

Independent Trustees of the Fidelity Equity and High Income and Fixed Income and Asset Allocation Funds

February 14, 2023

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Proposed Rule Regarding Open-End Fund Liquidity Risk Management Programs and Swing Pricing (File No. S7-26-22) (the “Proposal”)

Dear Ms. Countryman:

The independent trustees (the “**Independent Trustees**”) of the Fidelity Equity and High Income Funds and the Fidelity Fixed Income and Asset Allocation Funds appreciate the opportunity to comment on the Proposal by the Securities and Exchange Commission (the “**Commission**” or “**SEC**”) to require swing pricing and a “hard close” for all open-end funds registered under the Investment Company Act of 1940 (“**1940 Act**”) other than exchange-traded funds and money market funds.¹ As Independent Trustees of the funds we oversee, and investors in many of such funds, we comment from the perspective of the impact of the Proposal on funds and fund shareholders.² From that perspective, we have a number of concerns regarding the Proposal that we detail in this letter and summarize below. We are very concerned that the Proposal would:

- involve very significant costs to fund shareholders;

¹ Fidelity funds are overseen by different boards of trustees. The Fidelity Equity and High Income Funds consist of high income and certain equity mutual funds and exchange-traded funds and the Fidelity Fixed Income and Asset Allocation Funds consist of investment-grade bond, asset allocation, money market and certain other equity mutual funds and exchange-traded funds that, together (as of January 31, 2023) held approximately \$3.641 trillion in assets. Throughout this letter, any reference to a “fund” or “funds” is intended to refer to open-end mutual funds registered under the 1940 Act.

² The Proposal is extremely complex, and we note that others, including the Mutual Fund Directors Forum, Independent Directors Council, and other stakeholders are addressing many important points (including proposed changes to the liquidity classification system that may severely adversely affect funds investing in certain types of securities, such as emerging markets debt securities) that are not covered by this letter.

- likely result in funds no longer being attractive to, or even being made available to, large categories of shareholders, including those saving for their retirement and the education of their children;
- adversely affect the enormous percentage of fund shareholders that invest through intermediaries; and
- introduce risks of other disruptions to a system that has been working well, some of which may not be possible to foresee.

As an initial matter, we wish to acknowledge the SEC's intent to seek to reduce the likelihood of dilution of fund shareholders, particularly during market stress events and on days with extraordinary levels of net purchases or redemptions. Our concern, based on discussions with Fidelity management and our outside counsel, is that it is not currently possible to implement swing pricing. Fund shareholder purchases and sales through defined contribution plans or distributors do not arrive in time for fund managers to know whether the fund is experiencing a swing day or not.

The Proposal seeks to solve this operational impediment by imposing a hard close. This means that all orders would be required to be received by the fund prior to pricing – typically 4:00 p.m. Eastern time – to receive that day's net asset value (“NAV”). We believe the unintended consequences of the Proposal outweigh any benefit to shareholders and urge that the Proposal be abandoned and that alternatives to the SEC's Proposal be explored.

We believe, based on discussions with Fidelity management and both personal experience and common sense, that fund shareholders highly value the ability to place orders late in the trading day, so they have a general sense of the share price they will receive. Forcing orders to be placed significantly earlier in the day to accommodate the “hard close” subjects shareholders to greater market risk and risks seriously diminishing the perceived value of funds to investors. A typical retail fund shareholder may need to submit an order hours before pricing to be sure to receive that day's price, which they may not have even submitted if they still had the benefit of a few more hours of observing the market movements that day. The Proposal would deprive enormous numbers of investors (any investor that places orders with intermediaries) of the ability to obtain a price based on NAV as next determined after orders are placed, resulting in at least a day's delay in their receipt of purchased shares and of redemption proceeds. In other words, the Proposal risks reducing a fundamental feature of mutual funds that we reasonably believe shareholders, as well as their intermediaries and other advisers, value highly. At a minimum, before moving forward, the Commission should assure itself that fund shareholders (and their intermediaries) would make the choice that the Commission proposes to make for them.

The hard close also risks a fund shareholder being exposed to market risk if the intermediary or defined contribution plan does not transmit the order in time to meet the hard close, which risk is almost non-existent in today's environment. This situation is even more detrimental for shareholders who own funds through defined contribution plans. Our understanding of the flow of order information from defined contribution plans simply does not accommodate an order to be sent to a fund by 4:00 p.m. Eastern Time on any given day.

