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By Electronic Mail ([rule-comments @ sec.gov](mailto:rule-comments@sec.gov))

July 6, 2016

Mr. Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

RE: File Number SR-FINRA-2016-018

Dear Mr. Errett:

Fidelity Investments¹ appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC”) notice seeking comment on proposed amendments to the Financial Industry Regulatory Authority’s (“FINRA’s”) rules governing communications with the public.² The proposed amendments are a first step by FINRA in implementing the recommendations of its *Retrospective Rule Review Report*, published in December of 2014.³

Fidelity supported FINRA’s retrospective review of the communications rules, and we provided extensive comments to FINRA regarding how certain aspects of the rules (which were first enacted in 1980) could be updated to address current communications preferences of investors.⁴ To that end, FINRA states that “while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and economic impacts.”⁵ In considering updates to rules regarding broker-dealer filing obligations, FINRA analyzed many categories of communications materials, looking for filing obligations that are overbroad relative to the investor protections that they provide. This approach has led to proposed amendments that, if adopted, will permit FINRA staff to focus its resources on categories of communications that may involve greater risks to investors. Accordingly, Fidelity strongly supports these proposed amendments.

While the proposed amendments are strongly supported, we recommend, as discussed below, that FINRA clarify its interpretation of the proposed language in the template filing exclusion regarding information that is sourced from an investment company's regulatory documents filed with

¹ Fidelity is one of the world’s largest providers of financial services. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

² SEC Release No. 34-78026, 81 Fed. Reg. 39081 (June 15, 2016) (the “Proposal”), at www.sec.gov.

³ *FINRA Communications with the Public, Retrospective Rule Review Report* (Dec. 2014), at <https://www.finra.org/sites/default/files/p602011.pdf>

⁴ See, e.g., *Letter from Alexander C. Gavis, Fidelity Investments, to Ms. Marcia E. Asquith, Office of the Corporate Secretary, FINRA*, dated May 23, 2014; *Letter from Alexander C. Gavis, Fidelity Investments, to Ms. Marcia E. Asquith, Office of the Corporate Secretary, FINRA*, dated July 2, 2015.

⁵ Regulatory Notice 15-16, at p.2.

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the SEC.⁶

Proposed Rule 2210(c)(7)(B) includes an exception from the filing requirements for “[r]etail communications that are based on templates that were previously filed with the Department the changes to which are limited to updates of more recent statistical or other non-narrative information and non-predictive narrative information that describes market events during the period covered by the communications or factual changes in portfolio composition or is sourced from a registered investment company’s regulatory documents filed with the SEC.”⁷ In our prior comment letter to FINRA, Fidelity specifically recommended, in part, that FINRA should include non-narrative information sourced from the investment company’s filings as part of the filing exclusion for templates, and we were pleased to see this language included in the revised proposal.⁸

Fidelity strongly supports FINRA’s proposed exception from filing requirements for templated information, and we agree with the description in the text accompanying the proposed change: “FINRA agrees that it makes little sense to members to refile previously filed templates if the only changes to the template are sourced from an investment company’s regulatory documents filed with the SEC.”⁹ We are concerned, however, by somewhat contradictory language following on in the regulatory text: “FINRA declines to expand this filing exclusion also to cover any information that comes from *an independent data provider regardless of its source*, as that information is not subject to the same level of scrutiny as information in documents required by SEC rules.”¹⁰

When Fidelity recommended this filing exclusion in our prior comment letter, we suggested that it cover “non-predictive narrative information, provided that such narrative information come either from an independent data provider or is sourced from an investment company’s regulatory documents filed with the SEC.”¹¹ In revising the rule proposal, FINRA has declined to adopt the language regarding independent data providers. Although we continue to recommend that this language be included, as the member firm does not have control over the information developed by independent data providers, we also believe that, at the very least, non-predictive narrative information that is sourced from filed SEC documents should be included in the proposed template exclusion. This would mean that if non-predictive narrative information is (1) purchased or licensed directly from a third-party data provider and (2) sourced from an SEC document, then it could be excluded from filing with FINRA. A requirement to file this information, when it can be sourced back to an SEC filing, is overbroad relative to the investor protection that it provides. Moreover, we see no public

⁶ Registration statements (including prospectuses) of mutual funds are filed with the SEC, updated annually and subject to specific SEC disclosure rules and regulations. Further, although this narrative material would not be filed with FINRA, it would still be subject to the principal review and approval requirements of rule 2210 and spot checks and targeted examinations by FINRA staff.

⁷ File No. SR-FINRA-2016-018, at https://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-018.pdf (pp. 139-140).

⁸ See *Fidelity Letter*, *supra* note 4 (July 2, 2015).

⁹ File No. SR-FINRA-2016-018, at https://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-018.pdf (p. 65).

¹⁰ *Id.*, at p. 66 (emphasis added).

¹¹ See *Fidelity Letter*, *supra* note 4 (July 2, 2015).

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policy reason why such information, sourced back to the SEC filing, should be treated differently whether it is obtained directly from the SEC's databases or from a third-party reseller of such information. Accordingly, we recommend that FINRA include non-predictive information purchased or licensed directly from a third-party data provider that is sourced from filed SEC documents, in its proposed exception from the filing requirements.

While the proposed amendments are primarily focused on addressing member firms' filing requirements, we urge FINRA to examine and address additional communications regulations that have an impact on the delivery of clear and compelling communications to investors. In our previous comment letters, we recommended that FINRA focus on principle based disclosure solutions across all forms of communications including those through social media and mobile and wearable devices, as well as addressing regulations and policies that have affected the amount of disclosure in print advertising.

We also recommended that FINRA and the SEC continue to focus on differences in the regulation of broker-dealer and investment advisor communications, particularly regarding the use of predictions and projections in communications.

Fidelity appreciates the opportunity to comment on FINRA's proposed rule amendments. If you have any questions about any of these comments or need additional information, please feel free to contact the undersigned or Scott Maylander at [REDACTED].

Sincerely yours,

A handwritten signature in cursive script that reads "Alexander C. Gavis".

Alexander C. Gavis
Senior Vice President & Deputy General Counsel

Copies to:

Mr. Robert Colby, Chief Legal Officer
Mr. Thomas Selman, Executive Vice President
Mr. Joseph Price, Senior Vice President
Mr. Thomas Pappas, Vice President and Director
Mr. Joseph Savage, Vice President and Counsel
Ms. Amy Sochard, Senior Director Financial Industry Regulatory Authority