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Fidelity Investments
FMR LLC Legal Department
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By Electronic Mail (pubcom@finra.org)

July 2, 2015

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Proposed Amendments to Rules Governing Communications with the Public (Regulatory Notice 15-16)

Dear Ms. Asquith:

Fidelity Investments[1] appreciates the opportunity to comment on the proposed amendments to the Financial Industry Regulatory Authority's ("FINRA's") rules governing communications with the public.[2] The proposed amendments are a first step by FINRA in implementing the recommendations of its *Retrospective Rule Review Report,* published in December 2014.[3]

Fidelity supported FINRA's retrospective review of the communications rules, and we provided extensive comments regarding how certain aspects of the rules (which were first enacted in 1980) could be updated to address current communications preferences of investors.[4] To that end, FINRA states that "while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and economic impacts."[5] In considering updates to rules regarding filing obligations, FINRA analyzed many categories of communications materials, looking for filing obligations that are overbroad relative to the investor protections that they provide. This approach has led to proposed amendments that, if adopted, will

[1] Fidelity is one of the world's largest providers of financial services. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

[2] *Regulatory Notice 15-16* (May 2015) ("proposed amendments").

[3] *FINRA Communications with the Public, Retrospective Rule Review Report (Dec. 2014).*

[4] *See Letter from Alexander C. Gavis, Fidelity Investments, to Ms. Marcia E. Asquith, Office of the Corporate Secretary, FINRA,* dated May 23, 2014.

[5] *Regulatory Notice 15-16,* at p.2.

permit FINRA staff to focus its resources on categories of communications that may involve greater risks to investors. Accordingly, Fidelity strongly supports these proposed amendments.

While the proposed amendments are a good step forward, as discussed below, we recommend that FINRA provide broader relief from filing for narrative information that is updated in previously filed templates in retail communications. Proposed Rule 2210(c)(7)(B) includes an exception from the filing requirements for "[r]etail communications that are based on templates that were previously filed with the Department the changes to which are limited to updates of more recent statistical or other non-narrative information and non-predictive narrative information that describes market events during the period covered by the communication or factual changes in portfolio composition."[6] While we strongly support FINRA's efforts to alleviate the burdens associated with filing of non-predictive narrative information that describes market events or factual changes in portfolio composition, we recommend that FINRA extend this exclusion to cover additional types of narrative information.

Fidelity and other member firms provide detailed statistical and narrative information about mutual funds to retail and retirement plan investors for use in understanding and comparing different investment options that may be available to them. These communications are often described as "fund fact sheets," and they are usually distributed in printed brochures and made available through websites and mobile apps. Fund fact sheets contain statistical data and specific narrative sections that include information about the portfolio advisor/manager(s), benchmarks, investment risks and investment strategies and objectives. This narrative information is broader than "information that describes market events during the time period covered" or "factual changes in portfolio composition." For firms like Fidelity that support mutual fund supermarkets, with proprietary and non-proprietary funds, the number of fund fact sheets made available to investors can run into the thousands.

Data and narrative information is typically sourced either from third-party vendors, such as Morningstar or Lipper (and updated regularly), or from the member firms' database of proprietary fund information. Templates for these fact sheets are initially filed with FINRA. Data that is regularly updated or refreshed in the fact sheets is not filed with FINRA as it changes, since this process is exempted from filing under FINRA's previous interpretive guidance.[7] Changes to narrative information, which are frequently provided as updates in third-party data feeds, may be filed by member firms with FINRA, often in lengthy batches of filings.

Similar to statistical updates, these filings do not generally raise investor protection concerns, as the updates are either sourced directly from third-party vendor databases (the source of which is

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[6] *Regulatory Notice* 15-16, at p. 13 (emphasis in original text).

[7] See *Interpretive Letter to Forrest R. Foss, T. Rowe Price Associates, Inc.* (Jan. 2002), at https://www.finra.org/industry/interpretive-letters/january-28-2002-1200am.

directly from funds' prospectuses and other regulatory documents) or are sourced by the member directly from a database of proprietary fund information (the source of which is also the funds' prospectuses and other regulatory documents filed with the SEC).[8] We understand that these filings are subject to limited or no review by FINRA staff in that they are regularly occurring mechanistic filings in the form of spreadsheets often running hundreds of pages.[9]

Fidelity recommends that FINRA revise the proposed rule to accommodate dynamic updating of narrative language changes within templates without filing, when (1) the original template was filed with FINRA, and (2) the narrative information is sourced either from an independent data provider or directly from an investment company's prospectus or other applicable regulatory documents that are filed with the SEC. By allowing the data to come from an investment company or affiliate, the rule would not favor the purchasing of such data from independent data providers when the data originated from the investment company. Accordingly, we propose the following revisions to the proposed rule language:

> Retail communications that are based on templates that were previously filed with the Department the changes to which are limited to updates of more recent statistical or other non-narrative information, <u>and non-predictive narrative information that describes market events during the period covered by the communication, factual changes in portfolio composition, or other non-predictive narrative information, provided such narrative information comes either from an independent data provider or is sourced from an investment company's regulatory documents filed with the SEC</u>.

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While the proposed amendments are limited to addressing member firms' filing requirements, we urge FINRA to examine and address additional communications regulations that have an impact on the delivery of clear and compelling communications to investors. In our previous comment letters, we recommended that FINRA focus on principle based disclosure solutions across all forms of communications including those through social media and mobile and wearable devices, as well as addressing regulations and policies that have affected the amount of disclosure in print advertising. We also additionally recommend that FINRA continue to focus on differences among broker-dealer

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[8] Registration statements (including prospectuses) of mutual funds are filed with the SEC, updated annually and subject to specific SEC disclosure rules and regulations. Further, although this narrative material would not be filed with FINRA, it would still be subject to the principal review and approval requirements of rule 2210 and spot checks and targeted examinations by FINRA staff.

[9] Further, in some instances if there are changes within an updated statistical and narrative data file from a third-party vendor, it may be more efficient for the member firm simply to file the entire data file rather than to isolate the narrative descriptions (the new words, sentences, paragraphs) that may have changed in order to put them into a separate filing.

and investment advisor communications regulations particularly in the areas of predictions, projections and performance information.

Fidelity appreciates the opportunity to comment on FINRA's proposed rule amendments. If you have any questions about any of these comments or need additional information, please feel free to contact the undersigned or Joe DeAngelis or Scott Maylander at 617-563-7000.

Sincerely yours,

/s/ Alexander C. Gavis

Alexander C. Gavis
Senior Vice President & Deputy General Counsel

<u>Copies to</u>:
Mr. Robert Colby, Chief Legal Officer
Mr. Thomas Selman, Executive Vice President
Mr. Joseph Price, Senior Vice President
Mr. Thomas Pappas, Vice President and Director
Mr. Joseph Savage, Vice President and Counsel
Ms. Amy Sochard, Senior Director
Financial Industry Regulatory Authority