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November 12, 2013

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

Re: Release No. 34-70676; File No. SR-FINRA-2013-042

Dear Ms. Murphy:

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to respond to the Securities and Exchange Commission’s (the “SEC” or “Commission”) request for comment with respect to the above-mentioned Financial Industry Regulatory Authority (“FINRA”) proposed rule change that would require Alternative Trading Systems (“ATS”) to report trading information to FINRA and to obtain a unique Market Participant Identifier.²

Fidelity generally agrees with the comments submitted by the Securities Industry and Financial Markets Association (“SIFMA”), the Investment Company Institute and the Financial Industry Forum on the Proposal and offers the following comments to supplement those letters on specific issues.

Fidelity supports the objectives of the Proposal, including FINRA’s goal to “enhance the transparency of trading activity in the over-the-counter market.”³ We believe that quantitative, publicly available information regarding ATS trading can provide market participants, regulators and policymakers a greater understanding of the role ATSs play in the equity marketplace, as

¹Comments reflected in this letter represent the views of Fidelity Management & Research Company, investment adviser to the Fidelity family of mutual funds; National Financial Services LLC, a Fidelity Investments company that offers broker-dealer firms a comprehensive, fully disclosed clearing platform that includes a dedicated service model, a global trading platform, and a source of leading investment solutions; and Fidelity Capital Markets, Fidelity’s institutional trading division, which provides trading, products and services to the retail and institutional clients of Fidelity’s brokerage businesses. Fidelity owns and operates one ATS, CrossStream, as part of its National Financial Services LLC broker-dealer. In addition, Fidelity’s brokerage business routinely routes orders from retail and institutional brokerage customers to ATS venues for execution.

²See Notice of Filing of Proposed Rule Change to Require Alternative Trading Systems To Report Volume Information to FINRA and Use Unique Market Participant Identifiers, Exchange Act Release No. 70676, 78 FR 62862 (October 22, 2013), (the “Proposal”). Unless otherwise defined in this comment letter, capitalized terms have the meanings ascribed to them in the Proposal.

³Proposal at 62863.

well as provide a factual foundation for key discussions and decisions concerning equity market structure issues.⁴ We offer the following suggestions that we believe will improve the Proposal:

- FINRA should eliminate the Reporting Requirement and allow member firms to focus their resources on the MPID Requirement. Alternatively, FINRA should commit to remove the Reporting Requirement once the MPID Requirement is in place;
- the Proposal should be expanded to include trade information for other off-exchange executions and this information should be made public in the same manner as proposed for ATS trade information;
- FINRA should not charge a fee for professional users to access ATS trade information; and
- FINRA should enhance ATS trade information with market quality statistics from FINRA's own data resources.

Each of these comments is discussed in more detail below.

Reporting and MPID Requirements

Although we support the proposed new trade reporting requirements, Fidelity believes that FINRA's requirement that each ATS report information both under the Reporting Requirement and the MPID Requirement is unnecessary, redundant and confusing. Under the Reporting Requirement, every ATS that has filed Form ATS with the SEC would be required to self-report to FINRA its aggregate weekly volume information on the ATS's securities transactions within seven business days after the end of each calendar week. FINRA proposes to publish this ATS trade information for equity securities on a delayed basis. For example, FINRA proposes to publish ATS trade information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility on a two-week delay and ATS trade information on all other less liquid equity securities on a four-week delay. FINRA proposes to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 30 days following Commission approval. ATSs will be required to begin self-reporting the trade information no later than 90 days following publication of FINRA's *Regulatory Notice* announcing Commission approval of the Proposal.

