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February 3, 2020

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

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

Re: **Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8: File No. S7-23-19**

Dear Ms. Countryman,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") in response to its proposed amendments to Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act") that would revise the current eligibility requirements to submit a shareholder proposal, and the resubmission thresholds for shareholder proposals (the "Proposal").[2]

Fidelity commends the SEC for its overall efforts to examine the current proxy process both through its recent Roundtable on the Proxy Process and with the proposed updates to its shareholder proposal rules. Fidelity is well poised to comment on the Proposal based on our extensive experience in the U.S. proxy system as both an issuer and a voter. As the investment adviser of the Fidelity funds, we take seriously our responsibilities managing the funds to advance the interests of their shareholders, which includes reducing unnecessary costs for mutual funds and their shareholders.

I. EXECUTIVE SUMMARY

Fidelity strongly supports the Proposal and in addition to providing our views on the proposed changes under Rule 14a-8 to the shareholder proposal process, our letter suggests several other improvements to the current regime that the SEC should consider that would make

[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 LLC, the investment adviser to the Fidelity family of mutual funds.

[2] *See* Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, Release No. 34-87458 (Nov. 5, 2019), available at https://www.sec.gov/rules/proposed/2019/34-87458.pdf (the "Release").

it easier for mutual funds to make beneficial changes or to obtain shareholder votes more efficiently. Specifically, our letter suggests:

- The SEC should modernize shareholder proposal eligibility criteria by adopting the following from the Proposal: (i) the revised dollar and percentage thresholds for submission, (ii) the revised percentage thresholds for resubmission, and (iii) the reaffirmation requirement for each shareholder proposal that requires each proponent to refresh their proposal after some period of time after submission, if the proposal has not yet been included in a proxy statement;

- The SEC should create a new approval threshold for matters that require majority shareholder approval as defined by the Investment Company Act of 1940 (the "Act"), which would promote efficiency and modernization in the mutual fund industry, and should also revise the Act's vote tabulation methodology;

- The SEC should consider promulgating rules to allow funds to change fundamental policies and diversification classifications with prior notice and Board approval, rather than with shareholder approval;

- The SEC should modernize and streamline disclosure requirements for proxy statements to eliminate redundant disclosure available in other publicly available shareholder materials; and

- The SEC should modernize the methods of contacting shareholders to solicit their votes.

II. Recommendations for Improving the Proxy Regime for Investment Companies

A. Approve the Proposed Tiered Resubmission Thresholds

The current proxy system, which is designed for public operating companies that hold annual shareholder meetings, can create challenges for registered investment companies such as mutual funds, particularly with respect to shareholder proposals. For mutual funds, which only hold special meetings as needed for required shareholder approvals, obtaining that approval can often be expensive and time-consuming and can result in significant delay in the implementation of beneficial change.

Rule 14a-8 under the Exchange Act provides a framework pursuant to which shareholders can include a proposal in a company's proxy statement for consideration by shareholders. The current rule allows shareholders to submit proposals provided they can establish that, for at least one year prior to submission, they have owned the lesser of at least $2,000 or one percent of the securities eligible to vote on the matter. To the extent shareholders ultimately reject the proposal, the rule permits resubmission of identical proposals provided certain extremely low favorable tiered vote thresholds are achieved. To improve overall efficiencies and reduce unnecessary shareholder costs, we believe that the Commission should take into account the unique operating nature of open-end mutual funds and balance the interests of a fund's broader shareholder base against those of a very few as it considers changes to shareholder proposal submission and resubmission standards.

We believe that the Proposal's new tiered submission thresholds, requiring holding $25,000 of an issuer's securities for at least one year, holding $15,000 of an issuer's securities for at least two years, or holding $2,000 of an issuer's securities for at least three years, are a modest increase and a positive step towards ensuring that a shareholder has a meaningful investment in an issuer before being eligible to impose the potential costs of a shareholder proposal in the issuer's next proxy statement, and we support the SEC implementing this change. We also believe that the new proposed levels of support strike the right balance and are not overly restrictive from the perspective of registered investment companies. Indeed, we reviewed all shareholder proposals received by and voted on by Fidelity mutual funds for the past six years and found that the vast majority of these proposals would still have satisfied the eligibility criteria under the new tiered submission thresholds.

B. Required Shareholder Reaffirmance of Submissions

The Proposal also solicited comment on whether any special provisions should be considered, after some passage of time, for shareholders to reaffirm their submissions. [3] We strongly recommend that the SEC require shareholders to reaffirm submission of shareholder proposals for open-end investment companies at least every three years from the date of such submission and recommend that absent reaffirmation, the proposal will expire.

