



February 28, 2020

Submitted electronically

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE., Washington, DC 20549

Re: Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data; File No. 4-757

Dear Ms. Countryman:

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") Proposed Order directing the national securities exchanges and FINRA (“Plan Participants”) to submit a New Consolidated Data Plan for equity market data, including new requirements for the governance and operation of the Securities Industry Processors (“SIPs”).²

A fundamental principle of the U.S. equity markets is that investors need good data upon which to base their trading decisions. Since the 1970s, the consolidated tape has provided investors a simple and readily available means to obtain current equity trade and quote information by aggregating real-time market data across different venues into a single data feed. This basic process remains a strong attribute of the U.S. equity markets: many global markets do not have a consolidated tape and struggle with how to create one; non-equity asset classes do not have a consolidated tape equivalent.

Yet while in recent years technology and a competitive marketplace of multiple trading centers have improved the cost, liquidity, speed, and product innovation of equity trading, these competitive market dynamics have not extended to the consolidated tape. For more than forty

¹ Fidelity and its affiliates are leading providers of mutual fund management and distribution, securities brokerage, and retirement recordkeeping services, among other businesses. Fidelity submits this letter on behalf of Fidelity Management & Research Company, the investment adviser to the Fidelity family of mutual funds; National Financial Services LLC, a Fidelity Investments company, a SEC registered broker-dealer clearing firm and FINRA member; and Fidelity Brokerage Services LLC, a SEC registered introducing retail broker-dealer, and FINRA member. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association (SIFMA) and Investment Company Institute (ICI) in their comment letters to the SEC on the Proposed Order. We submit this letter to supplement the SIFMA and ICI letters on specific issues.

² Securities Exchange Act Release No. 87906 (Jan. 8, 2020), 85 FR 2202 (January 14, 2020) (File No. 4-757) available at: <https://www.govinfo.gov/content/pkg/FR-2020-01-14/pdf/2020-00360.pdf> (the “Proposed Order”). Capitalized terms have the meanings ascribed to them in the Proposed Order.

years, national securities exchanges and FINRA have been the exclusive operators of the SIPs which provide market data to the consolidated tape. During this time, exchanges have transitioned from mutualized, not-for-profit organizations to for-profit public companies. Fidelity, among others in the industry, has repeatedly highlighted the inherent conflicts of interest associated with for-profit exchanges simultaneously offering for sale their proprietary market data while operating the SIPs.³ It has been difficult for non-SRO market participants to effect changes to the SIPs given that voting authority for the plans resides exclusively with the Plan Participants and is concentrated among certain Exchange groups. Moreover, non-SROs act only in an advisory role to the SIP Operating Committee and do not participate in, or have transparency into, SIP Operating Committee discussions.

Fidelity strongly supports the Proposed Order to modernize the governance and operation of the SIPs. We anticipate the proposed changes will help mitigate the conflicts of interest that are inherent to the current structure and will establish a solid, new foundation through which future enhancements to the SIPs, as necessary, can be more efficiently and fairly made. Our recommendations that follow are designed to further improve the Proposed Order, which we view as long overdue and necessary to the continued strength of the U.S. equity markets.

EXECUTIVE SUMMARY

- Fidelity strongly supports the SEC's Proposed Order to require the Plan Participants to consolidate the current three Equity Data Plans into a single, New Consolidated Data Plan to promote efficiency and eliminate redundancies.
- Fidelity strongly supports the SEC's proposed governance structure of the Operating Committee of the New Consolidated Data Plan to address conflicts of interest in the current Equity Data Plans.
- To help ensure the timely implementation of the New Consolidated Data Plan, Fidelity recommends the Commission provide prescriptive direction and establish specific

³ Fidelity has repeatedly advocated for changes to the current governance process of NMS plans, including the SIP NMS Plans, in the following regulatory proposals: Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail; Notices, 81 FR 30614 (May 17, 2016) Fidelity comments *available at*: <https://www.sec.gov/comments/4-698/4698-14.pdf>; Executive Order 13772 "Core Principles for Regulating the United States Financial System" signed by U.S. President Donald Trump on February 3, 2017; Final Report *available at*: <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf> SEC Roundtable on Market Data and Market Access; File No. 4-72, Fidelity comments *available at*: <https://www.sec.gov/comments/4-729/4729-4566044-176136.pdf>; Securities and Exchange Commission, Proposed Rule, Transaction Fee Pilot, Exchange Act Release No. 78309, 83 FR 13008 (Mar. 26, 2018), Fidelity comments *available at*: <https://www.sec.gov/comments/s7-05-18/s70518-3712431-162396.pdf> Securities and Exchange Commission Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail, 84 FR 48458 (September 13, 2019) Fidelity comments *available at*: <https://www.sec.gov/comments/s7-13-19/s71319-6357608-196387.pdf>; Securities and Exchange Commission Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments, 84 FR 54794 (October 11, 2019) Fidelity comments *available at*: <https://www.sec.gov/comments/s7-15-19/s71519-6526198-200427.pdf>

milestones, and timetables for the completion of such milestones, in the Commission's final order.

