Fidelity INVESTMENTS

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Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Mutual Fund Distribution Fees; Confirmations, File No. S7-15-10

Dear Ms. Murphy:

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's proposed rule and rule amendments to replace Rule 12b-1 under the Investment Company Act of 1940 with a new framework governing the use of mutual fund assets to pay for the costs of distribution and shareholder servicing.[2]

Fidelity strongly supports the Commission's goal of promoting investor understanding of distribution costs in the purchase of mutual funds. We believe that greater clarity and transparency of these fees will enable investors to make more informed investment decisions. We also support the Commission's stated efforts to eliminate outdated requirements and provide for a "more appropriate" role for fund boards in overseeing fund distribution arrangements.

Fidelity appreciates the Commission's thoughtful approach in its attempts to minimize disruption of current distribution arrangements while seeking to benefit fund shareholders. However, Fidelity has strong concerns that the proposed rule changes will fall short of meeting the Commission's stated goals because they complicate rather than simplify the decisions that investors need to make. While Fidelity supports reform of Rule 12b-1, we request that the Commission reconsider its current proposal for the following reasons:

- Substantial changes to fund distribution arrangements are premature in light of other significant reforms currently under consideration by the Commission,

[1] Fidelity Investments, an investment adviser to over 400 mutual funds, is one of the largest mutual fund companies in the United States and is also a diversified financial services company that includes several registered investment advisers, registered broker-dealers, including a retail broker-dealer with the nation's largest fund supermarket offering as well as a clearing firm, and registered transfer agents. Fidelity is also one of the largest retirement plan service providers, providing investment management, recordkeeping, brokerage, consulting, directed trustee and custodial services to over 18,000 defined contribution plans that cover more than 12 million participants.
[2] SEC Release Nos. 33-9128; 34-62544; IC-29367 (July 21, 2010) ("Proposing Release").

including harmonization of the standards of care for investment advisers and broker-dealers, new point of sale disclosure requirements and guidance on revenue sharing practices. A piecemeal approach to reform is costly and confusing for investors as well as those who service them.

- The proposal's fundamental premise that 12b-1 fees over a certain amount must be referenced to sales loads disregards the many beneficial distribution models supported by 12b-1 fees today. Although we agree that aspects of the current 12b-1 framework can be improved, many shareholder services programs supported by 12b-1 fees clearly benefit investors and should be preserved. By treating 12b-1 fees in excess of 25 basis points as sales loads, the proposal may unduly restrict funds and service providers from entering into arrangements that benefit shareholders.

- The costs of implementing the proposed share aging requirements and other operational changes significantly outweigh the benefits. The Commission's staff estimates that only 7% of all fund assets are held in share classes with 12b-1 fees greater than 25 basis points,[3] yet the proposal will require, among other things, costly wholesale changes to transfer agent systems and retirement recordkeeping platforms, and the expansion of an already complicated share conversion system.

Fidelity requests that the Commission reconsider the proposal and address any proposed changes to Rule 12b-1 in conjunction with other regulatory reform matters affecting fund distribution.

This letter highlights the potential consequences of a failure to coordinate regulatory reform efforts, explains Fidelity's concerns with the proposal's foundational assumption about fund-paid distribution, and discusses opportunities to improve the current proposal.

I. Fidelity Encourages the Commission to Issue Comprehensive Guidance In Related Areas.

Fidelity welcomes important efforts to reform Rule 12b-1, but cannot support the Commission's current proposal in light of the possible impact of closely related regulatory guidance. The Commission's regulatory agenda includes issues that could bear on fund distribution arrangements, including potential guidance on revenue sharing,[4]

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[3] Proposing Release, Cost-Benefit Analysis, Impact, Section V.B. Table 2: 12b-1 Fees-Asset Data.

[4] *See* footnote 65 of the Proposing Release in which the Commission stated that, although it is not addressing revenue sharing practices in connection with this proposal, it remains concerned regarding revenue sharing practices and that is ..."continuing to consider further rule amendments related to revenue sharing."

new point of sale disclosure requirements,[5] and the current study regarding the standard of care for broker-dealers who provide investment advice to retail customers.[6] All of these matters interrelate and any action on one will impact the others, and in particular, will impact the Commission's proposals regarding mutual fund distribution fees and customer disclosure.

