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Submitted electronically through: https://www.sec.gov/rules/submitcomments.htm

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: **Investment Company Names: File Number S7-16-22**

Dear Ms. Countryman,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on its proposed amendments to Rule 35d-1 ("Names Rule") under the Investment Company Act of 1940 (the "Proposal" or "Proposed Rule Amendment").[2]

Fidelity commends the Commission for its efforts to modernize the Names Rule. Fidelity has extensive experience administering the Names Rule with respect to its over 500 mutual funds and ETFs, many of which operate under the requirements of the Names Rule.

As detailed below, Fidelity supports the Commission's efforts to improve and clarify the Names Rule to help ensure that shareholder expectations are met vis-a-vis a fund's name. We also generally support the Commission's proposed disclosure changes in Form N-1A to require funds to define the terms used in their name test policies in plain English and proposed amendments to Form N-PORT. Overall, we believe these changes will ensure that the Names Rule and the relevant disclosure and filing obligations continue to serve their intended purpose and provide greater transparency to shareholders, while ensuring consistent application of such rules across the industry.

However, we have concerns that the Proposal may extend beyond the scope intended by the Commission to encompass names beyond those applicable to investments that have, or issuers that have, "particular characteristics." We also believe that replacing the current "time of purchase" Names Rule framework and only permitting funds to depart from their 80% policy for a 30-day time period would not comport with shareholder expectations, would unduly restrict an

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[1] Fidelity is one of the world's largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 40 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Management & Research Company LLC, the investment adviser to the Fidelity family of mutual funds.

[2] See Investment Company Names, Release Nos. 33-11067; 34-94981; IC-34593; File No. S7-16-22, RIN 3235-AM72 (May 25, 2022) ("Proposing Release"), *available at* https://www.sec.gov/rules/proposed/2022/33-11067.pdf .

investment adviser's ability to meet its fiduciary duty to its clients and would be inconsistent with other provisions of the Investment Company Act of 1940 ("1940 Act"). Moreover, should the Names Rule be amended to eliminate the time of purchase test, it is imperative that investment advisers are given sufficient time – up to 180 days – to return the portfolio to its 80% policy. We have provided recommendations below to address these and the other concerns described herein.

I. EXECUTIVE SUMMARY

Fidelity's comments, detailed below, offer the following recommendations which we believe will improve the effectiveness of the Proposal:

- The Commission should exclude specific terms such as "global," "value," "growth," "income" and "core" from the application of the expanded Names Rule as such terms reference portfolio level characteristics, rather than security level characteristics.

- The Names Rule should continue to apply "under normal circumstances" under a time of purchase approach, while enhancing daily monitoring and record-keeping requirements. If a daily compliance test is instead required and departures from the name test are only permitted in a prescribed set of circumstances, we urge the Commission to allow funds at least 180 days to get back into compliance with the Names Rule.

- In reaffirming that Section 35(d) and Rule 35d-1 are not intended to be safe harbors, the Commission should clarify in the final rule's adopting release certain statements made in the Proposal that unintentionally redefine the disclosure obligations under Form N-1A, alter the "materiality" standard that is generally applied under the securities laws and impose additional obligations on index funds that are not contemplated by the Names Rule.

- The Commission should continue to permit funds to define terms using reasonable plain English definitions and not require terms used in a fund name to be consistent with "established industry use."

- The Commission should permit notification of shareholders of certain changes to the fund's name test through posting on a fund's website.

- The Commission should not require reporting on Form N-PORT on a portfolio investment basis.

- The Commission should consider permitting but not requiring certain adjustments to the derivatives notional value calculation and expanding the types of derivatives hedging instruments allowed in a fund's 80% policy.

- The Commission should consider a two-year transition period under the Proposal.

II. EXPANSION OF SCOPE OF THE NAMES RULE

We support the Commission in its endeavor to ensure that shareholder expectations are met vis-a-vis a fund's name. To further its goal, we urge the Commission to re-emphasize in the final rule's adopting release that certain terms that reflect portfolio level characteristics, rather than security level characteristics, should not trigger the Names Rule, as such terms cannot be objectively measured on an instrument level. Likewise, we believe the Commission's proposed approach, which provides investment advisers with flexibility to allocate assets of a fund whose name has multiple terms triggering an 80% policy in accordance with the investment adviser's investment thesis, rather than required thresholds, is in shareholders' interests. We believe these approaches will not only be consistent with shareholder expectations but also protect the integrity of the investment process and the ability of the investment advisers to implement fund investment strategies on behalf of shareholders over time.

A. The Names Rule Should Not Apply to Names that Reflect Portfolio Level Characteristics

In the Proposal, the Commission states that the expanded scope of the Names Rule does not include names that do not connote an investment focus, such as names that "reference characteristics of a fund's portfolio as a whole, or that reference elements of an investment thesis without specificity as to the particular characteristics of the component portfolio investments."[3] The Commission provides "duration," "balanced," "long/short," "real return" or a name that references a "retirement target date" as examples of terms that would not trigger the expanded Names Rule.[4] We agree with the Commission's assessment that these terms reflect portfolio level characteristics and urge the Commission to consider similar terms for exclusion. We believe that terms such as "global," "value," "growth," "income" and "core" similarly connote portfolio level characteristics and do not reflect a "particular characteristic" of the investment or issuer.

For example, the term "global" reflects characteristics of the portfolio as a whole, namely that the overall portfolio will be invested across multiple countries. An individual security would not be able to meet any such compliance test. Moreover, a shareholder of a fund with "global" in its name would not expect that each investment is "global" in nature. As a result, we do not believe that the term "global" references an instrument that has specific measurable characteristics and, as such, should be excluded from the application of the Names Rule.

Likewise, the terms "value" and "growth" are highly subjective and fluid and reflect portfolio level characteristics. For example, certain issuers may qualify as both a value and growth company and may not lend themselves to be easily and uniformly classified into a single category. For example, the Russell Growth and Value Indices undergo an annual rebalancing based upon criteria defined by the index provider. There are issuers that are found in both the

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[3] Proposing Release at 13.
[4] Proposing Release at 24, 25.

growth and the value index but with different weightings. Currently, when the Russell 1000 is divided into its growth and value style indices, the Russell 1000 Growth Index contains 519 members and the Russell 1000 Value Index contains 858 members. Investments such as "growth" and "value" issuers that do not readily lend themselves to objective criteria, including where terms may vary between funds and portfolio managers depending on the subjective processes of the managers, would be more difficult to test for compliance purposes. While an investment adviser may be able to define a "value" or "growth" company in the fund's prospectus, an individual company's classification will likely change over time. However, the fund's portfolio level investment thesis remains as disclosed, growth or value, such that the overall portfolio seeks to reflect that strategy.

