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Submitted electronically

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

Re: Joint Industry Plan; Notice of Filing of the National Market System Plan
Governing the Consolidated Audit Trail; File No. 4-698

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 proposed National Market System (“NMS”) plan that would capture customer and order event information for all exchange-listed equities and options across all U.S. markets - from the time of order inception through routing, cancellation, modification or execution - in a single, consolidated data repository (the “Proposed Plan”).²

On July 11, 2012, the SEC voted to adopt Rule 613 of Regulation NMS to require the national securities exchanges and FINRA (collectively, “the SROs”) to jointly submit a NMS Plan to create, implement, and maintain a consolidated audit trail (“CAT”) and central repository for CAT data (“Central Repository”).³ The SEC outlined a broad framework for the CAT in Rule 613, including certain minimum elements the SEC believed necessary for an effective audit trail, and asked SROs to develop the operational details of how to implement the CAT through

¹Fidelity 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, 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. NFS is a member of the CAT Development Advisory Group, which has provided suggestions to the SROs in the development of the Proposed Plan. Fidelity generally agrees with the views expressed by the Investment Company Institute, Securities Industry and Financial Markets Association and the Financial Industry Forum in their comment letters to the SEC. We submit this letter to supplement these letters on specific issues.

²Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail; Notices, 81 FR 30614 (May 17, 2016) *available at*: <https://www.gpo.gov/fdsys/pkg/FR-2016-05-17/pdf/2016-10461.pdf>

³Securities and Exchange Commission, Final Rule, Consolidated Audit Trail, 77 FR 45722 (August 1, 2012) *available at*: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-01/pdf/2012-17918.pdf>

an NMS Plan. The SROs developed the Proposed Plan and submitted it in final form to the SEC on February 27, 2015.⁴ The SEC now seeks public comment on the SRO's Proposed Plan.

Fidelity agrees that the development of a single, centralized system for tracking equities and options trades across all equities and options markets would provide efficiencies to the markets. The development of the CAT would enable the SEC and SROs to perform market monitoring, enforcement and regulatory activities more effectively without having to “cobble together disparate data from a variety of existing information systems lacking in completeness, accuracy, accessibility, and/or timeliness.”⁵ The CAT would also, hopefully, minimize regulatory reporting burdens for broker-dealers through the elimination of multiple rules and systems made redundant by the CAT.

Although we appreciate the considerable time and resources devoted to the development of the Proposed Plan, and the SROs engagement with industry participants during this process, we are concerned that the Proposed Plan continues to lack key details on many critical aspects of the CAT. We urge the SEC to continue its close oversight of the development of the CAT to ensure that in its final form the CAT: 1) is a secure system for individual investor and mutual fund trading information; 2) expedites the retirement of duplicative broker-dealer regulatory reporting systems; 3) has an equitable funding model; and 4) operates under an inclusive governance structure.

I. EXECUTIVE SUMMARY

- Data Access and Security. Given that a Plan Processor has not yet been selected for the CAT, key details regarding the safeguarding of confidential information in the Central Repository remain outstanding. We urge the SEC and SROs to continue to make data access and security concerns in the CAT a high priority to address the risk of leakage or misuse of highly confidential individual investor and mutual fund trading information;
- Expedited Retirement of Duplicative Regulatory Reporting Systems. Information reported to the CAT will duplicate, in whole or in part, existing broker-dealer regulatory reporting requirements. The SEC and SROs should establish a fixed date for retiring these duplicative systems or, in the alternative, these duplicative systems should sunset automatically once the CAT reaches certain performance metrics. Given their acknowledged, limited life span, the SROs should immediately cease enhancements to older regulatory reporting systems which will retire once the CAT is operational;
- Cost and Funding. The costs and funding of the CAT should be borne equitably by broker-dealers and the SROs;

⁴See Limited Liability Company Agreement of CAT NMS, LLC A Delaware Limited Liability Company *available at*: <https://www.sec.gov/divisions/marketreg/cat-nms-plan-02-27-15.pdf> and cover letter *available at*: <https://www.sec.gov/divisions/marketreg/cat-nms-plan-letter-02-27-15.pdf>

⁵Proposed Plan at 30615.