Revenue Sharing. Changes to current revenue sharing practices will impact Fidelity's review and analysis of this proposal and its impact on important servicing arrangements. Today, mutual funds have a number of ways to compensate service providers for valuable services that benefit fund shareholders as well as retirement plans and plan participants. Service providers may be paid out of fund-paid fees (12b-1 fees) or directly by shareholders (sales loads). They also may be paid by a fund's investment adviser out of its pool of revenue or other resources. The proposed limits on a fund's or adviser's ability to make these payments could put significant pressure on the methods by which services valued by investors are financed.

NAV Share Class. Fidelity is interested in the Commission's proposed amendments to Rule 6c-10 that would allow a fund to issue shares at net asset value and would permit a broker to impose sales charges based on the broker's own schedules as negotiated with its clients (referred to herein as the "NAV Share Class"). Nonetheless, the application of some form of fiduciary standard to brokers could complicate efforts to implement this proposal. For example, if the Commission were to impose a fiduciary standard on brokers, the specific contours of any heightened duty would inform how brokers managed the potential conflict of allowing some clients to purchase traditional Class A shares while others buy the NAV Share Class with a different commission schedule. While this does not render the NAV Share Class unworkable, the lack of coordination among related reform efforts dramatically complicates brokers' and funds' efforts to anticipate likely risks and opportunities of the proposal.

Comprehensive Disclosure Changes. Any revisions to disclosure on confirmations, account statements or any other documents should be viewed in totality (and in the context of related guidance, such as that recently issued by the U.S. Department of Labor ("DOL") governing retirement plan fee disclosure[7] and FINRA's Regulatory Notice 10-54 regarding disclosure of services, conflicts and duties[8]) to ensure

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[5] At the SEC open meeting on July 21, 2010, when the SEC Commissioners approved the rules described in the proposal, Robert Plaze of the Commission Staff noted that he expects that point of sale disclosure will be considered by the Commission in the near future.

[6] Pursuant to Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which was signed by President Obama on July 21, 2010, the Commission is required to conduct a study regarding the obligations of brokers, dealers and investment advisers and to submit a study report to Congress no later than six months after enactment of the Dodd-Frank Act.

[7] *See* Section III.B, infra.

[8] FINRA has recently requested comments on a concept proposal to require member firms, at or prior to commencing a business relationship with a retail customer, to provide a written statement to the customer

that the sum of such disclosure is comprehensive, helpful to investors and appropriate based on the nature of the transaction. Incremental changes to the disclosure regime will not only be costly, but also could result in investor confusion, ultimately undermining the goals the Commission seeks to achieve.

In light of these concerns, Fidelity urges the Commission to reconsider the proposal in its entirety in the context of a single, comprehensive reform proposal.

II. Not All Shareholder Services Financed by Fund-Paid Distribution Fees In Excess of 25 Basis Points Are Equivalent to Sales Activities.

The Commission's proposal is premised on an incorrect foundational assumption about fund-paid distribution. The proposed Rule 12b-2 appropriately recognizes that shareholder servicing can often be inextricably linked to services intended, at least indirectly, to result in fund distribution.[9] However, the proposal incorrectly assumes that, in all cases, shareholder services financed by fees in excess of 25 basis points should be treated as sales commissions. Today, Rule 12b-1 programs finance services that investors need and want, which services sometimes bear little resemblance to traditional sales activities designed to promote the purchase of a specific fund. Two examples illustrate the flawed logic, and its potential dangers.

Defined Contribution Retirement Plans. As the Commission has noted,[10] in the retirement plan market, 12b-1 fees are currently used to compensate a wide variety of service providers, including broker-dealers, trustees and recordkeepers.[11] The services financed by these charges directly benefit those who save for retirement through these plans. Such service providers not only provide daily valuation of accounts, and

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describing the types of accounts and services it provides, any conflicts associated with such services, and any limitations on the duties the firm otherwise owes to retail customers.