Requiring "value" and "growth" funds to implement an 80% test, particularly with the accompanying proposal to change name test monitoring from a time of purchase test to a daily test, which would essentially require that a growth or value security be sold once it no longer meets the disclosed definition, would fundamentally alter the investment process and impair the investment adviser's ability to generate long-term shareholder returns. Introducing such arbitrary constraints would significantly undermine a portfolio manager's discretion in selecting investments and ability to implement buy and hold strategies over time. If portfolio managers are compelled to sell securities that they would otherwise continue to hold, the fund may experience higher portfolio turnover, which may have cost implications and tax consequences for shareholders. Moreover, selling at a time when the security is performing well, absent other factors, would not be consistent with a shareholder's expectations and negatively impact their ability to benefit from the capital appreciation of a "value" or "growth" security. Similarly, new investors would expect that the fund will implement similar buy and hold strategies over time with respect to future investments, so that they can experience similar results in the future. The Proposal would have the unintended consequence of undercutting the long term buy and hold investment strategies that have served investors well over time. As a result, we do not believe that "growth" and "value" funds should be required to adopt a name test and should be deleted from the language proposed in Rule 35d-1(a)(2).

"Income" and "core" funds are also examples of an investment thesis that is applicable to the portfolio overall, rather than reflecting characteristics of an individual security. "Income" funds generally seek to provide investors with a certain level of income over time. This is achieved through a variety of instruments and strategies that are implemented across the portfolio. Moreover, "income" in a fund's name tells shareholders little about what the fund may invest in or how it intends to achieve its investment objective. An income fund could invest in stocks or bonds or a combination of the two. From an investor's perspective, the salient term in the fund's name will be the type of instruments used to seek income (e.g., equity income fund), which are already subject to the requirements of the Names Rule. Similarly, "core" funds can adopt several different strategies based on an investment adviser's investment thesis. These funds use a blended approach with growth and value components to seek to provide shareholders with an investment portfolio with less volatility and more stable returns over time. As such, no individual security can reflect any "income" or "core" characteristic, as such investment thesis is reflected on a portfolio level.

For the reasons discussed above, we urge the Commission in the final rule's adopting release to further elaborate on the types of funds that reflect an investment thesis of the overall portfolio and, as such, would not be required to adopt an 80% policy. We believe that "global," "value," "growth," "income" and "core" are good examples of such terms. While the potential impacts discussed above may be mitigated by excluding a security that no longer meets the disclosed definition from the fund's 80% policy, and instead counting the security in the fund's 20% bucket, we do not believe that this approach would be consistent with the fund's investment strategy. As discussed below, if over time investment advisers are forced to use the 20% bucket to retain securities in which the adviser has a strong conviction and which at the time of purchase met the fund's 80% test, the 20% bucket would be less available to use as a diversification tool. If the Commission were to include such terms in the expanded scope of the Names Rule, it would conflict with the investment objectives and portfolio management of such funds, potentially reducing or eliminating such options for shareholders.

B. Funds with Multiple Names

In the Proposing Release, the SEC also proposes to require funds with multiple terms in the fund's name to include each term in a fund's 80% policy. The Commission also states that an investment adviser should have flexibility to vary the amount invested in each term according to the investment adviser's investment thesis rather than requiring a specific minimum percentage (e.g., 5%, 10%, 25%) in each element.

We agree with the SEC's proposal that the investment adviser should be able to vary the amount invested in each term in a fund's name. Prescribed limits with respect to investments in each term in a fund's name would unduly restrict investment managers in implementing the fund's investment strategy and undermine an investment manager's ability to exercise its investment discretion to allocate investments under the 80% policy. Therefore, we support retaining investment advisers' decision-making flexibility in the proposal with respect to funds with multiple terms in their name.

III. DEPARTURES FROM A FUND'S 80% INVESTMENT POLICY

The Names Rule currently applies "under normal circumstances."[5] Under the current framework, compliance with the Names Rule is assessed at time of purchase of each instrument. If, after making an investment, the 80% policy is no longer met, the fund's future investments are required to be made in a manner that will bring the fund back into compliance with the requirements of Rule 35d-1.[6] The Commission acknowledges in the Proposal that this aspect of the rule was designed to provide flexibility to manage the portfolios, while normally investing 80% of assets consistent with the Names Rule.[7] The Commission goes on to say that "the provision was designed to avoid requiring a fund to rebalance its investments if the fund's

[5] See Rule 35d-1(a)(2).
[6] See Rule 35d-1 (b).
[7] Proposing Release at p. 34-35.

portfolio were no longer invested in accordance with the fund's 80% investment policy as a result of, for example, market movements or an influx of cash from new investors."[8]

Under the Proposal, departures from a fund's 80% investment policy would only be permitted under particular circumstances[9] and a fund would be required to make investments that bring the fund back into compliance with the 80% policy "as soon as reasonably practicable", but no longer than 30 days, except with respect to fund launches (180 days) or reorganizations (no time period).[10] The Proposal essentially eliminates the "under normal circumstances" approach and time or purchase test applied under the current rule, and imposes a daily compliance requirement. We strongly believe that the Names Rule should continue to apply "under normal circumstances" under the existing "time of purchase" framework in order to preserve the investment adviser's ability to manage portfolios according to disclosed investment strategies with a view toward long-term success, rather than short-term rebalancing of the portfolio due to market and other conditions to remain in compliance with the Names Rule.

A. The Names Rule Should Continue to Apply "Under Normal Circumstances" and be Measured at the Time an Investment is Made

The Proposal replaces the current "time of purchase" Names Rule framework with a requirement that an investment continue to meet name test requirements for the life of the holding, except under the enumerated circumstances and time periods. We believe that this approach would not comport with shareholder expectations, would unduly restrict an investment adviser's ability to meet its fiduciary duty to its clients and would be inconsistent with other provisions of the 1940 Act, which apply a time of purchase test to measure exposure. In addition, the current time of purchase framework generally does not result in extended periods of non-compliance with the Names Rule and operates efficiently to protect shareholder expectations. Therefore, we believe any concerns over funds drifting away from name test compliance over time can adequately be addressed with less drastic measures.

i. *Shareholders Expectations are Not Limited to the Name Test*

We believe that the existing approach of the Names Rule strikes the appropriate balance between investing the fund's assets in investments that are suggested by the fund's name and shareholder expectations for seeking returns consistent with the fund's investment objective. For example, while shareholders would expect that a fund with "small cap" in the name will invest in small cap securities, shareholder would equally expect that fund to invest in accordance with its investment strategies to achieve its stated investment objective (e.g., capital appreciation).

