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Submitted electronically

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

Re: *Universal Proxy*; File No. S7-24-16

Dear Mr. Fields,

Fidelity Investments¹ (“Fidelity”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (the “SEC” or “Commission”) proposed amendments to the federal proxy rules to require the use of universal proxy cards in all non-exempt solicitations in contested director elections at annual meetings other than those involving registered investment companies and business development companies.²

Fidelity is well positioned to comment on the Proposed Amendments. Through our management of the Fidelity mutual funds, we have extensive experience in the U.S. proxy system from both an issuer and voter perspective. In addition, in our role as a large broker-dealer, we can also offer comments as a significant participant in the proxy distribution process. As the manager of the Fidelity funds, Fidelity takes seriously its responsibilities to manage the funds to advance the interests of shareholders. In our role as a broker-dealer, we believe that brokers play an important role in the proxy distribution process and can provide their investor clients with a consolidated and consistent source of information and support.

EXECUTIVE SUMMARY

Our comments that follow include the following points:

¹ Fidelity Investments is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services.

² *Universal Proxy* (SEC), Release No. 34-79164; 81 FR 79122 (November 10, 2016) available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-10/pdf/2016-26349.pdf> (the “Proposed Amendments” or “Proposing Release”).

1. The SEC should require registrants and dissidents to use universal proxy cards in all non-exempt contested director solicitations at annual meetings and should develop clear, prescriptive rules to help facilitate compliance and enhance shareholder understanding of the universal proxy process;
2. The SEC's decision to permit the electronic availability of dissident proxy materials is a good policy that should be expanded into other areas;
3. The SEC should exempt registered investment companies from a universal proxy requirement; and
4. If approved, SEC staff should undertake a retrospective review of universal proxy to determine its impact on the proxy process.

Shareholder choice is constrained when voting by proxy in contested director elections. Fidelity support universal proxy as a logical way to fully accommodate shareholder voting preferences.

We believe that the current U.S. proxy system, although complex, generally operates efficiently and reliably. Nevertheless, the Commission is right to focus its attention on shareholder voting in contested director elections given the importance of shareholder voting in this context and the discrepancy that arises between shareholder votes cast in person versus shareholder votes cast by proxy.

As the Commission notes in the Proposing Release, a shareholder who attends a registrant's annual meeting for a contested director election in person may select among the entire slate of duly nominated director candidates proposed for election by either registrant or dissident and vote for any combination of those candidates. However, in our experience, few shareholders – retail or institutional – attend a shareholder meeting in person. Among other factors, the time and cost involved in travel; the need to know, in advance, of the need to vote a split ticket; and the fact that last minute agreements between parties can result in the settlement of contested director elections, all work to prevent shareholders, or their legal proxies, from attending a shareholder meeting in person.

In contrast to voting at a shareholder meeting in person, a shareholder voting by proxy must choose either the registrant's proxy card or the dissident's proxy card. This is because current practices effectively prevent one party from including the other party's nominees on their proxy card. Moreover, a shareholder can't vote on both the registrant's proxy card and the dissident's proxy card, because under state law in many jurisdictions a later-dated proxy card revokes and invalidates any earlier dated one. As a result, a shareholder voting by proxy is limited to the selection of candidates provided by one specific party soliciting the shareholder's proxy and is not able to vote for their preferred combination of nominees from each proxy card.

To address this discrepancy, the SEC has proposed mandatory use of a universal proxy card in certain contested director elections to allow a shareholder voting by proxy to choose among a combination of registrant and dissident nominees by including all nominees on both the

registrant's and dissident's proxy card, rather than asking a shareholder to choose between two competing cards. We support the Proposed Amendments as a logical way to fully accommodate shareholder voting preferences, subject to certain comments discussed below.

The SEC should require the use of universal proxy in contested director elections at annual meetings and should provide clear, prescriptive rules surrounding its use.

We do not believe that universal proxy will be successful unless the SEC makes it mandatory and establishes clear, prescriptive rules governing its use. If the SEC does not make universal proxy mandatory, we see little incentive for registrants to use it. Moreover, shareholders, registrants and dissidents would benefit from clear, prescriptive rules that establish a uniform, consistent approach to universal proxy. As an institutional investor, established rules of practice governing universal proxy will help ensure that we do not spend unnecessary resources trying to understand how, and for whom, to vote. We similarly believe that retail investors will benefit from clearly established rules of practice regarding the use of universal proxy.

As a general rule, Fidelity believes that more information in the marketplace is desirable. Under the Proposed Amendments, a dissident would be required to file with the SEC its notice to registrants of intent to solicit proxies in support of nominees other than the registrant's nominees.³ We support this requirement and further believe that this notice should be made publicly available. We observe that making the dissident's notice publicly available could serve as a way for investors who engage in securities lending to identify a potentially contentious situation in advance of the record date and provide them ability to recall shares they have lent out.

