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Submitted electronically through http://www.regulations.gov

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

Re: **Request for Comments on Fund Names: File Number S7-04-20**

Dear Ms. Countryman,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on its Request for Comment on the framework for addressing names of registered investment companies ("Funds") pursuant to 17 CFR 270.35d-1("Rule 35d-1" or the "Names Rule") under the Investment Company Act of 1940 (the "Request for Comment").[2]

Fidelity commends the SEC for continuing its efforts to improve the investor experience and modernize current regulatory approaches by assessing the effectiveness of the Names Rule and considering whether there are modifications the Commission should consider. Fidelity has extensive experience administering the Names Rule with respect to its over 500 mutual funds, many of which operate under the requirements of the Names Rule. Overall, we believe Rule 35d-1 continues to be effective in much of its current form.

However, as the Request for Comment acknowledges, in light of market changes, the evolution of new types of financial instruments, and advancements in, and access to, technology, we believe that opportunities exist to modify the current framework to allow the Names Rule to operate more efficiently and to serve its intended purpose to protect shareholders, while removing certain challenges regarding its application by Funds.

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[1] Fidelity is one of the world's largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 30 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Management & Research Company LLC, the investment adviser to the Fidelity family of mutual funds.

[2] *See* Request for Comments on Fund Names, Release Nos. IC-33809; RIN 3235-AM72 (March 2, 2020) ("Release"), *available at* https://www.sec.gov/rules/other/2020/ic-33809.pdf.

I. EXECUTIVE SUMMARY

Fidelity generally supports Rule 35d-1 in much of its current form, including maintaining both the asset-based testing for determining adherence to the Names Rule and continuing the 80% threshold against which the assets should be measured.

However, we believe that Rule 35d-1 could benefit from the following modifications:

1) Permitting deviation from the 80% threshold under a time-of-purchase test resulting from intra-day market and currency fluctuations and/or the impact from foreign market open and close periods;
2) Clarifying that a Fund's purchase of another fund should be allowed to count 100% towards that Fund's 80% Names Rule threshold where the acquired fund: (1) also has a name test substantially similar to that of the acquiring Fund, or (2) is an index fund investing in the same assets as the acquiring Fund's 80% test;
3) Confirming that the Names Rule applies to portfolio assets rather than investment strategies, including clarification that the Names Rule should not apply to environmental, social, and governance ("ESG") funds;
4) Permitting Funds to define the industry or industries in which they invest with reference to either (i) a third-party classification scheme, or (ii) a classification scheme of the investment adviser's own design;
5) Modernizing Rule 35d-1 with regard to how fund shareholders are notified of changes by allowing Funds to post notification of certain policy changes prominently on their websites and allow for email communication only of changes if the Fund has an investor's email address on file; and
6) Granting flexibility to tax-exempt and municipal funds in allowing them to designate their name test strategies as non-fundamental.

II. RECOMMENDATIONS REGARDING ASSET-BASED TESTING AND THE 80% THRESHOLD

A. Asset-Based Testing

We generally support the Names Rule's current framework for determining whether a name is misleading. Funds strike a daily net asset value ("NAV"), and the conviction of a Fund's strategy is determined by the asset weighting of a Fund's investments. As a result, the framework for determining whether a Fund's name is best aligned with its strategy, as measured by the assets held in the Fund, is appropriate. This test has the advantages of being easily measured, easily understood, and easily corrected should a Fund drop below its asset-based threshold. While, as the Commission suggests, a returns-based test could present an alternative mechanism,[3] in our view such a test presents disadvantages as compared to the current asset-

[3] Release at 11.

based test. Specifically, a returns-based test poses a time-horizon problem. As noted above, funds strike a daily NAV, allowing the Names Rule analysis to be refreshed daily. By contrast, a returns-based test is far more difficult to determine on a daily basis, and thus would require a predefined, and arbitrary, period against which returns are measured. As a result, not only is the test difficult to measure, but also difficult to correct.