[9] The Commission is to be commended for its care in crafting proposed Rule 12b-2. That rule, paired with the flexible approach to the definition of "distribution," is well-suited to current-day realities because it recognizes that distribution activities can sometimes be hard to separate from related shareholder servicing. Today, fund families pay rule 12b-1 fees to financial intermediaries, including broker-dealers, banks, insurance companies, third party administrators and other recordkeepers for distribution as well as other shareholder services. We agree with the Commission's position that funds should be permitted to bear ongoing expenses that, although distribution related, may benefit the fund and existing shareholders in a variety of ways. Limiting the use of the marketing and service fee to expenses incurred for "shareholder services" as defined in FINRA's sales charge rule is too restrictive. Fidelity also supports the broad definition of distribution activity in Rule 12b-2(e)(2) as consistent with the current use of the distribution component of 12b-1 fees and agrees that the definition should remain unchanged in its application to proposed rule 12b-2.

[10] *See* Proposing Release, M.5.

[11] The role that 12b-1 fees play in compensating retirement plan service providers has also long been recognized by the DOL. *See, e.g.,* DOL Advisory Opinion 97-15A (May 22, 1997), DOL Advisory Opinion 97-16A (May 22, 1997).

processing of contributions, exchanges and withdrawals under increasingly complex rules, but also assist with enrollment and promote investor education and financial literacy through information about available investment options, the importance of saving for retirement, and more recently, tools that provide guidance on asset allocation and investment strategies consistent with the participant's attributes and goals. It is not surprising then, that mutual fund assets make up roughly half of the $4.2 trillion invested in defined contribution retirement plans, and more than one-third of all mutual fund assets are owned through these plans.[12] These market data reflect the successful use that retirement plans have made of mutual funds in helping millions of investors save for retirement.

Proposed Rule 6c-10, which would treat amounts over 25 basis points in all situations as a sales load, does not suit the reality of work performed by service providers receiving Rule 12b-1 fees in connection with retirement plans. Many plan service providers who receive asset-based fees, including 12b-1 fees, do not consider themselves to be engaged in activities designed to promote a specific transaction or fund.[13] Indeed, for all but the smallest plans, the market demands that recordkeepers be agnostic with respect to fund choice. Thus, in the retirement plan context, the fundamental assumption that asset-based payments in excess of 25 basis points constitute compensation for sales activities is incorrect. Rule 12b-1 fees may not constitute the whole of a service provider's asset-based compensation; administrative fees such as sub-transfer agent fees, or revenue sharing, may play a role. Nonetheless, because retirement plans are unlikely to use share classes with ongoing sales charges,[14] a proposal with this fundamental misconception has the potential to disrupt financing for services provided to an important segment of mutual fund investors.

Money Market Funds Used as Cash Sweeps. The Commission's foundational assumption is also inapplicable to money market funds used in cash sweep vehicles. While most money market funds charge less than 25 basis points in Rule 12b-1 fees, intermediaries often choose money market funds with higher 12b-1 fees for use in cash sweep accounts.[15] The 12b-1 fees are used to compensate intermediaries for servicing and transaction costs and other expenses related to its customers' sweep accounts. Rule 12b-1 fees in this example are used much in the same way they are used to pay fund supermarket costs, i.e., to pay for ongoing expenses that benefit the fund and fund shareholders, and not as an economic substitute for a front-end sales load. Requiring that 12b-2 fees in excess of 25 basis points be characterized as ongoing sales charges,

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[12] This figure is derived from ICI statistics for 2009, quoted in the Proposing Release at footnote 384.
[13] Fund companies may, however, appropriately characterize these services as designed, directly or indirectly, to result in fund distribution.
[14] *See* Section III.A, infra.
[15] As of September 2010, 479 money market funds totaling $318 billion charged distribution and service fees of greater than 25 basis points. Source: iMoneyNet.

in this context, misses the crucial distinction that the Commission correctly makes between the proposed marketing and service fee—which can be used to pay ongoing expenses and thus is not subject to an aggregate cap—and the ongoing sales charge, which is capped and serves as the functional equivalent of a front-end load.[16]

