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Submitted electronically through https://www.sec.gov/rules/submitcomments.htm

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

Re: **Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company: File Number S7-09-20**

Dear Ms. Countryman,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on its proposed rule and form amendments that would modernize the disclosure framework for open-end management investment companies (the "Proposal" or "Proposed Rule").[2]

Fidelity strongly agrees with the Commission's goal of creating a disclosure regime that will result in streamlined, more concise, and uniform disclosures to mutual fund investors.[3] Fidelity's experience with customer feedback in many ways echoes the feedback cited by the Commission in its Proposal: the average retail investor can be overwhelmed by the amount of information in prospectuses and shareholder reports which can make them limited in utility in their current state.[4] The Proposal makes significant strides to provide a regime that will accomplish the Commission's goals by limiting the length of disclosures, tailoring the information included to that which is most useful to the average investor, and allowing flexibility in prospectus delivery.

While the Proposal makes strides in modernizing and improving disclosure, it unfortunately takes a step back with respect to the Commission's prior significant delivery modernization efforts by proposing to exclude registered funds from the scope of rule 30e-3.[5] We disagree with the Commission's view that

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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* Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Release Nos. 33-10814; 34-89478; IC-33963, RIN 3235-AM52 (August 5, 2020) ("Proposing Release"), available at https://www.sec.gov/rules/proposed/2020/33-10814.pdf

[3] Proposing Release at 44-45.

[4] Proposing Release at 9.

[5] *See* Proposing Release at 39 ("To ensure that all fund investors would experience the anticipated benefits of the proposed new tailored disclosure framework, we are proposing to amend the scope of rule 30e-3 to exclude open-end funds").

streamlined disclosures and expansion of digital delivery are an either-or proposition. Delivery modernization is based on an understanding of how individuals interact with different types of media and how they prefer to obtain their information, which studies show is increasingly through digital means. By contrast, disclosure modernization focuses on content that is needed to make communications understandable and digestible by investors. These coextensive concepts collectively benefit investors and therefore efforts to modernize disclosure and delivery methods should proceed simultaneously.

We believe that the optimum medium for delivery of streamlined, reader-friendly, and interactive disclosures is digital. The Proposing Release acknowledges the feedback the SEC received from its Fund Investor Experience Request for Comment, including comments submitted by Fidelity, that investors prefer to receive fund disclosures electronically, which allows investors to take advantage of the benefits that digital provides over paper, including layered disclosure and interactive features.[6] Instead of seeking to rollback efforts on digital access and delivery, to meet the SEC's disclosure modernization goals, we suggest the SEC continue to modernize its approach to delivery by not only retaining rule 30e-3 for open-end funds, but also making digital delivery, the method investors prefer, the default for investor regulatory documents, with paper an option for an investor to choose.

I. Executive Summary

While Fidelity supports the framework of the Proposed Rule, we recommend several modifications to improve its effectiveness, as described in more detail below.

Streamlined Shareholder Report: Fidelity generally agrees with the Commission's approach to a new summary shareholder report, however, we recommend the SEC should:

- Exempt funds with no retail shareholders from the requirement to create and transmit summary shareholder reports; permit funds to prepare a summary shareholder report that covers multiple series for a limited subset of funds; and provide clarification for multiple funds to be combined into a single document for purposes of financial statements in the Form N-CSR filings;
- Revise the requirements for identification of, and notice of, a "material fund change" by: (i) limiting disclosure of material changes to the enumerated categories in Item 27A(g) of Form N-1A; (ii) not requiring mailing of material changes to shareholders under Rule 498B in addition to their inclusion in the annual shareholder report, relying instead on the current regulatory framework; and (iii) not requiring additional notice if a fund has included disclosure of a material fund change within the summary shareholder report within a reasonable amount of time of the effectiveness of such change;
- With respect to changes to Management's Discussion of Fund Performance (MDFP): (i) narrow the scope of MDFP as proposed within the summary shareholder report; and (ii) do not require money market funds to include a performance section in the summary shareholder report;
- Reconsider the re-definition of a "broad-based index" and allow funds to choose an index that best represents the fund's specific investment strategy. Alternatively, if the SEC adopts its proposed re-definition, allow funds to utilize an appropriate benchmark in addition to the

[6] *See* Proposing Release at 34-35.

"broad-based" benchmark and consider labeling this index as the "SEC Required General Market Index", or similar;

- Require tailored disclosure related to liquidity risk management, limited to a fund's Form N-CSR and website disclosure, only when a fund has an "highly liquid investment minimum" requirement or when material liquidity issues have occurred for the fund in the period;
- Due to the limited usefulness of the semi-annual shareholder report, reconsider requiring funds to produce a summary semi-annual shareholder report and fulfill semi-annual reporting obligations through Form N-CSR postings on their websites; and
- Omit Performance Expenses from the Expense Presentation and Expense Ratio.

Proposed Rule 498B and Prospectus Disclosure Changes: Fidelity generally supports the Commission's approach to proposed Rule 498B and we recommend the following additional modifications:

- Rule 498B should remain permissive, as proposed, and should not require the creation of additional regulatory documents not created in the normal course of business;
- Item 27(A)(g) of Form N-1A should not include other permissive disclosures beyond the enumerated categories to reduce the likelihood of a proliferation of prospectus supplements under proposed Rule 498B;
- The mailing of material changes to shareholders (in addition to providing a summary of such changes in the summary annual report) should be removed as a condition to relying on the rule because the existing regulatory framework currently provides for timely notice of material changes to shareholders;
- The definition of "existing shareholder" in Rule 498B should be tied to whether the shareholder has received the most recent prospectus, rather than whether the shareholder has held shares continuously; and
- Prospectus risk disclosures should be streamlined to better facilitate shareholder understanding by requiring disclosure of principal risks only and a brief summary of such risks in the summary prospectus, instead of attempting to order principal risks according to importance which is subjective and potentially subject to change.

Rescission of Rule 30e-3: The SEC should retain Rule 30e-3 for open-end funds and should continue to modernize its approach to delivery by making digital delivery the default for disclosure documents, subject to investor protections that allow for advanced notice and the opportunity to opt to receive paper at any time.

Advertising Rule Changes: The SEC should reconsider revisions to its advertising rules as current FINRA rules in this area are sufficient.

II. Scope of Proposed Rule

Fidelity believes that much of the Proposal should be generally applicable to registered mutual funds but believes that there are areas where the application of these general rules does not serve to further the Commission's overall goals and suggests reasonable exceptions, as discussed in more detail below.

