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Submitted electronically through http://www.regulations.gov

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Adviser Business Continuity and Transition Plans (File No. S7-13-16)

Dear Mr. Fields,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on its proposal to require all registered investment advisers to adopt, implement and annually review written business continuity and transition plans that are reasonably designed to address operational risks related to a significant disruption in the adviser's business (the "Proposal").[2]

Fidelity fully supports the SEC's goal of ensuring that registered investment advisers have business continuity plans that mitigate the effects of any material disruption on clients. We strongly agree with the SEC that business continuity planning is required to meet an adviser's fiduciary duty and Fidelity devotes substantial time, resources and personnel ensuring that we have robust practices in place designed to mitigate, and reduce the likelihood of, disruptions to our business that may negatively affect our clients. We understand, however, that the SEC has observed that not all advisers employ such rigorous business continuity standards, and we support the SEC in its effort to ensure that comprehensive business continuity practices exist throughout the asset management industry.

We appreciate that the Proposal follows a principles based approach that addresses certain general components that should be included, but otherwise allows advisers flexibility to tailor their business continuity plans to the specific risks their businesses face.[3] We also agree with this flexible approach as it recognizes that most advisers already have extensive business

[1] Fidelity and its affiliates are leading providers of mutual fund management and distribution, securities brokerage, and retirement recordkeeping services, among other businesses. Fidelity submits this letter on behalf of Fidelity Management & Research Co., a SEC registered investment adviser and investment adviser to the Fidelity family of mutual funds, as well as Fidelity's several other affiliated SEC registered investment advisers. Fidelity generally agrees with the views expressed by the Asset Management Group of the Securities Industry and Financial Markets Association in its comment letter to the SEC. We submit this letter to supplement that letter on specific issues.
[2] Adviser Business Continuity and Transition Plans, SEC Release No. IA-4439, 81 Fed. Reg. 43530 (July 5, 2016) (the "Release"), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-07-05/pdf/2016-15675.pdf.
[3] *See* Release at 43538.

continuity practices in place that have been refined over time based on experience. These were originally adopted in response to Rule 206(4)-7 under the Investment Advisers Act of 1940 (the "Advisers Act"), which required SEC registered investment advisers to implement compliance policies and procedures and identified business continuity plans as an essential part of those policies and procedures.[4] The SEC's subsequent guidance issued after several disruptive natural disasters reiterated the importance of business continuity planning and provided useful guidance to enhance existing business continuity plans.[5] We appreciate the SEC's efforts to ensure that the Proposal is consistent with its existing rules and guidance addressing business continuity practices which for many advisers, including Fidelity, have been tested and proven to be effective or have been improved.

We fully support the SEC's objective in requiring comprehensive business continuity policies and believe these policies, subject to the modifications we recommend below, will protect clients during the entirety of their advisory relationship. We do not, however, believe there are unique risks that arise as a result of an adviser transition, whether voluntary or not, that would be mitigated through a separate transition plan. Although resolution planning may be appropriate in the context of banking supervision, the same rationale does not extend to asset managers because they operate with small, low-risk balance sheets that are not inherently susceptible to sudden financial distress and their financial condition has no direct impact on client assets, which are typically segregated at third-party custodians and held for clients' exclusive benefit. Further, advisers enter and exit the market regularly, in all market conditions, with no need for a special resolution mechanism or plan and no impact on the stability of the financial system. Since adviser transitions are routine in the industry and constitute mainly operational exercises, we believe that any potential client impact is already addressed through appropriate business continuity planning and the existing adviser and investment company regulatory framework, which enables these transitions to occur daily, in high volumes, regardless of financial distress.

