Alexander C. Gavis
FMR LLC Legal Department

August 24, 2011

By Electronic Mail (rule-comments@sec.gov)

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

RE: File Number SR-FINRA-2011-035; FINRA Proposal to Adopt Rules Regarding Communications with the Public as FINRA Rules 2210 and 2212 - 2216

Dear Ms. Murphy:

Fidelity Investments[1] appreciates the opportunity to comment on proposed FINRA rules covering communications with the public, which would replace or revise National Association of Securities Dealers ("NASD") Rules 2210 and 2211, certain Interpretive Materials and New York Stock Exchange ("NYSE") Rule 472 and related interpretive materials.[2]

Fidelity supports FINRA's time consuming process of combining and consolidating the rules of the former NASD and NYSE self-regulatory organizations. FINRA's efforts would enhance and rationalize many of the regulatory requirements for broker-dealer communications with the public. The initial proposal was a good first step in this direction, and Fidelity was pleased to see that FINRA considered and adopted a number of comments and suggestions by Fidelity.[3] Fidelity also supports FINRA's interim efforts to work with securities firms to

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[1] Fidelity Investments is composed of a group of financial services companies, including several FINRA registered broker-dealers as well as one of the largest mutual fund complexes in the United States.

[2] *See* FINRA Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2210, 2212, 2214, 2215 and 2216 in Consolidated FINRA Rulebook, 76 Fed. Reg. 46870 (August 3, 2011) ("Proposed Final Rules"), at www.sec.gov/rules/sro/finra/2011/34-64984.pdf.

[3] Examples include: FINRA (1) not adopting a proposed amendment requiring more current disclosure of fund sale charges and expense ratios sourced from annual reports; (2) eliminating a proposed requirement that members pre-file their Retail communications concerning CMOs and structured products; (3) restoring the 30-calendar day distribution requirement for Correspondence; (4) dropping the requirement of keeping records of the person who distributed a Retail communication and (5) eliminating a proposal to include press releases as Retail communications. *See* Letter to Marcia E. Asquith, Senior Vice President and Corporate Secretary, Office of the

examine issues surrounding social media and electronic communications. FINRA's social media guidance, published in 2010 and 2011, after consultation with its *Social Media Task Force*, has been helpful in supporting securities firms' participation in, and establishment of, social media sites to communicate with investors.[4] FINRA should continue to enhance, improve and revise its interpretations and regulations in light of rapid technological developments, including the exponential rise of mobile and tablet-based communications and, to that end, it should continue actively to engage the Task Force.

With regard to the Proposed Final Rules, Fidelity supports the views expressed by the Investment Company Institute ("ICI") and the Securities Industry and Financial Markets Association ("SIFMA") in their comment letters to the SEC, submitted on August 24, 2011. We submit this letter to provide additional comments, and the following are highlights of our recommendations:

- FINRA should not require conflicts disclosure for public appearances that contain recommendations, unless the speaker had intended to make a recommendation;
- The proposed changes to the disclosure requirements regarding recommendations should only apply to Retail communications that are published or used in electronic or other public media;
- Internal member firm communications should continue to be subject to the FINRA supervision rule requirements, rather than fall under the definition of Institutional communication;
- The definition of "Institutional Investor" should be revised to include a broader group of retirement plan sponsors and institutional investors;
- The definition of "Public Appearance" should be restored as this definition coordinates appropriately with regulations regarding interactive electronic communications;
- Both the SEC and FINRA should work with the financial services industry to develop a principles based paradigm for record keeping for electronic communications;
- FINRA should continue to examine the impact of mobile technologies on its communications rules;

Corporate Secretary, FINRA, from Alexander C. Gavis, Vice President and Associate General Counsel, FMR LLC Legal Department, Fidelity Investments, dated November 20, 2009.

[4] *See* FINRA *Regulatory Notice* 10-06 (January 2010) and *Regulatory Notice* 11-39 (August 2011).