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[8] Proposing Release p. 36.
[9] Under the Proposal, departures would be permitted only: "(1) as a result of market fluctuations, or other circumstances where the temporary departure is not caused by the fund's purchase or sale of a security or the fund's entering into or exiting an investment; (2) to address unusually large cash inflows or unusually large redemptions; (3) to take a position in cash and cash equivalents or government securities to avoid a loss in response to adverse market, economic, political, or other conditions; or (4) to reposition or liquidate a fund's assets in connection with a reorganization, to launch the fund, or when notice of a change in the fund's 80% investment policy has been provided to fund shareholders at least 60 days before the change pursuant to the rule." See Proposal p. 34.
[10] See Proposed Rule 35d-1 (b)(1).

Shareholder expectations would not be met if a portfolio manager is required to sell and replace a security as soon as reasonably practicable with another security if the investment adviser's conviction in the initial security continues to be strong. Instead, we believe a shareholder would expect that the adviser would continue to hold such investments and make other small cap investments that will bring the fund in line with its 80% test when the appropriate opportunity presents itself based on the investment adviser's investment discretion. We do not believe that a shareholder would expect ongoing strict adherence with the name test if it undermines the potential for returns consistent with the fund's investment objective and disclosed investment strategy, when such a security initially met the 80% test. In fact, such an approach has the potential to deny fund shareholders of potential alpha generating stocks that a portfolio manager would not have sold under a time of purchase test. Fund shareholders benefit from the compounding of returns from holding shares of a company over long periods of time.[11]

We disagree with the Commission's assumption that "investors' expectations for funds' investment focuses may not depend on whether market events negatively affect the investment in the fund's portfolio."[12] As an example, the Commission points to the growth in passive/index products and concludes that investors are thus looking to obtain specific investment exposure and are "seeking a return tied to the investment focus suggested in the fund's name."[13] While we agree that passive investment products have experienced growth in market share, investors in passive products have very different expectations than investors in actively managed products and index fund shareholder expectations should not dictate changes to active funds. We believe that investors in actively managed funds are not only focused on adherence to the fund's name, but also expect the investment adviser to respond to market events and other conditions, to manage the fund in accordance with the adviser's fundamental and/or quantitative investment screens, and to seek to outperform applicable benchmarks and competitor funds, consistent with the fund's investment objective and disclosed strategies and risk profile. We are concerned that the proposal to eliminate the time of purchase test for the Names Rule would significantly restrict the ability of actively managed funds to deliver on such shareholder expectations by creating portfolio distractions, increasing costs (implicit and direct) and driving non-investment linked behavior.

ii. *Time of Purchase Test is Consistent with the Investment Adviser's Fiduciary Duty*

An investment adviser has a fiduciary duty to its clients, which has been interpreted to include the duty of loyalty and duty of care.[14] The duty of care includes, among other things,

[11] The effect of compounding may be especially significant for small cap funds that purchase low priced small cap securities and hold them for extended periods. For example, a security holding in a Fidelity small cap fund had a compounded return of 123,647% over time.
[12] Proposing Release p. 36.
[13] Proposing Release p. 36.
[14] See e.g., "Commission Interpretation Regarding Standard of Conduct for Investment Advisers," Advisers Act Release 5248 (the "Interpretation") available at https://www.sec.gov/rules/interp/2019/ia-5248.pdf. at 8 ("This combination of care and loyalty obligations has been characterized as requiring the investment adviser to act in the "best interest" of its client at all times. In our view, an investment adviser's obligation to act in the best interest of its

"the duty to provide advice that is in the best interest of the client."[15] To meet its fiduciary duty, an investment adviser currently has discretion and flexibility to execute an investment strategy that is based on the fund's investment objective and disclosed principal investment strategies, according to the portfolio manager's research process and investment thesis. The Proposal would replace such investment discretion with overly prescriptive timelines for making purchase and sell decisions, with potentially negative consequences to shareholders.

If the Names Rule is applied to each individual security on a daily basis, rather than maintaining the current time of purchase test, an adviser's investment discretion would be replaced with regulatory requirements that dictate the specific time frames for making investment decisions, thus restricting investment advisers' ability to act consistent with their fiduciary duty. Time-bound investment decisions are contrary to an adviser's duty to provide advice that is in the best interests of its clients and fund managers should not be penalized for picking good stocks that appreciate in value over time. Eliminating a time of purchase test would make it extremely difficult for managers to pursue long term buy and hold strategies with certain mandates, such as small cap, small cap value and value. If, for example, a small cap security that qualified as an investment at the time of purchase were to fall out of the disclosed small cap definition, an investment adviser would be required to sell or purchase other securities, notwithstanding that the particular security continues to meet the adviser's investment thesis. Requiring investments to be sold within specific time periods would also likely result in additional transaction costs and have potentially negative tax implications for shareholders.

Additionally, securities that are close to a quantifiable threshold may have their classifications change on a frequent basis depending on market factors. For example, a mid-cap security at the upper end of the adviser's definition of mid-cap stocks may have its classification adjusted to a large cap stock due to market fluctuations but then revert back to a mid-cap stock within a short time period. Such a scenario would compel the adviser to sell a security within 30 days that would be eligible for repurchase a short time later after the proposed 30 days to get back onsides has elapsed. Market participants may be able to track a fund's portfolio holdings and determine potential fund trades, and front run the fund's purchases and sales of securities, which could result in adverse price impacts for fund shareholders. While certain securities may continue to be held in the fund's 20% bucket, as discussed above, we do not believe the 20% bucket was intended to only cover securities that may temporarily fall out of the name test and there may not always be sufficient head room to allow for an otherwise eligible security to be moved to the 20% bucket.

We believe that the continued application of a time of purchase test would avoid these types of negative consequences, while being more consistent with an adviser's fiduciary duties. Retaining the time of purchase test would allow investment advisers to continue exercising their investment discretion to make investment decisions that are in their clients' best interests, rather

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client is an overarching principle that encompasses both the duty of care and the duty of loyalty. As discussed in more detail below, in our view, the duty of care requires an investment adviser to provide investment advice in the best interest of its client, based on the client's objectives.").

