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July 8, 2013

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-01-13; Regulation Systems Compliance and Integrity

Dear Ms. Murphy:

Fidelity Investments¹ (“Fidelity”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “SEC” or “Commission”) with respect to proposed Regulation Systems Compliance and Integrity, also known as “Regulation SCI”² (the “Proposal”).

Fidelity uses a wide variety of trading venues to execute client orders as efficiently as possible. Recent technology issues at several market venues have affected the orders of our retail and institutional clients. Although the Commission has recently adopted a number of regulatory measures designed to limit the impact of systems issues in the U.S. equity markets, such as circuit breakers that halt trading when a stock price moves too far, too fast and the “limit up-limit down” mechanism, we believe that more can be done and the Commission should continue to pursue regulatory measures designed to promote market stability and bolster investor confidence.

Regulation SCI seeks to update and formalize the Commission’s existing, voluntary Automation Review Policy (“ARP”) Program by establishing new, enforceable rules that require certain market participants (“SCI entities”), to meet specific standards with respect to their core technology systems directly responsible for, among other items, order routing and execution, the collection and dissemination of market data, regulatory functions and surveillance activities (“SCI systems”). The Proposal provides a safe harbor for SCI entities and persons employed by a SCI entity that comply with their obligations under the Proposal.

¹Fidelity is one of the world’s largest providers of financial services, with assets under administration of \$4.2 trillion, including managed assets of \$1.8 trillion, as of April 30, 2013. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms. Fidelity owns and operates one ATS, CrossStream, as part of its National Financial Services LLC broker-dealer.

²Securities Exchange Act Release No. 69077 (Mar. 8, 2013) 78 Fed. Reg. 18084 (Mar. 25, 2013) (Regulation Systems Compliance and Integrity).

Fidelity has for some time supported the Commission's goal of increased oversight of automated systems that are critical to the proper functioning of the national market system. For example, we advocated that the SEC formalize the ARP Program in a comment letter submitted in response to issues raised at the SEC's October 2012 Technology and Trading Roundtable.³ While the Proposal is a positive step toward meeting the Commission's goal of ensuring that automated systems are robust, stable and resilient, as discussed below, we believe that the Commission should revise the Proposal slightly in recognition of the different degrees of relative importance to the national market system among SCI entities by differentiating requirements among diverse SCI entities. We also believe that the Commission should clarify further a SCI entity's (i) obligation to notify market participants when certain events occur at the SCI entity; (ii) obligation to provide Commission representatives access to SCI systems; and (iii) ability to designate members or participants to test its business continuity and disaster recovery plans under the Proposal.

I. Differences among SCI entities

Under the Proposal, SCI entities are defined as (i) a SCI self-regulatory organization (which includes any national securities exchange ("Exchange"), registered clearing agency, FINRA, or the MSRB); (ii) a SCI Alternative Trading System ("ATS")⁴; (iii) a plan processor; or (iv) an exempt clearing agency subject to ARP. To help enhance the Commission's oversight of key automated systems of entities of particular importance to the national market system, the Proposal would impose certain uniform requirements on all entities designated as SCI entities. However, there is a significant difference in relative importance to the national market system of various SCI entities, only some of which perform critical market functions. We recommend that the Proposal be amended to take into consideration these differences.

On this point, Fidelity agrees in particular with the views expressed by the Securities Industry and Financial Markets Association (SIFMA) in its comment letter to the SEC on the Proposal. Like SIFMA, we believe that the SEC should adopt a risk-based approach that tiers

³Technology and Trading Roundtable, 77 FR 56697 (Sept. 13, 2012). Fidelity's comment letter is *available at*: <http://www.sec.gov/comments/4-652/4652-39.pdf>.

