October 26, 2018

Submitted electronically

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

Re: Roundtable on Market Data and Market Access; File No. 4-729

Dear Mr. Fields,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments on issues related to the Securities and Exchange Commission's ("SEC" or "Commission") staff Roundtable on "Market Data and Access to Markets" held on October 25 and 26, 2018.[2] Fidelity's views reflect those of an institutional asset manager, an institutional broker-dealer, and a retail broker-dealer who purchase market data for their own use and the use of their institutional and retail customers.[3]

Fidelity believes that the U.S. equity markets are fundamentally strong and that investors have benefitted from numerous advances in recent years. Technology and a competitive marketplace of multiple trading centers have improved cost, liquidity, speed, and product innovation. These factors have created trading benefits for investors of all sizes, in particular, retail investors. However, these competitive dynamics have not extended to the primary building block of all trading decisions – market data.

A foundational principle of the U.S. equity markets is that investors need good data upon which to base their trading decisions. For some time, "good data" has generally been defined in the regulatory context as the National Best Bid or Offer ("NBBO"). The NBBO is a data set that

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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] Press Release available at: https://www.sec.gov/news/press-release/2018-210. Fidelity executive Marcy Pike will speak on Panel Six of the Roundtable, "Funding of Core Data Infrastructure".

[3] 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.

represents, "with respect to quotations for an NMS Security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan".[4]

Today, the national securities exchanges ("exchanges") and FINRA collect and distribute consolidated quote and trade reports through two securities information processors ("SIPs") governed by two national market system ("NMS") Plans: 1) The CTA/CQ Plan governs the collection, processing and distribution of quotation and transaction information for securities listed on all exchanges other than NASDAQ (Tape A and B) and 2) The NASDAQ UTP Plan governs the collection, processing and distribution of quotation and transaction information for securities listed on NASDAQ (Tape C). The exchanges and FINRA are collectively responsible for the SIPs' maintenance and share in the SIPs' revenues.

Millions of retail and institutional investors rely solely on SIP market data, which is used by full-service broker-dealers and online retail broker-dealers. In recent years the cost of SIP data has risen sharply for market participants. Publicly disclosed information shows a clear, increasing trend in SIP revenue distributed to the exchanges and FINRA from 2014-2017.[5]

Fidelity is concerned that continually escalating SIP market data costs may have a chilling effect on innovation that would otherwise benefit retail investors. While we strive to provide our retail customers with professional-level information and make significant technology investments to deliver these experiences, we must, at the same time, keep a close eye on the market data cost implications of new services and capabilities. Unlike most broker-dealers, Fidelity does not pass along market data fees to our retail brokerage customers. This cost absorption helps facilitate retail investor access to the markets, but comes at an opportunity cost. Resources used to pay rising market data fees are resources that cannot be used to develop new products and services. However, the alternative is worse: requiring retail customers to pay market data fees inhibits retail investor access to the markets.

We are also concerned that rising market data costs negatively impact competition in the broker-dealer market, making it more difficult for new entrants and levying an additional tax on already tight broker-dealer operating margins.[6]

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[4] C.F.R. § 242.600(b)(42).

[5] See CTA Quarterly Revenue Disclosure for Tape A/B revenue *available at*: https://www.ctaplan.com/sip-metrics#110000107301 and CTA Quarterly Revenue Disclosure for Tape C revenue *available at:* http://www.utpplan.com/metric.