The likely result is that cash sweep providers will move away from money market mutual funds and turn instead to non-registered products that can support larger payments to intermediaries and operate outside the strictures applicable to money market mutual funds. Fidelity's intention is not to question the merits of non-registered alternatives to money market funds, but the Commission should consider whether increased use of these products, as a consequence of the proposal, would be in the best interests of the typical retail investor. For example, interest-bearing accounts (that may or may not be FDIC-insured) compete with money market funds, but typically offer lower yields and less transparency to investors. These bank products lack the same requirements to disclose fund holdings as registered money funds, and are not bound by the risk-limiting provisions found in Rule 2a-7.

III. Specific Aspects of the Current Proposal Need Improvement.

Fidelity believes that specific aspects of the SEC's current proposal will impose significant costs on funds and service providers, some of which will ultimately be borne by shareholders, without generating substantial benefits for most fund shareholders. As previously noted, only 7% of all fund assets are held in share classes with 12b-1 fees greater than 25 basis points.[17] Yet the new requirements, as described in the proposal, will result in costly wholesale changes to transfer agent and recordkeeping systems, create myriad new disclosures and require development and implementation of a complicated share conversion system. In addition, while we support the proposed elimination of approvals and findings currently required to be made by fund boards under Rule 12b-1, we agree with the views of the Independent Directors Council and others that the proposed guidance concerning board oversight of ongoing sales charges is inappropriate and unnecessary.

A. Ongoing Sales Charge

The proposed amendments to Rule 6c-10 would permit funds to deduct asset-based distribution fees in excess of the 25 basis point marketing and service fee. However, the excess amount must be considered an ongoing sales charge subject to certain sales cap limits that require a conversion feature. The tracking, aging and conversion features of the proposed ongoing sales charge present many operational

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[16] *See* Proposing Release at 43 ("[Rule 12b-2] would recognize that funds bear *ongoing* expenses that, although they are distribution related, may benefit the fund and existing fund shareholders in a variety of ways.") (emphasis in original).
[17] *See infra* footnote 3 and accompanying text.

challenges, which will be costly to implement and potentially confusing to shareholders. Even for those Fidelity recordkeeping systems that currently track and age share lots related to Class B shares, the additional complexities associated with the greatly increased number of share classes and the many variations in fee schedules will greatly complicate processing.

Moreover, ongoing sales charges are poorly suited for certain channels. For example, funds with ongoing sales charges would not be well-adapted to retirement plans because they would confuse participants and significantly complicate plan record keeping and participant disclosures.[18] As a result, plan fiduciaries are unlikely to select funds with ongoing sales charges and recordkeepers will thus have little incentive to undertake the considerable expense of building the necessary capacity to track share lots.

In other instances, the complication of an ongoing sales charge is unnecessary to prevent shareholders from paying high 12b-1 fees indefinitely. For money market sweep programs, where investors are not expected to hold their shares for long periods of time, the Commission's concerns about shareholders paying 12b-1 fees indefinitely are less applicable and the burden of tracking share lots would outweigh any benefit to a money market fund sweep participant. In any event, both FINRA and the SEC could consider less burdensome ways to protect investors in cash sweep accounts via disclosure.[19]

If, despite our significant concerns, the Commission chooses to adopt the proposed Rule 6c-10 amendments for some types of mutual funds, we suggest the regulations be revised to promote consistency of application throughout the mutual fund industry and broker-dealer community. We believe that brokerage customers, including fund shareholders, benefit from easy portability of assets among broker-dealers. In light of the many ways mutual funds may be held, e.g. omnibus accounts or networked through the NSCC, we believe uniform standards and procedures are necessary to preserve the benefits of portability if some form of the rule proposal is adopted. More specifically, we propose the following:

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[18] Since most recordkeeping systems net participant purchase and redemption transactions in each fund offered in the plan, shares would be tracked at the plan (shareholder) level, and plan fiduciaries would need to make a decision about how best to allocate shares that have and have not converted across participant accounts. This in turn would result in complex disclosure to plan participants. In addition, funds in retirement plans receive relatively small, regular contributions each payroll period. Thus, over time, each participant's account would reflect the conversion of relatively small amounts in each OSC fund every single month for a substantial period of time. These transactions would be voluminous and the appearance of these transactions in a plan participant's account would increase the apparent complexity of this savings vehicle. Participant confusion would also be more likely, as two similar funds—a share class with ongoing sales charges and a share class without ongoing sales charges—would appear in every participant's account.

