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May 25, 2018

Submitted electronically

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Transaction Fee Pilot for NMS Stocks; File No. S7-05-18

Dear Mr. Fields,

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to provide comments on the Securities and Exchange Commission’s (the “SEC” or “Commission”) proposed new Rule 610T of Regulation NMS to conduct a Transaction Fee Pilot in NMS stocks.² Among other items, the Proposed Pilot is designed to facilitate analysis of the effects that transaction-based fees and rebates, and changes to those fees and rebates, may have on order routing behavior, execution quality, and market quality more generally. The SEC anticipates that the data generated by the Proposed Pilot will be used to evaluate potential regulatory action, including possible changes to Regulation NMS.

Fidelity’s comments reflect the views of an institutional asset manager, an institutional broker-dealer, and a retail broker-dealer who will be impacted by the Proposed Pilot.³

Fidelity believes that the U.S. equity markets are fundamentally strong and that investors have benefitted from numerous advances in recent years. Technology and a competitive marketplace of multiple trading centers have led to improved cost, liquidity, speed, and product innovation. The SEC, both directly and through its Equity Market Structure Advisory Committee, has assessed equity market structure issues and discussed potential enhancements to

¹ Fidelity and its affiliates are leading providers of mutual fund management and distribution, securities brokerage, and retirement recordkeeping services, among other businesses.

² Securities and Exchange Commission, Proposed Rule, *Transaction Fee Pilot*, Exchange Act Release No. 78309, 83 FR 13008 (Mar. 26, 2018), *avail. at*: <https://www.gpo.gov/fdsys/pkg/FR-2018-03-26/pdf/2018-05545.pdf> (the “Proposed Pilot” or the “Proposal”). Unless otherwise defined in this comment letter, capitalized terms have the meanings ascribed to them in the Proposal.

³ 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 (“NFS”), a Fidelity Investments company, a SEC registered broker-dealer clearing firm and FINRA member; and Fidelity Brokerage Services LLC (“FBS”), a SEC registered introducing retail broker-dealer, FINRA member, and affiliate of NFS. NFS operates a market center and routes orders for NFS and FBS customers.

U.S. equity market structure. We support the Commission's continuing efforts to evaluate the marketplace, and we look to the Commission to help promote market integrity, which in turn can bolster investor confidence.

Fidelity supports the Proposed Pilot. In recent years, market participants have heavily debated the effects that transaction-based fees, particularly access fees, and rebates may have on the equity markets, and we commend the SEC for advancing this discussion through a time-limited, empirical study. We also appreciate that the SEC has chosen to advance this discussion through the SEC rulemaking process and not through an NMS Plan. As industry concerns escalate with regard to NMS Plan governance, we do not believe that this is an appropriate time to increase the number of NMS Plans in operation.

We recommend that the SEC use the Proposed Pilot to examine the impact of transaction-based fees on execution and market quality and address potential broker conflicts of interest in order routing separately. If broker conflicts of interest in order routing are an issue in the marketplace, they will show themselves in execution performance. For this reason, we believe the SEC should first finalize regulations designed to make broker order routing and execution quality more transparent before taking action on the Proposed Pilot. We support the Proposed Pilot as a good first step in, but not a replacement for, a comprehensive SEC review of Regulation NMS. We also offer our views on the structure of the Proposed Pilot, should the SEC determine to proceed with it.

I. EXECUTIVE SUMMARY

- The SEC should use the Proposed Pilot to examine the impact of transaction-based fees on execution and market quality and address broker conflicts of interest in order routing similarly to how the SEC addresses broker conflicts in other contexts under the Securities Exchange Act of 1934: through mitigation, disclosure, and examination.
- The SEC should empower investors to make good routing decisions, and to help investors in those decisions, create more transparency around broker executions and execution quality statistics. Prior to taking action on the Proposed Pilot, the SEC should first (1) take final action on its proposed rulemakings concerning *Disclosure of Order Handling Information*⁴ and *Regulation of NMS Stock Alternative Trading Systems*⁵; (2) provide retail investors publicly available broker execution quality statistics; and (3) work with FINRA to issue new guidance on broker-dealers' best execution obligations.

