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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: **Amending the "Accredited Investor" Definition: File Number S7-25-19**

Dear Ms. Countryman,

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") on its proposed amendments to the accredited investor definition in Rule 501(a) of Regulation D and the qualified institutional buyer (QIB) definition for purposes of Rule 144A under the Securities Act of 1933 (the "Proposal").[2]

Fidelity commends the SEC for continuing its efforts to improve the current exempt offering framework through the Proposal, which incorporates feedback the SEC received in response to its June 2019 Concept Release on this topic.[3] Fidelity submitted a comment letter in response to the Concept Release where we shared our experiences in the registered and unregistered vehicle space, provided examples of current restrictions that we believe impede funds sponsors' ability to offer innovative products today, and offered recommendations for enhancements to the current framework.[4] We applaud the SEC for incorporating much of the feedback it received in response to the Concept Release, and we are very pleased that the Proposal incorporates Fidelity's suggestion to address the inconsistent treatment of H.R. 10 plans under the QIB definition. We strongly support the SEC promptly proceeding with its proposed changes to the QIB definition.

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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 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 LLC, the investment adviser to the Fidelity family of mutual funds, and FIAM LLC, Fidelity's institutional adviser.

[2] *See* Amending the "Accredited Investor" Definition, Release Nos. 33-10734; 34-87784, RIN 3235-AM19 (December 18, 2019) ("Release"), *available at* https://www.sec.gov/rules/proposed/2019/33-10734.pdf.

[3] Concept Release on Harmonization of Securities Offering Exemptions, Release No. 33-10649 (June 18, 2019) [84 FR 30460 (June 26, 2019)] ("Concept Release").

[4] *See* Letter from Fidelity Investments in response to Concept Release, dated September 24, 2019 ("Fidelity Comment Letter"), *available at* https://www.sec.gov/comments/s7-08-19/s70819-6190605-192467.pdf; *see* Release at 90, footnote 234, *citing* Fidelity Comment Letter.

Our comments below offer additional recommendations to further improve the Proposal. We also reiterate several modifications, which we cited in our comment letter in response to the Concept Release, that we believe will further meet the SEC's goals to promote capital formation and expand investment opportunities, while maintaining appropriate investor protections.

I. EXECUTIVE SUMMARY

Our recommendations, detailed more fully below, include the following:

- Fidelity supports the SEC's expansion of accredited investor status to natural persons holding certain professional certifications and we suggest the SEC expand this list to include individuals who are Chartered Financial Analysts (CFA) charter holders and Chartered Alternative Investment Analysts (CAIA). We also support the SEC's proposed criteria that it will use for further designations and suggest that the SEC broaden its requirement to not only include certifications that are "publicly available" but also those relevant certifications that may be "otherwise independently verifiable;"

- In response to its request for comment, Fidelity suggests that the SEC permit investors who hire a financial intermediary to "assume" the intermediary's status for purposes of meeting the accredited investor standard in relation to the investments managed by that intermediary;

- As the SEC considers further expansion of the exempt offering framework for retail investors, we offer several suggestions for easing certain constraints to expand access for registered funds investing in private investments. These include: (1) reconsidering the current prohibitions for all registered funds on cross-trading of private securities and limitations on co-investments by affiliated funds in order to increase liquidity for these investments, (2) reconsidering requirements on closed-end and interval funds related to policies on concentration and diversification, and (3) codifying routine exemptive relief previously provided for closed-end funds to offer multiple-share classes;

- Fidelity strongly supports the SEC's proposed amendments to the QIB definition which resolves a longstanding issue which would permit H.R. 10 plans that are QIBs to invest in collective investment trusts; and

- Fidelity recommends that the SEC address the omission of foreign funds for purposes of the QIB family aggregation calculation by allowing a "foreign equivalent" fund, such as those registered under the 81-102 regime in Canada and UCITS funds in Europe, to take advantage of this relief.

II. RECOMMENDATIONS TO THE ACCREDITED INVESTOR DEFINITION

A. New Categories for Natural Persons

The Proposal would add a category for natural persons to qualify as accredited investors based on certain professional certifications or other credentials that the SEC designates from time to time as meeting specified criteria. These criteria include whether: (1) the relevant certification or designation is made publicly available by the self-regulatory organization or other industry body, and (2) the certification arises out of an examination(s) that demonstrates an individual's securities and investing comprehension and sophistication where they can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment. The Release states that the SEC expects to designate in an initial order accompanying the final rule that holders of Series 7, 65, or 82 licenses qualify as accredited investors, even when they do not meet the income or net worth standards in the accredited investor definition.