I. EXECUTIVE SUMMARY

Our comments in this letter include the following points:

- Compliance Date: We recommend that the final rule include a reasonable timeframe to allow advisers to review and augment their existing plans to meet any additional requirements in the Proposal;

- No Public Disclosure of Plans: We strongly urge the SEC to allow advisers to keep the specific components of their plans confidential as these are considered proprietary and have the potential to cause significant competitive harm to advisers if they are disclosed;

[4] *See* Final Rule: Compliance Programs of Investment Companies and Investment Advisers, SEC Release Nos. IA-2204, IC-26299 (Dec. 17, 2003), *available at* http://www.sec.gov/rules/final/ia-2204.htm; *see also* Release at 43541, fn. 94.
[5] *See e.g.,* Release at 43533, fn. 22; *id.* at 43534, fn. 30.

- Risk of Client Harm is Effectively Addressed by Business Continuity Requirements and Existing Regulations: Since adviser transitions are primarily operational in nature, do not independently result in financial distress, and are not affected by financial distress, we do not believe that separate transition plans are necessary for advisers. Rather, we believe that client protection can be fully addressed through robust business continuity planning as well as the existing adviser and investment company regulatory regime;

- Living Wills Should Not Be Required for Advisers: We do not believe there is a need for advisers to prepare "living wills" or their equivalent in order to address their resolvability. Unlike banks, advisers are not prone to "failure" or sudden financial distress because they operate in an agency-only capacity, they are not in the business of proprietary trading or investing, and they typically operate with little or no leverage. Distress at an adviser does not implicate its clients in the same manner a bank's financial distress impacts its clients. Also, unlike banks, advisers and their clients do not benefit from deposit guarantees and they do not have access to central bank liquidity or material credit exposures to lenders, such that the failure of an adviser or fund does not spread distress to counterparties, taxpayers or the financial markets;

- Advisers Routinely Exit the Market Without Impact to Client Assets: As the SEC acknowledges, advisers and funds "routinely" transition client accounts "without a significant impact" to themselves, their clients, or the financial markets.[6] This is mainly due to the use of third-party custodians, which allow assets to be easily transferred, and the fact that advisers are highly substitutable. Since struggling advisers "self-resolve" largely through the process of redemptions, transfers in-kind, and fund liquidations and mergers, the impact to clients from an adviser exiting the business is minimal. For example, a mutual fund board faced with an adviser closing its business is allowed to appoint an interim manager, pending shareholder approval.[7] Clients in other accounts, such as separately managed accounts, routinely transfer assets in-kind to other advisers with little to no impact to those assets. We believe this absence in the historical record of client harm from advisers exiting the industry demonstrates that there is no benefit to requiring all advisers to adopt separate transition plans in addition to business continuity plans.

II. ENHANCEMENTS TO THE BUSINESS CONTINUITY REQUIREMENTS

While we strongly support the SEC's business continuity requirements, we recommend the following modifications to the final rule:

Compliance Date

We recommend that the final rule include a reasonable compliance timeframe to allow

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[6] Release at 43535.
[7] *See* Investment Company Act of 1940, 17 CFR 270.15a-4 (Temporary Exemption for Certain Investment Advisers).

advisers ample time to create or augment existing policies to comply with the rule. Notwithstanding that many advisers may already have business continuity plans in place, any rule adopted by the SEC will necessitate a comprehensive review by all advisers of their existing policies and procedures to determine whether any modifications or additions need to be made. These changes may also include discussions with third-party service providers, additional business continuity testing, contract negotiations, and possibly the involvement of a fund's Board of Trustees to review any changes to existing programs. We recommend a compliance timeframe of twelve months from the effective date of the final rule.

Public Disclosure of Plans

We strongly agree with the SEC that public disclosure of plan requirements will create additional risk exposure for advisers, including possible cybersecurity attacks.[8] An adviser's business continuity plan would necessarily contain highly proprietary and sensitive information, such as information about the firm's systems, service providers and structure, and location of any alternate facilities. Disclosure of this information has the potential to cause competitive issues and worse, potential compromise of the systems that the Proposal is intending to protect. Accordingly, we strongly recommend that any final rule permit advisers to keep the specific components of their plans confidential.