[6] In 2003, there were 5,261 FINRA member firms with 653,887 registered representatives. As of July 2018, there are 3,690 FINRA member firms remaining with 629,032 registered representatives. FINRA Statistics, www.Finra.org/newsroom/statistics#firms *See also*, Brookings, *Dwindling Numbers in the Financial Industry by Hester Peirce (May 15, 2017) available at:* https://www.brookings.edu/research/dwindling-numbers-in-thefinancial-industry/

In addition to the rising cost of SIP market data, there are significant conflicts of interest associated with how prices are set and increased in the current SIP model, and significant obstacles to performing an economic assessment of the reasonableness of SIP costs. Under SEC requirements, broker-dealers have a regulatory obligation to show SIP data when an investor is making a trading decision.[7] At the same time, exchanges have transitioned from mutualized, not-for-profit, member owned entities to for-profit entities that compete directly with their broker-dealer customers for order flow, and are motivated to meet quarterly shareholder expectations for revenue growth. From a practical standpoint, this means that competitors to broker-dealers set the price for data that broker-dealers have a regulatory obligation to purchase.

Moreover, the SEC and Congress have established a regulatory framework that allows exchange fees to become immediately effective upon filing with the SEC, denying the SEC and the public an opportunity to comment on fee changes before they become effective. Given these factors, it is no surprise that many broker-dealers find themselves in an environment similar to residents of a 19th century company town. We are required to purchase products from a single vendor, without competition or robust government oversight. Adding insult to injury, SIP data largely arises from broker-dealers' own customer orders that are executed on the exchanges: broker-dealers are paying exorbitant market data costs simply to buy back their own customer data.

We assert that the current process for compiling, disseminating, and pricing SIP data has not kept pace with changes to market participants or changes to the markets, because it is not transparent, shaped by competition, or subject to robust regulatory oversight. We offer several recommendations to the SEC to improve the transparency and competitiveness of SIP data.

EXECUTIVE SUMMARY

Our comments that follow include the following points:

- **Improve SIP Governance:** The SEC should improve SIP governance. The SEC should provide broker-dealers and asset managers the ability to vote on all matters before SIP Operating Committees to provide alternative views and to promote initiatives to better develop SIP data. NMS Plan voting rights should be limited to one vote per exchange family.

- **Increase Market Data Transparency:** The SEC should require more detailed, public disclosure of SIP market data costs and revenues.

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[7] Rule 603 of Regulation NMS, the "Vendor Display Rule", requires a broker-dealer to show a consolidated display of market data (*i.e.* SIP data) in situations "in which a trading or order-routing decision can be implemented." *See* Regulation National Market System, 17 C.F.R. §242.603(c).

- **Encourage Robust Oversight:** The SEC should maintain strong oversight of market data fees.

- **Introduce Market Competition:** The SEC should explore the idea of multiple market data consolidators as a means to create competition for the SIP, and hopefully lower SIP market data costs.

Each of these points is discussed in more detail below.

<u>The SEC Should Improve SIP Governance</u>

Similar to other NMS Plans, the SIP NMS Plans are overseen by Operating Committees, comprised of the exchanges and FINRA, and an Advisory Committee which includes, among others, broker-dealer, asset manager and vendor representatives. SIP Operating Committees typically meet in an executive session for formal votes. SIP Advisory Committee members act in a consultative role on select issues that the Operating Committees choose to bring to them, and Advisory Committee members are not invited to, nor do they have a vote on, matters discussed in the Operating Committees.

The Current SIP Governance Model is Conflicted

While there have been some SIP improvements in recent years (*i.e.* improved SIP performance and resiliency), SIP Operating Committees have been slow to make enhancements to improve the competitiveness of the SIP and the structure remains conflicted and inefficient in many ways.

For example, for-profit exchanges maintain tight control of SIP governance to protect their lucrative market data revenue (plus associated SIP connectivity costs). Broker-dealers and asset managers do not have voting representation on the SIP NMS Plans to bring about change. Given conflicts of interest when a market competitor is also a regulator, it is critical that broker-dealers and asset managers have representation on SIP Operating Committees to ensure accountability and to promote initiatives to better develop market data products. Moreover, we encourage the SEC to think broadly on this topic: we do not believe that issues associated with SIP governance are unique to SIP NMS Plans. Fidelity participates on the CAT Advisory Committee and has seen firsthand the benefits of greater industry participation in CAT NMS Plan decisions.[8]

Fidelity Recommendations

[8] Brian Frambes, Co-Head Global Cash Trading at Fidelity Management & Research Company, the investment adviser to the Fidelity family of mutual funds, is a buy-side representative to the CAT Advisory Committee.

