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June 22, 2017

Submitted electronically

Mr. Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SR-FINRA-2017-013

Dear Mr. Errett,

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 outlining FINRA's proposed criteria to decommission its Order Audit Trail System (''OATS'') rules and to amend FINRA's electronic blue sheet rules to reflect changes to these rules once FINRA members are reporting to the consolidated audit trail (''CAT'') and the CAT's accuracy and reliability meet certain standards.[2]

Fidelity supports the development of the CAT.[3] Among other items, we believe that the CAT can minimize regulatory reporting burdens for broker-dealers through the elimination of multiple rules and systems made redundant by the CAT.

The CAT NMS Plan requires each Plan Participant to file with the Commission proposed rule changes to eliminate or modify systems made redundant by the CAT "at such time as CAT Data meets minimum standards of accuracy and reliability."[4] FINRA is filing the Proposal to meet this CAT NMS Plan requirement. We are concerned that the Proposal will require broker-

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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.

[2]*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.gpo.gov/fdsys/pkg/FR-2017-06-01/pdf/2017-11359.pdf (the "Proposal"). Capitalized terms have the meanings ascribed to them in the Proposal.

[3]Fidelity's comments on the proposed CAT NMS Plan are available at: https://www.sec.gov/comments/4-698/4698-14.pdf.

[4]Proposal at 25423.

dealers to maintain both CAT and OATS simultaneously for an indefinite period of time because FINRA's proposed criteria to retire OATS is not clear and provides little incentive for firms to meet the proposed error rates that determine, in part, OATS retirement. Our comments on the Proposal include the following points:

Executive Summary:

- We recommend that FINRA provide more clarity on the criteria that it will use to retire OATS and not condition OATS retirement on data that is not currently required for OATS;

- We support a phased-in implementation for reporting to the CAT based on whether a firm is a current OATS reporter, rather than the size of the firm; and

- We urge FINRA to allow individual exemptions from OATS reporting once individual firms meet certain error rates, or, in the alternative, to allow firms to migrate to exclusive CAT reporting in phased groups. We believe that either approach would provide an incentive for firms to meet proposed error rates and expedite the transition from OATS to the CAT, to the benefit of industry participants and regulators alike.

Each of these points is discussed in further detail below.

Specific Accuracy and Reliability Standards

Under the Proposal, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in certain categories for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5). FINRA would measure the error rate thresholds by averaging the error rate across the 180-day period to help ensure that single-day measurements do not unduly affect the overall measurements.

As described in the Proposal, these minimum error rates would serve as the "*primary, but not the sole, metric*" that FINRA would use to determine the CAT's accuracy and reliability, and would serve as the *baseline* for FINRA to use to determine whether OATS could be "retired". Under the Proposal, during the minimum 180 day period during which the error rates are calculated, FINRA's use of the CAT data must *additionally* confirm that (i) usage over that time period has not revealed material issues that have not been corrected; (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

We do not believe that the proposed additional metrics, outside of the proposed error rates, provide enough clarity regarding when FINRA will retire OATS. For example, under the Proposal, even if all CAT Reporters across the industry meet required minimum error rates during the 180 day period, firms would still need to maintain both CAT and OATS if, in FINRA's opinion, the CAT fails to includes all data necessary to allow FINRA to meet its surveillance obligations and/or the Plan Processor is not sufficiently meeting all of its obligations under the CAT NMS Plan. We anticipate that these vague standards will put member firms in the position of working diligently to comply with error rate requirements with the goal of promptly transitioning to CAT-only reporting, while simultaneously operating OATS, EBS, and CAT for extended periods of time.

Maintaining duplicative regulatory reporting systems is a drain on firm monetary and human resources. Fidelity estimates that it will cost us approximately $1.5 million in both 2017 and 2018 to implement the CAT. Fidelity estimates that it costs us approximately $1.5 million per year to operate OATS. Fidelity further estimates that it will cost us approximately $450 thousand in fees each year for the CAT once it becomes operational. Running OATS and the CAT simultaneously is not only a drain on firm human resources, but also diverts firm capital from new investing initiatives and development of new products and services to help investors. Prompt retirement of OATS is thus not only a benefit to industry members and regulators, but to issuers and investors as well.

Additionally, FINRA should not condition OATS retirement on data that is not currently required for OATS. We agree with FINRA that error rates for equity securities should be measured separately from option securities since options orders are not currently reported to OATS. Similarly, error rates in reporting customer and account information should be outside the scope of an OATS retirement plan because this data is not reported to OATS today.

Small Industry Member Data

Under the current CAT NMS Plan, Small Industry Members (“SIMs”) are required to report to the CAT three years after the Effective Date versus two years after the Effective Date for other firms. FINRA supports an amendment to the Plan that would require current OATS reporters that are SIMs to report two years after the Effective Date (rather than three).

For practical reasons, Fidelity supports an alternative approach that would phase-in implementation for reporting to the CAT based on current CAT reporter status rather than the size of the firm. Currently, some SIMs are OATS reporters and some Large Industry Members are OATS excluded members or non-OATS reporting member firms. By limiting the first phase of CAT to current OATS reporters, FINRA would have all of the data that they currently have in OATS today. Moreover, this approach would limit the burden on SIMs and Large Industry Members who are OATS excluded or non-OATS reporting firms today by allowing such firms additional time to comply with CAT requirements. For these reasons, we recommend that the Plan Participants support an amendment to the Plan that would phase-in implementation for reporting to the CAT based first on whether firms are current OATS reporters and, subsequently, whether firms are currently OATS excluded members or current non-OATS reporting member firms.

Individual Industry Member Exemptions

The CAT NMS Plan requires FINRA to address in the Proposal whether "Individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions." FINRA believes that a single industry-wide transition from OATS to CAT is highly preferable to a firm-by-firm transition and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis.

FINRA should reconsider this approach. Under FINRA's proposal, individual firms have little incentive to reduce their individual reported error rates because the retirement of OATS will be based on industry wide error rates and not error rates at individual firms and other factors outside of firm control. If FINRA does not agree that a firm-by-firm transition is appropriate, in the alternative, FINRA should consider migrating firms in tranches, or phases, based on priority of those firms that first met the proposed error rates. We believe that either of these approaches would provide the necessary motivation for the industry to transfer to the CAT reporting regime in an expeditious manner, to the benefit of member firms and regulators alike.

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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 Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Mr. Gary Goldsholle, Deputy Director, Division of Trading and Markets
Mr. David Shillman, Associate Director, Division of Trading and Markets

Mr. Robert Cook, President and CEO, FINRA
Mr. Robert Colby, Chief Legal Officer, FINRA

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