As a result, if the Proposal is adopted, defined contribution plan participants and others that place orders through intermediaries would either be forced to routinely receive the next day's price for shares or their intermediaries would need to operationally build out a new means to transmit orders in advance of the hard close in order for their clients to receive the order's submission date price. The first potential outcome seems to us to be unfair to, and not in the best interest of, shareholders as it forces shareholders of a given fund to receive different rights depending on the channel through which their shares are held. A shareholder holding shares directly with the Fund will have a far greater ability to ensure they receive the order's submission date price for their shares as compared to their peers who happen to hold their shares through an intermediary or defined contribution plan. A shareholder holding shares directly with a fund will also have far more time to assess market conditions before submitting their order as compared to other fund shareholders. We also understand that the second potential outcome is impracticable and that the cost of meaningfully reducing the time between receipt of orders and the hard close deadline would be borne by plan participants and fund shareholders. An equally troubling potential consequence would be for the SEC's rulemaking to incentivize defined contribution plans to move assets from funds to less restrictive, competing products, such as collective investment trusts that do not benefit from the protections of the 1940 Act or the SEC's rules thereunder or oversight by fund boards, whose independent trustees work to protect investor interests. This risks reducing protections for investors in general, increasing costs to fund shareholders that remain in registered open-end funds, adversely affecting investor choices and investment outcomes, and generally harming the best interests of tens of millions of fund investors.

We further question certain of the factual premises for the Proposal. The SEC justifies the Proposal largely on its description of the experiences of fund managers during the market disruptions of March 2020 and the potential for dilution of non-redeeming fund shareholders during stressed market conditions. Based on our observations, and after discussions with Fidelity management, we understand that the funds overseen by the Independent Trustees did not experience undue challenges managing sales and redemptions in the best interests of shareholders in March 2020, nor did fund shareholders suffer material dilution during that time period.³ Fidelity's funds have

³ The SEC also justifies the proposed implementation of a "hard close" to prevent late trading of fund shares. *See* Proposal at 77,209. If late trading in fund shares is in fact an issue today, we believe that it would be best addressed

a longstanding and unblemished track record of meeting shareholder redemptions through a variety of market conditions.

Fund advisers are fiduciaries, which includes a responsibility to manage fund portfolios in light of relevant facts and circumstances, including anticipated and actual sales and redemptions. The Independent Trustees believe that the advisers of the funds overseen by them have consistently acted to manage the funds in line with this duty, including with regard to sales and redemptions and during stressed market conditions, in a manner sensitive to minimizing dilution of the remaining shareholders' interests.

We are extremely concerned that the mandatory swing pricing and hard close proposals involve the risk of profoundly and adversely changing the nature of mutual funds and the benefits that they provide for investors. We are also deeply concerned that such substantial changes have been proposed without first collecting and analyzing the necessary data that demonstrates that a problem exists and is of a magnitude sufficient to justify the costs associated with the Proposal. We believe less burdensome options are available to address the SEC's policy concerns, including those discussed in the Proposal, and urge a more flexible and less prescriptive approach than that currently contemplated. In particular, funds that invest primarily in liquid securities, which we believe are the vast majority of funds, should not be required to implement swing pricing or the proposed hard close or any other technique or tool.

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at the intermediary level rather than via methods that are so disruptive and costly to fund operations and, in turn, shareholders.

We again thank the Commission for the opportunity to provide comment on the Proposal. We would be pleased to provide further information or to answer any questions at the convenience of the Commission's staff. We may be reached through David W. Blass or Jasmin M. Ali of Simpson Thacher & Bartlett LLP, counsel to the Independent Trustees of the Fidelity Equity and High Income Funds [REDACTED] or Whitney A. Chatterjee or Donald R. Crawshaw, Sullivan & Cromwell LLP, counsel to the Independent Trustees of the Fidelity Fixed Income and Asset Allocation Funds [REDACTED] or [REDACTED].

Respectfully submitted,

/s/ David M. Thomas

David M. Thomas

Lead Independent Trustee

Fidelity Equity and High Income Funds

/s/ Michael E. Kenneally

Michael E. Kenneally

Chairman of the Independent Trustees

Fidelity Fixed Income and Asset Allocation Funds

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

William A. Birdthistle, Director, Division of Investment Management