Fidelity recommends that SIP Advisory Committee members be granted the authority to participate in, and vote on, all matters brought before SIP Operating Committees. We further recommend that all exchange families should receive only one vote in Operating Committee decisions, which will provide smaller exchanges and Advisory Committee members with adequate representation. Three exchange families (NYSE, NASDAQ, CBOE) currently account for 14 of the 16 Operating Committee votes today (IEX and FINRA have 2 votes). There are 11 Advisory Committee members (6 are required and 5 are additional participant selections).

The SEC Should Require More Detailed Disclosures of Costs and Revenues from the SIP

In the current technology landscape, many data providers are able to drive down the cost of providing data services by seeking efficiencies. In contrast, the trend for SIP data is ever increasing costs. SIP administrators, just like any other vendor of content, should be held accountable to reduce cost by leveraging technology and improving processes over time, and passing on those savings to the marketplace and to their customers.

Fidelity Recommendations

The SEC should require the exchanges and FINRA to enhance the public disclosure of their SIP market data expenses and revenues. Public disclosure of SIP market data expenses and revenues would support the SEC's required oversight of the fairness and reasonableness of market data costs, and would allow market participants to better understand these metrics and promote greater accountability toward strengthening the current process for compiling, disseminating, and pricing SIP data. Data to be disclosed should include, among other items, market data revenue derived from the SIP and expenses for SIP maintenance and improvement.

The SEC Should Maintain Strong Oversight of Market Data Fees

SEC Regulatory Review of Market Data

In approving an exchange fee filing the SEC must ensure, among other items, that an exchange's actions do not unduly burden competition and are fair and reasonable. We encourage the SEC to be vigilant in this oversight to help ensure that market data fees are "set, reviewed and regulated in the best interest of our markets and our Main Street investors."[9] While we are encouraged by recent SEC actions to this end[10], we do not believe that this oversight has always been as vigilant as it is required to be.[11]

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[9] Statement on Market Data Fees and Market Structure by SEC Chairman Jay Clayton (October 16, 2018) *available at: https://www.sec.gov/news/public-statement/statement-chairman-clayton-2018-10-16*

[10] Opinion of the Commission *In the Matter of the Application of SIFMA*, Review of Action Release No. 84432 (Oct. 16, 2018) available at: https://www.sec.gov/litigation/opinions/2018/34-84432.pdf and SEC Order *In the Matter of the Applications of SIFMA and Bloomberg*, Exchange Act Release No. 84433 (Oct. 16, 2018) *available*

SEC review of SIP market data fees is particularly important because the industry does not have an opportunity to comment on market data fee changes before they are implemented. This was not always the case. Prior to the passage of the Dodd-Frank Act, SRO fee filings were subject to a public notice and comment process before their approval or disapproval by the SEC. Dodd-Frank Section 916(a) amended Section 19(b) of the Exchange Act to allow SRO proprietary market data fee changes to become effective immediately upon filing. Similarly, SEC Rule 608(b) under Regulation NMS allows SIP fee filings to become effective immediately upon filing with the SEC. From a practical standpoint, this means that market participants do not know until after a fee filing is effective that fees have increased, or have an opportunity to meaningfully comment on fee increases before being subject to them.

SIP data is a monopolistic product that broker-dealers must purchase from exchanges, who serve as both their regulator and market competitor, to comply with regulatory requirements. Denying broker-dealers an opportunity to review and comment on SIP fees, prior the fees becoming effective, exacerbates this significant conflict of interest.

SEC review of market data fees extends beyond SIP data to other kinds of data controlled by the exchanges, including, but not limited to, corporate actions data. In other contexts, regulators have kept close watch to help ensure that there is robust competition around data that is critical to market participants.[12] We ask the SEC to do the same with SIP and other related exchange data.