III. COMMENTS ON THE TRANSITION PLANNING REQUIREMENTS

A. <u>Business Continuity Requirements and the Existing Regulatory Regime Effectively Protect Clients When an Adviser Exits the Industry</u>

We fully agree with the SEC's objective of protecting clients against operational risks and we think this is the lens through which any contingency planning requirements should be considered. As the Proposal notes, material disruptions at an adviser that negatively impact clients could arise from operational or technological failures at the adviser or critical third-party service providers, cyberattacks, weather events or loss of key personnel.[9] Operational risks generally are idiosyncratic, temporary, and can be mitigated, which is why advance planning for these events by advisers is important.

When an adviser exits the industry, voluntarily or not, it does not confront any different, or heightened operational risks than those that are already present on a daily basis and addressed by business continuity planning and, procedurally, under current regulatory requirements. We believe that client protection concerns are already addressed by business continuity requirements,

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[8] *See* Release at 43550 ("we understand that such information could be considered proprietary by some advisers and the public disclosure of business continuity and transition plans may make advisers more vulnerable to attacks from third parties, such as cybersecurity attacks that target the contingency plans laid out in an adviser's business continuity and transition plan.").
[9] *See id.* at 43531.

daily operational considerations, and the regulatory framework and therefore there is no need for separate transition plans for advisers.[10]

It is undisputed that advisers have routinely entered and exited the market, consistently in all market conditions, without any significant impact to their clients, counterparties or the financial markets. Many factors explain why this has been true in the past and is equally likely to be true in the future. For example, advisers rarely become insolvent. In the event they do close, they are easily resolvable due to their legal structure and balance sheets, which are separate from that of their clients. Clients can also easily replace or substitute advisers thanks to the numerous competitors willing and able to take over management responsibilities, and the ease with which client assets are transferred through the use of third-party custodians.[11] Given the substantial evidence that there is no need for resolution planning and in light of the Proposal's comprehensive business continuity requirements, we do not believe that separate transition plans are necessary to protect clients from a distinguishable or quantifiable harm due to an adviser exiting the industry.

The existing comprehensive regulatory regime for advisers and investment companies also effectively addresses transitions, substitutability and risks due to an adviser exiting the market. The Advisers Act generally requires client approval of a new investment adviser by prohibiting investment advisory agreements from being assigned without client consent.[12] With respect to investment companies, Section 15(a) of the Investment Company Act of 1940 (the "1940 Act") requires Board and shareholder approval for any new advisory contracts.[13] Section 15(c) of the 1940 Act further requires an investment company's Board to "request and evaluate" such information as may "be reasonably necessary to evaluate" the terms of a new investment advisory agreement."[14] The factors that may be considered by the Board when approving a new advisory agreement include: (1) the management and advisory needs of the fund; (2) the quality of the investment management and advisory services to be provided; (3) the management and advisory fee structure in light of Section 36(b) of the 1940 Act; (4) the organization and financial condition of the investment adviser; (5) the consideration of alternate advisers; (6) general conditions in the economy, the securities markets, and the mutual fund industry; (7) the historical relationship between the fund and the investment adviser; and (8) any other factors that might

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[10] We appreciate that the SEC has drawn upon existing business continuity requirements established for other financial industry participants in crafting its own requirements for investment advisors. We recommend that this approach be followed with respect to transition planning requirements as well, which we note are absent from the equivalent FINRA, NASAA and CFTC rules. *See id.* at 43533.

[11] There may be limited exceptions to this principal, for example in unusual circumstances where an adviser chooses to "self-custody" client assets. Fidelity itself does not engage in the "self-custody" of client assets.

[12] *See* Release at 43543, fn. 107.

[13] *Id.*, fn. 106. Section 15(a) of the 1940 Act requires that an investment advisory agreement be approved by "a majority of the outstanding voting securities" of the fund. Thus, if the board determines to approve the new investment advisory agreement, it also must authorize the calling of a shareholder meeting and the preparation and filing of a proxy statement. Pursuant to Rule 15a-4 under the 1940 Act, prior to obtaining a shareholder vote on the new advisory agreement, an investment adviser may serve under an interim advisory agreement. If the previous agreement was terminated by an assignment, then Rule 15a-4(b)(2) requires that the interim agreement also contain certain provisions.