A. *Exceptions in Applicability of Rules for Non-Retail Distributed Funds*

Like many fund families, Fidelity has subsets of funds that are not distributed to retail shareholders for various reasons. Fidelity has mutual funds registered under the Investment Company Act of 1940 (the "1940 Act") that are only available for purchase by other Fidelity mutual funds as well as funds that are exclusively available to sophisticated or institutional investors. Under the current disclosure regime, these funds prepare annual and semi-annual shareholder reports that are posted to the funds' website and also file Form N-CSR with the SEC. While the creation of the annual and semi-annual report is required under Rule 270.30e-1, there is no practical purpose served by the preparation of the proposed streamlined shareholder report under Item 1 of Form N-CSR for funds that are only held by other mutual funds or other institutional investors, because they will not be relied upon by such investors to evaluate their investment in these funds.

Fidelity believes, therefore, that funds with only institutional shareholders should be exempt from requirements under the Proposal to create and deliver a streamlined shareholder report. While the Commission has correctly focused the proposed shareholder reporting rules on the needs of the retail shareholder, it should also take this opportunity to recognize that requiring the same disclosure for funds with only institutional shareholders amounts to an inefficient and costly practice of "checking the box." We suggest that the Commission deem that, for funds with no retail shareholders, the requirement to prepare and deliver shareholder reports to every shareholder is met by posting the fund's Form N-CSR filing on a publicly accessible website.

B. Exception to Prohibition on Combining Disclosures

Fidelity applauds the Commission's attempt to limit the length of the annual shareholder report disclosure and reduce the confusion that investors can face when they receive voluminous fund disclosures. One aspect of the Proposal that targets these goals is to require funds to abandon the practice of preparing a single shareholder report that covers multiple series (i.e. "books") where an investor may receive one disclosure document containing the disclosure for the fund the investor owns along with disclosures for multiple funds that the investor does not own.[7] The process of combining funds into books for disclosure purposes serves to reduce the cost to fund companies (and ultimately to shareholders) in producing these materials, but the length and complexity of these books is at odds with the Commission's goal of streamlining the disclosure process.

While we do not disagree with the Commission's proposed restrictions on combining fund filings for purposes of the new summary shareholder report, Fidelity believes that funds should still be allowed to combine the financial statements of funds for purposes of Item 7 of Form N-CSR and posting to fund websites. The same rationale of simplifying materials for retail investors does not hold true when it comes to the Form N-CSR, which is intended to provide additional information for institutional and sophisticated investors. Further, as discussed below, Fidelity believes that a shareholder regime that includes digital delivery as the default best serves the Commission's overall goals, as well as those of fund families, including cost efficiencies gained in production of these reports by combining them into books, environmental benefits, and improved readability, including greater ease in making comparisons between funds. Accordingly, we recommend the Commission clarify in the final rule that combining financial statements for the purposes of Item 7 in Form N-CSR continues to be an acceptable practice.

In response to the Commission's request for comment on whether there are "certain types of funds for which a multi-series presentation in an annual report may be useful to shareholders,"[8] Fidelity believes that investors *could* benefit from funds that are complementary in nature being combined in a

[7] *See* Proposing Release at 52.
[8] Proposing Release at 54.

single streamlined shareholder report. For example, target date funds could be grouped together to allow an investor to observe the future glidepath of their fund by reviewing information about funds that are closer to their target date. Additionally, these types of groupings should not cause investor confusion because it would be easy to identify the fund they are invested in by the target date.

III. Material Fund Changes in Shareholder Reports and Prospectuses

The Proposal includes a requirement for the streamlined annual shareholder report to contain a section describing material changes the fund has made to disclosures regarding certain enumerated categories (as well as any other material changes that the fund chooses to disclose). Proposed Rule 498B also requires that funds mail a notice of material changes of the same items to shareholders within three business days of making a filing containing such changes.

Fidelity believes that the proposed material fund changes section in the annual shareholder report is an integral part of streamlining shareholder communications. We urge the SEC to consider further modernizing and streamlining shareholder disclosures and communications by: (i) limiting disclosure of material changes to the enumerated categories in Item 27A(g) of Form N-1A and (ii) not requiring mailing of material changes to shareholders under Rule 498B in addition to their inclusion in the annual shareholder report, relying instead on the current regulatory framework.

A. *Material Changes Should Only be Disclosed for Enumerated Categories Listed in Item 27A(g) of Form N-1A to Reduce the Likelihood of Lengthy Disclosures and a Proliferation of Shareholder Communications*

The Proposal would require that the annual shareholder report describe material changes with respect to a fund's (1) name, (2) investment objectives or goals, (3) ongoing annual fees, transaction fees, or maximum account fee (material increases only), (4) principal investment strategies, (5) principal risks, (6) investment adviser(s), and (7) portfolio manager(s).[9] In addition, the fund also may describe on a discretionary basis other material changes that it would like to disclose to its shareholders.[10] Proposed Rule 498B would require a notification to shareholders of material changes made to disclosures in the same categories within three days of filing of a registration statement or supplement containing such changes.[11]

Fidelity believes that the currently proposed approach of prescribing a list of categories that should be addressed in the report would be the most effective. We believe that an approach grounded solely in the subjective perspective of the funds leaves ambiguity and may result in a conservative approach to disclose most changes to avoid potential litigation risk. Such risk avoidance may lead many fund families to include long lists of fund changes that provide little, if any, benefit to the average shareholder and does not advance the Commission's goals to streamline disclosures.

We urge the SEC to reconsider some of the categories included in Item 27A(g). Portfolio manager changes are often the most frequent and potentially least impactful of the changes listed in Item 27A(g). A portfolio manager change that is not accompanied by changes to disclosed investment strategies is unlikely to result in any changes to the fund's investment universe or risk profile. As such, requiring a summary of portfolio manager changes in the report or notification to shareholders under Rule 498B would potentially increase the amount of communications mailed to shareholders, as funds look to

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[9] *See* Proposing Release at 132-133.
[10] *See* Proposing Release at 135-136.
[11] *See* Proposing Release at 248.

reduce the risk of a potential prospectus delivery violation under Rule 498B, while not providing shareholders with any information that would require a time sensitive decision of whether to continue to hold fund shares. We urge the SEC to eliminate portfolio manager changes from the enumerated categories in Item 27A(g). Alternatively, should the category remain, we believe shareholder notification under Rule 498B should only be required for funds that are managed by a single portfolio manager or changes to the lead portfolio manager in a team-based portfolio management structure. In addition, as discussed in the Proposing Release, notification of portfolio manager changes should not be required for index funds.[12]

In addition, we believe that the reference in Item 27A(g) to "other material changes that [the fund] would like to disclose to shareholders" should be eliminated. Such permissive language would not be consistently applied, which may result in lengthy disclosures in some instances. Such boundless language is also not well suited as a condition to satisfying prospectus delivery requirements under proposed Rule 498B as it seems to expand the mailing requirements to such other changes, in addition to the categories enumerated in the form. Out of an abundance of caution and to reduce the risk of a prospectus delivery violation, an incentive exists for funds to supplement their registration statements more frequently and mail such notices to shareholders. To avoid this outcome, we propose that the Commission either eliminate this reference in Item 27A(g) or clarify that the conditions to relying on Rule 498B extend only to the enumerated items in Item 27A(g)(1)-(7).

