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Submitted electronically

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail; File No. S7-13-19

Dear Ms. Countryman,

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to provide comments on the Securities and Exchange Commission’s (“Commission” or “SEC”) Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”).² The Proposed Amendments would require the self-regulatory organizations that are participants to the CAT NMS Plan (the “Plan Participants”) to provide public updates on CAT implementation progress and developments. The Proposed Amendments would also impose financial accountability provisions on the Plan Participants to help facilitate certain CAT Implementation Milestones.

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 National Financial Services LLC (“NFS”), a Fidelity Investments company, a SEC registered broker-dealer clearing firm and FINRA member; Fidelity Brokerage Services LLC (“FBS”), a SEC registered introducing broker-dealer, FINRA member, and affiliate of NFS; and Fidelity Management & Research Company (“FMR”), the investment adviser to the Fidelity family of mutual funds. NFS is a CAT Reporter on behalf of itself and its correspondent clearing firms, including FBS, and a former member of the CAT Development Advisory Group, which provided suggestions to the Plan Participants in the development of the Proposed CAT NMS Plan. FMR is an institutional investor representative to the CAT NMS Plan Advisory Committee. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association and the Financial Industry Forum in their comment letters to the SEC on the Proposed Amendments. We submit this letter to supplement these letters on specific issues.

² 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 “Proposal” or the “Proposed Amendments”). Capitalized terms have the meaning ascribed to them in the Proposal.

Fidelity has a strong interest in the efficient and expeditious implementation of the CAT. Delays in CAT implementation have cost Industry Members both in hard dollars and opportunity costs. Like many firms, we have dedicated operational and compliance resources to the implementation of the CAT and delays in the development of the CAT have prevented us from deploying these resources to other efforts. We are also at a point in time where we are simultaneously building a new regulatory reporting system (the CAT), while maintaining older regulatory reporting systems (OATS, Electronic Blue Sheets). Fidelity has long supported the development of the CAT as a means to minimize regulatory reporting burdens for broker-dealers through the elimination of multiple rules and systems made redundant by the CAT.³ The sooner the CAT is fully implemented, the sooner these duplicative reporting systems can be retired, and internal resources devoted to building the CAT, reallocated to other projects and initiatives.

Executive Summary

- Fidelity supports the Proposal's operational transparency requirements to formalize and publicly document CAT implementation progress.
- To provide greater understanding into the costs of implementing each phase of the CAT, we recommend that the proposed Quarterly Progress Reports also include financial information detailing the fees, costs and expenses that the Plan Participants have incurred to build and implement the CAT and these fees, costs, and expenses should be tied to the relevant Financial Accountability Milestone.
- Fidelity supports the Proposal's financial accountability requirements but recommends that the SEC allow some flexibility for reasonable delays, particularly in matters that may impact data quality.

Each of these items is discussed in more detail below.

Proposed Amendments to Increase Operational Transparency

Under the Proposed Amendments, the Plan Participants must file with the Commission, and make publicly available, a detailed Implementation Plan and ongoing Quarterly Progress Reports which would provide public updates on implementation progress and developments on the CAT.

³ See Fidelity comments on *Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail*; 81 FR 30614 (May 17, 2016) available at: <https://www.sec.gov/comments/4-698/4698-14.pdf> and Fidelity comments on *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT*, 82 FR 25423 (June 1, 2017) available at: <https://www.sec.gov/comments/sr-finra-2017-013/finra2017013-1821724-154264.pdf>

In addition, the CAT NMS Plan Operating Committee must approve the proposed Implementation Plan and ongoing Quarterly Progress Reports, by at least a supermajority vote, before the documents are filed with the SEC and made publicly available. If the documents are only approved by a supermajority of the CAT NMS Plan Operating Committee, and not by unanimous vote, the Proposed Amendments would require each Plan Participant whose Operating Committee member did not vote to approve, to separately file with the SEC and make publicly available on each of the Plan Participant's websites, or collectively on the CAT NMS Plan website, a statement identifying itself and explaining why the member did not vote to approve the Implementation Plan or Quarterly Progress Report. Prior to the Operating Committee's vote, the Implementation Plan and Quarterly Progress Reports must be submitted by the Operating Committee to the chief executive officer, president or equivalently situated senior officer of each participating self-regulatory organization to promote senior management attention and accountability with respect to CAT implementation.

Fidelity strongly supports greater public transparency across all NMS Plans. In recent years, the SEC has frequently used NMS Plans to implement market-wide initiatives that impact almost all market participants. However, the administration of NMS Plans is often opaque and can exclude the views of certain market participants in NMS Plan decision-making processes. Greater public transparency concerning NMS Plans, such as with the Proposed Amendments, is a regulatory step in the right direction.

We view the CAT as a large-scale technology project. Key to the success of any large-scale technology project is information sharing and good communication across all stakeholders. As an Industry Member and CAT Reporter on behalf of ourselves and our correspondent clearing firms, we are interested in specific details on, and timing of, CAT implementation. The proposed Implementation Plan and Quarterly Progress Reports will provide us more information on the timing of our CAT reporting obligations, which should help us more efficiently develop and implement regulatory data collection systems, adjusting as needed, as well as monitor and better understand the progress of overall CAT implementation.