[14] 15 U.S.C. 80a-15.

appear to the Board to be relevant.[15] The due diligence process that takes place in connection with the sale of an advisory business also entails the review of an adviser's registrations and material agreements, including but not limited to, organizational documents, SEC filings (including Form ADV), financial statements, administration, management, distribution and marketing agreements (including investment management agreements, offering documents, and credit facilities), and compliance manuals, procedures and related material. This thorough review, in combination with the applicable regulatory requirements discussed above, ensures that clients are fully protected throughout an advisor's transition process.[16]

The SEC's custody rule imposes strict requirements governing the manner in which SEC registered advisers must hold client assets.[17] The vast majority of client assets are held by third-party custodians and, as a result, transitioning client accounts from one adviser to another is a streamlined process that in many cases may not involve the physical movement or sale of assets. The change or termination of an adviser itself does not impact the value of a client's assets. The custody rule also ensures that clients have access to their assets both in the ordinary course, and if an adviser is terminated or a fund is liquidated. Shareholders in registered investment funds are further protected in that regulatory approval is required for an adviser to take extreme actions impacting clients, such as restricting redemptions.[18]

A review of each of the SEC's components for an adviser's transition plan[19] illustrates a lack of necessity for a separate plan because each of these requirements is: (i) already addressed as part of an adviser's daily operations, business continuity planning or the existing regulatory framework, or (ii) in certain instances, the pertinent information requested is not solely within the control of the adviser:

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[15] *See* Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Securities Act No. 33-8433 (June 23, 2004), *available at* https://www.sec.gov/rules/final/33-8433.htm. If the investment adviser also serves as the fund's principal underwriter, a new principal underwriting agreement will also need to be approved by the Board. *See* Section 15(b) of the Investment Company Act of 1940.

[16] *See* Speech by Andrew J. Donohue, Address at the Mutual Fund Directors Forum Second Annual Directors' Institute (Jan. 15, 2008), available at https://www.sec.gov/news/speech/2008/spch011508ajd.htm ("over the past 68 years the 15(c) process has evolved to the point where it requires the independent directors to engage, in person, in a detailed analysis of the investment advisory contract with each aspect of the analysis well documented. Although this necessarily has increased the amount of time independent directors devote to the 15(c) process, I believe that the result is beneficial for everyone — the investors, the fund, the adviser and the directors.").

[17] *See* Release at 43535 (citing Rule 206(4)-2 of the Advisers Act and noting "[t]he use of custodians that traditionally provide those services provide protection for client assets from the adverse effects of stress at an adviser."); *see also* Rules 17f-1 through 17f-7 under the 1940 Act (custody rules affecting investment company assets).

[18] *Id.* at 43543, fn. 108 (citing Third Avenue Trust and Third Avenue Management LLC which required SEC approval to suspend investor redemptions).

[19] *See* Release at 43542 ("Under the proposed rule, the transition components of a business continuity and transition plan would have to include (1) policies and procedures intended to safeguard, transfer and/or distribute client assets during transition; (2) policies and procedures facilitating the prompt generation of any client-specific information necessary to transition each client account; (3) information regarding the corporate governance structure of the adviser; (4) the identification of any material financial resources available to the adviser; and (5) an assessment of the applicable law and contractual obligations governing the adviser and its clients, including pooled investment vehicles, implicated by the adviser's transition.").