- The exception for filing of templates that are limited to statistical updates should be expanded to include narrative content that is sourced from, or provided to, an independent source;

- The filing exclusion for press releases should be expanded to cover press materials not used with the public; and

- At least a six month implementation period should be adopted for compliance with the new rules.

These recommendations are discussed in more detail below.

I. Public Appearances

Proposed Rule 2210(f)(1) would require that public appearances meet the general content standards set forth in the communications rules, and specifically the standards applicable to recommendations if the public appearance includes a recommendation of a security. If a public appearance includes a recommendation, whether planned or not, the requirements of proposed Rule 2210(d)(7) would apply and the speaker would have to provide specific conflicts of interest disclosure including information about personal holdings. In our 2009 letter on the proposed rule changes, Fidelity along with other firms and trade associations objected to this overbroad requirement. While Fidelity agreed that public appearances should comply with the general content standards, Fidelity argued that the proposed additional disclosure should not be applicable to recommendations of securities that are made by a presenter spontaneously.

Fidelity believes that it is entirely unworkable to subject oral communications that may contain a recommendation to the same content requirements as for written communications. Oral communications are most often conversational in nature and more difficult to monitor and review by member firms. Interviews of member firm representatives on television, radio or through the Web, for example, are often unscripted and extemporaneous.

It would be extremely difficult, if not impossible, for member firms actively to monitor these conversations or communications for instances of recommendations, without inhibiting these communications and the broadcasting medium generally. Moreover, it is difficult for the person communicating or giving an interview to monitor his or her remarks, particularly if the public appearance is in an interview format or is subject to a time limit. For example during a live television or radio appearance, an interviewee may be asked extemporaneously about specific securities or the conversation may turn to a discussion of sectors or investment strategies without warning or notice. In such situations, although the interviewee may not have intended to provide a recommendation, the context and format of the discussion might be interpreted as a recommendation, which would place an undue burden on the member and associated person to determine a means, *ex-post*, to provide the disclosures required in proposed Rule 2210(d)(7).

The requirement would also present very difficult challenges to compliance personnel who must provide training to associated persons participating in a public appearance. Training personnel on how to provide "on the fly" disclaimers in situations in which they are asked real-time about specific securities or when a live interview touches upon specific investment strategies is likely to be very difficult if not an impossible goal. Accordingly, Fidelity believes that this provision provides an unworkable standard and may likely have a chilling effect on associated persons' participation in public appearances.[5]

As an alternative formulation to the proposed rule, Fidelity recommends that an intent standard be included within the regulatory text. This change would mean that required compliance with the recommendation disclosure standards would only occur if the speaker intended to discuss specific recommendations of securities, rather than in situations where the discussion was extemporaneous or without premeditation. The following change to the regulatory text of proposed Rule 2210(f)(1) would cover this concept:

> (1) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications or correspondence, members and persons associated with members must follow the standards of paragraph (d)(1), and if a member or associated person <u>intends to</u> recommend[s] a security, paragraph (d)(7).

II. Securities Recommendations

The Proposed Final Rules expand the disclosure requirements for securities recommendations by applying them to both "Retail communications" and "public appearances," if they contain recommendations of securities. The original NASD IM-2210-1(6) only addressed disclosure requirements for recommendations for "Advertisements" and "Sales Literature." Under the proposal, public appearances by associated persons, any material that does not fall under the definition of research report and any Retail material distributed to more than 25 individuals during a 30 day time period would now be required to include specific conflicts disclosures (as required in proposed Rule 2210(d)(7)) if they contain a securities recommendation.

Fidelity supports the suggestion by SIFMA in its letter that the proposed change to the

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[5] We believe that FINRA's reliance on NASD Rule 2711 (research analysts and reports) is misplaced. Under that rule, the disclosures are specifically intended to address situations where a research analyst may be discussing securities that they may have recommended in their research reports. The research reports also are a vehicle in which conflicts disclosure is provided under the rule.

disclosure requirements should apply only to public appearances and Retail communications that are published or used in electronic or other public media. This limitation is in keeping with the original NASD IM-2210-1(6), and addresses concerns that broadly distributed recommendations should contain conflicts disclosure, while non-public materials distributed to a smaller group of clients should not be subject to the potentially extensive disclosure requirements, given the relationship and in light of the discussions that may occur between a client and associated person.