The Proposal also requires that a fund's list of material fund changes in the summary report include not only a summary of changes that have occurred within the previous period, but also any upcoming changes that are known to the fund at the time of the annual shareholder report. While Fidelity believes that in some circumstances advance disclosure of material changes could have some benefit to funds, we disagree that a fund should be *required* to include anticipatory changes in the report. If required to disclose all material fund changes that are anticipated, there is risk that a change will be disclosed that ultimately is never made effective. This would presumably give rise to a need for more disclosure and investor confusion. Fidelity suggests the Commission instead provide funds the flexibility to make anticipatory disclosures, but not make it a requirement. In that way, funds can judiciously use this flexibility to provide information to shareholders when prudent.

B. *Rule 498B Should Not Require the Mailing of Material Changes to Shareholders Because the Existing Regulatory Framework Currently Provides for Timely Notice of Material Changes*

Fidelity believes that both funds and shareholders have an interest in the efficiency of the disclosure process. Funds, while understanding that investors need up-to-date information about the funds to continue to make rational choices about their investments, want to provide appropriate information to allow investors to make those choices and to limit the costs associated with producing and delivering required disclosures. Shareholders want information that is meaningful to them in understanding their investments, while not being inundated with lengthy and potentially redundant disclosures.

The Proposal requires that funds include a summary of material fund changes in the annual shareholder report *and* provide notifications to shareholders as the changes occur. Absent the new mailing requirement in proposed Rule 498B, shareholders would still receive notice of material changes under the existing regulatory framework. Therefore, we urge the SEC to consider further modernizing and streamlining shareholder disclosures and communications by: (i) relying on the current regulatory framework requiring shareholder notice or approval of material changes to a fund's registration statement

[12] *See* Proposing Release at 137.

and (ii) requiring disclosure of material changes in the fund's summary annual shareholder report as proposed, paired with posting of any material registration statement supplements filed with the SEC on the fund's website.

Many of the categories enumerated in Item 27(A)(g) currently require shareholder approval or notification under existing rules and regulations. We believe that the existing regulatory framework provides shareholders with sufficient and timely information regarding material changes to the fund's investment strategies and fees to inform their investment decisions. Introducing an additional requirement to mail certain notices to shareholders for purposes of satisfying prospectus delivery requirements is unlikely to result in more timely information to shareholders, while introducing additional regulatory complexity and a potential proliferation of shareholder communications. Such increased regulatory complexity may discourage a number of fund families from adopting Rule 498B as a means of satisfying their prospectus delivery requirements, thus reducing the impact of the Proposal on streamlining shareholder communications.

With respect to fees, under Section 15(a) of the 1940 Act, shareholders are required to approve increases in compensation paid under the investment advisory contract. Similarly, under Rule 12b-1, shareholder approval is required of any increase in the amount of distribution fees paid by the fund. Therefore, should an investment adviser or distributor propose to increase a fund's management fee or its Rule 12b-1 distribution fees, shareholders of the fund would receive a proxy statement describing the proposal in detail pursuant to Schedule 14A. Because such fees are charged on an ongoing basis, timely notification or approval of such changes is required under Section 15(a) to permit a shareholder to make a timely decision on whether to continue to hold fund shares. Certain other fees are unlikely to have an immediate and ongoing impact on the fees paid by a shareholder, such as changes in maximum account fees or certain transaction costs included in the fee table, such that the shareholder would need to make a time sensitive decision on whether to redeem fund shares.

In addition, certain changes to investment strategies and policies require shareholder notification and/or approval under Section 13(a) and Rule 35d-1(a) under the 1940 Act. Under Section 13(a), shareholder approval is required of any changes to (1) diversification status; (2) fundamental investment policies disclosed in the fund's current statement of additional information; (3) concentration policies or other policies disclosed in the registration statement as requiring shareholder approval; or (4) to the nature of its business so that the fund ceases to be an investment company.[13] Likewise, Rule 35d-1(a) requires shareholder notice of any changes to a fund's investment policy to invest at least 80% of its assets in certain investments or industries ("Name Test").[14] Under these regulatory requirements, shareholders would receive a proxy statement pursuant to Regulation 14A should a fund make any changes to the policies enumerated in Section 13 and a 60-day notification of any changes to a fund's Name Test. Because changes to a fund's Name Test and Section 13(a) policies would have a more immediate impact on a fund's strategy, shareholder notification and/or approval is required in a more timely manner under existing rules and regulations.

Finally, under Rule 17a-8 under the 1940 Act, any proposal to merge a fund into another fund requires shareholder approval by target fund shareholders to the extent the investment policies, investment adviser and distribution fees are materially different between the acquiring fund and target

[13] *See* Section 13(a) of the 1940 Act.

[14] *See* Rule 35d-1(a) under the 1940 Act.

fund. A shareholder whose fund's policies and expenses would materially change as a result of a merger proposal would receive notice and an opportunity to vote on the proposal.

Because shareholders currently receive notice of, and in many cases an opportunity to vote on, changes to a fund's expense structure or investment strategies and policies, we do not believe that requiring additional notifications to shareholders is an appropriate condition to relying on proposed Rule 498B. To the extent a fund made material changes to disclosures that do not require an approval or notification under the existing regulatory framework, we believe that posting such registration statement supplements on the fund's website, to the extent they fall into the enumerated categories in Item 27A(g) of Form N-1A, rather than introducing additional mailing requirements, would strike the correct balance between keeping shareholders informed and streamlining shareholder communications.[15]

The Proposal also requires that any notice of material changes is provided within "three business days of either the effective date of the fund's post-effective amendment filing or the filing date of the prospectus supplement filing, by first-class mail or other means designated to ensure equally prompt receipt."[16] We do not believe this is a realistic amount of time to prepare a shareholder mailing. Many processes work in tandem to complete a shareholder mailing, including, but not limited to (i) compiling a list of shareholders as of a pre-determined date ("record date"); (ii) providing such files to mailing vendor(s) or internal departments in acceptable format; (iii) printing of sufficient notices; and (iv) putting together the mail package. The only way this process can be completed within three days of a registration statement supplement filing or effective date is if there was enough lead time to conduct the steps outlined above prior to any such filing. Should the Commission adopt the requirement to mail notices to shareholders, we propose a more general requirement that would result in the mailing of such notices "as soon as reasonably practicable," or a similar flexible formulation.