⁴Under the Proposal, an ATS would be considered a SCI entity ("SCI ATS") based on the ATSS trading over a specific period of time. Specifically, an ATS will be considered a SCI ATS if the ATS during at least four of the preceding six calendar months, had: (1) With respect to NMS stocks: (i) Five percent (5%) or more in any single NMS stock, and one-quarter percent (0.25%) or more in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan; or (ii) One percent (1%) or more in all NMS stocks of the average daily dollar volume reported by an effective transaction reporting plan; (2) With respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, five percent (5%) or more of the average daily dollar volume as calculated by the self-regulatory organization to which such transactions are reported; (3) With respect to municipal securities, five percent (5%) or more of either: (i) The average daily dollar volume traded in the United States; or (ii) The average daily transaction volume traded in the United States; or (4) With respect to corporate debt securities, five percent (5%) or more of either: (i) The average daily dollar volume traded in the United States; or (ii) The average daily transaction volume traded in the United States.

the obligations of a SCI entity based on the criticality of the functions performed by the particular SCI entity. SIFMA's proposed approach would impose more requirements on entities that perform critical market functions, such as Exchanges, than on other entities, such as SCI ATSS that meet certain trading thresholds but do not provide data to the Consolidated Quote System ("CQS"). We support SIFMA's proposed approach and write separately to underscore further the different functions performed by an Exchange and an ATS and why the proposal should treat the two differently.

SCI entities perform various functions in the national market system. Some of these functions are critical to the proper functioning of the markets and have market-wide implications for errors. Generally, a systems issue involving an ATS does not threaten the robustness, stability or resiliency of the national market system in the same manner as a comparable issue involving an Exchange. Below, we describe three major differences between the operations of an Exchange and an ATS which support our recommendation that the SEC should amend the Proposal to tier the obligations of a SCI entity based on the criticality of the functions performed by a particular SCI entity: role in price discovery, impact of a systems issue and existing regulatory framework.

Exchanges serve as the primary price discovery mechanism to the national market system. Exchanges publish quotes, disseminate order imbalance information, and attempt to attract interest in order to arrive at prices reflecting market equilibrium. This is especially true during the Exchanges' opening and closing auctions, where the primary listing market will set the official opening and closing prices of securities and in the case of an IPO's first transaction in the secondary market. Conversely, ATSS publish trade data after transactions occur, generally do not publish quotations into the CQS⁵, do not conduct IPO's and match buyers and sellers prices based on the best bid and offer prices as determined by Exchanges.

If an individual ATS has a systems issue, there is no foreseeable material effect on market wide trading, order routing, market data or other critical functions that the Commission seeks to protect in the Proposal. However, if an Exchange experiences a technology issue, the market impact could be more widespread. In the event of a systems issue at an individual ATS, only the limited base of subscribers at that ATS would be impacted since the ATS could temporarily shut down and route orders away to other trading venues. However, since the number of market participants that are members of, or route orders to, an Exchange is substantially larger than the base of subscribers to a single ATS, a systems failure at an Exchange could have a material impact to the national market system. The systems issues at an Exchange would be exacerbated during the opening and closing auctions for the reasons described above and even more so in the case of an IPO's first transaction in the secondary market.

⁵Fidelity supports SIFMA's proposed approach to designate as a higher level of criticality to the national market system SCI entities that are providers to the CQS.

Unlike Exchanges, ATSS are operated by registered broker-dealers and therefore are already subject to a comprehensive body of regulation under the Securities Exchange Act of 1934 (“’34 Act”) and related rules, as well as rules of self-regulatory organizations to which the broker-dealer belongs. These regulations include, among other requirements, stringent risk management, supervisory and control regulations. For example, under the SEC’s Market Access Rule (Rule 15c3-5 under the ’34 Act), broker-dealers that trade securities directly on an exchange or ATS are required, among other items, to establish, document, and maintain a system of risk management controls and supervisory procedures that are reasonably designed to systematically limit the financial exposure of the broker-dealer that could arise as a result of market access, and ensure compliance with all applicable regulatory requirements that are applicable in connection with market access. Broker-dealers also have obligations under FINRA Rules (i.e. FINRA Rule 3130) that require a firm to certify annually that it has in place processes to establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations. Firms are also required to modify such policies and procedures and test their effectiveness on a periodic basis. This regulatory framework contrasts with that of an Exchange, which currently does not impose risk management and supervisory controls on Exchange systems, a point that the Proposal seeks to address.⁶