Proposed Rule 2210(d)(7) states that Retail communications, correspondence and public appearances that include a recommendation of securities must disclose, if applicable, "that the member or any associated person with the ability to influence the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal . . . ." In response to comments by Fidelity and others on the original rule proposal, FINRA replaced the word "substance" with "content" in order to "help clarify which associated persons must disclose their financial interests."[6]

Fidelity believes that this change does not provide appropriate clarity as to how firms may comply with this rule proposal. Within financial services firms, many employees (and possibly outside agencies and vendors) are involved in the development and creation of content for communications materials. Moreover, firms often solicit feedback and comments from associated persons and other employees in the field concerning communications materials, and the feedback is then used to make revisions or develop new materials. It is not clear what standard should be used when trying to evaluate and record which employees had an ability to influence the content of a communication. For example, there may be many employees in management who have the ability to influence, but whose job responsibilities or assignments may have nothing to do with the content creation. In complying with the rule change, firms would need to maintain and continuously update a working list of individuals who have an ability to influence, even if they are not involved in the actual content development, particularly if those individuals might later meet with clients or customers to discuss securities recommendations. Fidelity believes this is an unnecessarily broad requirement and would be extremely difficult to administer.

Accordingly, Fidelity recommends that FINRA revise the added phrase to read: "*who is directly and materially involved in the preparation of the content.*" It is our opinion that this phrase more closely aligns with the public interest of having certain individuals disclose their financial interest in the securities discussed in a communications piece.

Finally, Fidelity notes that in response to its comments, FINRA now proposes an exclusion from disclosure when financial interests are "nominal." While this is helpful in

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[6] 76 Fed. Reg. 46870 (August 3, 2011).

addressing our concern regarding incidental holdings of securities, Fidelity believes that there should be an additional exclusion for indirect holdings, for example, if a representative holds a pooled investment vehicle, such as a mutual fund or a similar financial product that has a greater than nominal holding in a security being recommended. We continue to suggest that FINRA handle these situations by adding the words *"material direct"* in front of *"financial interest"* in the regulatory text of Rule 2210(d)(7)(A)(ii).

III. Internal Communications

In the Proposed Final Rules, FINRA has added Supplementary Material .01, which provides that a member's internal written (including electronic) communications that are "intended to educate or train registered persons about the products or services offered by a member" would be subject to review as "Institutional communications" under Rule 2210(a)(3). The requirement would subject this material to the general content standards, principal review and compliance procedures requirements under the communications rules. Fidelity supports the ICI's recommendation that this requirement be eliminated, as internal communications are already subject to sufficient oversight. Internal communications should be supervised under Rule 3010, which is specifically designed to address a member's supervision of its registered representatives' activities.[7]

Should the SEC retain this requirement as proposed, the new Supplemental Material should be expanded to include educational and training internal written (including electronic) communications intended for both registered and *associated persons*. Training and educational materials are created for a broad audience within firms, in order to ensure that the total population of employees understands and is training on product and service offerings. It would be an anomalous result under the rules for FINRA not to include as Institutional communications materials that are intended to be distributed also to associated individuals.

IV. Definition of Institutional Investor

The Proposed Final Rules provide a slight revision to the definition of "Institutional Investor," which was adopted in 2002. Fidelity continues to recommend that FINRA adopt changes to the definition. As Fidelity commented to the SEC when the Institutional Investor definition was first proposed,[8] we believe that the SEC and FINRA should reconsider the requirement that plans have at least 100 participants to satisfy the definition. Additionally,

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[7] We note that FINRA provides no rationale for including this requirement in the Proposed Final Rules at this juncture.