We agree with the SEC that certain professional certifications and designations may be an appropriate standard for demonstrating an individual's investing comprehension and sophistication. We also support inclusion of a requirement for the certification or designation to be capable of independent verification. In this regard, we suggest that the SEC broaden its requirement to not only include certifications that are "publicly available" but also those relevant certifications that may be "otherwise independently verifiable." This expansion provides the SEC flexibility as it considers additions to the list of professional certifications that meet its specified criteria in the future, which may not necessarily be searchable on a public website, but would be otherwise verifiable, such as on an access-controlled website.

In addition to the preliminary list of certifications proposed in the Release, we believe that additional certifications similarly meet the SEC's criteria and suggest that the SEC expand its initial recommendation to include individuals who are Chartered Financial Analysts (CFA) charter holders and Chartered Alternative Investment Analysts (CAIA). These certifications demonstrate the same types of financial sophistication as the Series 7, 65, or 82 licenses. The CFA Institute and CAIA certifications entail examinations testing financial knowledge of different asset classes that are comparable to that of the Series 7, 65, or 82 examination. These certifications are also independently verifiable through the CFA Institute membership directory, which is publicly searchable online, and in the case of the CAIA, through their website which is available to members.

B. Reliance on Financial Intermediary Status

The Release requests comment on whether the SEC should permit an investor advised by a registered investment adviser or broker-dealer to be deemed an accredited investor, and if so under what conditions and whether additional investor protections are warranted.[5] As Fidelity

[5] Release at 87.

stated in its comment letter in response to the SEC's Concept Release, we support permitting investors who hire a financial intermediary, including an investment adviser or broker-dealer, to assume the intermediary's status for purposes of meeting the accredited investor or qualified purchaser standards with respect to investments managed by that intermediary.[6]

Investors who employ financial intermediaries do so in reliance on the financial intermediary's knowledge and sophistication. Registered investment advisers are fiduciaries to their clients and broker-dealers have an obligation to act in a retail customer's best interest under Regulation Best Interest. A retail investor who does not qualify as an accredited investor and yet would like to access private offering opportunities should be able to work with, and rely on, the knowledge and sophistication that registered investment advisers and broker-dealers have in determining whether such an investment is appropriate for the investor, as analyzed under the appropriate standard of conduct. The duties and obligations owed are sufficiently protective and enforceable, and as such we do not believe that additional limits would be necessary should the SEC permit this expansion.

C. Additional Recommendation to Broader Efforts to Expand Private Investments While Ensuring Investor Protection

The SEC characterizes the Proposal as "an initial step in a broader effort" to consider ways to harmonize and improve the current exempt offering framework.[7] We applaud the SEC's efforts and agree that additional changes are necessary in order to accomplish the SEC's goal to expand access to private market offerings, while protecting retail investors. We believe that registered funds are particularly well-suited to promote and expand investor access to private investments, while ensuring robust investor protections. As we discussed in our response to the Concept Release,[8] there are several requirements applicable to registered funds investing in private securities, solely by virtue of these funds being registered under the Investment Company Act of 1940 (the "1940 Act"), that may hinder funds – specifically registered closed-end funds, including interval funds – from being offered more widely to retail investors.

1. *Increase Liquidity by Permitting Affiliated Cross-Trades of Private Securities and Permitting Co-Investment for Registered Investment Funds and Affiliated Private Funds*

Limited secondary market liquidity for private investments is a consideration for registered funds that seek to increase exposure to private securities. Permitting affiliated registered funds to engage in cross-trades of these securities would increase liquidity, reduce transaction costs for these funds, and potentially increase opportunities for retail investors to access private investment opportunities. Cross-trading of private securities among affiliates is largely prohibited by Rule 17a-7 of the 1940 Act, which permits securities transactions between affiliated registered investment companies only for transactions for which "market quotations are

[6] *See* Fidelity Comment Letter at 7.

[7] Release at 5.

[8] *See* Fidelity Comment Letter at 4-6.

readily available," at the "independent current market price."[9] Since private investments do not trade on an exchange and would not have a readily available market quotation, they generally do not meet the requirements of Rule 17a-7(b). The SEC Staff has permitted exceptions for cross-trading of municipal securities where a market quotation was unavailable but has not extended this relief to other securities.[10]

Allowing affiliated registered funds to engage in cross-trades of private securities provides benefits to funds and their shareholders. Registered funds would be more willing to increase their exposure to private investments knowing that liquidity opportunities are potentially available from an affiliated fund that determines the purchase and/or sale transaction is in the fund's best interest. Both parties to the transaction would also benefit by saving on costs generated from any open market transaction, such as commissions. Because cross-trades are private transactions between funds, they are also not exposed to the market and, therefore, generally do not have a market impact. This approach also provides investment flexibility and increased trading opportunities for both funds which are desirable as investment and liquidity needs may change, whether due to rebalancing, market dynamics, benchmark changes, or otherwise.

