MEMORANDUM

To: File No. S7-07-16

From: Eric Diamond, Senior Advisor to Chairman Jay Clayton

Re: Meeting with Representatives of Fidelity

Date: October 17, 2019

On October 1, 2019, Bryan Wood (Deputy Chief of Staff), Sebastian Gomez (Senior Advisor to Chairman Clayton), Kay Smith (Senior Advisor to Chairman Clayton) and Eric Diamond (Senior Advisor to Chairman Clayton) met with the following representatives of Fidelity:

- Peter Stahl, SVP and Deputy General Counsel
- Jason M. Goggins, VP, Government Relations

The meeting participants discussed, among other things, the proposed rules implementing section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. At the meeting, the Fidelity representatives provided the attached materials.

Dodd-Frank 956 Incentive Compensation:

- As a threshold matter, the approach to the joint incentive compensation rulemaking can and should:
    - Apply differently to banks and non-banks due to the fundamental differences in business models, risk profiles, and existing regulatory obligations of banks and non-banks
    - Reflect that the core agency problems that the rule is intended to address, are inherently reduced in privately held companies and non-banks that operate outside the federal safety net for banks (Fed discount window, insured deposits, etc.)

Considerations:

1. **Avoid One-Size-Fits-All Bank Regulations:** Don't impose regulations designed for banks on non-banks they do not fit, including asset managers and broker-dealers.

2. **Be Less Prescriptive:** We recommend a flexible risk-based approach. Being less prescriptive with respect to categorization of companies and compliance requirements will allow the rule to be applied sensibly to the diverse business models and ownership structures required to be covered.

3. **Asset Thresholds:** We recommend against using asset thresholds to categorize companies. Size alone is not a good indicator of risk in the area. If asset thresholds are used, they should be set higher than the previously proposed rule and indexed for inflation. **Preferred:** $1-$250bn, $250bn or more. In addition, a firm should be eligible to move to a lower tier based on risk profile.

4. **Exclude Assets Already Regulated to Prevent Inappropriate Risk Taking:** In particular, exclude 15c3-3 assets that are already subject to SEC rules that prohibit a BD from taking the types of risk with those assets that the incentive compensation rule is intended to address. BD's are required to hold those assets exclusively for the benefit of customers. The customer protection rule 1) prohibits the carrying BD from using "locked up" assets to finance proprietary trading and 2) requires the carrying broker-dealer to invest the customer reserve in cash or securities that are issued or backed by the U.S government – like Treasuries (low risk, low yield assets).

5. **Focus on Risk Assets:** Non-proprietary assets on the balance sheet for accounting purposes, including "locked up" assets and insurance separate account assets are not risk assets for the firm like other balance sheet assets. They should be excluded. This rule is about financial risk to the firm.

6. **Competitive Implications:** An inflexible executive compensation rule that does not differentiate between banks and non-banks could render non-bank compensation packages less attractive relative to competitors and make it difficult to recruit talented employees.