Separately, the Proposal questions whether additional market participants should be designated as SCI entities, including among other entities, clearing broker-dealers and transfer agents.⁷ We do not believe that designating clearing broker-dealers or transfer agents as SCI entities would be an effective way to promote investor confidence and market stability. Clearing broker-dealers and transfer agents are not involved in “real-time” trading activities such as execution--their activities are conducted post-trade -- and therefore if their systems are down temporarily or for a day, there is no material effect on market wide trading, order routing, market data or other critical functions that the Commission is trying to protect. Moreover, Regulation SCI is designed to formalize the Commission’s existing ARP Program. Given that clearing broker-dealers and transfer agents are not currently included in the ARP Program, we do not believe that they should be included in the regulation formalizing this Program.

⁶ Importantly, Exchanges are also subject to immunity from private liability based on case law and limitations on liability codified in Exchange rules for damages caused. The fact that Exchanges have such immunity, while ATSS do not, compounds the need for Exchanges to be subject to more stringent standards under Regulation SCI than ATSS. Given that the Proposal would provide a safe harbor from liability for SCI entities and persons employed by SCI entities that meet certain requirements under the Proposal, the fact that Exchanges have immunity from private liability also raises the question as to whether Exchanges should be able to avail themselves of the Proposal’s safe harbor from regulatory liability.

⁷ See Section III.G of the Proposal.

II. Clarification of obligations of a SCI entity

SCI entity's obligation to notify market participants of a dissemination SCI event

Under the Proposal, all SCI entities are required to disseminate information to members or participants promptly after becoming aware of a systems compliance issue or systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.⁸ The Proposal currently places the burden of determining which systems compliance issues or systems disruptions to disclose on the SCI entity. Because proper disclosure will likely be a factor in determining whether the SCI entity has complied with the rule, SCI entities may over-report issues out of an abundance of caution. We recommend that the Commission describe with greater specificity the types of dissemination SCI events that must be disclosed and to whom disclosure must be made. If SCI entities are not given clear guidelines as to what (and to whom) they are required to report, we anticipate that members and market participants will receive numerous notifications, many of which may not be relevant or important. Moreover, a flood of notifications, taken out of context, may decrease investor confidence in the markets by creating an impression based on the quantity, not quality, of the notifications disseminated, that certain counterparties pose serious risks to the market, when that is not the case. Additional clarity would appropriately focus the dissemination of information on events that matter to specific market participants and eliminate potential distraction and resources spent on information that is not relevant.

Scope of Commission access to SCI systems

Under the Proposal, a SCI entity is required to provide "Commission representatives reasonable access to its SCI systems and SCI security systems to allow Commission representatives to assess the SCI entity's compliance with this rule."⁹ We do not agree that it is necessary for the SEC to have access to SCI systems and SCI security systems to assess a SCI entity's compliance with this rule. We are not aware of other instances in which regulators have direct and real-time access to such systems and believe that allowing Commission

⁸Proposed Rule 1000(b)(5) would require information relating to "dissemination SCI events" to be disseminated to members or participants, and specify the nature and timing of such disseminations, with a limited delay permitted for certain systems intrusions. Proposed Rule 1000(b)(5)(i)(A) would require that an SCI entity, promptly after any responsible SCI personnel becomes aware of a dissemination SCI event other than a systems intrusion, disseminate to its members or participants the following information about such SCI event: (1) the systems affected by the SCI event; and (2) a summary description of the SCI event. In addition, proposed Rule 1000(b)(5)(i)(B) would require an SCI entity to further disseminate to its members or participants, when known: (1) a detailed description of the SCI event; (2) the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; and (3) a description of the progress of its corrective action for the SCI event and when the SCI event has been or is expected to be resolved. Proposed Rule 1000(b)(5)(i)(C) would further require an SCI entity to provide regular updates to members or participants on any of the information required to be disseminated under proposed Rules 1000(b)(5)(i)(A) and (i)(B).