- Technical Specifications. The SROs and Plan Processor should submit any new broker-dealer requirements developed pursuant to the Proposed Plan through the SRO rulemaking process. Moreover all SRO rule filings relative to the CAT should be filed and approved with enough time prior to the final CAT implementation date to allow market participants to properly implement the necessary systems and coding changes; and
- CAT Governance. The Proposed Plan's governance structure, and the proposed role of the CAT Advisory Committee, should be expanded and formalized.

Each of these items is discussed in more detail below.

Data Access and Security

Safeguarding our customers' financial information and mutual fund trading information is something Fidelity thinks about every day. We view cyber security as something of an arms race. Hackers are getting better at compromising institutions. Moreover, it is clear that data security is not just an issue for the private sector, but also for the federal government and SROs as well.

The CAT Central Repository will receive, consolidate and retain all CAT data. It will be the largest comprehensive data repository for securities transactions to date, processing more than 58 billion records (or approximately 13 terabytes of data) daily, including large amounts of highly confidential and sensitive personal and proprietary trading information.⁶ A data repository on this scale presents an attractive opportunity for potential misuse of data - from personal information for identity theft to trading information.

SEC Rule 613 includes provisions for hiring standards and secure data access controls, particularly as it pertains to access by the Plan Processor, its staff and third-party service providers to the Central Repository. While the Proposed Plan builds on these provisions, the Proposed Plan does not contain specific details on the security and confidentiality of CAT data received and reported to the Central Repository because the Plan Processor, who will develop these details, has not yet been selected.

For example, under the Proposed Plan, the Plan Processor's Chief Information Security Officer will be responsible for creating policies to address data security issues, including connectivity, encryption, breach management, data storage, and Personally Identifiable Information data requirements. However, without a Plan Processor yet selected, we do not yet have a clear understanding of how these important topics will be implemented in practice. Other aspects of the Proposed Plan, including clock synchronization and error correction service level agreements, are discussed but without sufficient detail to determine if they are operationally workable, or not.

⁶Proposed Plan at 30910.

Similarly, specific policies have yet to be developed related to data loss prevention, business continuity plans and cyber incident response plans, the details of which are highly important to all market participants, including individual investors, broker-dealers, investment advisers and mutual funds. We urge the SEC to require the SROs to share more detailed information on these topics as a Plan Processor is selected and the Central Repository is built, as well as provide market participants an opportunity to comment on these important details.

As more specific provisions regarding data access and security are developed by the Plan Processor, we urge the SEC and SROs to review these provisions with an overall goal of minimizing unnecessary risks and additional points of entry to the Central Repository. For example, the Proposed Plan permits the CAT to be implemented in a way that would enable the SROs and the SEC to download entire data sets and analyze the data within the regulator or the regulator's cloud, rather than requiring the viewing of this data only at the Central Repository. There is also industry discussion of expanding access to the Central Repository beyond SROs to broker-dealers to permit them to verify certain data they have submitted to the CAT.

We believe that both of these examples represent enhanced security risks to CAT data that the SEC and SROs should avoid. The SEC and SROs should require that CAT data is only accessible at the Central Repository and access to CAT data should be restricted to SEC and SRO employees with regulatory and oversight responsibilities pursuant to the federal securities laws, rules and regulations or contractual obligations. Additional points of entry to the CAT, and the ability to download the CAT to multiple systems, raises significant cybersecurity concerns that outweigh the benefit of access to processed CAT data.

Expedited Retirement of Duplicative Regulatory Reporting Systems

As required by Rule 613, the Proposed Plan contains a method to eliminate rules and systems that will be rendered duplicative by the CAT, once CAT is fully operational.⁷ The Proposed Plan anticipates a period of duplicative reporting responsibilities of up to 2.5 years, from when the SROs are able to perform all existing surveillance functions using CAT data. The Commission acknowledges that the period of duplicative reporting would likely constitute a major cost to industry due to, among other reasons, the length of the duplicative reporting period.

