



November 12, 2020

*Submitted electronically*

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

Re: Joint Industry Plan: Notice of Filing of a National Market System Plan Regarding Consolidated Market Data; File No. 4-757

Dear Ms. Countryman:

Fidelity Investments (“Fidelity”)<sup>1</sup> appreciates the opportunity to comment on the joint industry plan (“Proposed Plan”) filed by the national securities exchanges and FINRA (“Plan Participants”).<sup>2</sup> The Proposed Plan responds to a Securities and Exchange Commission (“SEC” or “Commission”) Order directing the Plan Participants to draft a new, single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system stocks.<sup>3</sup> If approved by the SEC, the Proposed Plan would replace the current model in which the public dissemination of consolidated equity market data is governed by three separate equity market data plans, overseen by two separate Plan Administrators, and exclusively operated by the Plan Participants who concurrently offer their own proprietary equity market data to the public.

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<sup>1</sup> 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 Fidelity Management & Research Company, the investment adviser to the Fidelity family of mutual funds; National Financial Services LLC, a Fidelity Investments company, a SEC registered broker-dealer clearing firm and FINRA member; and Fidelity Brokerage Services LLC, a SEC registered introducing retail broker-dealer, and FINRA member. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association (SIFMA) and Investment Company Institute (ICI) in their comment letters to the SEC on the Proposed Plan. We submit this letter to supplement the SIFMA and ICI letters on specific issues.

<sup>2</sup> Securities and Exchange Commission *Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data* Exchange Act Release No. 90096 (October 6, 2020), 85 FR 64565 (October 13, 2020) (the “Proposal”, the “Proposed Plan” or the “Plan”). Capitalized terms have the meanings ascribed to them in the Proposal.

<sup>3</sup> Securities and Exchange Commission *Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data* Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) (the “Order”). Fidelity’s comments on the Order are available at: <https://www.sec.gov/comments/4-757/4757-6891496-210884.pdf>



As noted in our comments on the SEC's Order, Fidelity strongly supports the SEC's new governance model for the public dissemination of consolidated equity market data. We agree that the Proposed Plan, once implemented, will promote efficiency and eliminate redundancies, address conflicts of interest in the current equity market data plans, modernize the governance structure of the SIPs, and establish a solid, new foundation through which future enhancements to the SIPs, as necessary, can be more efficiently and fairly made. We view the Proposed Plan as largely responsive to the SEC's Order and our recommendations below are designed to highlight certain areas for further SEC consideration.

## EXECUTIVE SUMMARY

- The SEC should work to ensure the prompt implementation of the Plan;
- To help promote diversity and independence of views, we recommend a three-year Operating Committee term for non-SRO Voting Representatives that could be renewed once, for a maximum term limit of six years;
- Plan Participant use of Executive Session should be more narrowly defined; and
- Both SRO and non-SRO Voting Representatives should have the ability to include Member Observers in Plan meetings. Member Observers should not be permitted to participate in an SRO Voting Representative's proprietary data business but should be subject to Plan conflicts of interest and confidentiality policies.

Each of these recommendations are discussed in further detail below.

### Implementation of the Plan.

The existing model for public dissemination of consolidated equity market data is a decades old structure that has not kept pace with modern equity markets. Over the past few years, the SEC has focused their resources on certain key equity market structure reforms, including updates to the governance model of the SIPs. This multi-year effort has included numerous opportunities for public comment, both at an SEC Roundtable<sup>4</sup> and through the comment response process on different SEC equity market data rulemaking proposals. To continue this reform momentum, the SEC should approve the Proposed Plan and see that it becomes effective and operative without delay.

For example, the SROs have proposed that the Plan take the form of a new Delaware limited liability company, CT Plan LLC. Under the Proposal, the Plan would become *effective* after (1) it is approved by the SEC and (2) CT Plan LLC is formed by filing a certificate of formation with the Delaware Secretary of State. We do not anticipate issues with the administrative formation of CT Plan LLC and suggest that the SEC establish a time frame, such

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<sup>4</sup> Securities and Exchange Commission *Roundtable on Market Data and Market Access* File No. 4-72. Fidelity's comments on the Roundtable are available at: <https://www.sec.gov/comments/4-729/4729-4566044-176136.pdf>

as ten business days after SEC approval of the Plan, for the CT Plan LLC to be formed and the Plan's effective date to be established. We believe ten business days would be an appropriate period for filing the certificate and would help demonstrate Plan Participant commitment to implement the approved Plan.

Moreover, once effective, the Plan should become *operative* without delay. CT Plan LLC will be led by an Operating Committee comprised of SRO Voting Representatives and non-SRO Voting Representatives. Under the Proposal, the Plan would become operative on the first day of the month that is at least 90 days after the last of at least five specified actions have occurred (the "Operative Date"):

- (a) the SRO Voting Representatives and Non-SRO Voting Representatives of the Operating Committee have been determined;
- (b) fees for market data disseminated pursuant to the Plan have been established by the Operating Committee, are effective as an amendment to the Plan pursuant to Rule 608 of Regulation NMS, and are ready to be implemented on the Operative Date;
- (c) the CT Plan LLC has entered into an agreement with the necessary Processor(s);
- (d) the CT Plan LLC has entered into an agreement with an Administrator selected pursuant to Section 6.3 of the Plan and such Administrator has completed the transition from prior Administrators under the CQ Plan, CTA Plan, and UTP Plan such that it is able to provide services under the Administrative Services Agreement; and
- (e) the Operating Committee and, if applicable, the Commission, has approved all policies and procedures that are necessary or appropriate for the operation of CT Plan LLC.