[15] Id. at p. 12.

than necessitating short-term monitoring and rebalancing of their portfolios to meet the Names Rule.

iii. Time of Purchase Test is Consistent with Other Sections of the Investment Company Act of 1940

In addition to the Names Rule, several other sections in the 1940 Act impose requirements that are designed to ensure a fund meets its disclosed investment limits and shareholder expectations. For example, if a fund discloses in its registration statement that it is diversified, it must meet the requirements of Section 5(b)(1) under the 1940 Act, which essentially limits 75% of the fund's assets to 5% in any one issuer and 10% of the issuer's voting securities.[16] Likewise, Section 8(b)(1)(E) under the 1940 Act requires an investment company to disclose in its registration statement its policy with respect to concentrating its investments in a particular industry or group of industries.[17] The Commission has defined "concentration" to mean more than 25% of the value of the fund's assets.[18] Furthermore, Section 12 (d)(1)(A) regulates how many shares a registered investment company may acquire in other investment companies ("Section 12 Limits").[19]

Portfolio diversification and industry concentration are assessed at time of purchase.[20] Likewise, Section 12 Limits are measured "immediately after [the] purchase" of an underlying mutual fund.[21] Like the Names Rule, these regulatory limits are intended to preserve the integrity of the fund offered to shareholders by requiring that a fund complies with its disclosed diversification, industry and fund of funds policies. However, the limits imposed by Sections 5, 8 and 12 of the 1940 Act do so without requiring the investment adviser to sell or purchase securities within a required regulatory time frame, thus preserving the investment adviser's ability to manage the fund according to its fiduciary duties and disclosed policy limits. We believe the integrity of the disclosures related to a fund's name are equally protected with a time of purchase test, which would provide investment advisers with the required investment discretion and flexibility to exercise their portfolio management responsibilities.

iv. Current Time of Purchase Framework Generally Does Not Result in Extended Departures from the Names Rule

[16] See Section 5(b)(1).
[17] See Section 8(b)(1)(E).
[18] *See e.g.,* BlackRock Multi-Sector Income Trust, SEC No-Action Letter (publ. avail. July 8, 2013).
[19] Section 12(d)(1)(A) prohibits a registered investment company from acquiring shares of an investment company if ***"immediately after such purchase"*** the acquiring fund would own more than 3% of the total outstanding voting stock of the acquired company, or more than 5% of the acquiring fund's assets would be invested in the acquired fund, or more than 10% of the acquiring fund's assets would be invested in other investment companies in the aggregate.
[20] See e.g., Section 5(b)(c): ("A registered diversified company which at the time of its qualification as such meets the requirements of paragraph (1) of subsection (b) shall not lose its status as a diversified company because of any subsequent discrepancy between the value of its various investments and the requirements of said paragraph, so long as any such discrepancy ***existing immediately after its acquisition*** of any security or other property is neither wholly nor partly the result of such acquisition.").
[21] See Section 12(d)(1)(A).

In the Proposing Release, the Commission acknowledges that "[w]hile the current rule includes a requirement that a fund must make future investments in a manner to bring the fund into compliance with the 80% investment requirement, this provision does not address situations where the fund is not investing its assets in a given period of time."[22] Based on our experience, we believe that the Proposal seeks to provide a solution to a problem that is not as prevalent as the Commission may believe. Fidelity has not observed it to be the case that funds are straying from their 80% policies for prolonged periods of time. Indeed, the vast majority of Fidelity funds that are subject to a name test have operated within their 80% tests on a daily basis. For Fidelity funds that have temporarily fallen below their 80% policy in the past, it would not have been advantageous to be time constrained in seeking to address such circumstances. For example, certain state specific municipal funds have experienced limited availability of alternative state specific bonds at times after several such bonds matured or were called by the state or dislocations in particular asset classes (i.e., negative yields on government bonds) have resulted in temporary departures from the 80% policy for certain funds. In such situations, the availability of alternative investments in order to get a fund back onside with its 80% policy was outside the control of the investment adviser.

Because the current time of purchase test does not result in extended departures from the name test and operates effectively to protect shareholder expectations, we believe portfolio drift can be adequately addressed without dismantling the time of purchase test. Rather than implementing a daily compliance requirement that would trigger prescribed time periods during which an investment adviser is required to make investment decisions, we believe requiring daily monitoring of each fund's compliance with its 80% policy, along with the proposed record keeping requirements, would effectively hold the fund accountable for compliance with the Names Rule and enable the SEC to exercise its oversight function, while also permitting investment advisers to continue to exercise discretion in managing portfolio assets.

We believe that as a fiduciary an investment adviser would generally seek to avoid having a fund fall below its 80% policy for an extended period of time and get the fund back over 80% with the next purchase and/or sale transaction when such transaction is consistent with the investment adviser's portfolio thesis. In addition, there are natural checks on funds, such as internal oversight, external review (Morningstar, consultants, adviser gatekeepers), and periodic index rebalancing that would preclude funds from changing their mandates, e.g., small cap funds from becoming large cap funds. As discussed above, we believe the current framework has not resulted in extended departures from the 80% policy, and therefore the Commission should seek to improve the monitoring and recordkeeping requirements, rather than the uproot the operation of the rule, to address any potential concerns about portfolio drift. This approach would be more commensurate with the limited scale of the issue the SEC seeks to address while also facilitating the oversight function exercised by the Commission.

[22] Proposing Release p. 36.

B. Should the Names Rule be Amended to Eliminate the Time of Purchase Test Funds Should be Provided 180 Days to Restore Compliance In order to Protect the Investment Management Process

Should the time of purchase test be eliminated, as proposed, the Commission should allow funds 180 days to monitor compliance with the Names Rule without triggering a compliance violation. As discussed above, market fluctuations and other events that are not related to the purchase and/or sale of a security may cause a fund to fall outside its 80% policy. We do not believe such events should automatically result in non-compliance with Rule 35d-1, or trigger reporting obligations and require a fund to get back to 80% within 30 days. If a fund is deemed non-compliant with its 80% policy based on a daily test, a one-day departure from the 80% policy would be an equivalent compliance violation to a more extended departure, when clearly the same concerns about portfolio drift are not present.

Instead, we believe that funds should have 180 days in order to remedy the violation, which will begin the first day the fund drops below its 80% policy. During this period a fund would be able to assess the portfolio and determine the best course of action. Any transactions during this period would be required to be in name test eligible securities until the fund has at least 80% of its assets in name test securities, with the exception of departures as a result of a reorganization. If a fund continues to be below its 80% policy after the 180 days has elapsed, the fund would then be deemed out of compliance with its 80% policy. This approach would streamline compliance with the Names Rule by focusing reporting and remediation efforts on more prolonged departures, rather than each and every temporary departure from the 80% policy.