IV. Summary Annual Report

Fidelity expresses strong support for the reasonable approach the Proposal takes in addressing the deficiencies in the current disclosure regime. Under the current rules, a shareholder's review of an annual report can be a daunting task. Much of the information included is not well understood by the retail investor and may not be relevant to the decision-making process for those shareholders. By limiting the material that can be included in an annual shareholder report and targeting the required information to what is relevant for the retail shareholder, the Commission makes the task of evaluating investments a more manageable one. Fidelity believes that the creation of a more concise annual shareholder report with information targeted to the needs of the retail shareholder as the foundation for the overall disclosure structure is appropriate and a needed change.

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[15] Under this framework, shareholders would continue to receive timely notice of changes to investment policies and fees that are more likely to have a material and more immediate impact on investment returns, such that a shareholder may wish to redeem their fund shares in a more timely manner, while having an opportunity to keep informed about less impactful or time sensitive changes by visiting the fund's website or reading the summary in the next annual shareholder report. For example, if a fund revises its registration statement to elaborate on existing risk disclosures (e.g. expand risk disclosures in light of the current pandemic), but the investment adviser continues to manage the fund according to existing investment policies and strategies disclosed in the fund's registration statement, a shareholder would not be required to receive a notification of or approve the disclosure update under the existing regulatory framework discussed above. However, a shareholder would still have access to the disclosure change on the fund's website and the change would be summarized in the fund's next annual shareholder report.

[16] Proposed rule 498(B)(c)(2).

While Fidelity agrees conceptually with the Commission's proposal with regards to the new annual shareholder report, we believe that certain elements of the proposed new annual shareholder report do not support the goal of providing the retail shareholder with necessary information to evaluate their investments. As discussed in further detail below, we believe certain of the information that would be required to be included in the summary annual report would be more valuable to investors if provided through a fund's website, where updated information would be available and the investor would have the ability to filter information based on their preferences and other information.

A. Management Discussion of Fund Performance

Fidelity agrees with the Proposal's limitation on the amount of information provided in the Management Discussion of Fund Performance (MDFP) section of the annual shareholder report and believes that while this information is important for investors, the annual shareholder report is not the best venue for this discussion. Fidelity provides investors multiple sources to receive insights from investment professionals on issues that have affected fund performance in a variety of forums on fund websites. The scope and value of these communications would not be nearly as effective if presented as a static section of a shareholder report. Providing this information in an accessible manner, available on the internet with direct links from fund websites, emails to existing shareholders, and embedded in electronic communications, allows shareholders the flexibility to consume this information how, and when it is most convenient for them.

Fidelity believes this is the appropriate paradigm for the discussion of fund performance. The MDFP section of the proposed annual shareholder report should be limited to a few select performance metrics and a high-level recap of issues affecting fund performance for the period, with more in depth information presented in a shareholder-friendly, and accessible fashion on the internet. Fidelity urges the Commission to facilitate this layered approach to the discussion of fund performance by limiting the information required in the MDFP section of the proposed annual report, while allowing funds to provide a link to further discussion on the fund's website.

1. MDFP Index Benchmarking

Fidelity believes that the Commission should not re-define what constitutes a "broad based index" in its final rule as it could lead to investor confusion, rather funds should continue to choose an index that best represent the fund's specific investment strategy. For example, requiring a real estate fund to compare themselves to an S&P Index would be misleading to investors that are investing in funds to gain exposure to the real estate segments of the market. A comparison to a benchmark for that particular segment gives the investor an understanding of whether a fund is providing the desired exposure, where a comparison to the S&P Index would in many situations not be useful at all. Additionally, if all funds are required to benchmark against an index like the S&P Index, there would be an increase in licensing costs to the funds for the use of that index, which ultimately will be borne by the investors.

If the Commission retains the re-definition in the Proposal, we recommend that funds be allowed to utilize an appropriate benchmark in addition to the "broad-based" benchmark to avoid investor confusion. In addition, to facilitate shareholder understanding of the purpose of the general market index, we suggest the Commission consider labeling this index as the "SEC Required General Market Index", or in a similar fashion that would communicate the intent of the index, in the MDFP disclosures and prospectus performance disclosures. Fund disclosures should also be permitted to include an explanation or definition of the benchmarks used. For example, the explanation accompanying the general market index would explain that the index does not necessarily reflect the investment strategy of the fund.

2. MDFP and Money Market Funds

The Commission requested comment on whether money market funds should be exempt from including performance information in their annual shareholder reports.[17] Fidelity believes that the exemption is appropriate, given that investor focus on money market funds differs from the standard performance discussions in the MDFP section. Absent an exemption, these funds would be required to produce an unnecessary section to the annual shareholder report that is of little to no value to investors and negates the goal of keeping the annual shareholder reports concise and targeted to the needs of the average retail shareholder.

B. Revisions to Eliminate Extraneous Information and Reduce Investor Confusion

The Proposal calls for funds to create a bespoke section in the annual shareholder report for discussion of each fund's Liquidity Risk Management Program, as well as the specific liquidity risks that each fund faces.[18] Fidelity urges the Commission to reconsider this requirement, as the vast majority of funds do not face specific liquidity risks outside of the market factor risks all funds face. Indeed, this is the reason many fund companies generally include a more general disclosure - precisely because for most periods there *are no* specific risks for most funds.[19]

There are funds, however, for which a more customized disclosure in this area may be appropriate. For example, funds that have instituted a highly liquid investment minimum and the related monitoring may have more particular information about the liquidity risks they face and how those funds' Liquidity Risk Management Programs address those risks. Even this disclosure, though, in our view should be limited to a fund's Form N-CSR and website disclosure since granular detail in this area is not of the type of information that the retail investor considers when making investment decisions and would not serve the Commission's goal of streamlining the annual shareholder report. Fidelity suggests that the Commission reconsider this requirement and instead require this disclosure for funds that have instituted a "highly liquid investment minimum" as part of the fund's Form N-CSR filing and website disclosure. Funds without a "highly liquid investment minimum" should continue to provide a general overview of their liquidity risk management program in the Form N-CSR as their only disclosure in this area, unless the fund, in its discretion, determines that material liquidity issues have arisen in the disclosure period and that a more tailored disclosure is therefore necessary.

V. Semi-Annual Report

The Proposal has re-imagined what fund communication to shareholders should look like in format and content. This re-imagining leaves the proposed semi-annual report serving much the same purpose as it always has: a mid-year update to the annual report, communicated to the investors the same way that the annual shareholder report is communicated. Recognizing that the semi-annual shareholder report could also benefit from the same overhaul that the Commission desires for the annual shareholder report, the Commission asks for comment about the purpose and format of the semi-annual shareholder report.[20]

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[17] Proposing Release at 116.
[18] Proposing Release at 150-151.
[19] As the Proposal notes, most funds have opted to disclose their liquidity risk management program at a basic level of describing how the program works generally and with no customization for the specific risks faced by a particular fund. See Proposing Release at 149-150.
[20] Proposing Release at 181-182.