- *First*, "policies and procedures intended to safeguard, transfer and/or distribute client assets during transition" with respect to the requirements to *safeguard* and *distribute* assets seem more applicable for custodians, who maintain custody of client assets, not advisers. Advisers are well versed in the processes for transferring the large volumes of client assets and accounts, which happen frequently, and there has not been demonstrated a need for separate policies addressing the transfer of client assets specifically during an adviser's transition. Indeed, we do not believe there is anything inherent to an adviser's transition that would require different policies;

- *Second*, "policies and procedures facilitating the prompt generation of any client-specific information necessary to transition each client account" are part of an adviser's ordinary operational procedures with respect to those service providers selected by the adviser, but not typically within its control for those service providers selected by separately managed account clients or investors investing in a fund through third-party intermediaries. We do not believe policies addressing the prompt generation of client-specific information under an adviser's control would be any different when an adviser exits the industry as opposed to during its normal operations;

- *Third*, "information regarding the corporate governance structure of the adviser" is already considered a routine and frequently updated component of an adviser's daily operational procedures, and is already contemplated by the SEC's business continuity requirements.[20] We do not believe there would be a pre-plannable distinction between the organizational structure of an adviser in the ordinary course and during its transition. To the extent there is a change in key personnel, this occurrence is addressed in the SEC's proposed business continuity requirements[21];

- *Fourth*, the "identification of material financial resources available to the adviser" in a transition is unnecessary because there is no empirical evidence that an adviser will experience financial distress during, or as a result of a transition, negating the need to identify in advance any potential sources of funding it may seek to use. Although contingent temporary financing for banks is a real concern during resolution, advisers do not rely on third-party financing the way banks do so there is no corresponding concern for advisers.[22] Further, an adviser's cost structure is highly flexible and directly

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[20] *See* Release at 43539 (suggesting an inventory of key documents as part of business continuity planning, including organizational documents).
[21] *See id.* (requiring business continuity plans to address both the temporary or permanent loss of key personnel).
[22] *See* Fin. Stability Bd., Guiding Principles on the Temporary Funding Needed to Support the Orderly Resolution of a Global Systemically Important Bank (G-SIB), at 5 (Aug. 18, 2016), *available at* http://www.fsb.org/wp-content/uploads/Guiding-principles-on-the-temporary-funding-needed-to-support-the-orderly-resolution-of-a-global-systemically-important-bank-%E2%80%9CG-SIB%E2%80%9D.pdf ("Work to date . . . has found that funding poses a material impediment to the resolution of global systemically important banks (G-SIBs). In particular, there is a risk of insufficient liquidity to maintain critical operations arising from the G-SIB's inability to roll over short-term borrowing or loss of access to alternative sources of credit. This work also found that more analysis and understanding of funding and liquidity needs in resolution is necessary, in particular liquidity and funding needs in different currencies.").

correlated to its assets under management, allowing the adviser to respond in the ordinary course to evolving financing conditions and changes in assets under management;

- *Fifth*, the requirement for "an assessment of the applicable law and contractual obligations governing the adviser and its clients" seems to require a restatement of the law and contractual requirements that advisers already operate under on a day-to-day basis. The existing regulatory framework already includes detailed requirements for advisers and their funds during a transition, including Board and client approvals. With respect to an assessment of contractual obligations, we believe this is already addressed by the Proposal's business continuity requirement concerning critical operations and systems and third-party service providers.[23]

Should the SEC believe there are risks to clients that are not already adequately addressed by existing regulations, we suggest the SEC consider further exemptive rules or guidance that would facilitate adviser transitions. We do not believe, however, that requiring transition plans that attempt to contemplate boundless hypothetical scenarios meaningfully adds additional client protections.

B. The Rationale for Bank "Living Wills" or Resolution Plans Does Not Extend to the Asset Management Industry

We appreciate that the Proposal is not requiring "living wills"[24] for advisers and we emphatically agree with this decision. The rationale for having "living wills" for banks does not extend to asset managers, which are not vulnerable to sudden "material financial distress" that could impede a "rapid and orderly resolution."[25] We understand the need for resolution planning in the banking context where the rapid dissolution of banks impacts clients (due to lack of bank liquidity to meet deposits), taxpayers (due to government bailouts and guarantees), and the financial markets (due to direct counterparty exposures and common exposures that are vulnerable to "fire sales" of assets by insolvent banking entities). However, the numerous distinctions between advisers and banks, many of which are acknowledged by the SEC,[26] demonstrate the lack of justification for resolution planning in the adviser context.