We believe the enumerated circumstances for departing from the name test generally reflect the reasons that funds may fall below their 80% name test. However, there may be unintended consequences to replacing a fluid standard with a rigid, prescribed set of circumstances. Funds have long operated under a flexible "under normal circumstances" standard with respect to compliance with the 80% test, which has provided funds with the ability to navigate unexpected and unprecedented challenges in pursuing their investment strategies. By prescribing a rigid set of conditions, the Commission may be unintentionally hampering a fund's ability to meet new and unforeseen challenges in the future that may fall outside of the enumerated circumstances. For example, an investment-grade bond fund may have learned about an anticipated credit downgrade for some of its portfolio securities. Although the downgrade has not yet occurred, the fund's manager believes it would be in fund shareholders' best interests to sell those securities now and use the proceeds to purchase other available investment-grade securities. However, doing so prior to the downgrade would cause the fund to dip below its 80% test in circumstances not allowed by the proposed conditions (as they would be caused by the fund's selling activity). Instead, the fund would be forced to wait for the downgrade to meet the enumerated circumstances,[23] even though the manager believes that acting now is in the fund's best interests.

[23] This passive downgrade scenario would appear to be covered by the first proposed condition: "as a result of market fluctuations, or other circumstances where the temporary departure is not caused by the fund's purchase or sale of a security or the fund's entering into or exiting an investment". Id. at p. 33.

If the Commission decides to retain an enumerated list of circumstances, we do not believe that an arbitrary 30-day time period is sufficient to address any allowed departures, particularly with respect to market fluctuations or other circumstances where the temporary departure is not caused by the fund's purchase or sale of a security or the fund's entering into or exiting an investment, and departures due to adverse market, economic, political or other conditions.

With respect to market fluctuations or other circumstances where the temporary departure is not caused by the fund's purchase or sale of a security, a 30-day time frame would not provide the investment adviser with sufficient time to get back above 80% in all circumstances. For example, a state specific municipal fund may have a sizeable amount of state municipal bonds maturing at the same time or bonds may be recalled. The availability of such state specific municipal bonds is outside of the control of the investment adviser, who would look to add additional bonds that meet the fund's 80% limits as they become available.

Similarly, adverse market, economic, political or other conditions are completely outside the investment adviser's control and the 30-day requirement would be too restrictive during such turbulent and unpredictable circumstances. Fund shareholders are looking to managers to help them navigate the markets, particularly during adverse market environments. Imposing time constraints on managers to make investment decisions during such times would handicap managers at a time when they most need investment flexibility. In addition, applying strict 30-day tests may result in illogical outcomes. For example, a fund that has 79% of its assets in the securities with particular characteristics on day 31 but then gets back into compliance on day 32 would appear to nonetheless trigger a Rule 35d-1 compliance violation that would be equivalent to a fund that is significantly below 80% for a prolonged period. Likewise, it would not make sense for an index that rebalances annually, such as the Russell 1000 Value Index, to retain an index constituent that no longer qualifies for the index during the year, but require an actively managed portfolio to be "rebalanced" to its 80% test within 30 days.

Moreover, limiting funds to positions in cash and cash equivalents or government securities outside their 80% investment policies in case of a temporary defensive position is unnecessarily limiting the decision-making responsibility of active portfolio managers. During such time, the investment adviser should be able to buy any portfolio securities that are otherwise consistent with the fund's disclosures of principal investment strategies and risks. Rather than prescribing certain investment types, the Proposal should provide investment advisers with flexibility to determine appropriate instruments for temporary defensive positions depending on the fund's strategy. Defensive security types could include, for example, investment grade securities, non-U.S. sovereign debt, and derivatives, as well as cash and cash equivalents and government securities. This flexibility is needed to permit investment advisers to effectively exercise their fiduciary duty and act in accordance with the fund's mandate.

We believe that at least 180 days is the appropriate period of time to allow investment advisers to react to each of these circumstances, with the exception of reorganizations for which no time period should be required. This time period would be consistent with a shareholder's expectation that the investment adviser will seek to minimize losses during unpredictable markets or other departures that were not caused by the fund's purchase and sale activity and

seek to take advantage of other opportunities when they presented themselves. We believe this is particularly important to investors in actively managed funds who are paying fund managers to make active portfolio decisions based on their informed research and views of market conditions. In addition, 180 days would not only take into consideration the protracted nature of certain events requiring departures from the 80% policy but provide investment advisers with sufficient time to evaluate and have the fund's board consider all options to bring the portfolio back over 80%, including changing the name and/or the 80% policy of the fund, soft closing the fund, or liquidating or merging the fund. Moreover, allowing 180 days for a fund to get back to 80% compliance would be consistent with the timeframe proposed in the Names Rule for new fund launches; departures due to market fluctuations and adverse conditions warrant similar treatment. While we agree that prolonged departures from a fund's 80% policy need to be addressed, we believe affording an adviser with the opportunity to remediate within 180 days would be appropriate, and that advisers would, consistent with their fiduciary duties, generally seek to remediate sooner, without being bound to a 30-day time period.

IV. EFFECT OF COMPLIANCE WITH AN 80% INVESTMENT POLICY

We acknowledge the SEC's view that Section 35(d) of the 1940 Act is not intended to be a safe harbor[24] and that a fund may be in violation of Section 35(d) even if it has adopted and complied with an 80% test. However, we have concerns with guidance provided in the Proposing Release and request that the SEC reconsider and/or clarify in the final rule's adopting release certain statements made in the Proposing Release that seem to redefine the disclosure obligations under Form N-1A, alter the "materiality" standard that is generally applied under the securities laws and impose additional obligations on index funds that are not currently contemplated by Section 35(d).

i. The Names Rule Should not Materially Alter the Anti-Fraud Provisions of the Securities Laws

In the Proposing Release, the Commission states that a fund's name could be "*materially deceptive* or misleading for purposes of section 35(d) if the fund invests in a way such that the source of a *substantial portion* of the fund's *risk or returns is different from that which an investor reasonably would expect* based on the fund's name, regardless of the fund's compliance with the requirements of the names rule."[25] We are concerned that the italicized portions of the SEC's statement in the Proposing Release unintentionally alter the current landscape of liability for materially misleading statements and omissions. Under Item 4 of Form N-1A, a mutual fund is required to disclose the principal investment strategies and the principal risks of investing in the fund. Principal risks include those risks "that are reasonably likely to adversely affect the fund's net asset value, yield and total return.[26] In addition, Section 10(b) and Rule 10b-5 under the Securities and Exchange Act of 1934 broadly prohibit fraudulent and deceptive practices or

[24] See Investment Company Names, Investment Company Act Release No. 24828 (Jan. 17, 2001). [66 FR 8509 (Feb. 1, 2001)] ("Names Rule Adopting Release") ("We note, however, that the 80% investment requirement is not intended to create a safe harbor for investment company names. A name may be materially deceptive and misleading even if the investment company meets the 80% requirement.")