As highlighted above, the procedures and requirements of Rule 14a-8 ignore the meaningful operating differences between investment companies and operating companies, resulting in unnecessary inefficiency and expense for mutual funds and, by extension, their shareholders. Unlike other issuers, open-end investment companies generally do not hold shareholder meetings each year. As a result, several years may pass between the submission of a shareholder proposal and the next shareholder meeting. In these cases, the submission may no longer reflect the interest of the proponent or may be in need of updating.

For example, Fidelity is in receipt of a meaningful number of shareholder proposals for funds that have not needed to convene a shareholder meeting for several years. With the passage of time, the information available to the funds regarding such shareholders becomes stale. In our experience, over the intervening years shareholders often: (i) sell their fund shares; (ii) move their residences and fail to provide their updated contact information (for shareholders who do not have a direct account relationship with Fidelity); (iii) retire and shift their account registrations; and/or (iv) modify their account registrations to invest through an omnibus arrangement that is record kept outside Fidelity. The costs associated with locating these proponents as well as updating, validating and reconciling their proposals with other substantially similar proposals are substantial and are borne by all shareholders of the affected fund(s).

[3] Release at 28.

C. Create an Additional "Majority Vote" Standard for Certain Matters Requiring Shareholder Approval and Revise the Vote Tabulation Methodology

In addition to the proposed revisions to Rule 14a-8, Fidelity recommends that the SEC engage in rulemaking under Section 6(c) of the 1940 Act to provide an additional vote threshold for matters that require approval by a "majority of the outstanding voting securities" of an investment company as defined in Section 2(a)(42) of the 1940 Act. For these types of matters, the statute mandates that a fund receive approval by the lesser of (i) 67% or more of the outstanding securities if the holders of more than 50% of the outstanding voting securities of the fund are present at the meeting, or (ii) 50% of the outstanding voting securities of the fund. The types of matters that require approval by this threshold include changes to a fund's concentration policy, mergers between funds, and approval of investment advisory contracts. In effect, the majority approval threshold under the 1940 Act requires that at least 50% of a fund's shareholders outstanding be present at a meeting in person or by proxy for an item to receive approval.

Most states have their own quorum and approval threshold requirements for entities organized in the state. For example, many investment companies are organized as Massachusetts business trusts or Delaware statutory trusts. For these types of entities, quorum and approval requirements are set forth in a company's trust instrument, which is adopted by the company's board of trustees/directors and approved by shareholders. Fidelity funds typically have a quorum requirement of one-third of the outstanding voting securities entitled to vote. Approval of matters voted on by shareholders typically requires the affirmative vote of a majority of the shares voted at the meeting, unless the 1940 Act requires a higher threshold, as noted above. A plurality of the shares voted at a meeting are required to elect trustees of a trust.

Fidelity believes that the more stringent 1940 Act "majority of the outstanding voting securities" standard sets an inefficiently high bar for items to be approved by shareholders today. The original purpose of this threshold – to protect shareholders from overreaching on the part of fund advisers, its distributor and affiliates that may have significant ownership of an investment company – is addressed through numerous other provisions of the 1940 Act and rules thereunder that have come into effect over the last 75 years, including enhanced independence standards for disinterested trustees, more robust requirements around maintaining compliance programs, and greater oversight around transactions with affiliates. We believe that the 1940 Act's majority vote requirement imposes more costs (in the form of expenses related to soliciting enough votes to meet the standard) to funds, and by extension their shareholders, and creates roadblocks for funds and their advisers to garner shareholder approval of important matters relating to fund operations.

Fidelity supports the additional majority vote standard recommended by the Investment Company Institute (ICI) in its June comment letter on improvements to the proxy system for mutual funds,[4] which we believe would be beneficial to our mutual funds and their shareholders.

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[4] *See* Letter from Paul Schott Stevens, President and CEO, ICI, to Ms. Vanessa Countryman, Acting Secretary, SEC, dated June 11, 2019, available at https://www.sec.gov/comments/4-725/4725-5658296-185774.pdf

The ICI recommended that a fund could satisfy the majority vote requirement with "75 percent or more of those shares affirmatively voting at [a shareholder meeting], if the holders of more than one-third of the outstanding voting securities of such company are present or represented by proxy." We examined voting tabulations for several campaigns within recent years and found that funds that had to solicit shareholders multiple times to reach the current majority vote threshold could have saved time and expense with this third option.