Fidelity believes that the Commission should use this opportunity to reconsider the semi-annual shareholder report from the ground up. Many of the same elements currently required (and that would continue to be required under the Proposal) are routinely available to shareholders on fund websites. Information related to performance, expenses, and graphical holdings are all updated frequently on the internet, providing more timely information to shareholders when making an investment decision. While the annual shareholder report has the clear purpose of providing shareholders an audited snapshot-in-time look at their investment for the previous period, the purpose of the semi-annual shareholder report is less clear. The information is not audited, as the annual shareholder report information requires, and shareholders have better and more timely access to this information online. Historically, when these disclosures were the primary way that investors obtained detailed information about their investments, it made sense to require funds to proactively distribute this information to each shareholder. As the internet has become the primary way that investors review their investments, the need to push information to shareholders has become antiquated. Investors can find detailed information about any mutual fund with a few simple clicks on the internet and can do so when it is convenient for them.

Fidelity recommends the Commission continue to allow funds to meet their semi-annual statutory requirement under the existing Form N-1A framework by posting the required information to the fund's website. Because of the reasons cited above, we find that the streamlined semi-annual report may not be beneficial to retail investors. In addition to the outdated nature of mailing semi-annual reports in the modern shareholder communication regime proposed by the Commission, much, if not all, of the information required for a semi-annual shareholder report overlaps with information the Proposal would require to be filed in a fund's Form N-CSR filing and posted on a fund's website. The duplicative nature of the information provided, combined with the timelier availability of information via web postings, make any delivery requirement an unnecessary cost.

VI. Proposed Rule 498B and Treatment of Annual Updates Under Proposed Disclosure Framework

Fidelity supports the Proposal to further streamline the delivery of regulatory documents to shareholders pursuant to proposed Rule 498B. Rule 498B would permit a fund to satisfy its prospectus delivery obligation under section 5(b)(2) of the Securities Act of 1933 ("Securities Act") to existing shareholders by delivering a summary annual report, in lieu of a statutory or summary prospectus, as long as certain conditions are met.[21] As further discussed below, we believe the Proposal's effectiveness can be enhanced by: (i) ensuring that Rule 498B remains permissive, as proposed; (ii) revising the website posting requirements to only require the posting of regulatory documents created in the ordinary course of business (i.e. not requiring a summary prospectus to be posted on the fund's website if the fund does not otherwise create and file a summary prospectus); and (iii) revising the definition of "existing shareholder" under Rule 498B to focus more on whether the shareholder has received the most recently dated prospectus, rather than whether shares have been continuously held.

A. *Rule 498B Should Remain Permissive to Provide an Alternative Means of Satisfying a Fund's Prospectus Delivery Obligations*

As proposed, Rule 498B provides an alternative means of satisfying a fund's prospectus delivery obligations, in addition to existing Rule 498 (the "Summary Prospectus Rule"), which permits a fund to satisfy its prospectus delivery obligation by mailing a summary prospectus to shareholders in lieu of a full statutory prospectus.[22] We believe that Rule 498B should remain permissive, as proposed, rather than

[21] *See* Proposing Release at 227.
[22] *See* Rule 498 under the Securities Act.

mandatory, thus allowing funds to determine which delivery method best suits its shareholders, depending on the type of shareholders in each fund. For instance, certain Fidelity funds do not have retail shareholders and are only available as underlying investment options for affiliated fund of funds or managed account programs. As such, the same concerns that underly proposed Rule 498B, reducing shareholder mailing and streamlining the customer experience, do not apply to funds who currently may only deliver the statutory prospectus to a limited number of affiliated shareholders. The costs associated with implementing and complying with Rule 498B for such funds would outweigh any potential benefits to either the shareholders or to the fund. In addition, the costs associated with mailing annual prospectuses to existing shareholders depend on a number of factors, such as whether the fund combines its annual shareholder report and prospectus mailings and the weight of its overall shareholder package.[23] Given the different practices and expense arrangements in place between different fund complexes, Rule 498B should be permissive to permit funds to choose which delivery method is the most cost effective, like the Summary Prospectus Rule.

B. *Website Posting Requirements Under Rule 498B Should Not Require the Creation of Additional Regulatory Documents That Are Not Created in the Ordinary Course of Business*

Reliance on Rule 498B is subject to certain conditions, including, among others, website availability of certain regulatory disclosures. The website posting requirements in Rule 498B mirror those of the Summary Prospectus Rule and require that a fund make available at the website address specified in its annual and semi-annual reports its current summary and statutory prospectus, statement of additional information (SAI), and most recent annual and semi-annual shareholder reports (collectively, the "rule 498B online fund documents"). However, while the Summary Prospectus Rule only requires funds that use the summary prospectus as a means of satisfying their prospectus delivery obligation under section 5(b)(2) of the Securities Act to prepare a summary prospectus, proposed Rule 498B's website posting requirements essentially impose a requirement to prepare a summary prospectus for all funds, regardless of whether funds rely on the Summary Prospectus Rule. For a variety of reasons, certain funds continue to rely on a full statutory prospectus to satisfy their prospectus delivery obligation. For instance, some funds do not have retail shareholders and as such do not warrant the extra expense of preparing and filing a summary prospectus. Should Rule 498B be permissive, rather than mandatory, as discussed above, such funds could continue to only prepare the statutory prospectus. However, should Rule 498B be mandatory, such funds would be required to prepare a summary prospectus, only for the purpose of posting it to the fund's website, rather than for the purpose of streamlining shareholder communications and reducing the length of regulatory documents. These funds would not accrue any other benefits of proposed Rule 498B, while incurring additional expenses in creating regulatory documents that no retail shareholders will read.