[8] Fidelity submitted a comment letter, dated February 15, 2002, to the Securities and Exchange Commission on the proposed changes to Rules Governing Communications with the Public (File No. SRNASD-00-12).

Fidelity continues to believe that the requirement that entities have assets of at least $50 million should be reduced to $5 million. Fidelity recommends that the SEC and FINRA take a closer look at the standards for this definition in light of having administered the rules over the past nine years.

All retirement plan sponsors – without regard to the amount of assets in, or participants of, the plan – have a fiduciary duty under the Employee Retirement Income Security Act of 1974 to choose and monitor the options offered under their retirement plans. This statutory responsibility requires these fiduciaries to have an in-depth understanding of investment concepts and of the products chosen as retirement plan options. Plan sponsors supplement their investment knowledge and remain abreast of current financial trends through regular contact with their investment providers. Plan sponsors work closely with relationship managers and sometimes third-party consultants on important issues such as plan design, selection of investment options and the creation of educational materials for plan participants.

Fidelity is unaware of a measurable correlation between the level of sophistication of a plan sponsor and the size of the company, as measured by plan participants, for which he or she works. Retirement plans with fewer than 100 participants often include, for example, professional services firms (*e.g.*, law, accounting, consulting or engineering firms). In these firms, as with most others, the plan sponsor may be just as sophisticated as the sponsor of a larger plan. Moreover, the 100 participant standard is very difficult to administer in practice because member firms may need to track the number of plan participants in each of their clients' plans in order to confirm that each plan meets the definition of institutional investor before institutional sales material is distributed.

Plan sponsors are increasingly demanding sophisticated sales material that addresses specific questions and concerns related to the investment process. We believe that FINRA rules should encourage the distribution of the most useful information available to plan sponsors of all sizes and that a 100 participant standard appears to be an arbitrary threshold that is currently difficult to administer.

Under the proposal, FINRA would allow members to aggregate the number of plan participants across plans offered by a single plan sponsor. Further, to the extent a plan sponsor offers plans in addition to those specified in proposed Rule 2210(a)(4),[9] Fidelity believes this aggregation should be allowed across all plan types offered by the employer. Under the current definition, there are instances where communications to such a plan sponsor regarding one plan may qualify as institutional sales material, while communications regarding another plan offered by the same plan sponsor may not.

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[9] Proposed Rule 2210(a)(4) includes Section 403(b) and Section 457 of the Internal Revenue Code and qualified plans as defined in Section 3(a)(12)(C) of the Securities Exchange Act of 1934.

Fidelity also continues to recommend that the $50 million threshold be broadened to include any person or entity with total assets of at least $5 million. A $5 million asset threshold has been recognized by the Securities and Exchange Commission under Regulation D as an appropriate level of sophistication for limited offers of securities and would be appropriate in this context.[10]

Finally, the proposed rule contains sufficient protections to allow for these recommended changes. As in the current IM 2210-1(2), proposed Rule 2210(d)(1)(E) would require member firms that prepare institutional sales material to "consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience." Fidelity continues to believe that this requirement, along with the fundamental duty of a member firm to communicate fairly with the public as seen in the general content standards for the FINRA rules, is sufficient to protect investors and supports a broader institutional investor definition.

V. Interactive Communications

A. Public Appearance Definition

In consolidating the communications categories from six to three in the Proposed Final Rules, FINRA proposes to eliminate the definition of "Public Appearance." Up until this proposal, FINRA had relied upon this definition in its guidance on social media. Specifically, FINRA classified participation in a real-time interactive forum as a Public Appearance, allowing such activity to fall outside of the prior approval and filing requirements. In newly proposed Rule 2210(b)(1)(D)(ii), FINRA intends to modify the principal review and approval requirements to allow Retail communications that are posted on online interactive electronic fora to be supervised in the same manner as Correspondence. This change was drafted as an approach to handling interactive electronic communications, rather than creating, as suggested by Fidelity and others, a new category of Interactive Electronic Communications.