⁴ Securities and Exchange Commission, Proposed Rule, *Disclosure of Order Handling Information*, Exchange Act Release No. 78309, 81 FR 49432 (July 27, 2016), *avail. at:* <https://www.gpo.gov/fdsys/pkg/FR-2016-07-27/pdf/2016-16967.pdf> Fidelity comments *avail. at:* <https://www.sec.gov/comments/s7-14-16/s71416-26.pdf>

⁵ Securities and Exchange Commission, Proposed Rule, *Regulation of NMS Stock Alternative Trading Systems* ("ATS"), Exchange Act Release No. 76474, 80 FR 80998 (Dec. 28, 2015), *avail. at:* <https://www.gpo.gov/fdsys/pkg/FR-2015-12-28/pdf/2015-29890.pdf>. Fidelity comments *avail. at:* <https://www.sec.gov/comments/s7-23-15/s72315-22.pdf>

- Given the interconnectedness of rules promulgated under Regulation NMS, including, but not limited to, the access fee cap and the Order Protection Rule, the Proposed Pilot is a good first step in, but not a replacement for, a comprehensive SEC review of Regulation NMS.
- At the start of the Proposed Pilot, the SEC should clearly define the data points that will be used to measure execution and market quality and the SEC should engage an independent third party to provide an independent assessment of the Proposed Pilot upon its completion.

Each of these recommendations is discussed in further detail below.

The Current 30 Cents per 100 Shares Access Fee Cap Should be Revisited Given the Passage of Time and Changing Market Environment Since it was First Established

When the SEC adopted Regulation NMS in 2005, the SEC presented the access fee cap as a necessary corollary to Rule 611, the Order Protection Rule. That is, the SEC placed a flat 30 cents per 100 shares access fee cap on exchange fees for equity transactions to ensure that market participants in a linked national market system had equal access to a protected price.

More than ten years after Regulation NMS was adopted, we agree that it makes sense to examine whether a flat 30 cents per 100 shares access fee cap is still the right number, or still the right number for all stocks. Over the past decade, technological enhancements have improved the speed and efficiency of the U.S. equity markets, fostered competition, and provided access to new and diverse sources of liquidity. Retail and institutional investors have benefited from lower spreads and execution costs. While the cost to execute an equity transaction has decreased since Regulation NMS was adopted, access fees remain a fixed transaction cost. It is reasonable to expect access fee caps to evolve with the markets, or at least examine whether they should. Moreover, a flat access fee cap for all stocks may not take into consideration different liquidity profiles of different stocks; one size may not fit all. An experiment on different levels of access fees and rebates for different symbols may yield interesting benefits to the equity markets.

The SEC Should Clarify the Goals of the Proposed Pilot and Address Conflicts in Order Routing Separately

The Proposed Pilot is designed to “facilitate analysis of the effects that transaction-based fees and rebates, and changes to those fees and rebates, may have on order routing behavior, execution quality, and market quality.” Much of the current debate around access fees centers around the value that rebates deliver to the markets. We believe that rebates are an important incentive to provide liquidity and promote price discovery in the public markets. We also believe that unless all exchange incentives and pricing differentiations are eliminated, there will always be perceived broker conflicts of interest in order routing.

Coupled with an existing best execution obligation, we assert that broker conflicts of interest in order routing are best addressed through transparency, actual performance, and

managing broker relationships. That is, the SEC can best address broker conflicts of interest in order routing similarly to how the SEC addresses broker conflicts in other contexts under the Securities Exchange Act of 1934: through mitigation, disclosure, and examination. For this reason, we recommend that the SEC clarify that the goal of the Proposed Pilot is to examine the impact of transaction-based fees on market and execution quality, and address broker conflicts of interest in order routing separately.

Prior to the Proposed Pilot, the SEC Should Finalize Proposed Rulemakings, Provide Retail Investors Publicly Available Execution Quality Statistics, and Work with FINRA on New Best Execution Guidance

Disclosure of Order Handling Information

If broker conflicts of interest in order routing are an issue in the marketplace, they will show themselves in execution performance. Securities regulators should be empowering investors to make good routing decisions and creating more transparency around broker executions and execution quality statistics to help investors in those decisions. The buy side can, and already does, address broker conflicts of interest in order routing by managing their brokerage relationships; however, some smaller buy side firms may have fewer resources to perform transaction cost analysis and interpret order handling and best execution. Before taking action on the Proposed Pilot, we recommend that the SEC first take final action on the Commission's proposed rulemaking concerning *Disclosure of Order Handling Information* and *Regulation of NMS Stock ATS*, provide retail investors publicly available broker execution quality statistics, and work with FINRA to issue new guidance on broker-dealers' best execution obligations.