The Proposal also solicits comment on the vote-counting methodology under Rule 14a-8(i)(12).[5] We believe that vote-counting methodology should be consistent across proposals. We endorse the ICI's recommendation in connection with its proposed new majority vote requirement to count broker non-votes as present for calculating quorum, but to exclude them from the affirmative vote calculation rather than treat them as votes against a proposal.[6] Our shareholders vote overwhelmingly in favor of most management proposals, but depending upon the shareholder base of a fund, it can receive high levels of broker non-votes, which while not cast for or against a proposal nonetheless count as votes against, diluting the in-favor votes from shareholders who are making an affirmative determination on a proposal. Some funds can receive so many broker non-votes that achieving a majority vote can become a mathematical impossibility, to the detriment of the fund and its shareholders.

D. Promulgate Rules to Allow Funds to Change Fundamental Policies and Diversification Classifications with Prior Shareholder Notice

Fidelity also recommends that the SEC engage in rulemaking under Section 6(c) of the 1940 Act to permit investment companies to change their fundamental policies and sub-classifications as a diversified or a non-diversified company without shareholder approval.

As the Commission knows, the 1940 Act requires a mutual fund to recite in its registration statement its policies relating to certain investment and other activities and whether those policies are fundamental, which means that they can only be changed with shareholder approval.[7] Section 13 of the 1940 Act further states that changes to certain policies, such as its sub-classification from a diversified to a non-diversified company or a policy to concentrate in a particular industry or group of industries, can be made only if approved by shareholders.[8] The reasons for these provisions were to prohibit the unlimited discretion of management as to the investment activities of an investment company and to constrain the ability of management to change the nature and character of a fund's business without any notice to or approval by shareholders.[9] Another check on this discretion already exists—such policy changes also require approval by a fund's board.

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[5] Release at 57.

[6] *Id* at 10.

[7] *See* Section 8 of the 1940 Act.

[8] *See* Section 13 of the 1940 Act.

[9] *See* Alfred Jaretzki, Jr., *The Investment Company Act of 1940*, 26 Wash. U. L.Q. 303, 317 (1941).

Obtaining shareholder approval of these types of changes is often expensive and time-consuming, delaying implementation of beneficial changes, which have already been approved by the board, for fund shareholders. As an example, after the Commission adopted amendments in 2014 to its rules that govern money market mutual funds under the 1940 Act, many fund sponsors including Fidelity looked to convert certain of their prime money market funds—which generally held a variety of taxable short-term obligations issued by corporations and banks, repurchase agreements and asset-backed commercial paper—to government money market funds. Converting these funds to government money market funds under Rule 2a-7 enabled them to continue to maintain a stable NAV, use amortized cost valuation and/or penny-rounding pricing, and avoid being subject to liquidity fees and redemption gates.[10] Prior to the 2014 money market reform amendments, some prime money market funds had implemented policies to concentrate their investments in the financial services industry, and converting these funds to government money market funds required them to seek shareholder approval to eliminate the policy and enable the fund to invest in accordance with the requirements for a government money market fund under Rule 2a-7.[11] In this case, obtaining shareholder approval to convert these prime money market funds to government money market funds required funds to expend resources and time to prepare proxy statements and solicit shareholder proxies to approve changes to the funds that would ultimately preserve fund features – a stable NAV without being subject to liquidity fees and redemption gates – desired by fund shareholders.[12]

Instead of requiring shareholder approval for these types of policy changes, Fidelity believes that the Commission should engage in rulemaking that would enable funds to change these policies after providing sufficient notice to shareholders prior to the change in the policy going into effect. A notice requirement in lieu of shareholder approval of the change will ensure that, when shareholders purchase shares in an investment company based on its investment policies, such as a concentration policy or its status as a diversified investment company, they will have sufficient time to decide whether to redeem their shares if the investment company pursues a different investment strategy.

This approach is similar to the approach taken by the Commission in connection with Rule 35d-1, the Commission's rule that addresses a fund's use of certain names that are likely to mislead an investor about its investment emphasis. Rule 35d-1 requires a fund with a name that suggests that the fund focuses its investments in a particular type of investment to invest at least 80% of its assets in the type of investment suggested by the name. Under the rule, in lieu of

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[10] *See* "Fidelity Phillips Street Trust Schedule 14A Information." *EDGAR*, Securities and Exchange Commission, Mar. 20, 2015, https://www.sec.gov/Archives/edgar/data/278001/000119312515099755/0001193125-15-099755-index.htm.

[11] Under Rule 2a-7, a government money market fund is a money market fund that invests 99.5% or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully. *See* Rule 2a-7(a)(14).