We appreciate the complexity and number of milestones to be met before the Plan's Operative Date but are concerned that progress against this work may not proceed with the momentum necessary for these much-needed reforms. To help the public understand progress made against these milestones, the SEC should require the Plan Participants to provide transparency to their work and the SEC should provide appropriate financial incentives for the Plan Participants to implement the Plan in an efficient and expeditious manner.

For example, the Commission recently introduced operational transparency and financial accountability amendments to the CAT NMS Plan which require the Plan Participants to file with the Commission, and make publicly available, a detailed implementation plan and ongoing quarterly progress reports. The Amendments also establish target deadlines for critical implementation milestones and provide financial incentives for Plan Participants to meet those deadlines.<sup>5</sup> We believe that similar Commission direction on the Proposed Plan will work to ensure that these modernizing reforms are ultimately realized.

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<sup>5</sup> Securities and Exchange Commission *Amendments to the National Market System Plan Governing the Consolidated Audit Trail* Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) (the "Amendments").

### Term Limits

Under the Proposed Plan, the initial group of non-SRO Voting Representatives of the Operating Committee would be selected by current SIP Advisory Committee members. The Plan proposes that non-SRO Voting Representatives would serve for two-year terms, with the ability to renew once (*i.e.* a maximum term limit of four years).

To help promote diversity and independence of views, we recommend a three-year Operating Committee term for non-SRO Voting Representatives that could be renewed once (*i.e.* a maximum term limit of six years). We believe that a maximum six-year term will provide a continuous source of fresh views on this topic. We also believe that there is sufficient interest in this topic among qualified market participants and firms that the same individual should not serve as a non-SRO Operating Committee member for more than six years in total, whether for consecutive terms or not.

### Executive Sessions

Under the Proposed Plan, non-SRO Voting Representatives to the Operating Committee would participate with SROs in the operation of the Plan. An exception to this general rule is SRO use of “Executive Session” which is defined in the Proposed Plan as “a meeting of the Operating Committee pursuant to Section 4.4(g), which includes SRO Voting Representatives, Member Observers, SEC Staff, and other persons as deemed appropriate by the SRO Voting Representatives”. Notably, non-SRO Voting Representatives are not permitted to attend an Executive Session.

Article IV, Section 4.4(g) of the Proposed Plan provides that items for discussion within an Executive Session should be limited to those “for which it is appropriate to exclude Non-SRO Voting Representatives,” identified as: (i) any topic that requires discussion of Highly Confidential Information; (ii) vendor or subscriber audit findings; and (iii) litigation matters. The Proposed Plan further provides that the above items are “not dispositive of all matters that may by their nature require discussion in an Executive Session.”

If SRO use of an Executive Session is an exception to the general rule that non-SROs participate with SROs in the operation of the Plan, then use of an Executive Session should be narrowly tailored to meet this use case. While the presence of SEC staff at an Executive Session, and the fact that SRO requests to discuss a topic in an Executive Session must be included on the written agenda for an Operating Committee meeting, will help ensure that the use of Executive Session is appropriate, we are concerned that use of Executive Session will limit the information available to non-SRO Voting Member and impact the effectiveness of their participation on the Operating Committee. To this end, we believe that the list of permissible topics for Executive Session should be limited to just (i) any topic that requires discussion of Highly Confidential Information; (ii) vendor or subscriber audit findings; and (iii) litigation matters. Also, because SEC staff will attend all Executive Sessions, we believe that SEC staff should have a the ability to determine whether a particular topic, upon further review in an Executive Session, should be

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brought back for SRO and Non-SRO Voting Representatives discussion at a subsequent Operating Committee meeting.

Member Observers

Under the Proposed Plan, a “Member Observer” means any individual, other than a Voting Representative, that a Member, in its sole discretion, determines is necessary in connection with such Member’s compliance with its obligations under Rule 608(c) of Regulation NMS to attend Operating Committee and subcommittee meetings. Article IV, Section 4.4(g) of the Proposed Plan would permit Member Observers to attend an Executive Session of the Operating Committee.

The term Member Observer should be revised to allow both SRO Voting Representatives and Non-SRO Voting Representatives to include individuals with specialized expertise to attend Operating Committee and subcommittee meetings. We also recommend that all Member Observers, whether included by an SRO Voting Representative or non-SRO Voting Representative, should be subject to the same conflicts of interest and confidentiality policies as Voting Representatives. Moreover, in the case of an SRO Voting Representative’s Member Observer, that Member Observer should not have responsibility for the management, marketing, sale, or development of proprietary equity data products offered by the SRO, to further avoid conflicts of interest between an SRO’s commercial business and their SRO role with regard to the Plan.

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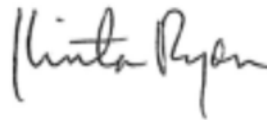
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Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments. Please contact us at [REDACTED] or [REDACTED].

Sincerely,



Michael Blasi  
SVP, Enterprise Infrastructure  
Fidelity Investments



Krista Ryan  
VP, Associate General Counsel  
Fidelity Investments

cc: The Honorable Jay Clayton, Chairman  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Allison Herren Lee, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner

Mr. Brett Redfearn, Director, Division of Trading and Markets