Fidelity has supported SEC efforts to enhance the transparency of order routing practices.⁶ Standardized information about the manner in which brokers handle orders can help institutional customers evaluate broker routing decisions, potential conflicts of interest, and the quality of trade executions. Finalizing the SEC's proposed rule on *Disclosure of Order Handling Information*, combined with an industry trend to unbundle research, would assist all firms in understanding, and acting on, broker routing decisions through standardized reporting.⁷

Improve Rule 606 Reports to Support Retail Investors

In addition to greater order routing transparency to institutional investors, Fidelity has also recommended that the SEC provide greater transparency to retail investors on their broker-

⁶ See *supra* notes 4 and 5.

⁷ Data generated by the Proposed Pilot will only include broker order routing information to equity exchanges and will not include all broker order routing activity. Because data generated by the Proposed Pilot will be an incomplete view into broker order routing practices, we recommend that prior to the start of the Proposed Pilot, the SEC finalize its *Disclosure of Order Handling Information* proposed rule. We also believe that the Proposed Pilot's incomplete view into broker order routing practices further indicates that the Proposed Pilot should examine the impact of transaction fees on market and execution quality rather than potential conflicts in order routing.

dealer's execution quality.⁸ Currently, the SEC requires market centers to disclose monthly data about the quality of their trade execution. Each monthly report discloses execution quality data based on the previous month's trading activity ("Rule 605 Reports"). Separately, the SEC currently requires brokers that route orders on behalf of customers to prepare quarterly reports that disclose, among other items, information on: 1) the percentage of total customer orders that were non-directed orders and the percentages of total non-directed orders that were market orders, limit orders and other orders; 2) the identity of the venues to which a significant percentage of total non-directed orders were routed for execution; and 3) the terms of the material aspects of the broker-dealer's relationship with each venue identified, including a description of any arrangement for payment for order flow and any profit-sharing relationship ("Rule 606 Reports").

We do not believe that Rule 606 Reports are often used by retail customers to assess their broker's order routing and execution services. In the past ten years, we have received no more than a handful of retail customer requests for this information. We believe that Rule 606 Reports are most often used by broker-dealers to assess how their order routing and execution services compare to other firms, as well as by academics, members of the financial press, and wholesale market makers who review and evaluate this data as they seek to serve retail investor interests.

Missing from the current Rule 606 Reports is a means for a retail investor to determine how well their broker-dealer typically fills a retail order when compared to the "National Best Bid or Offer" (NBBO) at the time the order was received by the executing broker-dealer. Although a customer can request details on the identity of the venue, time of execution, and whether the order was directed to a specific venue per customer request, a customer would need to match this information to their broker's market center's Rule 605 Report to determine how well their broker filled their order compared to the NBBO. We believe that a more direct, relevant and understandable means for retail customers to evaluate a broker's management of conflicts and quality of retail order routing practices is through execution quality statistics presented on a broker-by-broker basis. Disclosing this information would allow investors to perform a comparative analysis between brokers based on clear pricing and execution metrics, which would be highly valuable information for an investor seeking to assess perceived conflicts.

We are not the first to recommend the SEC extend certain execution quality aspects of Rule 605 Reports to Rule 606 Reports.⁹ Under our recommendation, a retail investor would compare the net result of their trade by a particular broker, *i.e.* did the broker save the customer money by getting a price that was better than the NBBO and/or did the broker supply the

⁸ See *supra* note 4.

⁹ See Joe Ratterman, Chief Executive Officer, BATS Global Markets, Inc., Testimony to U.S. Senate Permanent Subcomm. on Investigations (June 17, 2014) ("Transparency could further be improved by amending Rule 606 to require disclosure about the routing of institutional orders, as well as separate disclosure regarding the routing of marketable and non-marketable orders, and the inclusion of execution quality data."); see also, Securities and Exchange Commission Equity Market Structure Advisory Comm., Customer Issues Subcomm., Recommendations Relating to Customer Issues (July 25, 2016), *avail. at*: <https://www.sec.gov/spotlight/emsac/emsac-customer-issues-subcommittee-recomendation-072516.pdf> see also Fidelity comments on Securities and Exchange Commission, Proposed Rule, *Disclosure of Order Handling Information*, *supra* at note 4.

customer order with enhanced liquidity. We believe that the publication of these simple and clear statistics will help retail investors evaluate their particular broker in the context of the number of retail brokerage firms through whom they can trade. Specifically, we propose that the SEC require brokers to make publicly available on their websites statistics such as 1) Price Improvement¹⁰; 2) Execution Price¹¹; 3) Execution Speed¹² and 4) Effective Spread.¹³