⁴Fidelity has a significant interest in market structure developments and provided comment on the Commission's 2009 proposal to increase the transparency of dark pools by treating actionable indications of interest as quotes, lowering the trading volume threshold at which an ATS is required to display its best priced orders for a listed stock and provide nondiscriminatory access to such orders to non-subscribers, and requiring real-time disclosure of the identity of each ATS that executes a trade. See Regulation of Non-Public Trading Interest, Exchange Act Release No. 60997, 74 FR 61208 (November 23, 2009), Fidelity comment letter *available at*: <http://www.sec.gov/comments/s7-27-09/s72709-65.pdf>. Fidelity also submitted a comment letter in response to issues discussed at the SEC's Technology and Trading Roundtable, 77 FR 56697 (Sept. 13, 2012), Fidelity comment letter *available at*: <http://www.sec.gov/comments/4-652/4652-39.pdf> and in response to the SEC's proposed Regulation Systems Compliance and Integrity, Exchange Act Release No. 69077, 78 Fed. Reg. 18084 (Mar. 25, 2013), Fidelity comment letter *available at*: <http://www.sec.gov/comments/s7-01-13/s70113-46.pdf>.

The Proposal also requires every ATS to acquire a single, unique market participant identifier (“MPID”) designed for the exclusive use of reporting each ATS’s transactions to FINRA (“MPID Requirement”). After an ATS acquires its MPID, any reporting by the ATS, including all information that the ATS is already required to self-report under the Reporting Requirement, must be reported to FINRA a second time using the MPID for the ATS. The effective date for the MPID Requirement will be no later than 270 days following publication of FINRA’s *Regulatory Notice* announcing Commission approval of the Proposal.

According to the Proposal, after the MPID Requirement is implemented, FINRA intends to compare ATS trade information self-reported under the Reporting Requirement to information submitted under the MPID Requirement to “verify the consistency and accuracy of both.”⁵ Once FINRA confirms the MPID Requirement is functioning as intended, FINRA states that it will determine whether to continue to require ATSS to self-report trading information.⁶

As a threshold matter, Fidelity supports FINRA’s proposed two-week delay in dissemination of ATS trading information for NMS Tier 1 stocks and four-week delay in dissemination of ATS trading information on non-NMS Tier 1 stocks and OTC Equity Securities. We believe that any shorter time period for dissemination of this information would increase the risk that trading activities of large institutions could be prematurely signaled to the market, allowing opportunistic traders to trade with or ahead of those orders.

More importantly, we believe that FINRA should eliminate the Reporting Requirement altogether and instead receive ATS trade information solely under the MPID Requirement. Under the Proposal, broker-dealers are required to self-report ATS trade information to FINRA for six-months, at which point broker-dealers will be required to supplement the self-reported data with the exact same data reported under the MPID Requirement. The Proposal’s interim Reporting Requirement sets up an additional process that will require member firms to expend technology and staff resources for at least nine months while FINRA decides what to do longer term. By eliminating the Reporting Requirement, the Proposal will be implemented in a manner that minimizes disruption to the markets and cost to broker-dealer firms, without any loss of transparency into ATS trading.

We agree with SIFMA that if FINRA nevertheless continues to require that firms implement the Reporting Requirement, FINRA should commit to discontinue the Reporting Requirement as soon as possible after the MPID Requirement has taken effect, and certainly once FINRA has established that the MPID Requirement is functioning and effective. There is no regulatory need for duplicative reporting systems, and member firms will bear the expense of maintaining multiple systems and people to manage and deliver the two reports.

Finally, although we currently expect that seven business days should be a sufficient amount of time for an ATS to consolidate, review and report this information to FINRA, it is difficult for us to fully assess this timeframe because FINRA has not yet identified the format by

⁵Proposal at 62865, FN 23.

⁶Id.

which member firms will deliver their weekly reporting data. If FINRA proceeds with the Reporting Requirement, we urge FINRA to develop a straightforward reporting format for member firms. This approach will minimize the need for member firms to make costly technology changes to comply with a potentially interim reporting requirement.

Trading information for other off-exchange trades

FINRA states that the Proposal is designed to “enhance the transparency of trading activity in the over-the-counter market.”⁷ The Proposal currently requires each ATS that has filed a Form ATS with the SEC to provide specific trade information to FINRA. We note that there are other types of non-displayed trades that are not captured by the Proposal. Reporting and dissemination of additional non-displayed liquidity and off-exchange trades would further the goal of enhanced transparency of trading activity in the over-the-counter market. By limiting the Proposal to trades involving ATSS, FINRA will obtain information on only a portion of the overall trading activity that is not currently publicly displayed. Unless this additional information is made publicly available, the industry, regulators and policymakers will have an incomplete view of over-the-counter market trading activity, which may in turn, affect discussions and decision-making on equity market structure topics.