[12] *See* Fidelity Phillips Street Trust Schedule 14A Information (noting that, based on how shareholders use Fidelity Cash Reserves and investor feedback, Fidelity believed that shareholders would prefer a fund that seeks to maintain a stable net asset value per share and that is not subject to liquidity fees or redemption gates).

adopting its 80% investment requirement as a fundamental policy, a mutual fund may adopt a policy that it will provide notice to shareholders at least 60 days prior to any change to its 80% investment policy.[13] In its adopting release for the rule, the Commission acknowledged that most commenters opposed the fundamental policy requirement, arguing that it would be too burdensome for investment companies, constraining their ability to respond efficiently to market events or to new regulatory requirements.[14]

Fidelity believes that a notice requirement to change a fundamental policy under the 1940 Act is another step toward modernization, consistent with the approach taken in Rule 35d-1.

E. Streamline Proxy Statement Disclosure Requirements

The registration statement forms used by mutual funds permit registrants to incorporate by reference various disclosures into documents that are required to be delivered to shareholders.[15] One of the most common uses of incorporation by reference for mutual funds involves the inclusion of a fund's statement of additional information ("SAI") into the fund's related prospectus.[16] The incorporation of the SAI into the prospectus reflects the Commission's understanding of the relative importance of the information contained therein when compared to that required to be disclosed in a fund's prospectus.[17]

Schedule 14A also permits incorporation by reference in the context of proxy statements; availing oneself of this flexibility, however, comes with demanding delivery obligations.[18] As a result, many mutual funds elect to forgo incorporation by reference, adding unnecessary complexity and costs to many proxy statements by simply duplicating information already contained in the fund's registration statement (albeit, in some cases, with a slightly different time

[13] The rule does require, however, that the 80% investment requirement be adopted as a fundamental policy for tax-exempt investment companies. In its adopting release, the Commission noted that it believes that the 80% investment requirement should continue to be a fundamental policy for a tax-exempt investment company because of the critical importance of the tax-exempt status to its investors. *See* Investment Company Names, SEC Release No. Release No. IC-24828 (Jan. 17, 2001).

[14] It is interesting to note that, with the adoption of Rule 35d-1, a fund has the ability to change its name and principal investment strategy (e.g., from XYZ Stock Fund to XYZ Bond Fund) by giving 60 days' notice to shareholders, yet it cannot add or remove a policy to concentrate in a group of industries consistent with its name or 80% investment policy without shareholder approval. In fact, if a fund does not have a name that suggests that it focuses in a particular type of investment, it could change a principal investment strategy, including an 80% investment policy, without any advance notice to shareholders.

[15] *See* General Instruction D.1 to Form N-1A; General Instruction F to Form N-2.

[16] *See* General Instruction D.1(b) to Form N-1A (providing that a fund may incorporate by reference any or all of the statement of additional information into a prospectus).

[17] *See* General Instruction C.2 to Form N-1A (noting that the purpose of the SAI is to provide additional information about a fund that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be included in the prospectus, but that some investors may find useful.

[18] *See* Note D.2 to Schedule 14A (requiring issuers to undertake to provide, without charge, to each person to whom a proxy statement is delivered, upon written or oral request, and by first class mail (or other equally prompt means) within *one business day* of receipt of such request, a copy of any and all information that has been incorporated by reference).

horizon). We recommend that the Commission consider further streamlining and modernizing the incorporation by reference rules contained within Schedule 14A to permit a fund to deliver any and all material incorporated by reference upon demand within a more reasonable period of time. It has been Fidelity's experience that, were we able to take advantage of the flexibility offered by incorporation by reference, we could reduce the length of proxy statements by an average of 20 pages. We believe that when multiplied by the number of proxy statements we print and deliver in connection with any proxy campaign, that cost savings would be meaningful to fund shareholders.

F. Modernize Delivery and Communications with Shareholders

Fidelity strongly supports efforts to improve investor engagement and increased voting participation. We believe that there are additional opportunities to make it easier for investors to receive proxy materials and encourage the Commission to review how proxies are solicited. As technology evolves, the methods that have worked in the past for reaching our shareholders are becoming less effective. While we may electronically deliver proxy materials, and shareholders may vote online and by telephone in addition to mailing in a proxy card, it can be difficult to obtain responses from shareholders. When shareholders fail to return proxy cards, we are limited to contacting them by landline telephone or mailing additional sets of proxy materials, often at fund expense. Many shareholders only have cell phones, and we are not able to contact them without express consent. This is particularly a trend with younger customers, which creates increasing concern for future proxy campaigns. We urge the Commission to work with other relevant agencies, such as the Federal Communications Commission, to allow us to contact customers using the technology they prefer, rather than spending time and resources on outdated methods.

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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,

Cynthia

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