[23] *See* Release at 43545 (requiring business continuity plan to address maintenance of critical operations and system and identification and assessment of third-party services critical to the operation of the adviser).
[24] *Id.* at 43535, fn. 40.
[25] *See* Dodd-Frank Act §165(d) (requiring nonbank financial companies designated under the Act to provide "the plan of such company for rapid and orderly resolution in the event of material financial distress or failure" and that such plan shall include "(a) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company; (b) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company; (c) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and (d) any other information that [may] jointly require by rule or order.").
[26] Release at 43535, fn. 40 ("We are not proposing that advisers adopt resolution plans or ''living wills'' similar to that which certain financial institutions must now adopt under FDIC and Federal Reserve rules because investment advisers do not interact with the government in the same way as banks. For example, advisers do not accept insured

Advisers are separate legal entities from the funds and assets they manage and client assets never become the assets of the adviser, nor are they commingled with assets of another client. This allows an adviser to be hired or terminated with minimal impact to its clients. Advisers, unlike banks, also do not take significant proprietary positions in the funds and accounts they manage. A poorly performing fund or account would not threaten the solvency of an adviser the way that poor performance of proprietary assets threatens the solvency of a bank, since both the declines and increases in asset values and losses in funds and accounts are borne by fund investors or clients and are not absorbed by the adviser. Even if a fund or account "failed", the resulting impact to clients is little different than if the clients had invested directly in the classes of assets in which the fund or account was invested. Assets would be sold into the markets and losses are absorbed by those clients. The adviser does not backstop any losses and therefore cannot itself suffer a "loss" that contributes to its insolvency in the same way a failing bank incurs losses on proprietary investments.

The structure of an adviser also provides it financial flexibility, which reduces the likelihood that an adviser will suddenly "fail." An adviser's operating structure is mainly derived from labor costs (i.e., the employment of investment personnel), which are typically variable in nature and often deferred and tied to long-term shareholder returns. This affords an adviser the ability to internally rationalize, and then nimbly adjust its expenses to respond to changes in the financial environment and assets under management. To the extent an adviser or fund does incur financial losses due to a major operational event or otherwise, Fidelity and other advisers also carry insurance for professional and management liability which would act as an additional backstop.[27]

The examples noted in the Proposal of "sudden" and disruptive exits from the financial services industry all involved banks or insurance companies.[28] While it is noted that several of these financial services firms included asset management subsidiaries there is no evidence that any of those advisers contributed to, or independently experienced financial distress that impacted their own clients. To the contrary, Neuberger Berman, an asset management subsidiary of Lehman Brothers continued to operate notwithstanding its failing parent entity. Neuberger Berman retained its clients and successfully exited the Lehman bankruptcy to become a standalone entity that continues to operate today.[29] We are not aware, and the Proposal does not identify, any instances of standalone asset managers suddenly becoming insolvent. Instead, sales of asset managers, client account transfers, and fund mergers and liquidations happen regularly, even in times of market stress, and as discussed above, there is already an adequate regulatory framework in place that addresses these scenarios and protects clients.

''deposits,'' do not have access to the Federal Reserve discount window, and do not use their own balance sheets when trading client assets.").

[27] In the same vein as expense reduction, however, the identification of insurance policies is part of an adviser's normal business operations and similarly we do not think merits separate transition planning requirements. Release at 43538, fn. 122 ("when considering any material financial resources available to it, the adviser also could identify any insurance coverage.").

[28] Release at 43535, fn. 38.

[29] *Id.* at 43536, fn. 45.

We appreciate the SEC's observation that an adviser may also be impacted by a financially distressed affiliate that provides certain critical systems or services.[30] This is a valid point and one we believe would be sufficiently addressed through the Proposal's business continuity requirements concerning critical operations and systems and third-party service providers.[31] Indeed, we are unable to identify additional situations that may cause client harm which would not already be covered by business continuity requirements or existing regulatory requirements.