While Fidelity understands FINRA's goal of reducing the number of categories for communications, we are concerned that by eliminating the Public Appearance category, FINRA will eliminate its flexibility in addressing new forms of communications in the future. Without such a category, it will be necessary for FINRA to amend the rules governing Retail communications, Institutional communications and Correspondence each time there is a new form of communication that needs to be addressed under the rule. For example, under the current proposal, FINRA has addressed interactive electronic communications in the retail setting, but has not addressed issues regarding interactive electronic communications under the Institutional communications and Correspondence categories. Interactive communications in the

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[10] If the SEC and FINRA are not comfortable with a $5 million threshold, they might consider a threshold of $25 million, an accredited investor standard under the securities laws.

institutional setting are becoming prevalent, with broker-dealers, advisors and retirement plan administrators developing or implementing social platforms to enhance communication among clients. This raises the question as to whether FINRA will need to address Institutional communications through additional proposed rule changes.

Fidelity recommends that FINRA instead maintain the Public Appearance definition so that it may continue to cover interactive electronic communications within this framework recognizing that these communications are more analogous to physical public appearances. With a unified definition, FINRA may then provide rulemaking for interactive electronic communications for Retail communications, Institutional communications and Correspondence, without creating separate exceptions for each category. Further, we note that the Proposed Final Rules overall maintain the concept of a public appearance. As noted above, proposed FINRA Rule 2210(f) would require that public appearances meet the general content standards set forth in the communications rules and specific regulations regarding recommendations. We believe that unintended consequences may occur by detaching the concept of interactive electronic communications from the definition of Public Appearance.

In the just-published Regulatory Notice 11-39, it appears that FINRA may have inadvertently created certain restrictions on member firms' participation in third-party interactive fora. In Questions/Answers 1 and 5 of the Notice, for example, it would appear that if a registered or associated person is invited to participate in an interactive forum, in a business capacity on a third-party site (say the person is invited to be a participant in a moderated investors' forum on a news website), the interactive statements by the person would need to be record kept, regardless of the fact that the forum is out of the firm's control and the firm does not reuse the content. This may not be the case if the same person participated in a public appearance on a moderated forum on a news television or radio show. This example, based on FINRA's developing standards for interactive electronic communications outside of the concept of a public appearance, highlights the disconnect between approaches. Fidelity recommends that the SEC and FINRA reconsider the elimination of the Public Appearance definition and instead consider how it can serve as a framework for handling interactive electronic communications issues.

B. Record Keeping

Social media and interactive electronic communications involve changing content that is posted real-time to websites and mobile applications. Communications resulting from social media interactions are usually conversational, and can be disjoined short phrases with participation by multiple parties and differing subject threads. Since these interactions take place in real-time the ability to reconstruct a conversation at a later time may be difficult and may not precisely reflect the actual interactions or threads that occurred. In all respects, given the amount of content and data that must be stored under record keeping rules regarding social media interactions, discovery of issues relating to investor protection concerns may be difficult and impossible, analogous to searching for a needle in a haystack.

FINRA very recently provided limited guidance in Regulatory Notice 11-39, stating that an "analysis does not depend upon the type of device or technology used to transmit the communication, nor does it depend upon whether it is a firm-issued or personal device of the individual; rather, the content of the communication is determinative."[11] While the content of the communication is determinative for record keeping purposes, the technologies in which content is generated and then stored and retrieved is important to consider when determining the effectiveness of regulations.

Fidelity recommends that the SEC, FINRA and the securities industry work cooperatively to examine the existing regulatory paradigm for electronic record keeping, with an eye toward fresh ideas that are informed of investor protection concerns, existing and emerging technologies and the need for rationalization of storage of massive amounts of interactive electronic content and data. This could be accomplished by establishing a special joint task force to examine and make recommendations on the issue.