Even if Rule 498B remains permissive, we believe that the goals the rule seeks to achieve would be best served by permitting funds to rely on the rule regardless of whether they previously relied on the Summary Prospectus Rule or used the statutory prospectus to satisfy their prospectus delivery obligations. For instance, as discussed in the Proposing Release,[24] certain funds are offered as part of a target date strategy that becomes increasingly conservative in its asset allocation over time. As such, the fund's statutory prospectus includes multiple funds in the target date strategy. Therefore, a target date fund may

[23] For example, depending on vendor costs, it is common that postage and processing fees for mail packages less than 3 oz is the same regardless of the actual weight. Therefore, reducing the weight of a package mailed to shareholders does not always result in decreased mailing costs for the fund.
[24] *See* Proposing Release at 238-239.

choose to deliver its full statutory prospectus to initial investors under proposed Rule 498B, but would dispense with creating a summary prospectus under the Summary Prospectus Rule and instead rely on Rule 498B and only deliver the summary annual shareholder report to existing shareholders on an ongoing basis. Should Rule 498B's website posting requirements require that a summary prospectus be posted on the fund's website, regardless of whether the fund otherwise prepares a summary prospectus, some of the incentive of relying on the new rule to streamline shareholder disclosures would disappear. The cost impact of preparing a summary prospectus and relying on the Summary Prospectus Rule rather than proposed Rule 498B will vary by fund complex based on the mix of shareholders and other operational considerations. Should the website posting requirements require the creation of additional regulatory documents not prepared in the normal course of business, fewer funds would avail themselves of Rule 498B, thus reducing the potential benefits of the Proposal for funds and shareholders.

C. Definition of "Existing Shareholder" Should be Tied to Whether the Shareholder Has Received the Most Recent Prospectus

Rule 498B distinguishes between new investors and existing shareholders. An "existing shareholder" is defined as a "shareholder to whom a summary or statutory fund prospectus was sent or given to satisfy obligations under section 5(b)(2) of the Securities Act and who has held fund shares continuously since that time."[25] Existing investors are not required to receive an updated prospectus after their initial purchase. However, if a shareholder redeems their holdings and subsequently purchases shares, under proposed Rule 498B, a prospectus delivery would be required at that time.

While we understand the need for distinguishing between new and existing investors under Rule 498B, as written, the Proposal would require a prospectus to be mailed to a shareholder who has subsequently redeemed their shares after an initial purchase, regardless of whether the prospectus was updated since the initial delivery. As such, Rule 498B may inadvertently amend Section 5(b)(2) of the Securities Act, which permits a sale of a security to be "preceded by a prospectus that meets the requirements of subsection (a) of Section 10."[26] Therefore, to the extent a prospectus remained current between the initial delivery of a prospectus to a new investor and a subsequent purchase, no additional delivery requirements exist under Section 5(b)(2). However, under the Proposal, if a shareholder redeems their holdings after the initial investment and subsequently purchases shares, the same prospectus that was initially delivered to the shareholder would need to be delivered again because the shareholder has not held shares continuously. We urge the Commission to reconsider the definition of "existing shareholder" to focus more on whether the shareholder has received the most recently dated prospectus, rather than whether shares have been continuously held. Such an interpretation would be more in line with Section 5 of the Securities Act and would require fewer operational changes to implement, thus lowering implementation costs and encouraging more widespread adoption of the revised prospectus delivery framework under Rule 498B.

VII. Proposed Amendments to Fund Prospectus Disclosure Requirements

We support the Commission's initiative to improve prospectus disclosures and further facilitate shareholder readability and understanding of fund regulatory documents. We are concerned, however, that certain changes proposed to the principal risk disclosure section of the prospectus may expose funds to additional litigation risk, while not facilitating greater understanding of principal risk disclosures by fund shareholders.

[25] See Proposing Release at 230.
[26] Section 5(b)(2) of the Securities Act.

A. Limiting Risk Disclosure in Prospectus to Principal Risks

We agree that lengthy risk disclosures do not achieve the policy goals of facilitating an investor's understanding of the principal risks of an investment in a particular fund. More specifically, we believe that the proposed requirement to limit risk disclosure in the prospectus to principal risks and the requirement to provide a brief description of such principal risks in the summary prospectus, rather than a lengthy recitation of the principal risks described in the statutory prospectus, will go a long way in achieving the policy goals set out in the Proposing Release. Eliminating non-principal risks and providing a concise summary of the risks in the summary prospectus will greatly facilitate the readability and understanding of prospectus risk disclosures.

However, we do not believe that Proposed Instruction 1 to Item 9(c) of Form N-1A, which would define a principal risk as a "risk that would place more than 10% of the fund's assets at risk ("10% standard") and whether it is reasonably likely that risk will meet this 10% standard in the future" will equally serve these policy goals. While funds currently do use a variety of methods for determining what constitutes a principal risk, generally risk disclosures correspond to the principal investment strategies disclosed in the prospectus. In most cases, each principal strategy has a corresponding principal risk disclosure. While a 10% standard sounds quantitative and thus easily measured, a fund's exposure to any one instrument at any given time is not always easily quantified or measured against a numerical value and changes over time. For instance, when a fund of funds makes use of non-affiliated funds, it is not possible to determine the extent to which an acquired fund's principal risk would trigger the fund's 10% standard either at the time the registration statement is filed or thereafter. In addition, exposure of fund assets changes over time due to market events. However, the 10% standard may imply to shareholders that their exposure to certain instruments is at or above the 10% threshold. Rather than imposing a numerical standard for identifying principal risk disclosures, we believe funds should continue to assess whether a risk rises to the level of a principal risk based on its own assessment of the fund's principal investment strategies and underlying investments.

B. Ordering of Principal Risks Disclosures

Once risk disclosures have been streamlined to eliminate non-principal risks and provide a brief summary in the summary prospectus, we do not believe that attempting to order risks in order of importance, with the most significant risk appearing first, will further facilitate shareholder understanding of such risk disclosures. The Commission states that if funds were to order their risks according to importance, the ordering would "highlight for investors the risks that they should consider most carefully." This presumes that each investor's investment objectives, risk tolerance and overall investment portfolio is identical. In addition, the proposal presumes that the severity or importance of any one risk stays static throughout the year. We do not believe that the nature and format of a fund regulatory document, which by design serves multiple purposes (i.e. regulatory disclosure document, evergreen forward looking disclosure for all shareholders) is the appropriate way to provide individualized investment advice in the form of prioritized risk disclosures. While we do agree that alphabetizing risk disclosures does not necessarily facilitate more streamlined risk disclosure, we do not believe the disclosure lends itself to prescribed ordering for the reasons discussed above.

Should the Commission require a specific ordering of risks, rather than requiring a subjective grouping by importance, we believe the Commission's goals of streamlining risk disclosures would better be served by requiring groupings of risk disclosure by fund investment strategies. For example, if a fund has an 80% policy, any principal risks relating to that policy should appear first in the principal risk disclosures. Another category that may lend itself to more prominent ordering would be any risk disclosures relating to concentration policies or other policies enumerated in Section 13(a) of the 1940

Act. This ordering would emphasize risk disclosures according to substantial investments by the fund, rather than a subjective analysis of the importance of each risk factor. Although the Proposal would permit a fund to use any reasonable means of determining the significance of risks, thus permitting the approach described above, we believe it is important that the disclosure requirements do not imply that the ordering of risks reflects an analysis of how important a risk factor is to an individual investor. We believe this would result in additional shareholder confusion by implying that a shareholder should weigh one risk more highly than another, without understanding a shareholder's overall investment portfolio or risk tolerance, thus exposing funds to additional litigation risk.