Fidelity's proposed approach is supported by our current practices. We are currently one of the few firms that voluntarily publishes, on a quarterly basis, on our public website www.fidelity.com, industry standardized statistics that measure the quality of trade executions on retail investor orders in exchange-listed stocks.¹⁴ Many leading retail brokerage firms have been encouraged to provide similar statistics but have chosen not to publicly post this information. We also display to customers, at the time of trade execution, the amount of any price improvement received on their trade and provide a Month-to-Date, Year-to-Date and Prior Twelve Month summary, as well as a historic detail of price improvement received on orders.¹⁵

Regulation of NMS Stock ATS and Best Execution Obligations

In addition to enhanced order routing and execution quality disclosures for institutional and retail investors, prior to the Proposed Pilot, we also suggest the SEC: 1) finalize its proposed *Regulation of NMS Stock ATS*, which would enhance the operational transparency and regulatory oversight of certain ATSs; and 2) work with FINRA to jointly provide greater guidance surrounding broker-dealers' best execution obligations.

Over the past year, FINRA has done considerable work on the topic of broker-dealers' best execution obligations:

- In November 2017, FINRA initiated an examination sweep focusing on broker-dealers' best execution obligations when they receive order routing inducements, such as payment

¹⁰ Measured by percentage of shares executed at prices better than the prevailing NBBO.

¹¹ Measured by percentage of shares executed at or within the NBBO.

¹² Measured by the average period between the time the broker receives an order and the time of order execution.

¹³ Measured by the distance from the midpoint of the market at the time when the customer's order was entered to the execution price the customer receives. This value would be doubled to capture the entire bid ask spread. This amount captures both how often, and by how much, a broker-dealer improves the price of a share.

¹⁴ Fidelity worked with other firms through the Financial Industry Forum ("FIF") to develop industry standardized statistics. Fidelity's current metrics are *avail at*: https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/FIF-FBS-retail-execution-quality-stats.pdf

¹⁵ Price improvement details provided for certain domestic stock and single-leg option orders entered during market hours after the primary opening, provided there is a NBBO at the time the order is placed. Price improvement details are provided for informational purposes only and are not used for regulatory reporting purposes.

for order flow and maker-taker rebates, or when they internalize order flow.¹⁶ In this sweep, FINRA noted that it is reviewing how broker-dealers manage the conflicts of interest that exist between their duty of best execution and their own financial interests.

- In December 2017, FINRA published selected observations from recent examinations that FINRA considered worth highlighting due to their potential impact on investors and markets or the frequency with which they occur.¹⁷ One of these observations was in the area of broker-dealers' best execution obligations. FINRA advised that conducting a regular and rigorous review of customer execution quality is critical to a broker-dealer's supervision of its best execution practices, particularly if a firm routes customer orders to an ATS in which the firm has a financial interest or market centers that provide order routing inducements, such as payment for order flow arrangements and order routing rebates.
- In early 2018, FINRA announced that it was expanding its equity best execution surveillance program to assess the degree to which firms provide price improvement when routing customer orders for execution or when executing internalized customer orders.¹⁸ Once this new surveillance pattern is in production, FINRA will systematically review both the frequency of price improvement, as well as the relative amount of price improvement obtained or provided when compared to other routing or execution venues.

Fidelity believes that FINRA's significant work outlined above would be enhanced if the SEC worked with FINRA to provide further guidance around broker-dealers' best execution obligations. We encourage the SEC and FINRA to work together on this topic.

The Proposed Pilot Will Create Valuable Insights but Should Not Replace a Comprehensive SEC Review of Regulation NMS

A competitive marketplace is complex and issues associated with market complexity, such as access fees, maker-taker pricing, the growth of displayed and non-displayed trading venues, market data, NMS plan governance, and the Order Protection Rule, are so interconnected that any assessment of one must necessarily consider how these other aspects of market structure have changed, or could change, under different market structure models. We believe that the SEC should examine transaction-based fees as part of a broader review of Regulation NMS.¹⁹

¹⁶ 2017 FINRA Targeted Exam Letter on Order Routing Conflicts, *avail. at:* <http://www.finra.org/industry/order-routing-conflicts>

¹⁷ 2017 Report on FINRA Examination Findings, *avail. at:* <http://www.finra.org/industry/2017-report-exam-findings>

¹⁸ FINRA 2018 Regulatory and Examinations Priority Letter, *avail. at:* <http://www.finra.org/industry/2018-regulatory-and-examination-priorities-letter>

¹⁹ Fidelity has long advocated for the SEC to undertake a holistic review of Regulation NMS. *See* Written Statement of Bill Baxter, Head of Global Program Trading and Market Structure, Fidelity Management and Research Co. before the SEC's Equity Market Structure Advisory Committee (May 13, 2015), *avail. at:* <https://www.sec.gov/comments/265-29/26529-17.pdf>. The Department of the Treasury also agreed that the SEC

Access fees are just one component of a set of rules under Regulation NMS which, if looked at in isolation, could have unintended consequences.