A cross-trade for a private security between affiliated funds would be effected at the value of the security as determined by the fair valuation procedures which are approved and overseen by a fund's Board of Directors. Indeed, this fair valuation process is currently used by funds determining the value of these securities for purposes of determining their net asset value (NAV). The fact that funds are generally allowed to use prices supplied by independent pricing services to determine their NAV consistent with Section 2(a)(41) of the Act and Rule 2a-4 demonstrates that these prices are sufficiently accurate to be used to value securities for purposes of cross-trades under Rule 17a-7.

Extending the relief previously provided for municipal securities to additional securities is also consistent with the policy goals of Section 17(a), Rule 17a-7, and the SEC's rationale for issuing its past relief for cross-trading of municipal securities. In its prior relief, the SEC allowed the use of a price for cross-trades of securities for which market quotations were not readily available where the price used was independently determined and provided "an independent basis for determining that the terms of the transaction are fair and reasonable to each participating investment company and do not involve overreaching."[11] Similarly, we suggest that the SEC provide relief where the price used to facilitate an affiliated cross-trade of private

[9] Rule 17a-7(b) of the 40 Act.

[10] *See e.g., United Municipal Bond Fund* (July 30, 1992, amended Jan. 27, 1995) (SEC staff agreed to permit a municipal bond fund to effect cross trades in municipal securities for which market prices were not readily available where funds involved would trade the securities at the price provided by an independent pricing service, which would be approved by the funds' board of directors and audited by their independent public accountant); and *Federated Municipal Funds* (Nov, 20, 2006).

[11] *Federated Municipal Funds* (Nov. 20, 2006).

securities is objectively fair to both funds, as determined through the fair valuation process used for valuing securities when calculating the NAV of the fund.[12]

Another way to expand liquidity to private securities through registered funds is for the SEC to reconsider the potential for registered investment funds and affiliated private funds to co-invest in private investments, which is currently only permitted pursuant to exemptive relief and subject to stringent conditions. Co-investments can provide numerous benefits to registered funds, both closed-end and open-end, including an opportunity to participate in a broader range of private investments, larger financing commitments, and more favorable deal terms. The current complexity and restrictions that exist in the standard co-investment relief issued by the SEC can discourage asset managers from seeking the benefit of such relief for their registered funds, thereby limiting the funds' access to attractive co-investment opportunities.

As the SEC considers further expansion of access to the exempt offering framework, we suggest that it reconsider this constraint, which would encourage increased liquidity through more widespread offerings of private investments through registered funds.[13]

2. Remove Concentration and Diversification Requirements for Closed-End Funds

Also unnecessary for a registered closed-end fund investing in private investments are the fundamental diversification and concentration policy requirements under the 1940 Act. A fund must adopt a policy specifying that it is either diversified or non-diversified and adhere to a concentration policy specifying whether it intends to "concentrate" its assets (*i.e.*, investment of more than 25% of its assets) in any one industry or group of industries. Changes to either policy require approval by a majority of the fund's shareholders. Both requirements can prove challenging for a closed-end fund that invests in private investments, which may have a limited number of holdings, particularly during the winding up and winding down periods. While a fund could seek to obtain a shareholder vote every time it crossed the 25% concentration threshold, this is an unnecessary, cumbersome, and time-consuming result and imposes a barrier to the efficient operation of the fund. Further, the SEC Staff's increasing reliance on the Global Industry Classification Standard (GICS) and its insistence that GICS is the only standard with which a registrant can reasonably delineate industry classifications is not required by the 1940 Act and can further exacerbate these issues for registrants.

[12] *See United Municipal Bond Fund.*

[13] Fidelity's Comment Letter responding to the Concept Release also suggested several ways to expand investment opportunities in unregistered funds, including changing the current limitations for Section 3(c)(1) and Section 3(c)(7) funds to make these scalable to offer to a larger population. Our suggestions included: (1) creating a new exemption that significantly increases the number of investors that can participate in Section 3(c)(1) funds beyond 100; (2) permitting non-qualified purchasers to invest in Section 3(c)(7) funds; or (3) creating a hybrid exemption that allows for an unlimited number of qualified purchasers and an imposed limit on the number of non-qualified purchasers, be it 100 or another number. *See* Fidelity Comment Letter at 6-7. We encourage the SEC to work with Congress to create and implement these changes.

