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

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

Re: **Amendments to Procedures With Respect to Applications under the Investment Company Act of 1940: File Number S7-19-19**

Dear Ms. Countryman,

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) on its proposal to improve the existing framework for seeking exemptive relief from certain provisions of the Investment Company Act of 1940 (the “Proposal”).²

Fidelity strongly supports the Proposal and commends the SEC for seeking to make improvements to its current exemptive relief application process, which the Release acknowledges can be time-consuming.³ We agree that creating a streamlined and expedited review process will allow the SEC to refocus its time and attention on exemptive relief applications that raise novel issues and present innovative financial products. This redeployment of resources will provide a benefit to shareholders, by increasing the diversity of investment opportunities available to them, and to funds, by encouraging financial innovation through novel exemptive relief applications.

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 30 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Management & Research Company and FMR Co., Inc., the investment advisers to the Fidelity family of mutual funds. In addition to our comments, we also support the recommendations set forth by the Investment Company Institute in its letter responding to this request for comment, available at https://www.ici.org/pdf/19_ltr_sec_relief.pdf.

² See Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940, Investment Company Act Release No. 33658 (Oct. 18, 2019) (“Release”), available at <https://www.sec.gov/rules/proposed/2019/ic-33658.pdf>.

³ Release at 10.



I. EXECUTIVE SUMMARY

Fidelity offers the following suggestions to the Proposal, described in more detail below, which we believe will improve its efficacy and effectiveness:

- We support the Commission’s creation of an expedited review process for routine exemptive relief applications and provide several recommendations to expand the eligibility requirements including: (i) broadening the proposed “substantially identical” standard; and (ii) expanding the lookback period for eligible applications to be considered from two years to a minimum of five years.
- We support the proposed 45-day timeframe for expedited review and the proposed 90-day timeframe for standard exemptive relief application review, but recommend certain changes to the proposed extensions provided concerning the review of amendments to those applications.
- While we acknowledge that information exchanged during the exemptive relief application process is subject to release under the Freedom of Information Act, we are not supportive of the SEC’s proposal to publicly release all staff comments and applicant responses to exemptive relief applications on EDGAR following the final disposition of an application.

II. RECOMMENDATIONS

A. Expedited Review Process Eligibility

Under the Proposal, new rule 0-5(d)(1) would allow an applicant to request expedited review if the exemptive relief application is “substantially identical” to two other applications for which an order granting the requested relief has been issued within two years of the application’s initial filing. We commend the SEC for creating a new review process to handle routine applications and believe the proposed 45-day review period strikes an appropriate balance.

While we understand the rationale for requiring similarity between the submitted application and past precedent, we are concerned that the requirement that applications be “substantially identical” and contain identical terms and conditions to the precedent applications is too limiting and may result in few, if any, applications, meeting this high threshold. Exemptive relief applications may necessarily differ based on the organizational structure of the applicant, which may dictate certain terms and conditions for one applicant that may not be relevant for another. For example, an applicant with affiliates will include additional terms and conditions concerning those affiliates that would not be relevant for an applicant without affiliates, and vice versa. However, to utilize the new expedited review process, the subsequent applicant would be required to adopt terms and conditions that are not applicable to its business, or risk having its application being ineligible for expedited review because it is not “substantially identical.”

We agree with the approach suggested by the Investment Company Institute in its comment letter that, in place of the “substantially identical” standard, an application for

expedited review must contain terms and conditions that are substantially identical to prior precedent “in all *applicable* respects.” We believe this standard, along with proposed requirement that applicants submit marked copies of the application showing changes from the final versions of the two precedent applications, will facilitate the Commission’s goal to limit the utility of the expedited review process to truly “routine” matters, without unduly limiting its use.

Along these lines, we also suggest that the Commission reconsider allowing applicants for expedited review to combine portions or sections of different prior applications (a “mix and match approach”).⁴ Funds may have different business needs and may seek exemptive relief through one, or multiple applications. Based on our experience, the chance of one fund’s exemptive relief application containing *exactly the same relief* sought by another fund is highly unlikely. In our view, so long as the substantive exemptive relief requested otherwise meets the Commission’s conditions for expedited review, it should not matter whether that relief is contained in one or multiple exemptive relief applications. Should the SEC decide that the relief sought is not appropriate for expedited review, it always has the option of moving the application to the standard review process. We are concerned that not permitting a mix and match approach will discourage firms from seeking to take advantage of the expedited review process at all.