In addition, should the Commission adopt a requirement to order risks in a particular manner, we ask the Commission to also clarify that intra-year fluctuations in the ordering or grouping should not require a disclosure update or a notice of material changes pursuant to proposed Rule 498B.

VIII. Rescission of Rule 30e-3

The SEC is proposing to exclude glistered funds from the scope of current Rule 30e–3, which is a development that comes midstream in the timing for implementation of that rule. The Commission's justification for this mid-stream change is essentially that the new Proposal would allow for the delivery of concise shareholder reports sent directly to shareholders, and moving to the Rule 30e-3 structure of a notice and electronic access approach would not be necessary.

We are very concerned that the SEC's proposal would be changing the approach to delivery of shareholder reports that was well underway by the mutual fund industry and could result in significant shareholder confusion and additional and perhaps substantial costs to mutual fund companies as they change their processes and operations to accommodate the new approach. Fidelity supports the alternative proposal by the SEC that would continue to permit funds to rely on rule 30e-3 to satisfy their delivery obligations. We support the statement in the Proposing Release that this "alternative would provide optionality to funds to determine their preferred method for delivering shareholder reports where shareholders have not expressed a clear preference for electronic delivery or paper delivery of the report and could reduce costs for some funds compared to the proposal, such as for those funds that have already begun to prepare to rely on rule 30e–3." Further, it is our experience that the vast majority of shareholders prefer a streamlined delivery approach as evidence shows that few have opted out of receiving the streamlined notice and electronic access for shareholder reports.[27]

Fidelity supports the SEC's focus on streamlining the content, format, and delivery of shareholder reports. We believe that rationalizing the content and information that is prepared by fund companies for their shareholders is an important initiative and one that is separate and apart from the means of delivery of such information to investors. We do not believe that the SEC should conflate the shortening and rationalization of disclosures with how they will be delivered to shareholders and investors. Taking each concept separately will lead to better policies and approaches than combining the two concepts.

When it comes to digital delivery of shareholder information, current data regarding investor behavior shows that investors are increasingly preferring to engage with their financial services firm

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[27] The Release states "[h]owever, given that we do not expect the proposed shareholder reports to be much longer than a paper notice under rule 30e–3, we do not believe that excluding relevant funds from rule 30e–3 as proposed would significantly increase the costs of delivering shareholder reports relative to the baseline." While this may be true in the abstract, this statement ignores the fact that many fund companies have already commenced implementing systems to operationalize Rule 30e-3's requirements and have developed processes to ensure compliance with the upcoming rule, which can be relied upon by funds beginning in January 2021.

through the Internet and digitally enabled devices.[28] Further, recent studies show an overwhelming movement by Americans using digital communications.[29] Investors today conduct millions of online interactions daily on financial services web and mobile sites.[30] These activities include transactions, communications, and regularly accessing important shareholder information such as account and confirmation statements, tax forms, and other regulatory documents. The vast majority of investors are now using digital communications and delivery as a safe and secure way of handling their financial business.[31]

The SEC was a pioneer in supporting electronic delivery of regulatory documents by registrants when it issued regulatory guidance over twenty years ago.[32] More recently, the Commission has advanced the shift to digital delivery on several more limited occasions by permitting a "notice and access" regime for certain regulatory documents.[33] While these modernizations were significant, more must be done to promote investors' preferences for digitally accessing their regulatory documents in a safe, secure and flexible manner.

The Proposal seeks to encourage funds to make fuller use of innovative technology to enable more interactive and user-friendly disclosures. We strongly believe that the SEC's goals can be met by changing the current framework, that focuses on paper delivery as the primary method of transmission, with an approach that establishes the first means of communication as digital, with paper as an alternative, rather than the other way around. Accordingly, we strongly recommend that the SEC update its digital delivery interpretations to allow regulated firms to use an investor's digital address -- such as an e-mail or smartphone telephone number -- as the primary address when delivering regulatory documents, including among others account and confirmation statements, mutual fund prospectuses and annual and semi-annual reports.[34]

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[28] *See Investors in the United States–A Report of the National Financial Capability Study, FINRA Investor Education Foundation* (2019), at https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf.

[29] *See* Pew Research Center, *Internet Broadband Fact Sheet* (2019), at https://www.pewresearch.org/internet/fact-sheet/internet-broadband/. In addition, a survey by the Investment Company Institute in 2015 found that 91 percent of U.S. households who own mutual funds had Internet access (up from 68 percent in 2000), and that there was widespread use among various age groups, education levels and income levels. *See* Burham, K., Bogdan, M. & Schrass, D., *Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet,* 2015, ICI Research Perspective 21, no. 5 (Nov. 2015), at www.ici.org/pdf/per21-05.pdf.

[30] *See, e.g., CNBC Trader Talk, Trading volume for electronic brokers doubled last quarter and shows no signs of letting up* (May 2020), at *https://www.cnbc.com/2020/05/13/trading-volume-for-electronic-brokers-doubled-last-quarter-and-shows-no-signs-of-letting-up.html*..

[31] *See Letter to The Honorable Jay Clayton, Chairman, U.S. Securities & Exchange Commission, from Fidelity Investments, Charles Schwab & Blackrock,* dated September 8, 2020, at https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/about-fidelity/coalitionletter.pdf; SIFMA, FISA, IAA, *E-Delivery: Modernizing the Regulatory Communications Framework to Meet Investor Needs for the 21st Century* (Sept. 2020), at https://www.sifma.org/wp-content/uploads/2020/09/E-Delivery-Paper.pdf.

[32] *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)]; Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)]; and Use of Electronic Media for Delivery Purposes, Exchange Act Release No. 36345 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)].

[33] *See* Optional Internet Availability of Investment Company Shareholder Reports, *SEC Release No. 33-10506,* at https://www.sec.gov/rules/final/2018/33-10506.pdf.

[34] We recommend that this proposal apply to SEC regulatory documents that are delivered to investors through broker-dealers, retirement plan recordkeepers, investment advisors, mutual funds, transfer agents and direct issuers.

A *digital delivery* approach would recognize that an electronic address can be as appropriate for communications and regulatory document delivery as a postal mailing address. An approach focused on digital delivery is well supported by data on investor behavior and can provide a better overall experience. Furthermore, the current global health crisis demonstrates that modernization is needed to address business continuity planning by financial services firms, and to serve millions of investors who are increasingly seeking to do business through digital channels. SEC modernization would also align with the actions of other federal regulators and federal programs that now permit the greater use of electronic delivery. [35] We recommend that in moving to a digital delivery approach the SEC consider important investor protection principles, including:

- ***Advance Notice.*** Investors should be provided with a reasonable timeframe to receive notice that their regulatory documents will be delivered to them digitally. Notice of the change in process must be written clearly and in plain English, explaining the details of how digital delivery will work.