[25] Proposing Release at p. 69 (emphasis added).

[26] See Item 4(b)(1)(I) of Form N-1A.

making any untrue statements of a material fact or omissions of such material facts in connection with the purchase and sale of a security.[27] The Supreme Court has held that a fact is material if there is "a substantial likelihood that the ... fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[28]

While we understand that the SEC does not view Section 35(d) and Rule 35d-1 as safe harbors, we believe the current regulatory landscape, which requires certain specific disclosures under Form N-1A and provides for further registration statement liability through other securities laws, appropriately addresses any potential liability for material omissions or misstatements in the registration statement. We do not believe that an additional standard of whether a "*substantial portion of the fund's risk or returns is different from that which an investor reasonably would expect*" provides additional protections to shareholders, while it introduces uncertainty to the anti-fraud provisions under the securities laws and current disclosure obligations. As described above, with respect to subjective terms such as growth and value where issuers may qualify at the same time for both categories it may not be clear whether and to what extent "growth" companies are included in a "value" fund and vice versa. Such uncertainty will result in increased litigation risk, which may lead investment advisers to essentially invest all of the fund's assets in securities consistent with the fund's name test. This cannot be the intended consequence of the Proposal.

The 2001 Names Rule adopting release recognized the importance of the investment adviser's ability to utilize the remaining 20% of fund assets to preserve a manager's flexibility.[29] In fact, at that time, while affirming that the 80% policy is not intended to create a safe harbor, the SEC rejected a specific proposal to require that the remaining 20% of fund assets be invested in "securities that are substantially equivalent to its primary investments."[30] As we noted in our letter commenting on the Commission's 2020 Request for Comment on the framework for addressing names of registered investment companies, the 20% portion of the fund's portfolio that is not subject to the Names Rule is a diversification tool in managing fund assets.[31] As a result, we do not believe it is necessary to fundamentally change the nature of the existing anti-fraud provisions or the intended protections afforded by the Names Rule in order to re-affirm that Section 35(d) is not a safe harbor. To avoid such uncertainty, the SEC should clarify in the

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[27] See Section 10(b) and Rule 10b-5 under the Securities and Exchange Act of 1934.

[28] SC Industries v. Northway, Inc., 426 U.S. 438, 449 (1976); see Basic, Inc. v. Levinson, 485 U.S. 224 (1988) (as the Supreme Court has noted, determinations of materiality require "delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him...." TSC Industries, 426 U.S. at 450)

[29] See Final Rule: Investment Company Names, Release No. IC-24828; File No. S7-11-97, RIN 3235-AH11 (January 17, 2001) ("2001 Names Rule Release"), *available at* https://www.sec.gov/rules/final/ic-24828.htm ("Further, we are concerned that restricting the investment of the remaining 20% of an investment company's assets would unnecessarily reduce the manager's flexibility without providing significant additional benefit to shareholders.").

[30] Id. (("One commenter recommended that the Commission adopt an additional requirement that the remaining 20% of an investment company's assets be invested in securities that are substantially equivalent to its primary investments. We are not adopting the commenter's recommendations because we do not believe that an investment company's name, standing alone, can be expected to fully inform investors about all of the investments of the company.")

[31] See Letter from Fidelity Investments to Vanessa Countryman (May 5, 2020), available at https://www.sec.gov/comments/s7-04-20/s70420-7152088-216414.pdf.

adopting release that a fund's name could be misleading or deceptive under Section 35(d) even where the fund complies with its 80% investment policy when it fails to otherwise comply with the anti-fraud provisions under the relevant securities laws.

ii. *An Index Fund's Oversight Obligations With Respect to an Index does not Extend to Daily Compliance Monitoring of Each Index Constituent*

In addition, the Proposing Release states that "[a]s noted in the 2020 Request for Comment, a fund may be invested 80% or more in an index included in the fund's name, but that *underlying index may have components that are contradictory to the index's name*. In such circumstances, even though the fund meets the names rule requirements by its investments in the index, the name could still be materially misleading or deceptive." As a general matter, we believe that advisers are assessing the data accuracy of third-party index providers, and hold index providers to high standards. However, a fund's obligation with respect to third-party index providers should not extend beyond its vendor oversight responsibilities. While an adviser has some visibility into the index methodology of a third-party index provider, it does not routinely review or determine whether index constituents meet the index methodology. There are often many inputs and criteria that go into an index methodology, making it difficult to assess index changes in real time. Likewise, the determination of whether an index constituent will be included in the index rests solely with the index provider, not the fund. While advisers may question the inclusion of a particular index constituent and request that the index provider make changes, the discretion to make such changes ultimately lies with the index provider to carry out in accordance with the index methodology. Moreover, an index fund that seeks to track the performance of an index by replicating the underlying index holdings, but that strays from the index holdings would undermine the disclosed investment strategy and the Names Rule.

The Commission's statement also seems to imply that a single index constituent may cause an index fund to be in violation of Section 35(d). We do not believe that the Commission intends any such oversight requirements or conclusions and simply intends to remind index funds that even if such fund invests 80% of its assets in index constituents, it may not be sufficiently invested in underlying index constituents to call itself an index fund.[32] As a result, we request that the Commission clarify its statements with respect to underlying index constituents to avoid the impression that an index fund's oversight obligations with respect to an index provider extend to daily compliance monitoring of each constituent.

V. PROSPECTUS DISCLOSURE DEFINING TERMS USED IN A FUND NAME

It is currently common practice for Fidelity's mutual funds to include prospectus disclosure that describe their 80% investment policies and that define any terms that their names include in plain English, including funds whose names do not currently require such

[32] See 2001 Adopting Release ("We note, however, that the 80% investment requirement is not intended to create a safe harbor for investment company names. A name may be materially deceptive and misleading even if the investment company meets the 80% requirement. Index funds, for example, generally would be expected to invest more than 80% of their assets in investments connoted by the applicable index").

disclosures.[33] We fully support incorporating such a requirement into the instructions to Form N-1A and Rule 35d-1, for all funds to help investors better understand the 80% policy. In addition, we support the proposal to permit a fund to use any "reasonable definition" of the terms used in its name and urge the Commission to also include such an instruction in Item 4 of Form N-1A. However, we are concerned that "established industry use" is a nebulous standard that will not help clarify terminology used in fund names and may result in industry homogenization of investment products.