Moreover, and as proposed, the universal proxy card should clearly articulate the number of nominees for which the shareholder can vote. Similarly, one of the challenges to universal proxy, not discussed in the Proposing Release, is how registrants and dissidents would handle mis-marked ballots. We anticipate that issuers and dissidents could reasonably handle mid-marked ballots in different ways. For this reason, the Commission should also establish rules governing mis-marked ballots, and should require both issuer and dissident proxy materials to clearly communicate to shareholders how mis-marked ballots will be handled.

The SEC's decision to permit the electronic availability of dissident proxy materials is a good policy and should be expanded into other areas.

Current SEC rules do not require the registrant to solicit, or furnish, a proxy statement to a certain number or percentage of shareholders. SEC rules only require registrants to furnish a proxy statement to each person solicited.⁴ However, SEC rules require registrants to provide to all shareholders not solicited in connection with a shareholder meeting an information statement

³ See proposed 17 CFR 240.14a-19(a) and (b)

⁴ See 17 CFR 240.14a-3

with the same information required in a proxy statement.⁵ As a result, as the Commission notes in the Proposing Release, “registrants routinely satisfy their obligation under Rule 14c-2 by furnishing a proxy statement to all shareholders.”⁶

Under the Proposed Amendments, the registrant’s proxy statement would advise shareholders that information on the dissident’s nominees is available in the dissident’s proxy statement which can be accessed, along with other relevant documents, for free on the Commission’s website.⁷ A dissident would be responsible for bearing the costs and resources associated with filing a proxy statement with the Commission and, within prescribed timeframes, soliciting the holders of shares representing at least a majority of the voting power of shares entitled to vote on the election of directors.⁸ A dissident would not be required to solicit all shareholders.⁹ Interested shareholders who were not solicited by the dissident could seek out information on the dissident’s nominees from the dissident’s proxy statement available for free on the Commission’s website and as directed by the registrant’s proxy statement.

The SEC’s decision to permit the electronic availability of dissident proxy materials is a good policy and should be expanded into other areas. Notification of the availability of proxy materials on the Commission’s website will inform all shareholders how to access information about the parties’ nominees so that they can make an informed voting decision, particularly when they have received a proxy statement and universal proxy card from only one party. To enhance this requirement, we encourage the SEC to consider creating directed links to specific company filings on the Commission’s website and/or require a toll-free telephone number from which, at their discretion, shareholders could request paper copies of proxy materials free of charge.

By way of example, the Commission recently approved amendments to FINRA and MSRB rules that, for certain principal transactions, would require dealers to disclose on retail customer confirmation statements, a reference and, if the confirmation is electronic, a hyperlink to a specific webpage on the MSRB’s EMMA or FINRA’s TRACE website that contains publicly available trading data for the specific security that was traded.¹⁰ The Commission might similarly develop directed or customized links to company filings on EDGAR and require

⁵ See 17 CFR 240.14c-2

⁶ Proposing Release at 79138

⁷ See proposed 17 CFR 240.14a-101 Schedule 14A Item 7(h)

⁸ See proposed 17 CFR 240.14a-19(a)(3)

⁹ Although a dissident would not be required to solicit all shareholders under the Proposed Amendments, the Commission estimates in the Proposing Release “that in 97% of recent proxy contests the dissident solicited a number of shareholders greater than would be required under the proposed minimum solicitation requirement.” Proposing Release at 79138 and 79160.

¹⁰ See MSRB Regulatory Notice 2016-28 available at: <http://www.msrb.org/~media/Files/Regulatory-Notices/Announcements/2016-28.ashx?n=1> and SEC Release No. 34-79346; File No. SR-FINRA-2016-032 (November 17, 2016) available at: <https://www.sec.gov/rules/sro/finra/2016/34-79346.pdf>

registrants and dissidents to include this link in their proxy materials as a way for shareholders to locate this information more easily. We also believe that some shareholders may wish to obtain paper copies of proxy materials and suggest that proxy materials also contain a toll-free telephone number from which shareholders could request this information free of charge.

Fidelity has long been a proponent of the use of electronic media as a delivery option for investors.¹¹ Electronic delivery, particularly under a notice and access model, offers investors an opportunity to obtain continuous and up-to-date information in a format in which they are accustomed and that is searchable. Electronic delivery offers significant cost savings benefits to investors and to the intermediaries that support them and is environmentally friendly.