C. Mobile Communications

In our comment letter on the previous proposal, Fidelity recommended that FINRA focus on the important area of mobile communications. FINRA has responded by saying that it "also agrees that issues related to mobile electronic devices are important and will consider further guidance or rulemaking as issues arise, but does not believe that this proposed rulemaking is the appropriate vehicle to address all issues raised by new technologies."[12]

Since our last writing, the use of mobile phones and devices has continued to grow exponentially. Pew Internet & American Life Project reports that "[m]obile phones have become a near-ubiquitous tool for information seeking and communication—83% of American adults own some kind of cell phone—and these devices have an impact on many aspects of their owners' daily lives."[13] Investors are conducting business through mobile communications, including cellular and smart phones, tablets and net-books with full Internet accessibility. Consumer demand for access to websites through mobile devices is growing and many recent innovations in displays are allowing investors to conduct sophisticated business transactions and dealings through handheld devices, away from desktop and laptop computers. Tablets and wireless devices are enabling users to access the Internet or download specific applications that provide computer-like capabilities. A significant challenge for FINRA and the securities industry will be to develop regulations that support the development of mobile communications.

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[11] FINRA *Regulatory Notice* 11-39 (August 2011).

[12] 76 Fed. Reg. 46870 (August 3, 2011).

[13] Pew Internet and American Life Project , *Americans and their cell phones* (August 17, 2011), at www.pew.org. Recent estimates indicate that there are over 250 million U.S. mobile subscribers, correlating to about 80 percent of the U.S. population

We recommend that FINRA focus on this area either with its Social Media Task Force or through a similar collaborative approach.

Fidelity has recognized this development and responded to its customers' needs by introducing software applications for tablets and smartphones. Fidelity's tablet-based applications provide investors with up-to-the-minute market news, charting, quotes, account information and trading functionality. There are several ways that securities firms build web sites and software applications for wireless devices. For some wireless carriers, firms may build web pages that may be accessed and rendered on the wireless device. Building these pages involves scaling down the firm's overall web activities to fit within the wireless device's screen. This process involves determining, among others, how best to render required contracts, disclaimers and disclosures through the device.

An alternative development process involves building software that will be downloaded on the actual device. An example is the developing of a software application for use on an iPhone or Android device. In this situation, the device carrier or sponsor may have specific standards and a certification process for the software application. The standards can range from disallowing click-through agreements/terms of use on entry to the software or requiring that links or disclosures follow certain style guides. Prior to launching the software application, the securities firm must submit the software program to the wireless device provider for approval.

In the few years since Fidelity's previous comment letter was filed, mobile commerce is approaching the point where many wireless users are abandoning their desktop Internet connections when communicating with securities firms. FINRA's disclosure requirements regarding, for example, member names, comparisons, rankings, fees and expenses, and performance information should be examined to determine how they can be rendered in mobile commerce. Given the pace of developments with mobile displays, the disclosure requirements in FINRA's communications rules may not serve their intended purpose if they are either too long or detailed to be read on handheld screens. In summary, Fidelity recommends that FINRA consider how its communications rules are impacted by these developments, and consider using its Social Media Task Force or one of its other standing committees for this important and necessary evaluation.

VI. Use of Templates

Proposed Rule 2210(c)(7) includes an exception from the filing requirements (1) for "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" and (2) for communications that were previously filed with FINRA and that are to be used without material change. We were pleased that FINRA adopted our previous comment that the prior proposal should break out these exceptions separately.

FINRA did not accept our previous recommendation that certain narrative changes to

templates be permitted without filing or re-filing. To help investors compare and contrast fund investments in a standardized, easy to read format and to create cost efficiencies that can benefit investors, member firms often communicate mutual fund performance and other fund information in a standardized, templated format in a variety of media, including hardcopy and electronic. These templates range from basic to complex. Most templates include basic information about a mutual fund, such as the fund's name, a description of the fund (typically its investment objective, strategy and risks), performance information, fees and portfolio manager. More complex templates might include fund holdings and composition information, corresponding information about a fund's benchmark as well as common industry measures and ratios such as Alpha, Beta, Standard Deviation, Sharpe Ratio, among others.