For example, suppose a small cap stock fund, with 85% of its assets in small cap stock assets and 15% in various bond assets, experiences a stock-market drop due to a recession, and that drop is sustained over a period of time. As a result, 85% of that fund's assets may have diminished the fund's performance, while 15% of the fund's assets (the bond portion) may have positively contributed to the fund's performance. Using a returns-based test, because the contribution to the fund's positive performance is solely attributable to the fund's bond assets, this small cap stock fund could fail its names test. (Indeed, it even raises the question of whether the Names Rule would deem this fund a bond fund.) While this result appears anomalous, so too would its correction. If the fund cannot improve returns in its core asset as a result of the recession, it may need to liquidate its entire holdings of bonds in order to eliminate, perversely, the assets that are positively contributing to its performance but negatively impacting its conformance to the Names Rule. Furthermore, the fund could make moves to correct for its returns-based imbalance, but that correction would naturally be backward-looking, correcting for the performance of the most recent time period and detracting from the manager's ability and purpose to focus on pursuing performance in the months ahead. And all that assumes as well that an appropriate returns-based benchmark could be established in order to measure returns. For these reasons, we believe the asset-based test continues to function as a proper means to measure name-test compliance.

In response to the Commission's inquiry in the Release,[4] we do not believe derivatives exposure should be treated any differently in complying with the Names Rule. The Names Rule has long allowed synthetic instruments, such as derivatives, to be used as a substitute for assets subject to the asset-based test. We support derivatives continuing to count towards name-test eligibility provided (i) the derivative position is positively correlated with the name test, (ii) the prospectus discloses that derivatives may count towards name-test eligibility, and (iii) the derivatives are measured at either mark-to-market value or otherwise in accordance with any future valuation mechanism the Commission prescribes through its proposed rulemaking on the use of derivatives by registered investment companies and business development companies.[5]

B. 80% Threshold

We believe that measuring the asset-based test at an 80% threshold continues to be appropriate. Important with any threshold percentage is that it denotes conviction in the asset as established by the Fund's name, is consistently applied, and allows a level of flexibility. Assets

[4] Release at 11-12.
[5] *See* Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers' Transactions in Certain Leveraged/Inverse Investment Vehicles, Release No. 34-87607; IA-5413; RIN 3235-AL60 (January 24, 2020) (the "Release"), *available at* https://www.sec.gov/rules/proposed/2019/34-87607.pdf.

at an 80% level are much more than a plurality or simple majority, strongly indicating that the primary focus of the Fund must be in the assets represented by the Fund's name. As the standard for the eighteen-year life of the Names Rule, it is known to the industry and consistently applied across all Funds. Additionally, the 80% value affords a level of flexibility without deviation from the main purpose of the Fund in two ways. First, the remaining 20% allows a Fund, during normal market conditions, to pursue alternatives that can contribute to a Fund's strategy and diversification, allowing for additional returns or tempering of losses, without straying from any investor's conviction in the Fund's strategy. Second, since the 80% test is measured at the time of purchase, in the event the assets decline in value below 80%, the 80% value is sufficiently high such that any declines, absent extraordinary circumstances, still ensure that the vast majority of the Fund's assets are counted toward the Fund's name test. This combination of conviction, consistency, and flexibility makes the continued use of the 80% threshold appropriate.

While the concept of measuring the 80% test at the time of purchase has value, as noted above, we believe that in certain instances it can also create challenges for a Fund in the event it exceeds the limit, without a commensurate benefit to Fund shareholders. To address this incongruity, we suggest the time-of-purchase test be broadened to account for intra-day currency fluctuations and market price movements that could cause a Fund to fluctuate in and out of compliance with the 80% threshold after an order has been placed. Therefore, we propose that the Names Rule allow that any deviation from the 80% threshold under a time-of-purchase test resulting from intra-day market and currency fluctuations and/or the impact from foreign market open and close periods be allowed to proceed, so long as any subsequent investments are intended to move the Fund towards conformity with the 80% test.

Lastly, in determining what assets may qualify under the 80% threshold, we believe the Names Rule should clarify that a Fund's purchase of another Fund should be allowed to count 100% towards that Fund's 80% test where the acquired Fund: (1) also has a name test substantially similar to that of the acquiring Fund, or (2) is an index Fund investing in the same assets as the acquiring Fund's 80% test. For example, if a Fund's name test is to invest 80% in U.S. large cap equities, and the Fund purchases shares of an exchange-traded fund ("ETF") with a name test of 80% in U.S. large cap equities, then the Fund should be able to count 100% of the value of that ETF toward the Fund's name-test requirements.