We are already seeing potential unintended consequences of the Proposed Pilot. For example, to compensate for the decrease in access fee revenue and flexibility in pricing, we predict more stock exchanges may open, spreading liquidity across more venues and increasing fragmentation in the equity markets.

We also note that there are currently close to three hundred (300) securities that are dually listed on both a U.S. exchange and the Toronto Stock Exchange (“TSX”). The TSX currently charges an access fee of 30 cents per 100 shares. At present, we are not aware of any plans by the TSX or Investment Industry Regulatory Organization of Canada to engage in an access fee pilot similar to the US. This means that for the duration of the Proposed Pilot, there will likely be two different access fee regimes for the same securities. We anticipate that this differential may result in more trading occurring on a non-U.S. exchange for these securities.

If the Commission determines to proceed with the Proposed Pilot, we offer the following views with regard to its proposed structure:

Clear Measures of Market and Execution Quality

The SEC should establish clear measures of market and execution quality for the Proposed Pilot. As we remarked in comments on the Tick-Size Pilot, we believe that measurements of market and execution quality should be clearly defined at the start of the Proposed Pilot, to avoid post hoc justifications and arguments about success and failure.²⁰ Fidelity generally agrees with the SEC’s proposed metrics for measuring market and execution quality in the Proposed Pilot, in particular, data measuring effective spread, quoted spread, slippage, displayed liquidity, and depth of book. Similar to the Tick-Size Pilot, we also suggest the Commission engage an independent third party to provide an independent assessment of the Proposed Pilot.²¹

Modifications to Pilot Design

- Test Groups and Control Group: The Proposed Pilot will have 1,000 stocks per test group. We question whether a statistically relevant sample size may be achieved with

should conduct a retrospective review of Regulation NMS in its Capital Markets Report. *A Financial System that Creates Economic Opportunities: Capital Markets* (Oct. 2017), avail. at: <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>

²⁰ Securities Exchange Act Release No. 73511 (Nov. 3, 2014), avail. at: <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/pdf/2014-26463.pdf>. Fidelity comments avail. at: <https://www.sec.gov/comments/4-657/4657-81.pdf>

²¹ Exchanges and FINRA select Rosenblatt to Assess Tick-Size Pilot (Jan. 23, 2018), avail. at: [https://www.linkedin.com/pulse/exchanges-finra-select-rosenblatt-assess-tick size-pilot-gawronski](https://www.linkedin.com/pulse/exchanges-finra-select-rosenblatt-assess-tick-size-pilot-gawronski)

fewer stocks. We support the Proposed Pilot's stratified random sampling by market cap, share price, and liquidity.

- No rebate and no linked pricing test group: The Proposed Pilot will contain a test group where exchanges can continue to charge up to 30 cents per 100 shares access fee and would be prohibited from offering rebates and linked pricing. This test group is designed to measure broker behavior in the absence of an inducement to trade.

We appreciate the data this test group has the potential to yield, including but not limited to: 1) the factors, other than pricing, broker-dealers consider important when routing to a particular exchange and 2) whether competition among exchanges in this test group leads to lower access fees and/or greater fragmentation and wider spreads among stocks with certain liquidity profiles. We note that in the current marketplace, exchanges compete with each other on price in the form of rebates. If exchanges cannot offer rebates or linked pricing in this test group, we will look to see if exchanges compete on access fees. If all exchanges continue to charge an access fee of 30 cents per 100 shares for Pilot Securities in this test group, there will be no competition among exchanges for transactions in Pilot Securities, which does not contribute to fair or efficient markets. We ask the SEC to monitor exchange behavior in this test group.