Once a member firm has determined an appropriate template format, it may be used to communicate information on one or more mutual funds. The templates are updated based on the type of template and its contents. Fund fact sheet templates, for example, are generally updated quarterly to reflect the most recent quarter-end performance. On the other hand, a retirement plan enrollment guide template might be populated or updated each time a new plan is added or converted to the member firm's platform or each time a plan changes its investment options. When templates are updated, generally only the data associated with a templated field is revised, so that field titles, fund descriptions and applicable disclosures are not changed. The data update is typically statistical in nature; an example of this is fund performance or fund expense data.

Member firms that service retirement plans or provide access to a mutual fund supermarket type program may provide voluminous aggregate data on the funds they distribute. To provide important fund information in a cost-efficient manner, templates are not only necessary, but effective in presenting comparative data about different investment options. The burden of filing of every populated template with narrative changes is cost prohibitive and imposes significant burdens on FINRA review staff. Reviewing narrative changes, be they numeric or narrative will not serve to further investor protection, but will only add to costs that would likely be passed along to investors.

Currently, FINRA staff requires filing of each template (assuming it contains fileable content) the first time it is used with the public. Subsequent filings of templates are required only if there are changes to the narrative sections of the templates. Updates of performance and other statistical data do not trigger a re-filing requirement. Examples of narrative changes in templates might include (1) the names listed under the field for the fund's portfolio manager(s), (2) updated benchmark names (for example, the renaming of the numerous Lehman indices to Barclays Capital indices), or (3) textual changes to a fund's investment objective or strategy. These changes are typically fed dynamically from data provided by third-party sources, such as Morningstar or Lipper, or from an affiliated fund company's databases. FINRA has used the concept of sourcing from an independent source in the regulation of rankings information.

Fidelity recommends that the proposed rule accommodate dynamic updating of narrative language changes with templates where (1) the original template was filed with FINRA and (2) the narrative information is sourced either from an independent data provider or from an

investment company or its affiliate, where the investment company or affiliate has provided the information to an independent data provider. The reason for the allowing the data to come from an investment company or affiliate is so that the rule does not inherently favor the purchasing of such data from independent data providers when the data originated from the investment company. Accordingly, we propose the following amended 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, or more recent narrative information, provided such narrative information comes either from an independent data provider or from an investment company or its affiliate that has provided such information to an independent data provider.

VII. Media Communications

Proposed Rule 2210(c)(7)(H) reinstates a filing exclusion provided for press releases made available only to members of media. This change is based on comments by Fidelity and others regarding the handling of press materials.

As an additional consideration, Fidelity believes that all press materials, including press releases, solely provided to the media should be excluded from filing with FINRA staff under Rule 2210. Member firms, in addition to the standard press release, often provide studies, whitepapers, research reports, charts, presentations and educational materials to the media for background and research purposes. The press benefits from these materials, as it assists their understanding of facts and issues when writing articles.

The focus of the FINRA communications regulations is to ensure that appropriate investor protection concerns are reflected in materials that are shared directly with the public. Fidelity does not believe that press material should be subject to a filing requirement not applicable to press releases, provided that such material is not made available by a member to the public. Accordingly, we recommend that the filing exclusion language of the proposed rule be broadened from its mention of “press releases” to “press materials.”

VIII. Transition Period

FINRA has not proposed a specific implementation time period for the Proposed Final Rules. Fidelity recommends that FINRA provide at least a six-month compliance period for firms to implement the rules. This will allow an appropriate time period for firms to change their communications workflow and record keeping systems to reflect the new categories of content. Further, if FINRA adopts new requirements for handling of internal training materials, Fidelity recommends a compliance time period of nine months in order to allow firms to change their

compliance procedures and policies and conduct employee trainings and outreach regarding the handling and filing of the content.

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Fidelity appreciates the opportunity to comment on this important rule proposal. If you have any questions about any of these comments or need additional information, please contact the undersigned at 617-563-7000.

Sincerely yours,

/s/ Alexander C. Gavis

Alexander C. Gavis
FMR LLC Legal Department
Fidelity Investments

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