Fidelity Recommendations

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at: https://www.sec.gov/litigation/opinions/2018/34-84433.pdf and Joint Statement on the Application of SIFMA for Review of Action Taken by NYSE Arca, Inc. and NASDAQ Stock Market LLC by Commissioner Hester M. Peirce and Commissioner Elad L. Roisman (October 16, 2018) *available at*: https://www.sec.gov/news/public-statement/peirce-roisman-statement-101618

[11] Commissioner Jackson's staff recently "reviewed all ninety-five times exchanges have recently changed their connectivity practices, and not once—before this week—have we taken action to stop them." *See* Unfair Exchange: The State of America's Stock Markets, by SEC Commissioner Robert J. Jackson Jr., George Mason University, September 19, 2018 *available at*: https://www.sec.gov/news/speech/jackson-unfair-exchange-state-americas-stock-markets

[12] By way of example, we point to the 2008 antitrust case brought by the U.S. Department of Justice ("DOJ") to prevent the proposed acquisition of Reuters Group PLC by The Thomson Corp. because it would substantially lessen competition in the distribution and sale of fundamentals data, earnings estimates data, and aftermarket research reports in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The DOJ ultimately approved the merger but only after Thomson and Reuters agreed to sell copies of their financial databases — Thomson's Worldscope, Reuters Estimates, Reuters Aftermarket Research and Reuters EcoWin — in order to meet conditions designed to address the anticompetitive effects of the proposed merger. DOJ initial complaint *available at*: https://www.justice.gov/atr/case-document/complaint-222

We agree with recommendations in the Treasury Capital Markets Report that the SEC should use its legal authority to determine whether the market data fees charged by exchanges are "fair and reasonable," "not unreasonably discriminatory," and an "equitable allocation" of fees among market data users.[13] We believe this SEC review should occur before, not after, a fee becomes effective. To this end, we recommend that the SEC amend SEC Rule 608(b) under Regulation NMS to prevent SIP fees from becoming effective immediately upon filing with the SEC, and to require a public notice and comment period for all SIP fee filings.

Alternative Feeds

As an alternative to high SIP market data costs, many exchanges have offered "Alternative Feeds" of market data for non-trading/order-routing consumption and in compliance with the Vendor Display Rule. This data is offered at a lower price than SIP data but is not always a viable alternative to SIP data for the following reasons:

> **Limited Use.** The Vendor Display Rule requires brokers to show investors the NBBO in cases "in which a trading or order-routing decision can be implemented." Broker-dealers typically have multiple means, across multiple channels and platforms (i.e. web, phone) where customers can implement trading or order routing decisions. We work diligently to optimize our market data costs, and our customer experience, by using alternatives to SIP data (such as CBOE One) where possible; however due to the nature of information we convey to our investors, and our obligations under the Vendor Display Rule, we often have no choice but to show SIP data.[14]
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> **Operational Cost of Using Alternative Feed.** From a practical standpoint, changing from a SIP feed to an Alternative Feed is not as easy as "flipping a switch". Firms typically decide to implement an Alternative Feed only after a lengthy comparison and heavy research on the costs of making this change. Included in this cost analysis is not only the number of times the Alternative Feed can be used in the place of the SIP, but the

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[13] The Department of the Treasury, *A Financial System that Creates Economic Opportunities: Capital Markets* (Oct. 2017), *available at*: https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf ("The Treasury Capital Markets Report"). Similar to recommendations in the Treasury Capital Markets Report, Fidelity has long advocated for the SEC to undertake a holistic review of Regulation NMS. *See* Written Statement of Bill Baxter, Head of Global Program Trading and Market Structure, Fidelity Management and Research Co. before the SEC's Equity Market Structure Advisory Committee (May 13, 2015), *available at:* https://www.sec.gov/comments/265-29/26529-17.pdf.