1. *Adviser "Resolutions" Are Frequent, Orderly, and Do Not Result in Negative Impact to Clients or the Financial Markets*

Advisers who choose to exit the industry do not need to create advance plans for their insolvency or transition because they typically "resolve" themselves in an orderly fashion. The normal and methodical means of resolving a fund or client account is through clients' redemptions or withdrawals, which prompt funds to liquidate or merge, and advisers to leave the business. An adviser's resolution is not a rare occurrence and it is common for asset managers to be sold, replaced or wound down and for funds to merge or liquidate or clients to transfer assets to a different adviser. Fund mergers and liquidations happen regularly, even in times of market stress as evidenced by the financial crisis of 2008, and there is no evidence that they have a negative impact on clients or the financial markets.

Indeed, during the past ten years, close to 65% of smaller U.S. mutual fund asset managers exited the market, without any notable impact to the financial markets or their clients.[32] The SEC, the Financial Stability Oversight Council, and the Financial Stability Board all have recognized that the closure of asset managers and investment funds has not been shown to be impactful to advisory clients or the stability of the financial system.[33] The orderly and routine closures and transitions of advisers and funds stand in stark contrast to the unwieldy

[30] Release at 43536.
[31] *Id*. at 43538 (suggesting that with respect to critical operations and systems, advisers should consider alternatives and redundancies to help maintain continuity in operations during a significant business disruption).
[32] *See* Letter from Scott C. Goebel, Senior Vice President & Gen. Couns., Fidelity Mgmt. & Res. Co. to Secretariat of the Fin. Stability Bd., at Exhibit 7 (May 27, 2015), *available at* http://www.fsb.org/wp-content/uploads/Fidelity-Management-and-Research-Company.pdf.
[33] *See* Release at 43535 ("In the normal course of business, it is our understanding that advisers routinely transition client accounts without a significant impact to themselves, their clients, or the financial markets"); *see also* Fin. Stability Bd., Consultative Document: Proposed Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities (June 22, 2016), *available at* http://www.fsb.org/wp-content/uploads/FSB-Asset-Management-Consultative-Document.pdf ("[F]unds close (and are launched) on a regular basis with negligible or no market impact."); *see also* Fin. Stability Oversight Council, Notice Seeking Comment on Asset Management Products and Activities, 79 Fed. Reg. 77488, at 77494 (Dec. 24, 2014), *available at* http://www.gpo.gov/fdsys/pkg/FR-2014-12-24/pdf/2014-30255.pdf ("The Council recognizes that asset management firms and investment vehicles investment vehicles have closed without presenting a threat to financial stability. The Council notes that an investment vehicle has a separate legal structure from the asset manager, any parent company, or any affiliated investment vehicles under the same manager. In addition, the assets of the investment vehicle are not legally available to the asset manager, its parent company, or affiliates for the purpose of satisfying their financial obligations or those of affiliated investment vehicles.").

resolutions of complex bank holding companies and similar organizations during the 2008 financial crisis.

The two examples of less successful transitions provided in the Proposal involve Long-Term Capital Management, [34] a highly leveraged hedge fund not regulated under the Investment Company Act, and the Reserve Primary Fund, a registered money market fund with heavy exposure to Lehman Brothers before it failed, are commonly cited in this context. These two outlier funds are not representative of the approximately 16,000 investment companies that existed as of the end of 2015.[35] Notably, the issues suffered by these funds were not due to the adviser's distress or transition, rather by investment choices, and arguably would not have been mitigated if the fund had a transition plan in place.