To improve the value of this reporting, we recommend that the proposed Quarterly Progress Reports include financial information detailing the fees, costs and expenses that the Participants have incurred to build and implement the CAT. These fees, costs and expenses should be tied to the relevant Financial Accountability Milestone.⁴

The CAT NMS Plan currently contemplates that the CAT NMS Plan Operating Committee will establish, and the Plan Participants will implement, fees for Plan Participants and Industry Members to recover the costs and expenses incurred by Plan Participants in connection with the development, implementation, and operation of the CAT. Plan Participants are required to file these fees with the SEC, specifying the percentage of the costs and expenses to be

⁴ Given that the proposed Quarterly Progress Reports would be filed and made publicly available no later than 15 business days following the end of each calendar quarter, these fees, costs, and expenses could be disclosed on a one quarter lagging basis.

allocated to the Plan Participants and Industry Members, and explaining how costs and expenses will be allocated within each group. Each Plan Participant must also demonstrate that such fee filings provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The fees, costs, and expenses Plan Participants have incurred to develop, implement and operate the CAT should be disclosed in the proposed Quarterly Progress Reports and clearly tied to the relevant Financial Accountability Milestone. This information will help Industry Members better understand the universe of costs they might be asked to pay at a future date as well as how those costs relate to each Financial Accountability Milestone. This information will also be helpful to Industry Members as they review and comment on individual CAT fee proposals submitted by the Plan Participants. If Industry Members have a better understanding of overall costs to develop, implement and operate the CAT, then Industry Members will have a better understanding of whether individual CAT fee proposals comply with the Exchange Act, namely in light of overall costs incurred by the Plan Participants, whether a particular CAT fee proposal is fair, equitable and does not impose burdens on competition.⁵

Financial Accountability Amendments for Implementation of the CAT

To prevent additional delays, the Proposed Amendments would apply new conditions to the collection of any fees established by the Operating Committee, or implemented by the Participants, regarding the recovery from Industry Members of any fees, costs, and expenses incurred by or for the FINRA CAT LLC in connection with the development, implementation, and operation of the CAT. These new conditions would apply from the effective date of these Proposed Amendments, if adopted by the Commission, until such time that the Participants have completed Full Implementation of CAT NMS Plan Requirements (“Post-Amendment Industry Member Fees”). Plan Participants would be required to meet four (4) critical CAT Implementation Milestones by certain dates in order to collect the full amount of any Post-Amendment Industry Member Fees. These Implementation Milestones and target dates are:

- April 30, 2020 for Initial Industry Member Core Equity Reporting;
- December 31, 2020 for Full Implementation of Core Equity Reporting Requirements;
- December 31, 2021 for Full Availability and Regulatory Utilization of Transactional Database Functionality; and
- December 31, 2022 for Full Implementation of CAT NMS Plan Requirements

⁵ The SEC has recently proposed amendments that would rescind a provision that allows a proposed amendment to an NMS Plan to become effective upon filing if the proposed amendment establishes or changes a fee or other charge. Such a proposed amendment instead would be subject to the procedures set forth in Rule 608(b)(1) and (2) that require the SEC to publish the proposed amendment, provide an opportunity for public comment, and preclude a proposed amendment from becoming effective unless approved by the SEC. Securities and Exchange Commission, *Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments* 84 FR 54794 (October 11, 2019) available at: <https://www.govinfo.gov/content/pkg/FR-2019-10-11/pdf/2019-21770.pdf>

If the Plan Participants fail to meet the target deadlines, they would only be entitled to receive a portion of the amount of the relevant Post-Amendment Industry Member Fee, as determined by the amount of time (in number of days) by which the Participants have missed the target deadline.

We have seen improvements in the development of the CAT, and dynamic between the SROs, Industry Members and Plan Processor since FINRA CAT LLC took over as Plan Processor earlier this year. FINRA CAT LLC has provided frequent updates, listened to industry concerns, and provided much needed guidance in the form of the CAT Industry Member Onboarding Guide, a new CAT Industry Member Reporting Scenarios document, and new FAQs.

Fidelity believes that each of the proposed target deadlines for CAT implementation are realistic deadlines, and that four target deadlines is a reasonable number. We support the proposed financial accountability provisions to provide appropriate incentives for the Plan Participants to implement the CAT in a timely manner. If the Participants miss a proposed target deadline, we generally do not believe that it is reasonable for the Plan Participants to fully recover fees, costs, and expenses from Industry Members, because further delays by Plan Participants will impose additional costs on Industry Members.

We also recognize that despite best efforts, unforeseen circumstances may occur where it may be in the collective best interest to extend a target deadline. In these circumstances, we believe that financial penalties will create a degree of friction in the development process that is not conducive to the overall success of the CAT and that may prioritize rushing to complete a target deadline over a long-term view of the CAT. We recommend that the SEC allow for some flexibility or reasonable delays in target deadlines, particularly in matters that may impact data quality.

The Proposal's financial incentives also raise the question of the overall cost of the CAT and the equitable allocation of that cost across different market participants. The SEC has yet to approve a CAT fee proposal and Plan Participants have not provided justification for imposing fees on broker-dealers for the CAT, that will be in addition to fees the Plan Participants already charge broker-dealers for regulatory funding. We are concerned that the Plan Participants, as sole voting members in the CAT NMS Plan, may be conflicted in decisions of how to allocate costs associated with the CAT. One way to address this issue is through the Proposal's increased transparency of the fees, costs and expenses that the Plan Participants have incurred to build and implement the CAT. Another way to address this issue is to provide market participants, such as broker-dealers and asset managers, greater opportunities to participate in CAT governance.

Secretary, Securities and Exchange Commission

October 28, 2019

Page 6 of 6

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Fidelity would be pleased to provide further information and participate in any direct outreach efforts the Commission undertakes regarding the CAT.

Sincerely,



Thomas Tesauro

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

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