[14] Fidelity may also choose to use SIP data over Alternative Feeds for risk mitigation purposes. For example, Fidelity Clearing and Custody Solutions® provides brokerage services to non-affiliated registered broker-dealers and investment advisers. We have determined to only display SIP data on our electronic platforms in this market because our broker-dealer and investment adviser customers may communicate this data to their end customers in the context of a trade or order routing decision. We are also wary of presenting Alternative Feed data to our investment professional clients when their customer might be reviewing data from the SIP.

costs of changing a firm's technology infrastructure to accommodate the change.[15] Moreover, once a decision is made to use an Alternative Feed, it is not always easy to "switch back" to a SIP feed, and the potential for a subsequent reversion back to SIP data, made for cost or other reasons, must be factored into any decision to use an Alternative Feed.

Price Differences Between Alternative Feeds and SIP data. Even in cases where Fidelity is not constrained by the Vendor Display Rule to show SIP data, we may still show SIP data where there is a price difference between Alternative feed data and SIP data for a given security. On a real-time basis, Fidelity monitors price differentials between Alternative Feed data and SIP data and where we believe that the delta does not represent the marketplace, we show investors SIP data in place of the Alternative Feed.[16]

Cost Savings is Good But Not Substantial. Fidelity implemented CBOE One only after an extensive and lengthy comparative analysis based its respective cost and functions. However Fidelity's use of CBOE One vs. Fidelity's use of SIP data resulted in a cost savings of less than 1% of our overall market data fees. We offer this insight as a demonstration of the limited utility of Alternative Feeds.

We want to underscore that Fidelity has no objection to showing SIP data to our customers, but for the high cost of SIP data. As a public policy matter we recommend against the SEC limiting the Vendor Display Rule or minimizing locations where brokers are required to show SIP data. Investors are well served by frequent and easy access to current market prices. Rather than limit where investors see SIP data, we assert that the regulatory process and required oversight under which SIP costs are established should be more reasonable, which may allow SIP data to be shown more frequently.

Changed Role of Market Participants

The role of exchanges has changed significantly since the SIPs were first established. Not-for profit, member owned exchanges have been replaced by public companies, who compete directly with their broker-dealer customers for trade executions and seek to maximize shareholder value. The only remaining constant is the exchanges' self-regulatory organization ("SRO") status. In the context of the SIPs, the SRO status of exchanges presents several clear conflicts of interest, notably 1) misaligned incentives when a competitor is also a regulator and 2) exchange immunity and limitations on liability for their SRO status, when their primary activities fall outside of their

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[15] For example, Fidelity does not take direct SIP feeds, but receives SIP data through a third-party data vendor. The benefits of using a 3rd party aggregator vs. direct to exchange include lower connectivity costs, and lower operational oversight. A disadvantage of using a 3rd party aggregator is that they may not support all Alternative Feeds.

[16] We see instances of this spread most often in less liquid securities and this spread can fluctuate based on the selection of securities that are being requested on a given day.

regulatory activities. These restrictions apply even when the exchange is performing market-based functions that are identical to their broker-dealer competitors, who operate in a competitive marketplace without liability protections.

Professional vs. Non-Professional Subscriber Status

An example of misaligned exchange interests in market data is the Professional and Non-professional subscriber status used by exchanges to charge tiered pricing for market data. By way of background, when opening a brokerage account, customers are asked to self-identify their status as a Professional or Non-professional subscriber. Exchanges consider customers to be a Professional subscriber if any of the following statements are true:

- The customer uses, or plans to use, quote data for any reason other than their own use;
- The customer is registered with FINRA, the SEC, CFTC, any state securities agency, or any securities or commodities exchange or organization;
- The customer is employed or registered as an Investment Advisor;
- The customer is employed by a bank, insurance company, or other non-registered organization performing a job function that requires the customer to use quote data for any reason other than their own personal use.