Fidelity strongly supports the development of the New Consolidated Data Plan.

Consolidation of Plans and Administrators; Independence of Administrators

Currently, the three separate Equity Data Plans cover the collection, processing and distribution of SIP data. Two separate Plan Administrators oversee the three separate Plans (NYSE for the CTA NMS Plan and CQ NMS Plan, and the Nasdaq for the Nasdaq/UTP NMS Plan). The Commission believes that these redundant efforts contribute to duplicative costs, including maintaining accounting for three sets of legal and auditor fees, maintaining separate books and records, filing separate amendments, and devoting personnel resources to coordinate and facilitate three separate plans.

Under the Proposed Order, the three separate Equity Data Plans would be merged into a single New Consolidated Data Plan and a single Plan Administrator would be chosen to oversee the newly formed plan. The Proposed Order also outlines independence standards for the Plan Administrator: the Plan Administrator could not be owned, or controlled by, an entity that also offers for sale a market data product, either directly or via another subsidiary.

We support the Proposed Order's changes to the Equity Data Plans and Plan Administrator role. The consolidation of three separate Equity Data Plans into a single new Consolidated Data Plan, with a single Plan Administrator, will promote administrative efficiency and consistency among the Equity Data Plans, reduce existing redundancies, and simplify plan governance and maintenance. Moreover, requiring the Plan Administrator to be independent of an entity that also offers for sale a market data product will address conflicts of interests that exist today with national securities exchanges holding conflicting roles with regard to their commercial interests and the interests of the Equity Data Plans.

Plan Processors

The Proposed Order allows two Plan Processors to remain in place— one Plan Processor for Tape A and Tape B listed securities and a second Plan Processor for Tape C listed securities.

The SEC recently issued a proposed rule that would, among other items, make changes to the definition of SIP "core data" and allow for competing market data consolidators in place of the current two Plan Processors of the SIP.⁴ While we plan to respond to this proposed rule separately, our preliminary view is that the current process whereby a single Plan Processor handles a mutually exclusive universe of securities is an antiquated design process that does not

⁴ Securities Exchange Act Release No. 88216; File No. S7-03-20 (Feb 14, 2020) available at: <https://www.sec.gov/rules/proposed/2020/34-88216.pdf>

address the need for failover/redundancy in the Plans.⁵ Although the Commission has worked to address resiliency in core market infrastructures, (*i.e.*, Regulation SCI), the SEC should consider allowing multiple processors to offer the full universe of symbols, which would create both competition and redundancy/failover processes.

Fidelity strongly supports the SEC's proposed governance structure of the Operating Committee of the New Consolidated Data Plan.

Under the SIP's current governance structure, the Plan Participants have exclusive control of the Equity Data Plans, largely through exclusive participation and voting rights in the SIP Operating Committee. While this structure may have been appropriate in the 1970s, the transformation of national securities exchanges from mutualized entities to publicly owned companies that offer competing products to the SIPs, and the emergence of Exchange groups which control 14 of the current 17 votes on the SIP Operating Committee, requires the SEC to re-evaluate this historic structure in light of the current market environment.

Voting Rights

The Proposed Order outlines voting representation for the SIP Operating Committee.

Under the Proposed Order, each unaffiliated SRO, and each Exchange group, would have one vote on the SIP Operating Committee. If an Exchange group or unaffiliated SRO has a market center or centers that trade more than 15% of consolidated equity market share, a second vote would be provided to that Exchange group or unaffiliated SRO. We support the proposed unaffiliated SRO and Exchange group voting rights as a means to ensure voting rights are allocated on the basis of market share, while preventing the consolidation of voting power among certain Exchange groups and removing incentives to open new exchanges as a means to obtain another Operating Committee vote.

Under the Proposed Order, for the first time, non-SROs would be permitted to participate in the SIP Operating Committee and vote in SIP Operating Committee meetings. Fidelity has long advocated for broker-dealers and asset managers to have voting rights on the SIP Operating Committee.⁶ Broker-dealers and asset managers are important stakeholders in the Equity Data Plans, pay considerable market data fees, and should have transparency and engagement on the SIP Operating Committee, rather than simply act in an advisory capacity.

The Proposed Order's voting structure would provide for 2/3 of votes to be cast by Plan Participants and 1/3 of votes to be cast by non-SROs. We support a SIP Operating Committee

⁵ For example, on August 22, 2013, for approximately three hours, all trading in Nasdaq listed securities was halted due to an overloading of the UTP SIP. Once there was an accepted plan for re-opening the market, connectivity to the UTP SIP was made available to the UTP Participants. See UTP Vendor Alert #2013 – 9 available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-9>

⁶ See footnote 3 *infra*

voting structure where non-SRO participants have a meaningful ability to effect change, and we believe that providing non-SRO participants 1/3 voting rights is a good start.