Fidelity believes that FINRA should amend the Proposal to include additional executions that are currently not publicly displayed and/or executed off-exchange. This could include broker-dealer internalized executions or crossed orders from upstairs trading desks, trades executed in the over-the-counter market by wholesale market makers trading with order entry brokers, and executions on broker crossing systems that have not filed a Form ATS with the Commission. By providing more data on different broker-dealer executions that are currently not publicly displayed, market participants will offer, and obtain, greater visibility into the overall trading activity.

In addition to broker-dealer executions, we recommend that the Commission consider a similar rule for entities under its jurisdiction, such as U.S. Securities Exchanges (“Exchanges”). Significant amounts of trading are done at Exchanges in dark pools, where liquidity is not displayed as a result of the Exchange’s dark or reserve order type.⁸ Given the regulatory goal of increased transparency into off-exchange executions, the Commission should consider requiring all entities providing such executions, regardless of their status or regulator, to provide this information publicly.

⁷Proposal at 62863.

⁸For example, the NYSE advertises that, “NYSE ARCA trades over 500 million shares of dark liquidity, daily” See: <http://www.nyse.com/equities/1224238238849.html> and NASDAQ OMX notes that for October 2013, the equity order type “non-displayed limit orders (including midpoint)” constituted 6.60% of its executed orders. See: <http://www.nasdaqtrader.com/trader.aspx?ID=ordertypeusage>.

FINRA should not charge a fee for professional users to access this data

Under the Proposal, FINRA intends to establish a flat, monthly subscription fee (with a yearly commitment term) to recover costs that may be incurred in providing access to the published reports to professional subscribers.⁹ Fidelity strongly opposes FINRA charging a fee for professional subscribers to access ATS trading information.

According to the Proposal, ATS trade information will be posted on FINRA's website with "appropriate disclosures that the information is based on ATS submitted reports and not on reports produced or validated by FINRA."¹⁰ FINRA is not producing or validating the information, so we submit that there is no need to charge a fee simply to post this information on their website. Moreover, we believe that the proposed fee for professional users to access this data will inhibit discussion on market quality questions that may be raised by the trade information. The Commission has recently made available to the public, via its new Market Structure Data and Analysis Website, a range of market metrics and analytics including data from the Commission's Market Information Data and Analytics System (MIDAS). As Chair White noted in the SEC's press release announcing the launch of the website, "By also making this information publicly accessible, two great things should happen. It should increase efficiency so people don't have to struggle to find this information. And it should spur innovation by unlocking the power of data and research to unlock a wealth of ideas from investors, market participants, and academics."¹¹ Given the interest in off-exchange trading by market participants, regulators and policy makers, we believe that the free flow of ATS trade information has the potential to spur discussion on this topic and that such discussion could be hindered if ATS trade information is only available for a fee to certain users.

The need for enhanced execution quality metrics

As noted above, Fidelity supports increased transparency of ATS trading as a means to help inform current discussions on market quality and market structure. We further believe that ATS trade information would be enhanced if FINRA were to accompany disclosures concerning ATS trading volumes with market quality statistics from FINRA's own data resources. For example, we urge FINRA to present data concerning the price points at the time of executions (i.e., whether the executions were performed inside, at, or outside of the quote) with ATS trade volume information and make this information publicly available for free to all on FINRA's website. Market participants would find this information useful as a means to help ensure that their trade execution decisions are appropriate. Additional market quality statistics would also provide market participants, regulators and policymakers more detailed disclosures concerning trading activities in the U.S. equities markets.

⁹FINRA notes that the amount of the fee will be established pursuant to a future, separate proposed rule change that FINRA will file with the Commission. Proposal at 62864, FN 18.

¹⁰Proposal at 62863.

¹¹Securities and Exchange Commission 2013. *SEC Launches Market Structure Data and Analysis Website* Release No. 2013-17 (Oct. 9, 2013).

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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,



Scott C. Goebel

cc:

The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

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