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November 1, 2010

Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comments on Proposed Rule Regarding Mutual Fund Distribution Fees; Confirmations, File No. S7-15-10

Dear Ms. Murphy:

I am writing on behalf of the Independent Trustees (the "Independent Trustees") of the domestic open-end equity and high income investment companies managed by Fidelity Management and Research Company. The Fidelity Equity and High Income Funds comprise more than 221 registered investment companies ("funds") with aggregate assets in excess of $580 billion.

The Independent Trustees appreciate the opportunity to comment on the proposed new Rule 12b-2 and the other rule amendments that would replace Rule 12b-1 under the Investment Company Act of 1940. The Independent Trustees wish to comment specifically and solely on the aspects of the proposals relating to the contemplated role of fund boards under the proposed framework. We are not expressing a view on the other aspects of the proposal itself, particularly the aspects of the proposal that will require mutual funds, their sponsors and intermediaries to restructure their relationships with each other and fund shareholders. We encourage the Commission to conduct a thorough and well-reasoned analysis of the economic impact of the proposals, including their costs

and benefits and, most importantly, the impact on fund shareholders and on mutual fund sales.

The Independent Trustees support the Commission's statement in the release that: "one of the fundamental premises of rule 12b-1 – that independent trustees would play an active part in setting distribution fees – does not reflect the current economic realities of fund distribution and the role 12b-1 fees play in it."[1] The Independent Trustees also agree with the Commission's statement that: ". . . many of the assumptions underlying the rule appear to no longer reflect current marketplace realities, including the role that 12b-1 fees play in the distribution of fund shares and the tasks that trustees should be required to undertake in considering whether to approve 12b-1 fees." The Commission should take such steps as necessary to assure that this reality is fully realized in whatever rules the Commission ultimately adopts. As discussed below, to the extent that Rule 12b-1 continues to be in effect, the Commission should recognize the limited role that the Board should play in overseeing 12b-1 plans.

Proposed Rule 12b-2. As the Proposing Release notes, fund boards would "have the ability to authorize the use of fund assets to finance distribution activities consistent with the limits of the rule and their fiduciary obligations to the fund and fund shareholders." The proposed rule itself provides safeguards on the use of fund assets that should assist a board in exercising its fiduciary role. Thus, if it is unnecessary for the

[1] Mutual Fund Distribution Fees; Confirmations, Investment Company Act Release No. 29367 (July 21, 2010).

Commission or its staff to suggest a list of factors that boards should consider in connection with the oversight of distribution. Such a list has proved to be counterproductive and can quickly lose its relevance as market practices evolve. This has certainly been the case with respect to the Rule 12b-1 factors.

The role contemplated for the fund board under Rule 12b-2 is consistent with the Commission's longstanding policy of seeking to reduce the involvement of fund boards in the oversight of day-to-day fund operations:

> [I]ndependent directors are unnecessarily burdened . . . when required to make determinations that call for a high level of involvement in day-to-day activities. Rules that impose specific duties and responsibilities on the independent directors should not require them to "micro-manage" operational matters. To the extent possible, operational matters that do not present a conflict between the interests of advisers and the investment companies they advise should be handled primarily or exclusively by the investment adviser.[2]

Whether or not the Commission determines to proceed with Rule 12b-2, the Independent Trustees strongly recommend that the Commission amend or otherwise provide guidance concerning the role of fund boards under Rule 12b-1 that is consistent with the proposed approach under Rule 12b-2. For example, it is unclear to us why fund boards should be required to review the quarterly reports of expenditures under

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[2] SEC, Protecting Investors: A Half Century of Investment Company Regulation (1992) at 266.

Rule 12b-1 plans if, as the Commission recognizes, such reviews should not be necessary under Rule 12b-2.

The Independent Trustees also note that the Commission addresses defensive Rule 12b-1 plans in the Proposal. The Independent Trustees believe that, regardless of whether the Commission adopts Rule 12b-2, the Commission should not throw into question the viability of defensive 12b-1 plans. We would request that the Commission clarify how Rule 12b-2 would eliminate the need for "defensive" plans since it appears to imply that expenditures by a fund's investment adviser may be viewed as being expenditures under the proposed rule, even though such expenditures would not be made from fund assets.

Proposed Rule 6c-10. The Independent Trustees are concerned about the Commission's proposed guidance concerning the role of fund boards under Rule 6c-10. The proposed guidance suggests that ". . . directors must exercise their reasonable business judgment to decide, among other things, . . . whether the underwriter's compensation is fair and reasonable (considering the nature, scope and quality of the underwriting services rendered), and 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."

This guidance is inconsistent with some of the Commission's other statements in the Proposing Release:

- The Proposing Release states that the ongoing sales charges that would be paid by fund shareholders under Rule 6c-10 are "another form of sales load." In the past, we understand that boards have not been expected to exercise extensive oversight of sales loads, since the level of sales loads are to be set by the market, subject to the oversight of FINRA.

- The Proposing Release states that: "funds lack the bargaining power to effectively negotiate the level of fees that are paid to financial intermediaries through 12b-1 plans and other sources . . . " This is as true of sales loads (deferred or otherwise) as it is of Rule 12b-1 fees.

- The Proposing Release states that: "one of the fundamental premises of rule 12b-1 – that independent directors would play an active part in setting distribution fees – does not reflect the current economic realities of fund distribution . . . ." Again, this observation applies to sales loads as well as to Rule 12b-1 fees.

As the Commission acknowledges, marketing charges are set by the market. A mutual fund board should not be inserted into what is essentially the relationship between the fund's investment adviser and the distribution channel selected by a purchasing shareholder. Nor is a fund board in a position, as the proposed guidance suggests, to determine whether these market-based fees are "fair and reasonable." Rather, the issue should be whether these fees are clearly disclosed to fund shareholders.

We appreciate the opportunity to comment on the Commission's Proposal as it pertains to the role of a fund's board. If we can be of any further assistance in this regard, please contact Kenneth J. Berman at 202.383.8050.

Very truly yours,

/s/ Ned Lautenbach
Ned Lautenbach
Chairman, Independent Trustees
Fidelity Equity and High Income Funds