The Proposed Order would also require an augmented voting structure, that is, any action by the SIP Operating Committee would require an augmented majority vote of 2/3 majority, which must also include a majority of SRO votes. We support an augmented voting process and believe that it is preferable to the current SIP Operating Committee process of unanimous consent, which effectively provides a single exchange veto authority over any Operating Committee action. Moreover, an augmented voting process is consistent with the voting process outlined in the CAT NMS Plan.

Selection of non-SRO members

Under the Proposed Order, contrary to current practice, the Plan Participants would not be able to select non-SRO members of the Operating Committee. The initial group of non-SRO members would be selected by current SIP Advisory Committee members. Non-SRO members of the Operating Committee would serve for a two-year role.

To help promote independence of views, we agree that the Plan Participants should not select non-SRO members of the Operating Committee. Current SIP Advisory Committee members should undertake a fully transparent application process for new members, advertised publicly and well in advance, to help ensure equality of opportunity and a wide spectrum of eligible candidates. We recommend that any non-SRO candidate selected have a baseline level of knowledge on market data matters that come before the committee.

We recommend a three-year term for non-SRO members that can be renewed once for a maximum term limit of six years. SIP market data governance involves complex issues and it may take time for new non-SRO members to learn specific content. We believe that a maximum six-year term will provide for a continuous source of fresh views on this topic. We also recommend the establishment of initial staggered terms for non-SRO members. Staggered terms would allow new non-SRO members to participate in the Operating Committee while receiving learning benefits from tenured non-SRO members with expertise on specific SIP issues.

SEC rulemaking authority and implementation of the final order.

The Commission has plenary authority to prescribe rules governing the collection and dissemination of equity market data.⁷ We appreciate that rather than issue a final order, the SEC

⁷ Section 11A of the Securities Exchange Act of 1934 (*National Market System for Securities; Securities Information Processors*), among other items, directs the SEC to prescribe rules “as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter to . . . assure the prompt, accurate, reliable and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.” 15 U.S.C. 78k-1(c)(1)(B). Section 11A further authorizes the SEC, by rule or by order, to authorize or require the SROs to act jointly with respect to

has issued the Proposed Order as an interim step to solicit public comment. We support the SEC's incremental approach to rulemaking as a deliberate step to obtain further stakeholder views on this important topic, prior to issuing a final order to the Plan Participants.

We also note that several NMS Plans have been criticized in recent years (*i.e.*, the Tick Size Pilot NMS Plan) as placing too much control of important industry initiatives in the hands of Plan Participants who, given their dual role as self-regulators and commercial market participants, may be conflicted in implementing the plan. We believe that NMS Plans have been most successful where Plan Participants have no commercial interests and the NMS Plan is run as a public utility (*i.e.*, the NMS Plan to Address Extraordinary Market Volatility, otherwise known as Limit-Up, Limit-Down).

To help avoid delays in the implementation of the Proposed Order, we recommend that the SEC's final order to the Plan Participants should detail the Commission's specific requirements so that Plan Participant interpretations of the final order do not frustrate the SEC's intent to modernize the SIPs. We also recommend that the SEC include in their final order targeted milestones, and timetables for such milestones, that the Plan Participants must meet to help ensure the new governance structure is implemented in a timely manner. If Plan Participants do not meet a milestone deadline, the Plan Participants should not be eligible to receive market data revenues from the SIPs. We believe that this process is consistent with Commission action in other NMS Plans and will help ensure that these much-needed modernizing reforms to the SIPs are ultimately realized.⁸

#

matters as to which they share authority, including the NMS plans governing the dissemination of core market data. 15 U.S.C. 78k-l(a)(3)(B).

⁸ See, e.g., Securities and Exchange Commission Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail, 84 FR 48458 (September 13, 2019) *available at*: <https://www.govinfo.gov/content/pkg/FR-2019-09-13/pdf/2019-19852.pdf> The Commission proposed a similar process in amendments to the CAT NMS Plan which attached financial accountability to the Plan Participants' regulatory obligation to implement the CAT in an efficient and expeditious manner. Under these proposed amendments, Plan Participants must achieve certain enumerated implementation milestones prior to the Plan Participants ability to recover related fees, costs or expenses from Industry Members.

Secretary, Securities and Exchange Commission

February 28, 2020

Page 7

Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments. Please contact us at [REDACTED] or [REDACTED]

Sincerely,



Michael Blasi
SVP, Enterprise Infrastructure
Fidelity Investments



Krista Ryan
VP, Associate General Counsel
Fidelity Investments

cc: The Honorable Jay Clayton, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner

Mr. Brett Redfearn, Director, Division of Trading and Markets

