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[redacted]

August 15, 2016

Submitted electronically

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

Re: Release No. 34-78359; File No. SR-FINRA-2016-027

Dear Mr. Fields,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to respond to the Securities and Exchange Commission's (the "SEC" or "Commission") request for comment on a FINRA proposed rule change to expand the Trade Reporting and Compliance Engine ("TRACE") reporting rules to include certain secondary market transactions in marketable U.S. Treasury securities (the "Proposed Rule").[2] Fidelity submits this letter from the standpoint of an institutional investor in the Treasury markets and two FINRA members that are subject to the proposed reporting requirements.

Fidelity agrees that the official sector should have more information regarding the U.S. Treasury market and that the Proposed Rule requiring certain trade information from FINRA members is a good start. We support harmonized Treasury security trade reporting requirements across market intermediaries[3] to allow regulators a comprehensive view into the marketplace and

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[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 SEC registered clearing broker-dealer and FINRA member; Fidelity Brokerage Services LLC ("FBS"), a SEC registered introducing broker-dealer and FINRA member; and Fidelity Management & Research Co., a SEC registered investment adviser and investment adviser to the Fidelity family of mutual funds. Both NFS and FBS are independent SEC registered broker-dealers that are not owned by a bank. Fidelity generally agrees with the views expressed by the Investment Company Institute ("ICI") and Securities Industry and Financial Markets Association ("SIFMA") in their comment letters to the SEC on the Proposed Rule. We submit this letter to supplement the ICI and SIFMA letters on specific issues.
[2]Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; *Notice of Filing of a Proposed Rule Change Relating to the Reporting of U.S. Treasury Securities to the Trade Reporting and Compliance Engine*, 81 FR 48465 (July 25, 2016) *avail. at*: https://www.federalregister.gov/articles/2016/07/25/2016-17446/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-a Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Proposed Rule.
[3]The term "market intermediaries" is used throughout this comment letter to describe brokers, dealers, and principal trading firms (PTFs) that buy or sell Treasury securities for their own account or the accounts of others. We oppose reporting requirements on funds or other investors in the Treasury cash market. We believe that brokers, dealers and PTFs are involved in virtually all trades in this market and that these market intermediaries are in the best position to

to maintain an even playing field with respect to costs. While we do not disagree with the substance of the Proposed Rule, we disagree with the manner in which it has been proposed for the following reasons:

EXECUTIVE SUMMARY

- Not all market intermediaries in the Treasury cash market are FINRA members. Given the official sector's need for a comprehensive view of Treasury cash market transaction data, we do not understand why a trade reporting requirement directed only at FINRA members has been put forth at this time;

- The Proposed Rule will impose direct and indirect costs on FINRA members with an unclear benefit to the official sector given that the trade data reported will present an incomplete view of the Treasury cash market;

- The SEC should delay the approval and/or implementation of the Proposed Rule until similar proposals are finalized for all market intermediaries in the Treasury cash market; and

- Regulators should carefully consider the question of public dissemination of reported Treasury trade data and address this issue in a separate rulemaking effort.

Each of these items is discussed in more detail below.

The Proposed Rule is Premature

Earlier this year, the Department of Treasury ("Treasury") sought public comment on U.S. Treasury market structure, including, among other items, more comprehensive official sector access to Treasury market data and the benefits and risks of increased public disclosure of Treasury market activity.[4] In seeking comment on ways market participants could report Treasury market data to the official sector, the Treasury RFI acknowledged that trading in the Treasury cash market occurs across a diverse set of venues and modes of execution and that "activity related to U.S. Treasury markets trading often extends beyond individual regulator boundaries and often leaves any individual regulator with only a partial view".[5]

Market intermediaries in the Treasury cash market include principal trading firms (PTFs), that account for the majority of trading and standing quotes in the order book in both the Treasury futures and inter-dealer cash markets and bank dealers that account for the majority of secondary cash market trading overall but comprise well under half of the trading and quoting

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report Treasury cash market transactions given their existing infrastructure for reporting transactions to other markets.

[4]Department of the Treasury, *Notice Seeking Public Comment on the Evolution of the Treasury Market Structure*, 81 FR 3928 (January 22, 2016) *avail. at*: https://www.federalregister.gov/articles/2016/01/22/2016-01246/notice-seeking-public-comment-on-the-evolution-of-the-treasury-market-structure (the "Treasury RFI").

[5]Treasury RFI at 3928 and 3932

activity in the inter-dealer cash markets.[6] For example, it has been noted that in the inter-dealer market on October 15, 2014, PTFs accounted for more than 50% of the total trading volume across various maturities in the cash market, while bank dealers accounted for roughly 30-40% of volume in the cash market.[7] There does not appear to be current official data on the percentage of Treasury cash market activities conducted by FINRA members, but market participants have informally offered wide ranging estimates of "25% - 65% of the dollar volume."[8]

The Treasury Department has stated its commitment "to having a comprehensive plan to collect cash market data in place by year end" and that it "will continue working with other agencies and authorities to develop a plan for collecting similar data from institutions who actively trade U.S. Treasury securities but are not FINRA members."[9] More recently, staff of the Joint Member Agencies has stated that they "will continue to assess effective means to ensure that the collection of data regarding Treasury cash securities market transactions is comprehensive and includes information from institutions that are not FINRA members."[10]

Based on these statements, we infer that significant work is underway to collect Treasury cash market trade data from institutions that are not FINRA members.[11] Given this work, we question why it is necessary to impose a trade reporting requirement on only FINRA members at this time. If the Joint Member Agencies are close to finalizing similar proposals for market intermediaries under their jurisdiction, we encourage the Joint Member Agencies to coordinate on such proposals prior to their approval. If the Joint Member Agencies are not close to finalizing proposals for market intermediaries under their jurisdiction, SEC approval of the Proposed Rule would disparately impact FINRA members for an uncertain period of time, with an unclear benefit to the official sector given the incomplete view of the Treasury cash market activity that it would present.