- ***Honor Investor Preferences***. Investors should have a freely accessible means in which to communicate their preferences and ability to change their election at any time.

- ***Easy Access to Change Contact Information.*** Investors should have an opportunity to provide up-to-date contact information for the purpose of digital delivery, or the means to change their information, during the time period before their regulatory documents are moved to digital delivery, and at any time thereafter. Investors who have not provided such contact information will not be transitioned to digital delivery until digital contact information is provided.

- ***Consumer Friendly Format.*** Investors should be able to access regulatory documents in a user-friendly and timely manner at their convenience. Access should be provided in a safe and secure manner with ease of reference and retention abilities. Investors must be provided with a paper copy of a regulatory document in a reasonable timeframe, if so requested.

- ***Safeguards to Assure Delivery.*** Firms should establish safeguards to address invalid or inoperable digital contact information of investors and establish policies and procedures for the change to paper delivery if failures to digital delivery cannot be cured.

Accordingly, we recommend that the SEC consider as part of its modernization rules updating its longstanding guidance and approach to the delivery of mutual fund shareholder information. This recommendation would work in parallel to SEC proposals regarding disclosure modernization, as the delivery of information should be a separate consideration from work regarding digital disclosure.

IX. Amendments to Require Standardized Fee and Expense Figures in Investment Company Advertisement.

[35] *See* United Nations Department of Economic and Social Affairs, *Embracing digital government during the pandemic and beyond* (Apr. 2020), at https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-61-covid-19-embracing-digital-government-during-the-pandemic-and-beyond/ ("Navigating through these challenging times requires governments to adopt an open government approach and to use digital communication channels to provide reliable information on global and national COVID-19 developments. E-participation platforms can represent useful tools to engage with vulnerable groups online and to establish digital initiatives to collectively brainstorm for policy ideas to critical social and economic challenges."); IMFBlog, *Digital financial inclusion in the times of covid 19,* at https://blogs.imf.org/2020/07/01/digital-financial-inclusion-in-the-times-of-covid-19/.

The Proposal seeks to amend Rules 482 and 433 of the Securities Act of 1933 and Rule 34b-1 of the 1940 Act requiring firms to provide standardized fees and expense information in investment company advertisements. The Proposal would apply to generally all investment company advertisements including mutual funds, ETFs, registered closed-end funds and BDCs.

While we support efforts to promote fair and balanced communications which present fee and expense information to retail shareholders, we believe that the more appropriate rule structure to govern this area is within existing FINRA Rule 2210 (d)(5) which has been in effect for many years. FINRA Rule 2210(d)(5) requires retail communications that present non-money market performance to provide standardized information related to a fund's maximum sales charge and expense ratio. After careful consideration and rulemaking, FINRA developed its rules in this area creating differing standards for retail and institutional communications.[36] This distinction in rulemaking was developed to allow regulated firms to tailor a communication based on the level of expertise and sophistication of the intended recipient of the communication. Today, the vast majority of advertisements that contain fee information concerning mutual funds are filed with and reviewed by FINRA staff.

We believe that the investor protection concerns related to investment company fee and expense presentations that may exist with retail customers do not exist with a more sophisticated institutional audience.[37] Moreover, the framework to differentiate communications based on audience already exists in the FINRA rules and has been incorporated by broker-dealers into their procedures related to communication creation and review. For these reasons, we recommend the SEC to work with FINRA to revise existing Rule 2210(d)(5) and broaden the rule as necessary to apply to non-performance communications that discuss a fund's fees and expenses.

X. PERFORMANCE EXPENSES

The Proposal includes a simplified expense presentation for shareholder reports that would require a fund to provide a table showing the expenses associated with a hypothetical $10,000 investment in the fund during the preceding reporting period. The Proposal states that this is aimed at disclosure of costs directly deducted from the fund's assets (which we will refer to as "operating costs") and differentiates such direct costs from "performance expenses associated with the fund's portfolio management activities (such as the fund's securities lending activities and transaction costs associated with the fund purchasing and selling portfolio investments)." To address the latter, the Proposal requires the fund to qualitatively describe, in a footnote to the table, performance costs included in total return, if material to the fund. For example, if applicable, the fund must explain that the total return includes fund investment transaction costs, securities lending costs, or acquired fund fees and expenses ("AFFE"), which materially reduced total return.

The Proposal also includes a simplified fee summary in the prospectus, which includes operating expenses under the heading "Ongoing Annual Fees." Here again, the Proposal differentiates between operating expenses and performance expenses, and does not propose to include all performance expenses

[36] When the NASD first proposed the rule change in Notice to Members 03-77, all member communications including institutional communication were required to include required fee and expense information. Based on industry feedback, the NASD revised the proposal acknowledging the differing level of sophistication and expertise inherent with institutional investors as compared to retail investors. *See* Release No. 34-50226; File No. SR-NASD-2004-043.

[37] *See* NASD Notice to Members 03-38 creating a new category of communications (Institutional Communications) designed to modernize the existing rules governing communications with the public by creating differing content standards for institutional communications compared to retail communications and removing filing requirements.

in the expense ratio at this time (though it does note that certain performance expense such as interest expense and dividends are already included in the expense ratio and will continue to be).

We agree with the Proposal that it is important to differentiate between operating expenses and performance expenses. We believe that only recurring operating expenses should be highlighted in the simplified expense presentation and expense ratio, which would better allow investors to meaningfully compare expenses across funds. Furthermore, disclosing performance expenses (such as securities lending, brokerage, interest expense and AFFE) without also disclosing the net benefit to the fund resulting from such activities provides inaccurate and potentially misleading information to shareholders, which could have a chilling effect on the use of such strategies/investments despite their benefits to shareholders. We agree with the recommendation submitted by the Investment Company Institute in its letter responding to the Proposal that performance related expenses are best viewed as strategy-related expenses that necessarily vary significantly over time and, that the inclusion of such expenses in the expense ratio would ignore the net benefit of employing such strategies and discourage the employment of such strategies, to the detriment of shareholders.

It should also be noted that, even if excluded from a simplified expense ratio, shareholders who wish to review a fund's performance expense related information will remain able to do so by viewing the fund's financial statements (and, in the case of securities lending expenses, the fund's statement of additional information). Even with performance related expenses excluded from the simplified expense ratio, advisers will remain appropriately aware of the impact of the same as their funds will continue to compare their performance to a benchmark that, by design, does not take such expenses into account.

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

Dalia Blass, Director, Division of Investment Management