[19] Today, cash sweep programs are required to disclose to customers that cash sweep options should not be viewed as long-term investments, and that customers that desire to maintain cash balances for other than a short-term period and/or seek higher yields should consult their broker to discuss other investment options.

1. Standard Reference Load

While we support market rules that maximize fund variety and investor choice, we believe that an industry-standard reference load will enable investors more easily to compare and contrast expenses across different funds and fund providers, and at the same time will reduce operational complexity.

Non-standard reference loads tied to each fund will likely create a wide variety of ongoing sales charges and conversion schedules. We believe that the multitude of share class conversions will confuse investors and will reduce transparency of fees. For example, an investor who purchases mutual funds in a brokerage account or through a fund supermarket program is likely to hold funds from a number of mutual fund providers. Each fund held by the investor may be subject to different reference loads and different conversion schedules both within the same fund complex and from funds from different fund providers. The situation becomes even more complicated if the investor chooses to exchange shares among or within funds. A standard reference load would help to simplify conversion schedules, increase fee transparency and therefore help to make it easier for investors to compare and contrast the pricing of funds.

In addition to providing shareholder benefits, a standard reference load would reduce the costs and complexities of tracking and applying individualized reference loads, as it would allow for systems that track and cap ongoing sale charges at the same rate across all funds. For example, a standard reference load eliminates the requirement to re-assign a conversion date after initial date of purchase if a shareholder exchanged into funds with higher upfront load structures and equivalent ongoing sales charges.[20]

2. Reinvested Dividends and Capital Gains

Fidelity agrees with the Commission that shares reinvested as a result of dividend or capital gains distributions should not be treated as new purchases subjecting them to a maximum ongoing sales charge. However, we are concerned that the language in the proposal that requires reinvested dividends or capital gains to have the same conversion period as the shares upon which the distribution was declared[21] could be interpreted to require mutual funds to assign each reinvested dividend and capital gain share lot with a corresponding conversion date and to recordkeep these multiple dates. This would result in an onerous record keeping burden that would increase over time as dividend and capital gain share lots multiply.

For example, assume a client invests in a bond mutual fund on five separate occasions with five separate conversion dates. If the bond fund pays dividends on a

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[20] *See* proposed Rule 6c-10(d)(14)(ii), defining Reference Load in the case of shares exchanged within the same group of investment companies as the highest load rate of either the acquired or exchanged security.
[21] *See* Proposing Release, Section III.D.3.

monthly basis, a fund company would be required to add five additional share lot positions with each dividend or capital gain reinvested in the fund. With each additional new purchase in the fund and subsequent dividend and capital gain reinvested amount, the recordkeeping requirement continues to grow and becomes increasingly difficult to maintain.

Therefore, Fidelity requests clarification that the Commission would permit a method currently used by many fund companies that charge a back-end load or CDSC. Fidelity understands that many firms record keep or group all reinvested capital gains and dividends together in one bucket or lot. As the client redeems shares or shares mature and convert to a class without an on-going sales charge, a pro-rata amount of the reinvested shares are redeemed or converted as applicable. This approach is consistent with current industry practice and we believe would achieve the result intended by the Commission.

Finally, while we support the Commission's position that dividend and capital gains not be treated as new purchases, we do not believe that dividends and capital gains should be invested in a share class without an ongoing sales charge. This requirement would result in significant administrative costs as a result of the numerous small balance positions that would be opened upon a distribution reinvestment and would likely subject these accounts to small balance account fees. In addition, this requirement would result in investors holding multiple share classes of each fund position in their accounts, causing increased investor confusion.