We believe the requirement that the definition be reasonable and in plain English, along with the existing anti-fraud provisions under the securities law, will provide sufficient clarity to shareholders, without stifling innovation and opportunities for investment advisers to differentiate their investment strategies. Applying an "established industry use" standard would inhibit the ability of fund managers to differentiate funds by name and push them toward definitions that are perceived to reflect established industry use. We agree with the Commission that any definitions used "should have a meaningful nexus between the term used in the fund's name and the fund's investment focus,"[34] and that this is the more appropriate standard for defining fund names. This approach defines a "reasonable definition" more succinctly then "established industry use" and should be included in rule text or instructions to Form N-1A.[35] Accordingly, we propose removing "established industry use" from Rule 35d-1.[36]

VI. MODERNIZING THE RULE'S NOTICE REQUIREMENTS

We support the Commission's efforts to further modernize Rule 35d-1's shareholder notification requirements to permit electronic delivery and the proposed amendments to Rule

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[33] See, e.g., Fidelity Small Cap Discovery Fund prospectus ("The Adviser normally invests at least 80% of the fund's assets in securities of companies with small market capitalizations. Although a universal definition of small market capitalization companies does not exist, for purposes of this fund, the Adviser generally defines small market capitalization companies as those whose market capitalization is similar to the market capitalization of companies in the Russell 2000® Index or the S&P SmallCap 600® Index. A company's market capitalization is based on its current market capitalization or its market capitalization at the time of the fund's investment. The size of the companies in each index changes with market conditions and the composition of the index.") (emphasis added); Fidelity Low-Priced Stock Fund ("The Adviser normally invests at least 80% of the fund's assets in low-priced stocks. Low-priced stocks are those that are priced at or below $35 per share or with an earnings yield at or above the median for the Russell 2000® Index. Earnings yield represents a stock's earnings per share for the most recent 12-months divided by current price per share. For convertible preferred stocks, the Adviser may consider the price of the security itself or the price of the security into which it is convertible.") (emphasis added); Fidelity Intermediate Bond Fund ("Normally investing at least 80% of assets in investment-grade debt securities (those of medium and high quality) of all types and repurchase agreements for those securities").

[34] Proposing Release at p. 75.

[35] The Proposing Release reflects the SEC's belief that a name's meaning should not be permitted to be materially altered by fund disclosure. As an example, the SEC states that "a fund that calls itself a 'solar energy fund' would not be able to use disclosure to qualify the name in the prospectus by stating that the fund's 80% basket includes investments in the securities of any type of alternative energy company." Id. at p. 79. We do not believe that such a definition would have a "meaningful nexus between the term used in the fund's name and the fund's investment focus" and as such would be in violation of the proposed rule. Therefore, it is not necessary to also impose an "established industry use" standard to address the SEC's stated concerns that a fund sponsor may "subvert an investor's reasonable expectations of a fund's investment focus." Id.

[36] See proposed Rule 35d-1(a)(2)(iii).

35d-1(e), including the additional content requirements. As discussed in Fidelity's 2020 Comment Letter, we believe the SEC should further modernize shareholder notification by allowing funds to post notification of certain policy changes prominently on their websites.[37] We believe this approach would allow investors to access relevant materials in a more user friendly and familiar manner and thus increases the likelihood that investors would see and read it.

Fidelity has long been a proponent of digital delivery of shareholder information. Current data regarding investor behavior shows that investors increasingly prefer to engage with their financial services firm through the internet and digitally enabled devices.[38] Further, recent studies show an overwhelming trend by Americans to use digital communications.[39] Investors today conduct millions of online interactions daily on financial services web and mobile sites.[40] These activities include transactions, communications, and regularly accessing important shareholder information such as account and confirmation statements, tax forms, and other regulatory documents. Most investors are now using digital communications and delivery as a safe and secure way of handling their financial business.

Electronic posting and communication where the change does not materially change the risk profile of the fund further supports the evolution of investor preference. A fund could also deliver written notification of the change in the next shareholder report and include disclosure in the prospectus advising shareholders to check the website for the most recent information. If the change would materially change the risk profile, then a physical mailing should proceed where the fund does not have an email address for the investor and electronic delivery should be permitted for those shareholders with an email on file. This approach would strike an appropriate balance between the level of effort required to personally deliver a notification to a shareholder's physical or electronic mailing address and the nature of the information being delivered.[41]

[37] See Letter from Fidelity Investments to Vanessa Countryman (May 5, 2020), available at https://www.sec.gov/comments/s7-04-20/s70420-7152088-216414.pdf

[38] See Investors in the United States–A Report of the National Financial Capability Study, FINRA Investor Education Foundation (2019), available at: https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf.

[39] See Pew Research Center, Internet Broadband Fact Sheet (2019), at https://www.pewresearch.org/internet/factsheet/internet-broadband/. In addition, a survey by the Investment Company Institute in 2015 found that 91 percent of U.S. households who own mutual funds had Internet access (up from 68 percent in 2000), and that there was widespread use among various age groups, education levels and income levels. See Burham, K., Bogdan, M. & Schrass, D., Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2015, ICI Research Perspective 21, no. 5 (Nov. 2015), at www.ici.org/pdf/per21-05.pdf.

[40] See, e.g., CNBC Trader Talk, Trading volume for electronic brokers doubled last quarter and shows no signs of letting up (May 2020), at https://www.cnbc.com/2020/05/13/trading-volume-for-electronic-brokers-doubled-lastquarter-and-shows-no-signs-of-letting-up.html.

[41] The process to create shareholder mailing packets is time consuming and costly. While electronic mail saves money on postage, the process to compile an electronic mailing is much the same in that shareholder files for shareholders of record are compiled and addresses are associated with each such shareholder file. While each individual mailing, including electronic mailing, is therefore personally addressed, the content of the notice is identical for all shareholders as it does not contain any personal account or other customized information. Therefore, in our view, the level of customization and effort required is not warranted by the nature and materiality of information provided to shareholders.