To this end, we agree with statements made by Commissioner Piwowar at the SEC open meeting approving the release of the Proposed Amendments, that if the majority of the SEC is willing to satisfy the provision of important shareholder voting information solely by electronic means in the case of universal proxy, the majority of the SEC should be willing to proceed with electronic delivery in other contexts as well.¹² We commend the SEC for their recently proposed Rule 30e-3, which provides for default web delivery of mutual fund shareholder reports. We support proposed Rule 30e-3 with certain modifications and encourage the SEC to complete this rulemaking as well as revisit its existing guidance on electronic delivery generally.¹³

We also recognize, based on experience, that retail investors may call their broker for proxy materials if they do not receive them directly. If the Commission does not follow our suggestion to require a toll-free telephone number from which a shareholder could request paper copies of dissident proxy materials free of charge, we ask the SEC to clarify that a broker-dealer could provide dissident proxy materials to a shareholder upon request and, further, that the dissident would bear the processing, printing and mailing costs associated with this request. While we cannot anticipate in advance how many shareholders may call their broker for dissident proxy materials under a universal proxy process, we believe that any costs associated with this mailing should be borne by dissidents and not by broker-dealers.

The SEC Should Exempt Registered Investment Companies from a Universal Proxy Requirement.

We support the Staff's preliminary views that investment companies (including open-end, closed-end and business development companies) should be exempt from the proposed

¹¹ See Letter from Alexander C. Gavis, Asst. Gen. Couns., Fidelity Mgmt. & Res. Co. to the SEC (June 16, 2000), available at: <https://www.sec.gov/rules/interp/s71100/gavis1.htm>.

¹² Commissioner Michael S. Piwowar, Dissenting Statement at Open Meeting on Universal Proxy (October 26, 2016) available at: <https://www.sec.gov/news/statement/statement-piwowar-universal-proxy-10-26-2015.html>

¹³ Fidelity comments on Investment Company Reporting Modernization (SEC) 80 FR 33590 (June 12, 2015) available at: <https://www.sec.gov/comments/s7-08-15/s70815-249.pdf>

universal proxy requirements for the threshold reason that investment company corporate governance differs substantially from operating company corporate governance.

State law, under which investment companies are registered, and the Investment Company Act of 1940 (“’40 Act”) typically distinguish registered investment companies from operating companies. Most investment companies are structured as “open-end funds” and, unlike operating companies, are generally not required to hold annual shareholder meetings, making contested director elections rare. The lack of an annual meeting also complicates the process for a dissident to nominate an opposition slate.

Moreover, unlike operating companies, the ’40 Act already contains significant voting rights for shareholders themselves, outside of the board, including shareholder approval of certain fundamental features of the fund. We also see less opportunity for shareholder arbitrage in open-end investment companies, as compared to operating companies. This is because open-end investment company shares are not traded like operating company shares, but are redeemed at the net asset value calculated after the order is placed; thus there is no unlocked value in open-end investment companies which can be revealed with a change in directors.

We also note that investment companies that are part of larger complexes generally have board structures that can be disrupted by split ticket voting. Fidelity, like many other investment companies, uses a “cluster” board structure in which a board oversees a set of funds in the complex. We find this structure to be efficient because it enables a set of directors to, among other items, oversee common operational matters across multiple funds in the complex (*i.e.*, the hiring and retention of service providers). If the SEC were to require universal proxies for registered investment companies, we believe that the efficiencies of this board structure would be reduced due to the disruption caused by split-ticket voting to a complex’s cluster board structure (*i.e.*, a dissident nominee is elected to a board for a particular fund or funds, but would not also serve on all other funds overseen by that board).

We also note that registered investment companies have a more diverse shareholder base than operating companies which may make it more difficult for a dissident shareholder to solicit the holders of shares representing at least a majority of the voting power of shares entitled to vote on the election of directors. Lastly, universal proxy is not an efficient process for registered investment companies because shareholders in a registered investment company are not just shareholders; they are also customers that have chosen to purchase a particular product, *i.e.*, a particular fund. In our experience, if shareholder of a registered investment company does not like the manner in which the fund is operated, they will typically vote with their feet by selling out of their fund shares, rather than seek to nominate their own directors to the board.

Retrospective Review

Because the impact of universal proxy on contested director elections is not known, and has been subject to considerable speculation, if the Commission approves the Proposed Amendments, we recommend that the SEC staff undertake a retrospective review of universal proxy some period of time after its approval. This review should provide empirical analysis of,

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among other items, the costs incurred by registrants and dissidents using universal proxy, the number of proxy contests and dissident nominees elected to a board pre- and post-rule, the impact of universal proxy on invalid votes, and whether universal proxy has improved corporate suffrage rates. This review should also include interviews with retail customers, broker-dealers, and other constituents in the proxy process. We believe this review would be helpful to determine the efficacy of universal proxy in contested director elections as well as whether further changes in this area are warranted.

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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 Mary Jo White, Chairman
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Ms. Shelley Parratt, Deputy Director, Division of Corporation Finance
Mr. David Grim, Director, Division of Investment Management
Ms. Heather Seidel, Chief Counsel, Division of Trading and Markets
Mr. Rick Fleming, Investor Advocate