We also agree with the Commission’s approach of requiring that the precedent exemptive relief be contained in two prior applications, however we suggest that the SEC expand the lookback period for applications that are eligible to be considered as precedent beyond two years. We would suggest a minimum of at least five years, which would create a wider pool of precedent, including lines of applications that may be routine but do not have as frequent filings, that will be eligible for the new expedited review process.

B. Expedited Review Process Timeframe

As discussed above, we are supportive of the general timeframe proposed for the expedited review process, which will require the SEC to issue a notice for application no later than 45-days from the filing of the application. As proposed, the 45-day period is paused upon any comment on the application by the SEC and would resume 14 days after the filing of an amended application that is responsive to such request. In the event of the filing of an unsolicited amendment, the SEC is proposing that the 45-day review period will restart.

We believe the 14-day pause for filing an amended application strikes the right balance, however, we are concerned that the 45-day restart of the review period upon the filing of an unsolicited application is too long and could have a chilling effect on applicants wishing to submit amendments, which are not substantive and may be beneficial to the SEC during its review.

We recommend that the Commission reconsider its approach, and limit the pause for *immaterial* unsolicited amendments to a 14-day pause, and only restart the full 45-day timeframe for *material* unsolicited amendments. Examples of immaterial amendments that would only implicate a 14-day pause could include, for example, corrections of factual errors or omissions,

⁴ Release at 13, fn. 29.

organizational edits, or factual additions, or updates to the legal analysis that do not impact the substance of the application or the terms and conditions of the relief. These are common amendments which may be made during the exemptive relief application process, and we do not believe applicants should be penalized for undertaking to make these updates on their own.

C. Standard Review Process Timeframe

We applaud the SEC for also endeavoring to improve the standard exemptive relief application process by proposing a 90-day timeframe for the staff to “take action” on applications, subject to unlimited 90-day extensions. While we are supportive of the proposed 90-day period, we believe the ability for the SEC to issue unlimited 90-day extensions would undermine the efficacy of the proposed standard review process timeframe.

We suggest that the SEC take a similar approach to extensions for the standard review process as is currently proposed for the expedited review process and implement a graduated timeframe for review, based on the materiality of the amendment. We recommend: (i) a 14-day pause for review of staff-solicited amendments and immaterial unsolicited amendments, (ii) a 45-day pause for review of material solicited amendments, and (iii) a 90-day pause for review of material unsolicited amendments.

D. Release of Comments

The SEC is also proposing to publish on EDGAR staff comments on applications, and responses to those comments, except for those materials (or portions) covered by confidential treatment requests, no later than 120 days after the final disposition of an application. While we understand that comments and responses are already subject to public Freedom of Information Act requests, we have concerns with the widespread dissemination being proposed.

First, we are concerned that public dissemination of the communications between the SEC and an applicant could result in competitive harm, thereby stifling innovation and potentially chilling communications between applicants and the SEC. As the SEC is aware, exemptive relief applications may include business processes, and proprietary and competitive information, especially where the application submitted is for a novel product. While firms can, and do, currently designate portions of their applications confidential, we expect that firms would seek confidential treatment even more if this information is publicly released. This would likely result in making the exemptive relief process more time consuming for both the SEC and applicants, without any commensurate benefit.

Second, we question the utility of this information to investors. The information included in the exemptive relief application process, in our opinion, is not the type of information that an investor will find valuable in making an investment decision, in contrast to information included in a fund’s Registration Statement.⁵ The exemptive relief application process may result in

⁵ Frequently, comments are exchanged by the SEC and applicants during the exemptive relief process verbally and via email. In the event the SEC proceeds with requiring public dissemination of exemptive relief communications,

numerous responses to questions and amended applications, with the factual record not following a linear order, all of which may confuse, rather than inform, investors.

In light of the potential costs and limited investor benefits, we recommend that the Commission reconsider its recommendation to publicly release staff comments and applicant responses to exemptive relief applications.

* * *

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,

A handwritten signature in black ink, appearing to read "Cynthia", with a long horizontal line extending to the right.

cc: The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Allison H. Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner

Dalia Blass, Director, Division of Investment Management

we recommend that the scope be limited only to written comments submitted through EDGAR and not include other informal communications.