VII. N-PORT Reports

The Proposal requires amendments to Form N-PORT to "provide market-wide insight with respect to those registered investment companies, other than money market funds, that are subject to the 80% investment policy requirements" and to provide the Commission, as well as market participants, "information about the percentage of such a fund's assets that are invested in the 80% basket."[42] Specifically, the Proposal requires periodic public reporting on Form N-PORT of: (1) the value of the fund's 80% basket, as a percentage of the value of the fund's assets, (2) if applicable, the number of days that the value of the fund's 80% basket fell below 80% of the value of the fund's assets during the reporting period, and (3) with respect to each portfolio investment, whether the investment is included in the fund's 80% basket.[43]

Fidelity commends the Commission for taking steps to add greater transparency regarding name test compliance in proposed Item B.9 of Form N-PORT to include items (1) and (2) discussed above. We believe such information would appropriately assist shareholders in comparing different funds to determine which fund best suits their investment needs as well as assist the Commission in its oversight of such funds' compliance with the names rule.

However, publicly reporting proposed disclosure requirements in Item C.3 of Form N-PORT, as discussed in item (3) above, which changes on a more frequent basis than the reporting period, would overwhelm investors with outdated information that would not help compare funds in a meaningful way. A shareholder is unlikely to review N-PORT filings for multiple funds to compare how each portfolio investment is designated for purposes of name test compliance. Even if a shareholder committed the time required to conduct such a comparison, the different treatment between the funds would be a result of different definitions applied to the name test by each fund, rather than any meaningful investment decisions. A shareholder who decides to purchase or sell a fund based on one or more particular holdings of that fund is focused on their views of the appropriateness of that investment for the fund, rather than characterization of that holding for compliance with the 80% name test. Although it would be of limited use, the information would add highly technical disclosure that may ultimately overwhelm shareholders. Fidelity recommends that the Commission revise the proposed Form N-PORT reporting requirements by excluding the information referenced in (3) above, as proposed in new Item C.3 of Form N-PORT.

VIII. CONSIDERATIONS REGARDING DERIVATIVES

A. Permit but do not Require Certain Adjustments to the Derivatives Notional Value Calculation

The Proposal would require a fund when calculating the notional amount of derivatives transactions to convert interest rate derivatives to their 10-year bond equivalents and to delta adjust the notional amount of options contracts (the "Notional Adjustments"). While Fidelity generally agrees with the proposed ability to apply the Notional Adjustments, we believe such

[42] Proposing Release at p. 96.
[43] See proposed Item B.9 and Item C.2 of Form N-PORT in Proposal.

adjustments should be made optional and not mandatory. Funds should have the discretion to decide whether to adopt the Notional Adjustments, which would be consistent with similar adjustments allowed under Rule 18f-4. Adopting different approaches to applying the Notional Adjustments under the Proposal and Rule 18f-4 will require separate tracking and monitoring procedures and systems, resulting in operational and technological challenges, and increased costs. Also, requiring the Notional Adjustments prevents funds from taking a more conservative approach by deciding not to scale down the notional value of derivatives to their 10-year bond equivalent. We therefore ask that consistent with Rule 18f-4 the Commission permit but not require funds to adopt the Notional Adjustments.

B. Expand the Types of Derivatives Hedging Instruments Allowed in the 80% Investment Policy

The Proposal would permit a fund to include in its 80% investment policy derivatives instruments that provide (i) investment exposure to the investments suggested by the fund's name, or (ii) "investment exposure to one or more of the market risk factors associated with the investments suggested by the fund's name" (e.g., interest rate risk, credit spread risk, and foreign currency risk). While Fidelity supports a fund's ability to include additional types of derivatives in its 80% investment policy, we ask that the Commission expand the types of derivatives hedging instruments that are considered eligible for purposes of determining compliance with the Names Rule. For example, fixed income funds routinely use interest rate derivatives to manage duration risk. More specifically, funds that invest in mortgage passthrough securities commonly use U.S. Treasury futures and options to hedge against the impact of mortgage prepayments on the fund's duration. However, using derivatives instruments to manage duration in this manner may not align with the investments suggested in a fund's name or provide investment exposure to a "market risk factor" associated with an investment suggested by the fund's name. An investment adviser's ability to effectively use derivatives instruments to hedge duration and other risks will be dramatically reduced under the Proposal if the notional value of such derivatives hedging transactions is included in the denominator of the names test calculation but excluded from the numerator because they are considered names test ineligible. Accordingly, we ask that the Commission expand the types of derivatives hedging instruments that may be included in a fund's 80% investment policy by allowing derivatives transactions that hedge the risks associated with one or more securities held by a fund notwithstanding whether they are intended to hedge market risk factors associated with the investments suggested by the fund's name.

IX. TRANSITION PERIOD AND COMPLIANCE DATE

The Proposal allows for a one-year transition period from the date the final rule is published in the Federal Register for funds to come into compliance with the requirements of the Proposal.[44] Accordingly, at the transition period funds would be required to comply with the requirements of the Names Rule amendments, proposed new prospectus disclosure requirements, additional record-keeping requirements and the proposed new Form N-PORT reporting.

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[44] Proposing Release at p. 112.

Fidelity believes that a one-year transition period is not sufficient to implement necessary changes and recommends that the Commission extend the transition period to two years. This would assist funds with implementing the significant changes to existing monitoring systems, compliance policies and procedures and fund disclosure and related board approvals, as well obtaining additional resources, that the Proposal would necessitate, including: (i) implementing new name test compliance monitoring mechanism should the rule be amended to eliminate the current time of purchase approach; (ii) analyzing all funds that currently do not have a name test to determine whether a name test is required; (iii) reviewing funds with existing name tests to ensure continued compliance with the proposed amendments; (iv) drafting new name test policies and accompanying prospectus disclosures; (v) seeking board approval of any new name tests, amendments to name test, if any, and sending out related shareholder notices and other prospectus disclosure changes; (vi) updating fund registration statements; (vii) implementing a separate system for calculating fund net assets that complies with proposed Rule 35d-1(g)(2) with respect to derivatives instruments; (viii) reviewing and enhancing recordkeeping practices with respect to name test monitoring to ensure compliance with proposed Rule 35d-1(b)(3); (viii) implementing revised shareholder notice requirements; and (ix) implementing new Form N-PORT filing requirements. We believe that the time necessary to perform the tasks associated with complying with the final rule will require more than one year, particularly, when implementation will coincide with other recent SEC rulemaking and necessitate time, attention and resources, including the Commission's proposed rules relating to funds' and advisers' incorporation of environmental, social, and governance (ESG) factors, shortening the settlement cycle, cybersecurity requirements for funds and advisers, and money market fund reform.

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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 Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner

William Birdthistle, Director, Division of Investment Management