Professional subscriber status is meant to refer to the customer's use of data in their occupation as a securities industry professional and not their personal use of market data. Exchanges spend considerable resources auditing broker-dealers to ensure that subscriber status categories are correctly applied. Why? Because it is in their commercial interest to do so –Professional subscriber market data rates are significantly higher than Non-professional subscriber rates. We question whether exchange resources used to audit member firms might be better deployed to reduce SIP costs.

Professional and Non-professional subscriber designations do not serve the interests of the markets because this terminology confuses retail investors. Professional subscriber status should be based on the manner in which an individual is using the data, not their primary occupation. In our experience, retail customers consider themselves a "Professional" subscriber when they consider their main, paid, occupation, and not the manner in which they are using market data.[17] We recently looked at one thousand records at our retail broker-dealer and found 20-30% of customers mis-identified themselves as a Professional subscriber to SIP data. Broker-dealers spend considerable time educating customers to help ensure that they correctly identify their Professional or Non-professional status because this is not a meaningless distinction. While only

[17] For example, Fidelity customers whose primary occupation is listed as: a "professional dog walker", "barista", "emu rescue ranch operator", "dentist", or "architect" have all indicated Professional subscriber status for market data on their Fidelity brokerage account application. This indication of "Professional" status was likely based on a mis-interpretation that the question of "Professional" or "Non-Professional" referred to their occupation, not securities industry status.

3.7% of our retail customers meet the Professional subscriber designation – they represents 39% of our monthly retail brokerage exchange market data spend. Moreover, this internal review is an ongoing, time consuming task because under exchange rules, firms can't change customer subscriber designations themselves, but need to reach out to customers and ask them to do so.

Fidelity Recommendations

The SEC should abolish the Professional subscriber status for customers who access market data through a retail brokerage account. Leveraging their own unique ID and password, retail customers who access their individual brokerage accounts through a retail platform are doing so to monitor their own portfolios, perform research and make trade decisions that are in support of their individual short and long term financial goals, regardless of their occupation. We further recommend that the Simultaneous Access Policy, be eliminated for Non-professional users. The intent of this policy is to prevent abuse by market professionals, not to restrict non-professionals from looking at market data from multiple media sources, such as their desktop, their phone, and iPad, etc.

The SEC should explore the idea of multiple market data aggregators as a means to create competition for SIP data, and hopefully lower costs

The Treasury Capital Markets Report recommended that the SEC should recognize that markets for SIP and proprietary data feeds are not fully competitive and should foster competition and innovation in the market for SIP data. The Treasury Capital Markets Report further recommended that the SEC should consider amending Regulation NMS, as necessary, to enable competing consolidators to provide an alternative to the SIPs.

Fidelity encourages the SEC to explore further the concept of competing market data consolidators. While this proposal would not address the high cost of exchange market data directly, it would allow for competition, which over the long term, would hopefully drive down market data costs. Moreover, competing market data consolidators would eliminate the current exchange monopoly on market data dissemination.

In a multiple market data consolidator model, we would expect that broker-dealers would continue to provide market data to exchanges, however instead of exchanges being the sole aggregators of SIP data, exchanges would sell this data to competing market data consolidators, including the SIPs. In a new environment of competing market data consolidators, regulators would likely need to examine why broker-dealers chose to use a particular market data consolidator over another. Regulators would also need to maintain a vigilant eye on how much exchanges charged competing market data consolidators for their market data.

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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,

Marcy V. Pike

Krista Ryan

Marcy Pike
SVP, Enterprise Infrastructure
Fidelity Investments

Krista Ryan
VP, Associate General Counsel
Fidelity Investments

cc: The Honorable Jay Clayton, Chairman
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad Roisman, Commissioner

Mr. Brett Redfearn, Director, Division of Trading and Markets
Mr. John Roeser, Associate Director, Division of Trading and Markets
Mr. David Shillman, Associate Director, Division of Trading and Markets
Mr. Daniel Gray, Senior Special Counsel, Division of Trading and Markets

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