2. *Advisers are Highly Substitutable and Managed Assets are Routinely Transferred Without Resulting Client Harm*

We appreciate that the SEC acknowledges that advisers "routinely transition client accounts without a significant impact to themselves, their clients, or the financial markets."[36] Since client assets are held at a qualified custodian and segregated from the adviser's assets, "transitioning accounts from one adviser to another can largely be a streamlined process that in many cases may not involve the physical movement or sale of assets."[37]

While professional asset management is a valuable service, it is not unique or critical to a client in the same manner as banking or insurance. Asset owners can manage their assets alone or outsource management to an adviser, or do both.[38] If an advisor were to discontinue managing a particular fund due to a change in strategy or closure of a fund, a fund investor has many choices. The investor can continue the same strategy by moving their assets to another fund offered by the same adviser, or transfer their assets to another adviser engaging in the same strategy. There is no shortage of advisers or funds for investors to choose from as competition to attract assets from investors ensures a constant offering of advisers and investment products. Since 2013, the overall number of registered investment companies, which includes almost 9,500 mutual funds, has remained steady at approximately 16,000 funds, despite changes in the types and identities of the individual funds.[39] Fund sponsors routinely create new mutual funds to meet investor demand and close mutual funds that are not successful. The ICI reports that from

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[34] Release at 43536.
[35] *See* Investment Company Institute, 2016 Investment Company Fact Book at 22, *available at* http://www.icifactbook.org (hereinafter, "ICI Fact Book").
[36] Release at 43535.
[37] *Id.*
[38] *See* BlackRock, ViewPoint, Who Owns the Assets? Developing a Better Understanding of the Flow of Assets and the Implications for Financial Regulation (May 2014), available at http://www.blackrock.com/corporate/en-us/literature/whitepaper/viewpoint-who-owns-the-assets-may-2014.pdf (estimating approximately 75% of the world's financial assets are managed directly by the asset owner and only 25% of these assets are managed by third-party asset managers).
[39] ICI Fact Book at 22.

year-end 2009 to year-end 2015, the number of mutual fund sponsors increased from 682 to 873, with 440 sponsors entering the market and 249 sponsors leaving.[40]

Not only do funds and advisers enter and exit the market frequently, but fund investors and advisory clients also routinely move assets out of funds and accounts, and terminate advisory relationships, without any impact to themselves or the financial markets.[41] The ICI reports that in 2015 there were $15.7 trillion in U.S. mutual fund assets under management.[42] Overall, mutual funds had a net cash outflow of $102 billion in 2015, in contrast with a net cash inflow of $104 billion in 2014. In 2015, investors redeemed $123 billion, on net, from long-term funds, and added $21 billion, on net, to money market funds.[43]

Adviser exits, fund mergers and liquidations, and client asset transfers all occur on a massive scale in the ordinary course, and have functioned with only minor exception during recent financial downturns. Against this backdrop, we do not believe there is any value in requiring transition plans that anticipate scenarios that do not affect advisers, in order to protect against harm that is not experienced by clients.

IV. CONCLUSION

As discussed above, we fully support the SEC's goals in implementing business continuity requirements for advisers and suggest the SEC continue to adopt a principles based approach that addresses certain general components that should be included in a business continuity plan, but allows advisers flexibility to tailor their business continuity plans to specific risks inherent in their businesses. We believe effective business continuity requirements protect against tangible client harm caused by operational risks and we encourage the SEC to focus their attention in this area rather than require separate transition planning requirements for advisers. To the extent the SEC believes there are any residual risks to clients that are not addressed through the business continuity requirements or the existing adviser and investment company framework, we would welcome discussion about a narrowly tailored approach.

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[40] ICI Fact Book at 16.
[41] Release at 43535 ("Pooled investment vehicle clients generally have the ability to terminate the advisory contract of the adviser or remove the governing body that may provide advisory services (*e.g.*, general partner or managing member) and appoint a new adviser or governing body if they so desire, while separate account clients can generally terminate the advisory contract and appoint a new adviser to manage their assets, all while their assets are typically maintained at a qualified custodian.").
[42] ICI Fact Book at 9.
[43] *Id.* at 10.

Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,

cc: The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

David W. Grim, Director, Division of Investment Management