The Proposed Plan's requirement for broker-dealers to operate duplicative order audit trail regulatory systems, such as FINRA's Order Audit Trail System (OATS), the Electronic Blue Sheet (EBS) system, and the Large Trader reporting requirements, for a significant time period is unnecessary and redundant. This interim reporting requirement sets up an additional process that will require broker-dealers to expend technology and staff resources on obsolete systems for a continued amount of time while the SROs determine what to do with these systems

⁷Proposed Plan at 30728. The elimination of duplicative reporting would require several steps: (1) the SROs would identify their respective duplicative SRO rules and systems; (2) the SROs would file with the Commission the relevant rule modifications or eliminations; (3) the Commission would review and consider such rule modification or elimination filings; and (4) subject to the requisite Commission approval, the SROs would then implement such SRO rule changes.

in the longer term. Duplicative audit trail reporting is anticipated to cost broker-dealers in excess of \$1.6 billion per year.⁸

The SROs, working with the Plan Processor, should commit to the expedited retirement of older reporting systems as soon as possible after the CAT is functioning and effective. Not only is the implementation of new regulatory reporting requirements a drain on broker-dealer resources, but the need to ensure continual, timely, and accurate reporting to older platforms requires firms to continue to expend resources to maintain these systems. The SEC and SROs should establish a fixed date for retiring regulatory compliance systems that overlap with the CAT or, in the alternative, these duplicative rules should sunset automatically once the CAT reaches certain performance metrics.

The SROs should also immediately cease enhancements to existing broker-dealer reporting systems which will retire once the CAT is operational. We see no purpose in requiring broker-dealers to continue to fund operational changes to systems which will be retired in the near future. This use of resources is particularly draining during a time period in which broker-dealers are concurrently funding operational changes to develop the CAT.⁹

Costs and Funding

The SROs propose to conduct the activities of the CAT through CAT NMS LLC, a jointly-owned limited liability company formed under Delaware law, which will create, implement and maintain the CAT and Central Repository. Under the Proposed Plan, the SROs would pay a Participation Fee to CAT NMS LLC and any net profit or loss from the operation of the CAT would be allocated among the SROs equally. To cover the costs and implementation of CAT NMS LLC, along with the Central Repository, the Operating Committee will establish fees based on market share for Plan Participants and message traffic for market participants, along with additional fees for late or inaccurate reporting, correction of submitted information or access for regulatory purposes. The Proposed Plan presents estimates of aggregate current, implementation, and ongoing costs to the industry.¹⁰

The costs and funding of CAT should be borne equitably by CAT reporters, such as broker-dealers, and CAT users, such as the SROs. We are concerned that SROs, as sole voting members in the CAT plan, are conflicted in decisions of how to allocate the costs of operating the CAT. One way to address this issue is, as discussed below, to provide market participants, such as broker-dealers and institutional investors, a meaningful role in CAT governance.

Technical Specifications

⁸Proposed Plan at 30708.

⁹We would expect similar exercises to decommission additional systems made redundant by the CAT, as future enhancements are made to the CAT. For example, the Proposed Plan currently limits CAT data to information on equities and options trades. If, at a future date, the CAT is enhanced to include information on fixed income trading, we would expect that current broker-dealer regulatory reporting systems for fixed income trades would be retired if their function is redundant to the CAT.

¹⁰Proposed Plan at 30727.

Market venue and SRO “technical” or “operational” changes can have a significant effect on a broker-dealer’s business. The implementation of these changes often requires a very significant investment of technology dollars and human capital. Moreover, these changes are often subject to short implementation time periods that do not present an opportunity for a discussion of issues and concerns and can potentially expose the markets and investors to unnecessary risk.

We believe that significant regulatory proposals that may appear as operational changes, such as forthcoming details on important CAT processes, should be submitted through the rigors of the established process outlined in Section 19(b) of the Securities Exchange Act of 1934 for SRO rulemaking. We believe that this formal rulemaking process will allow market participants to openly discuss proposed CAT processes with the SROs and SEC and/or offer reasonable alternatives. Similarly, all SRO rule filings relative to the CAT should be filed and approved with enough time prior to the final implementation date to allow market participants to properly implement the necessary systems and coding changes. Without sufficient lead time, significant operational risk could be introduced into the marketplace because of the systems involved and the complexity of the Proposed Plan.