B. Confirmation Disclosure

Fidelity supports the Commission's goal of increasing transparency regarding fees to investors, and believes that information regarding fees enables investors to make informed investment decisions. However, the additional disclosure requirements in confirms and account statements for periodic investment plans proposed by the Commission are repetitive, costly, and offer little additional benefit to fund shareholders. Specifically, we believe that the enhanced disclosure regarding marketing and service fees and ongoing sales charges proposed for fund prospectuses is sufficient and easily understood. Second, for periodic account statements, the Commission should allow one-time disclosure of these fees to avoid costly repetition of information. Third, given the DOL's recent rulemaking regarding fee disclosure, the Commission should exempt retirement plans (both fiduciaries and plan participants) from any additional disclosure requirements.

Prospectus disclosure renders proposed confirm disclosure unnecessary. The proposal would require similar disclosure about 12b-2 fees and ongoing sales charges in both prospectuses and trade confirmations. We believe that the proposed prospectus disclosure will provide sufficient information to enable an investor to make a fully informed investment decision and that such information should not also have to be disclosed in the trade confirm. Moreover, the proposed trade confirmation disclosure for some mutual funds could lead investors to conclude wrongly that other investment products do not carry additional fees not disclosed on the confirmation.

Periodic account statements. The proposal's account statement disclosure requirement is poorly suited for those who invest through periodic plans. We do not believe there is a compelling reason for these investors to receive the same information in each statement cycle. The same is true for shareholders who hold core holdings in their brokerage accounts in money market funds and whose transactions are reported on periodic account statements. In all of these circumstances, the proposed statement disclosure would be repetitive and result in larger statements without providing additional benefit to investors. If the Commission retains any statement disclosure requirement, we ask that the Commission modify the proposal to allow one-time disclosure in these circumstances.

Exemption for retirement plans. We urge the Commission to exempt retirement plans and their participants from any new disclosure requirements implemented under this proposal. Disclosure of expenses associated with retirement plans have received intense regulatory focus by the DOL. Currently, plan service providers are working assiduously towards the effective date of a new DOL regulatory regime designed to provide full disclosure of compensation received by plan fiduciaries and recordkeepers for plan services.[22] The DOL rules will require plan service providers to disclose what they are paid, by whom and for what services. In addition, the DOL released just over three weeks ago a proposed rulemaking addressing the disclosure of fees to participants. This participant fee disclosure project follows a substantial Request for Information solicited by the DOL. Many comments submitted in response to that project stressed the need to balance the provision of information against potential participant confusion. Any regulation by the Commission of this area that does not take into account the DOL's extensive and evolving fee disclosure regulatory regime may inadvertently create duplication, additional cost, and needless confusion for those who invest through retirement plans.

C. Registration Requirements for Retirement Plan Service Providers

Fees under current Rule 12b-1 are used to pay for a variety of plan services. Service providers, such as third party administrators or recordkeepers, are often not registered as broker-dealers. The proposal, however, suggests that because the ongoing sales charges would constitute transaction-based compensation under the rule, "[i]ntermediaries receiving those payments thus would need to register as broker-dealers"

[22] 29 C.F.R. Sec. 2550.408b-2.

unless they can avail themselves of an exception or exemption.[23] The proposal further states that even "[m]arketing and service fees paid to an intermediary may similarly require the intermediary to register under the Exchange Act."[24]

As the Commission has noted, today many retirement plan service providers that are not registered as broker-dealers receive compensation from funds in the form of 12b-1 fees. It would be quite disruptive if, as a result of the proposal, these service providers were required to register as broker-dealers simply to continue to receive the same amount of fund-based compensation for the same services they are providing today. Fidelity expects that some of these service providers would choose to exit the business rather than register, thereby reducing the high level of competition among service providers that exists today.

We request that the Commission confirm that the necessity for an entity's registration as a broker-dealer is to be determined by the nature of the work performed by that entity, not by the source of the funds received in connection with the services. We believe that this is consistent with current law and would adequately serve the interests underlying current broker-dealer registration requirements.[25]

D. Role of Fund Boards

The Commission highlights a number of goals for the proposal, one of which is to "provide a more appropriate role for fund directors"[26] in their oversight of fund distribution fees and arrangements. Fidelity echoes the concerns raised in other comment letters[27] that, while the proposal appropriately streamlines a board's oversight duties in some respects, it would nonetheless impose new, significant burdens on fund boards.