III. RECOMMENDED MODIFICATIONS TO THE NAMES RULE

A. Assets vs. Strategies

Currently, names suggesting certain investments, industries, and specific geographies must comply with the Names Rule. Each of these descriptions is a way to categorize types of assets. This fact is made clearer by the staff of the Division of Investment Management's (the "Staff") "Frequently Asked Questions about Rule 35d-1" (the "FAQ")[6] for interpreting name-test

[6] *See* Frequently Asked Questions about Rule 35d-1 (Investment Company Names), *available at* https://www.sec.gov/divisions/investment/guidance/rule35d-1faq.htm.

applications, on which much of the industry relies. While the FAQ attempts, among other things, to classify whether certain terms are subject to the Names Rule, the FAQ in effect attempts to distinguish between assets versus strategies. For example, "tax-exempt" and "municipal" in a Fund's name would be subject to the Names Rule because they describe particular types of assets, while the term "income" in a Fund name would not be because, while assets may pay yields or dividends, that does not mean that the asset itself is an "income" asset. Rather, "income" describes how assets may be used to benefit investors or work within an investor's financial plan, and thus is a strategy. We suggest that Rule 35d-1 eliminate references to particular types of names, and instead codify this distinction directly. Specifically, Rule 35d-1 should confirm that names that describe or define asset types would be subject to an 80% test; names that describe strategies would not, but the Fund must disclose the strategy in its prospectus and how it intends to execute it.

The Release's inquiries regarding Funds with an ESG strategy bring this point into sharp relief. While the Commission focused several of its questions directly on whether the Names Rule should apply to terms such as ESG or that reflect certain qualitative characteristics of an investment, we believe it is more appropriate to frame the discussion of ESG in the context of this assets versus strategy dichotomy. Because the focus of any one ESG Fund can vary greatly from any other (is it an E, S, or G Fund, or a combination thereof?), and differ on what securities qualify as ESG securities (is the Fund investing in stocks, bonds, real estate, derivatives, tax-exempt securities, European securities, etc.?), we believe it is more appropriate to define ESG through the Fund's prospectus disclosure instead of trying to capture the myriad possibilities in the Fund's name alone. This approach is still subject to Section 35(d)'s general prohibition on misleading names, and the description of the strategy will provide investors with more complete information as to how the Fund intends to adhere to its ESG principles than the Names Rule alone would allow.

Additionally, using a Names Rule approach raises questions as to how ESG securities would be classified, and raises issues concerning third-party classifications, which we discuss in more detail below. To the extent there is a larger discussion the Commission is interested in undertaking concerning how compliance to ESG factors could be measured, we are pleased to continue that discussion, but do not believe this is an issue that should be solved exclusively by the Names Rule. Indeed, many Funds have names that are not subject to the Names Rule, and have robust compliance regimes in place that are subject to review and examination to ensure that strategies are appropriately followed in line with investor expectations as set forth in the Fund's registration statement.

B. Industry Classification

Similar to the flexibility the Staff has provided issuers with respect to fundamental concentration policies, the Names Rule should clarify that an issuer is permitted to select its own industry classifications so long as they are reasonable and are not so broad that the primary economic characteristics of the companies in a single class are materially different. More specifically, Rule 35d-1's flexibility should permit Funds to define the industry or industries in which they invest with reference to either: (i) a third-party classification scheme that is regularly published, such as the Global Industry Classification Standard (GICS), the Industry

Classification Benchmark (ICB), or the Revere Business Industry Classification System (RBICS); or (ii) a classification scheme of the investment adviser's own design so long as the scheme and its related methodology are reasonable, clearly disclosed and available to fund shareholders in some form, consistently applied (including any asset, revenue, or profit test for assigning companies to an industry or industries) and subject to some form of meaningful oversight.

While many Fund complexes rely on a third party for industry classifications, doing so can present challenges from time to time, particularly for advisers employing active management strategies. For one, the third party's standard for any one industry may change, necessitating potentially drastic changes in a Fund's investment strategy or portfolio holdings. Such changes can cause a Fund to incur transaction costs and may require disclosure updates, which can be costly to shareholders and time-consuming. For example, in 2018 GICS made major changes to its framework, reclassifying internet companies from information technology to communications services even the underlying businesses remained the same and the investor community largely continued to view these internet companies as information technology companies. Furthermore, as investment advisers seek to continue to innovate and expand their investment strategies and offerings, they are increasingly met with third-party classification schemes that can limit innovation, stifle industry diversification and cause unnecessary delay and confusion. It has been our recent experience that advisers, who we believe are in the best position to create meaningful classification schemes leveraging their extensive experience and expertise, can find themselves forced to constrain their strategies in order to squeeze a fund's portfolios into the confines of a restrictive third-party regime designed and constructed with underlying passive management assumptions, and that these constraints may not be well understood by investors (for example, the average retail investor is unlikely familiar with GICS).