CAT Plan Governance

Under the Proposed Plan, CAT NMS LLC would delegate governance and operations responsibility for the CAT Plan and Central Repository to an Operating Committee. The Operating Committee would generally consist of one voting member representing each SRO.

Industry members would have a relatively limited voice in the operations of the CAT through an Advisory Committee which would advise the SROs on the implementation, operation and administration of the Central Repository. Members of the Advisory Committee would have the right to attend meetings of the Operating Committee, to receive information concerning the operation of the Central Repository, and to submit their views to the Operating Committee on matters pursuant to the Plan prior to a decision by the Operating Committee on such matters.

Under the Proposed Plan, members of the CAT Advisory Committee *would not* have a right to vote on any matter considered by the Operating Committee. Moreover, the Operating Committee would have the ability, where appropriate, to determine to meet in Executive Session, during which only voting members of the Operating Committee would be present. Under the Proposed Plan, an Executive Session could be called if the Operating Committee determines by majority vote that such an Executive Session is advisable. Although members of the Advisory Committee would have the right to receive information concerning the operation of the Central Repository, the Operating Committee would retain the authority to determine the scope and content of information supplied to the Advisory Committee, which would be limited to that information considered necessary and appropriate for the Advisory Committee to fulfill its functions.

Although the Proposed Plan’s governance structure is similar to those of other NMS Plans approved by the Commission, such as Limit-Up, Limit Down and the Tick Size Pilot, the

structure of these NMS Plans has largely remained unchanged since they were first developed in the 1970s. The markets have changed considerably since the 1970s, and we believe that a different approach to NMS Plan governance is appropriate at this time.

Specifically, we do not believe that the governance structure in the Proposed Plan permits CAT Advisory Committee members an opportunity to participate meaningfully in the implementation, operation, and administration of the CAT for the following reasons:

- The Operating Committee determines the scope and content of information supplied to the Advisory Committee;
- There are no limitations on when the Operating Committee can call an Executive Session; and
- The Operating Committee can prohibit the Advisory Committee from attending any Executive Session of the Operating Committee by a majority vote. Thus, the Advisory Committee can be excluded from discussions on important topics for any reason, as long as a majority of Operating Committee members agree to the exclusion.

At its July 8, 2016 meeting, the SEC's Equity Market Structure Advisory Committee ("EMSAC") voted unanimously to adopt a recommendation to the Commission regarding changes to NMS Plan governance structure and expanding and clarifying the role of NMS Plan Advisory Committees.¹¹ These proposed changes include, among other items, recommendations to:

- Clarify the process for selecting Advisory Committees representatives;
- Expand and formalize the role of the Advisory Committees, including formal votes on matters before the Operating Committee and the ability to initiate its own recommendations;
- Significantly narrow the use of Executive Sessions by NMS Plans;
- Limit NMS Plan provisions requiring unanimous vote; and
- Revisit allocation of voting rights among SROs.

We support the EMSAC recommendations as a good first step in necessary changes to NMS Plan governance. We also agree that the SEC should engage in formal administrative rulemaking to revise Rule 608 of Regulation NMS to specify that NMS Plans must contain

¹¹See U.S. Securities and Exchange Commission Equity Market Structure Advisory Committee *Recommendations Regarding Enhanced Industry Participation in Certain SRO Regulatory Matters* (June 10, 2016) available at: <https://www.sec.gov/spotlight/emsac/emsac-trading-venues-regulation-subcommittee-recomendation-61016.pdf>

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governance provisions consistent with the objectives specified in the EMSAC recommendations, as well as implement these recommendations in the Proposed Plan. We believe that these proposed improvements to the governance of NMS Plans will help create a more transparent equity market structure that will ultimately benefit all investors.

* * * * *

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

Mr. Stephen Luparello, Director, Division of Trading and Markets

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

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