The proposal would require a board to "oversee the amount and uses of [12b-2] fees in the same manner that it oversees the use of fund assets to pay any other fund

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[23] Proposing Release III.D., footnote 168.
[24] *Id. See also,* Proposing Release M.5., footnote 387.
[25] Even if the Commission were to impose a new registration obligation with respect to ongoing sales charge and/or marketing and service fee compensation, however, such obligation should rest on the fund's distributor and not on the service provider. In other words, the fund's distributor as payor should have the obligation to ensure that it only pays ongoing sales charges to entities that are registered broker-dealers; retirement plan recordkeepers that are not registered as broker-dealers, however, should not have an obligation to determine whether any compensation they receive from a mutual fund complex for such services is sourced from an ongoing sales charge (or else have an obligation to register as a broker-dealer). In addition, to the extent the Commission concludes that registration as a broker-dealer is, in fact, required in such instances, the Commission should provide a sufficient transition period before making such a new registration obligation effective to enable those service providers that are not currently registered to do so.
[26] *See* Proposing Release at 2.
[27] *See* comment letters from the Investment Company Institute, Independent Directors Council, and the Mutual Funds Directors Forum.

operating expenses..."[28] We agree with the Commission's proposal to eliminate the quarterly review of 12b-1 fees and expenditures and annual approval of 12b-1 plans. As the Commission notes, fund boards are well equipped to exercise their business judgment, in their role as fiduciaries, in overseeing fund distribution fees without such formal requirements.

However, the Commission has gone further than relying on directors' fiduciary obligations and has instead proposed additional guidance in connection with board oversight of ongoing sales charges. The Commission is proposing that a board would need to annually evaluate "whether the sales loads (including the ongoing sales charge) are fair and reasonable in light of the usual and customary charges made by others for services of similar nature and quality."[29] We echo the concerns raised by the Independent Directors Council and others that such additional guidance is unnecessary and suggests an inappropriate role for fund boards. Fidelity agrees that such a review standard departs significantly from duties currently imposed on fund boards with respect to their oversight of sales loads. It also suggests that boards, and not market forces, should dictate what an investor should pay, and a broker should charge, for the broker's services. This appears to require that fund directors become involved in commercial matters that go beyond their appropriate oversight role. Fidelity agrees with recommendations that the Commission omit these extraneous guidelines, as fund boards will continue to be guided by their fiduciary duties with respect to their oversight of fund distribution.

E. Compliance Period

Fidelity supports a longer time period than the 18 months proposed for compliance. Although the rule contemplates that funds with 12b-1 fees of up to 25 basis points can—before the compliance date—recharacterize their fees as 12b-2 marketing and service fees without the necessity of converting shares to another class, we do not believe that 18 months will allow sufficient time for all fund companies to complete an orderly conversion and amend necessary fund-related documents and agreements. First, the proposal represents a seismic shift in the way mutual fund complexes think about fund pricing and distribution approaches. Changes to fund architecture can impose significant time and cost burdens on fund complexes—necessitating changes to fund accounting and reporting systems, changes to disclosure documents and marketing materials, and time spent educating sales forces and phone representatives. Some of these fee restructurings could require prior shareholder approval, thereby incurring additional time and expense to prepare proxy statements and solicit shareholder votes. Second, 18 months is particularly difficult for the retirement plan market, because we anticipate that plans will seek to change mutual fund line-ups before the compliance date

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[28] *Id.* at 42-43.
[29] *Id.* at 65.

to remove share classes with 12b-1 fees in excess of 25 basis points. We urge the Commission to consider a compliance date of 30 months.

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We thank the Commission for considering our comments. Please contact me should you have any questions concerning this letter.

Sincerely yours,

Scott C. Goebel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner

Andrew J. Donohue, Director, Division of Investment Management
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