If the SEC chooses to approve the Proposed Rule at this time, we urge the Commission to coordinate the implementation date of the Proposed Rule with the implementation date of similar requirements for non-FINRA member market intermediaries in the Treasury cash market. The official sector and market participants will be best served by coordinated and harmonized reporting requirements across Treasury cash market intermediaries.

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[6]Treasury RFI at 3928
[7]Proposed Rule at 48470, at note 45
[8]Proposed Rule at 48470
[9]U.S. Department of the Treasury and Securities and Exchange Commission *Statement on Trade Reporting in the U.S. Treasury Market* (May 16, 2016). *avail. at: https://www.sec.gov/news/pressrelease/2016-90.html*
[10]U.S. Department of Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, U.S. Commodities Futures Trading Commission (the "Joint Member Agencies") *Statement Regarding Progress on the Review of the U.S. Treasury Market Structure since the July 2015 Joint Staff Report* (August 2, 2016) *avail. at*: https://www.treasury.gov/press-center/press-releases/Pages/jl0533.aspx
[11]We note that the Joint Member Agencies have announced that they will host a conference on October 24, 2016 to discuss their continued progress on actions taken since the issuance of their Joint Staff Report on the U.S. Treasury market. We encourage the Joint Member Agencies to share the status of their efforts to collect trade data on the Treasury cash market from entities that are not FINRA members at the October conference.

The Proposed Rule Will Disparately Impact FINRA Members

If the SEC approves the Proposed Rule in its current form PTFs and bank dealers, that are not FINRA members and that account for a significant portion of trading in the Treasury cash market, would not be subject to the reporting requirements. This disparate treatment creates a competitive disadvantage for FINRA member firms in several ways.

Potential for regulatory arbitrage. If the Proposed Rule is approved in its current form, we believe that investors seeking anonymity who do not want their transactions reported to the official sector will not use a FINRA member broker-dealer to execute their transactions. This activity would result in a loss of business to FINRA members with a commensurate gain of business to Treasury cash market intermediaries who are not FINRA members.

Increased costs on FINRA members that are not imposed on similarly situated market intermediaries. FINRA proposes to exclude reporting of Treasuries from standard TRACE fees at least for the start of the program but indicates it is considering the appropriate long-term funding approach and fee structures. We anticipate that trade reporting fees will eventually be charged and could be significant. In addition, as outlined in FINRA's rule filing, FINRA member firms will incur expenses under the Proposed Rule associated with, among other items: technology builds, including developing trade modifier fields; testing; ongoing maintenance of feeds; the development and maintenance of regulatory compliance programs with respect to new reporting requirements; and managing and responding to inquiries from FINRA on Treasury cash market trade reporting. None of these costs will be imposed on non-FINRA member market intermediaries who perform similar trading activities in the Treasury cash market.

Ultimately, we believe that the Proposed Rule is another example of increased regulation on the brokerage industry that impacts the ability of firms to continue to operate as broker-dealers in light of the significant regulatory costs of doing business. We believe that the regulatory costs of doing business as a broker-dealer versus other types of financial professionals have been a factor in the close to 35% decline in the number of registered broker-dealers in the past 12 years.[12]

FINRA Member Data will Present an Incomplete View of the Market. Ultimately, we question whether the Proposed Rule's trade reporting data will be useful, given that the reporting requirement is not uniformly applied to all Treasury cash market intermediaries and FINRA member only trade reporting data will present the official sector an incomplete view of the

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[12] As of 2004 year end, the number of registered broker-dealers was 6,339. As of the 2011 year end, the number of registered broker-dealers was 4,709, reflecting a net decrease of 1,630 (or 26%) in the number of registered broker-dealers. *See*: Security and Exchange Commission's *Financial Responsibility Rules for Broker Dealers Final Rule*, 78 FR 51824 (August 21, 2013) at 51870 *avail. at*: http://www.gpo.gov/fdsys/pkg/FR-2013-08-21/pdf/2013-18734.pdf. As of July 2016, the number of registered broker-dealers was 4,113. *See* Security and Exchange Commission's Proposed Collection; *Comment Request on Form Custody*, 81 FR 46978 (July 19, 2016) at 46978 *avail. at*: https://www.gpo.gov/fdsys/pkg/FR-2016-07-19/pdf/2016-17000.pdf

Treasury cash market. Our concern is more pronounced if this data is used as a basis for rulemaking and/or there is public dissemination of Treasury cash market trade data.

Public Dissemination

FINRA is not currently proposing to disseminate any trade-level information to the public regarding transactions in Treasury securities, but notes that when the proposed reporting requirement for official use is in place, FINRA will work with the Treasury and SEC to analyze the data to determine whether a transparency regime may be appropriate.

We believe that the decision as to whether there should be any public dissemination of Treasury security trade data needs to be carefully considered. As a general matter, we are concerned that public transparency could adversely diminish the depth, liquidity and functioning of the Treasury market, resulting in harm to funds, investors, and other market participants. We recommend that the Joint Member Agencies proceed by implementing trade data reporting requirements on *all* Treasury cash market dealers and limit such reporting to only the official sector. After a thorough official sector review of the data obtained, the Joint Member Agencies should discuss potential courses of action with the industry with full public notice and opportunity to comment on any potential rulemaking.

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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 Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
David Grim, Director, Division of Investment Management

Robert L.D. Colby, CLO, FINRA
Ola Persson, Vice President, Transparency Services FINRA

Antonio Weiss, Counselor to Treasury Secretary Jacob J. Lew