⁹Proposed Rule 1000(f).

representatives access to these systems may introduce unforeseen risks, which run counter to the policy objectives of Regulation SCI.

SCI systems are proprietary, fairly complex, frequently updated, and typically have myriad necessary connections to various other systems within a given firm. Because additional access points to these systems raise security concerns as well as the possibility of errors being inadvertently introduced into the system, industry standards typically require that systems be safeguarded, including controls on the access to systems. To accommodate SEC representative access to systems, SCI entities will need to establish highly structured control protocols to address SEC access and review of their SCI systems. Such protocols would be costly and burdensome in light of the limited benefits obtainable given the complexity of the systems. In light of the risks described above, we believe the SEC should rely on its standard methods of monitoring compliance rather than provide Commission representatives access to SCI systems which will be risky, inefficient and ineffective.

SCI entity's ability to designate members or participants to test its business continuity and disaster recovery plans

Proposed Rule 1000(b)(9) would require each SCI entity to (i) designate specific members or participants and (ii) require participation by those designated members or participants in scheduled testing of the SCI entity's business continuity and disaster recovery plans, including its back up systems, in the manner and frequency as specified by the SCI entity, at least once every 12 months. SCI entities would be required to notify the Commission of such designations and the standards for its designations, but would have discretion over which specific members or participants the SCI entity deemed necessary to participate in its testing.¹⁰ The Proposal does not provide an opportunity for designated members and market participants to discuss with a SCI entity whether their participation in the testing is necessary (or necessary to the degree indicated by the SCI entity).

Today, members and market participants are invited to participate in a wide variety of testing of the operations of various market participants. Although participation is not required under SEC rules today, market participants and members voluntarily participate in such testing because they have an economic incentive to do so. A member or participant's failure to participate in certain types of testing may result in costly issues for their firm at a later date. We are concerned that if a SCI entity has sole discretion to designate specific members or participants to participate in the testing of its business continuity and disaster recovery plans, SCI entities will have an incentive to designate a broad group of testing participants. Designated members and market participants will likely expend significant resources to participate in testing, particularly if they are designated by multiple SCI entities. Rather than allow SCI entities complete discretion in designating testing participants, we believe that the Commission should

¹⁰Proposed Rule 1000(b)(9)(ii) would further require an SCI entity to coordinate such testing on an industry- or sector-wide basis with other SCI entities.

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revise the Proposal to allow designated members and market participants to state to the SCI entity why their participation is not required and “opt-out” of such testing. Alternatively, the Commission might take a “best practice” approach to such coordinated testing and not require participation by designated members and market participants. We believe that these approaches are more efficient and would still result in effective participation by those members who have an interest in the testing of business continuity and disaster recovery plans at a specific SCI entity.

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Fidelity thanks the Commission for considering our comments. We would be pleased to provide any further information or respond to any questions that you may have.

Sincerely,



cc:

Honorable Mary Jo White, SEC Chairman
Honorable Elisse B. Walter, SEC Commissioner
Honorable Luis A. Aguilar, SEC Commissioner
Honorable Troy A. Paredes, SEC Commissioner
Honorable Daniel M. Gallagher, SEC Commissioner

Mr. John Ramsay, Acting Director, Division of Trading and Markets
Mr. James R. Burns, Deputy Director, Division of Trading and Markets
Ms. Heather Seidel, Association Director, Division of Trading and Markets
Mr. David Shillman, Associate Director, Division of Trading and Markets