The current approach to diversification and concentration also does not serve any meaningful investor protection purpose because investor expectations regarding diversification and concentration are already required to be addressed fully through disclosure in the fund's registration statement, including the fund's reasonable industry classification system. Indeed, the original purpose of the classification requirements in the 1940 Act was centered around a disclosure-based system.[14]

Accordingly, we recommend that the SEC exempt closed-end funds from the concentration and diversification requirements in the 1940 Act provided it is fully disclosed by the fund to investors in its registration statement.

3. Codify Routine No-Action Relief for Multiple-Share Class Structures into Rulemaking

Multiple share class structures are only available to registered closed-end funds through the costly and unnecessary exemptive relief process and are subject to certain conditions. Multiple share class arrangements provide a fund with the ability to attract a larger asset base through distribution to multiple channels, including retail investors. While the SEC has routinely granted closed-end funds this exemptive relief, by codifying this relief into rulemaking - as it has done in other contexts, such as with its recent ETF rulemaking - the SEC would eliminate the costs associated with seeking such relief and the number of opportunities for retail investors to invest in these offerings could potentially increase.

III. RECOMMENDATIONS TO THE QIB DEFINITION

The Proposal seeks to amend the definition of "qualified institutional buyer" (QIB) in Rule 144A(a)(1) to include additional entity types that meet the $100 million threshold to avoid inconsistencies between the types of entities that are eligible for accredited investor status and those that are eligible for QIB status under Rule 144A. The Release confirms that the proposed amendment would encompass collective investment trusts (CIT) that include as participants individual retirement accounts or H.R. 10 plans that are currently excluded from the QIB definition pursuant to Rule 144A(a)(1)(i)(F), so long as the CIT satisfies the $100 million threshold.[15]

Fidelity strongly supports these proposed amendments and we commend the SEC for remedying the inconsistent treatment of H.R. 10 plans under the QIB definition which was identified by Fidelity and other commenters in response to the Concept Release.[16]

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[14] *See* S. Rep. No. 1775, 76th Cong., 3d Sess. 21-22 (1940) (discussing need for national regulation of investment companies and investment advisers); 41 Columbia L. Rev. 269, *The Investment Company Act of 1940* (1941) ("The classification is of importance in the Act, its primary significance being that management companies are required to specify the group under which they desire to register, so that prospective investors may know the extent to which their investments will be diversified.").

[15] Release at 92, footnote 241.

[16] *See id.*; *see* Fidelity Comment Letter at 7-9.

H.R. 10 plans, which are also known as Keogh plans, are qualified retirement plans of self-employed persons and represent a significant portion of the U.S. marketplace of retirement assets. Currently, an H.R. 10 plan that is covered by ERISA and has more than $100 million in assets, can purchase Rule 144A securities in its own right. However, should that same H.R. 10 plan seek to invest in a CIT, the plain meaning of Rule 144A would disqualify the CIT from being a QIB and the CIT would no longer be able to buy Rule 144A securities. Under the proposed amendments, H.R. plans that meet the $100 million threshold would now be able to invest in CITs or commingled pools as an alternative to traditional mutual funds, which will result in additional low-cost options for their participants and promote competition and capital formation. We urge the SEC to adopt these amendments as proposed.

We also suggest that the SEC expand the allowance for "family" aggregation that is limited to U.S. registered investment companies that could not themselves qualify as QIBs but that do so together with other members of the same investment company family.[17] Currently, only U.S. registered investment companies can take advantage of aggregation to meet the $100 million QIB threshold. We recommend that the SEC, as it has done in other rulemaking contexts, incorporate the concept of "foreign equivalent" into the QIB family aggregation calculation. At a minimum, we suggest that a "foreign equivalent" should include funds registered under the 81-102 regime[18] in Canada and UCITS funds in Europe, which are subject to comparable regimes that impose many of the same kinds of regulations and oversight that apply to U.S. registered investment funds and U.S. registered investment advisers.

The standards of sophistication that the SEC wishes to assure of QIBs through the $100 million threshold are met by the investment manager of such an investment fund complex, and a non-U.S. fund advised by such manager should not be excluded merely because it is organized outside of the U.S. This disparate treatment is especially impactful when seeding newly launched non-U.S. funds. These funds, as part of their investment objective, could seek access to the U.S. debt markets, including Rule 144A offerings, but are unable to fully pursue that objective until such time as they qualify as QIBs in the event the offering does not qualify for another exemption. We recommend that the SEC, as it considers changes to the QIB definition, address this inconsistent treatment for non-U.S. funds operating in a regulatory regime that is closely aligned with that of the U.S. and that are advised by a highly sophisticated U.S. investment manager that has all the characteristics that define a QIB.

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[17] 17 CFR 230.144A(a)(1)(iv).

[18] National Instrument 81-102 Investments Funds (NI 81-102).

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 Jay Clayton, Chairman
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