- Duration: We agree with the proposed two year duration of the Proposed Pilot with an automatic sunset at the end of year 1 unless the SEC approves an extension for the second year. We believe that the SEC and market participants will have gathered the data they need after year 1. Although the SEC has accommodated for the launch of the Proposed Pilot with the Tick Size Pilot, we recommend against two pilots running simultaneously for simplicity purposes and to avoid any claims that one pilot impacted the other.

- Pilot Securities:

— Exchange Traded Products (“ETPs”): We agree that ETPs should be included in the Proposed Pilot as the liquidity of these products may also be impacted by access fees. If ETPs are included in the Proposed Pilot, we believe that ETPs that track the same group of stocks should be placed in the same test group. If similarly situated ETPs are not grouped together, the SEC will place different price levers on virtually the same product, which is not equitable from a competitive business perspective.

— Less Liquid Stocks: We agree that the Proposed Pilot should include securities with a wide range of market caps and volumes, including less liquid stocks. Limiting a pilot to only larger stocks will impact a section of the market that already functions well and miss capturing the impact of charging fees on smaller issuers. Smaller companies should also be included to test whether different access fees can help improve market structure for less liquid securities.

- Trading Centers: We agree that the Proposed Pilot should only apply to equities exchanges, and not to ATS or options exchanges.
 - ATS: ATSs serve an important role in the markets by facilitating block size orders and minimizing information leakage. Because ATSs are not subject to the Order Protection Rule, they are also not subject to an access fee cap and should not be subject to the Proposed Pilot. Moreover, ATS' fee structures are already subject to competitive market forces and have more complex pricing models than exchanges making their participation in the Proposed Pilot less useful.
 - Options Exchanges: Similarly, the access fee cap does not currently apply to options exchanges, in recognition of the fact that options and equities are materially different types of securities. We support the SEC's decision to not include options exchanges in the Proposed Pilot and encourage the SEC to consider a roundtable on issues concerning options market structure in the near future.
- Trade-at: We support the SEC's decision not to include a "trade-at" requirement in the Proposed Pilot. For some time, the Commission has expressed an interest in investigating whether the quality of public price discovery may be harmed by un-displayed liquidity. We have yet to see evidence that price formation is deteriorating or data establishing that the quality of public price discovery is harmed by un-displayed liquidity.

A trade-at requirement is, in its own regard, a controversial issue that has been part of market structure discussions irrespective of access fee debates. To succeed, the Proposed Pilot should be designed as simply as possible. Moreover, including a trade-at requirement in the Proposed Pilot also introduces unnecessary complexity, making the Proposed Pilot more time-consuming and expensive to implement.

- Posting of Order Routing Data and Broker Confidentiality: The Proposed Pilot would require exchanges to prepare a publicly downloadable file containing fairly granular, sensitive and aggregated broker-dealer order routing information for all Pilot Securities. In preparing these datasets, the exchanges would be required to anonymize information relating to the identity of individual broker-dealers before making the order routing datasets publicly available. In order to track and aggregate the activity of particular broker-dealers across multiple exchanges, the SEC proposes that each exchange use the same anonymized code provided by the SEC and based off the CRD identifier, to identify a specific broker-dealer.

We are concerned that the identity of specific broker-dealers may be reverse engineered based on public data provided for the Proposed Pilot. For example, the SEC proposes to separately publish held orders and not-held orders in publicly available order routing data. Given the large percentage of held orders that represent retail order flow, we believe that it will be easy to distinguish the largest retail broker-dealers from publicly

available data. For this reason, we suggest that the SEC: 1) eliminate the publicly available data on held and not-held orders and 2) extend the dissemination period for this data to be made publicly available from 30 days to 120 days. Moreover, to help ensure that specific broker-dealers are not identified as associated with a particular data set, the SEC should specify that the anonymized code for each broker-dealer can only be used by exchange employees directly responsible for publishing the data and cannot be shared with other exchange employees.

- Comingled Data: Broker-dealers supporting multiple businesses (*i.e.* brokers that have institutional customers and retail customers) will have their order routing data comingled and published in the aggregate. Given differences in order routing decisions, such as whether some order routing decisions are mandated by clients and others are not, we are concerned that comingling these orders will skew the results of the Proposed Pilot. For this reason, we further suggest that the SEC focus data gathered from the Proposed Pilot on market and execution quality rather than broker order routing decisions.

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Secretary, Securities and Exchange Commission

May 25, 2018

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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.

Sincerely,



cc: The Honorable Jay Clayton, Chairman
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner

Mr. Brett Redfearn, Director, Division of Trading and Markets
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Mr. Robert Cook, President and CEO, FINRA