These constraints are exacerbated in various current third-party attempts to classify ESG securities. Methodologies and accepted standards for ESG continue to evolve and diversify among third-party providers and across geographic regions, leading to a lack of correlation among the major ESG ratings agencies.[7] Furthermore, providers of ESG ratings often base their methodology principally on reported data, when even available, providing a backward-looking, point-in-time view of companies rather than a forward-looking analysis of a company's trajectory on ESG issues. While one could argue that reported data is a strong means to form a consistent comparison of adherence to ESG principles (assuming that there were a consistent understanding of common ESG principles), in truth the quality and detail of reporting on ESG measures varies by company, even among companies within the S&P500, and worsens among companies further down the market capitalization scale. As a result, adopting a third-party ESG ratings classification does not necessarily provide an investor with a clear or consistent understanding as to how that ESG classification informs a fund's investment strategy or to what extent it may do so, and such an investor would be better served by the Fund's adviser clearly defining and articulating its ESG classification scheme.

[7] For example, the Global Reporting Initiative, which is widely accepted in Europe, generally frames ESG based on a company's impact on the world, while the Sustainability Accounting Standards Board tends to focus on the changing world's impact on a company.

Finally, in order to ensure that shareholders can have confidence in the integrity of an industry classification scheme of the adviser's own design, the Fund and/or its adviser could publish the classification scheme and its related methodology on its website or as an appendix to the Part B of its registration statement. Furthermore, in an effort to provide meaningful oversight, any proprietary classification scheme could be subject to periodic review with the Fund's Board of Trustees or a committee within the investment adviser's own organization, or could become subject to appropriate review and controls as part of the adviser's Rule 206(4)-7 program. Additionally, any material changes to the classification scheme could follow the same shareholder notification requirements of the Names Rule. We believe that allowing advisers to create their own industry classification scheme as described above is consistent with the Names Rule's disclosure-based approach, and that Rule 35d-1 should focus on the manner in which the classification scheme is created and communicated.

C. Shareholder Notification

We support the existing requirement that fund shareholders be provided with notice prior to any change in a Fund's 80% investment policy. However, we believe the Names Rule, which was adopted prior to numerous advancements in technology, should be modernized to allow funds to post notification of certain policy changes prominently on their websites and allow for email communication only of changes if the Fund has an investor's email address on file. Electronic posting and communication alone should be sufficient if the change does not materially change the risk profile of the Fund; provided such Fund delivers written notification of the change in the next shareholder report and includes disclosure in the prospectus advising shareholders to check the website for the most recent information. If the change would materially change the risk profile, then a physical mailing should proceed where the Fund does not have an email address for the investor. In all cases, we believe the proscribed manner for providing notices (i.e., the envelope language in bold type) serves little relevance today and that investors are better served by allowing the Fund to provide a greater level of personalization that is more likely to lead to investor engagement. Therefore, we believe that the greater prominence requirement with regard to mailing notices should be removed.

D. Non-Fundamental Policy for Tax-Exempt & Municipal Funds

We also suggest the SEC consider a change to allow any Names Rule requirement to be treated as non-fundamental and allow Funds to rely on the shareholder notification approach. Tax-exempt and municipal bond Funds must currently treat such investment policies as fundamental while other Fund types do not. While we understand that the Staff in setting forth this position may be concerned that an investor preference not to have returns subject to taxation would form the basis for their investment in a tax-exempt Fund, and thus that Fund's moving to a taxable strategy would negate the whole purpose of that investor's investment, it is no less true that an investor preference for an equity Fund would become equally frustrated were that Fund to become a bond fund, and yet the Staff does not require equity or bond Funds to be subject to a fundamental policy. We think this logical inconsistency should be corrected in the Names Rule. The notice provision provides shareholders ample opportunity to divest holdings and find alternative investment options should they disagree with a change in any Fund's investment policy.

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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 Allison H. Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner

Dalia Blass, Director, Division of Investment Management