



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
TRADING AND MARKETS

May 19, 2020

Cynthia Lo Bessette  
Chief Legal Officer  
Fidelity Management & Research Co. LLC  
245 Summer Street V13E  
Boston, MA 02210

Re: Fidelity Covington Trust

Dear Ms. Lo Bessette:

In your letter dated May 19, 2020, as supplemented by conversations with the staff of the Division of Trading and Markets ("Staff"), Fidelity Covington Trust (the "Trust"), on behalf of itself, any national securities exchange or national securities association on or through which shares of the Funds ("Shares") are listed (each, a "Listing Exchange") and/or may subsequently trade (with each such market referred to herein as a "Market"), Fidelity Distributors Company LLC ("Distributor") and persons or entities engaging in transactions in Shares, including Authorized Participants, requests from the Staff, or from the Securities and Exchange Commission ("Commission"), exemptions from, or interpretive or no-action advice regarding Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-10, 15c1-5 and 15c1-6 under the Exchange Act.

We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as defined in your letter, unless we note otherwise.

The Trust is registered with the Commission under the Investment Company Act of 1940 (as amended "1940 Act") as an open-end investment company. The Trust has created a new series of "Initial Funds" as described in your letter. The Trust also contemplates offering additional funds ("Future Funds") that may be created in the future that comply with the terms of the relief requested herein. These are collectively referred to as the "Funds."

Each Fund is qualified to operate and will operate as an exchange traded fund organized as an open-end investment company under the 1940 Act (an “ETF”).<sup>1</sup> The investment adviser to each of the Funds (the “Adviser”) is, or will be, registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), subject to regulation by the Commission and, to a more limited extent, the States.

The Funds will operate in a manner similar to ETFs that are eligible to rely on Rule 6c-11,<sup>2</sup> under the 1940 Act (“Rule 6c-11 Funds”). The principal difference between the Funds and Rule 6c-11 Funds is that the Funds will not publicly disclose their complete portfolio holdings on a daily basis.

We note that in lieu of daily disclosure of the Funds’ complete portfolio holdings, the Funds will provide a number of disclosures to investors and prospective investors. Among other disclosures, each Fund will disclose on its website on each Business Day, before commencement of trading shares: (1) the contents of a Tracking Basket, designed to track closely the daily performance of the Fund, and (2) the Tracking Basket Weight Overlap, as discussed in your request. Each Fund will also disseminate daily on its website, per Share for each Fund, the prior Business Day’s NAV and the Closing Price or Bid/Ask Price, and a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such NAV. Each Fund’s website will also provide, at no cost: (1) any other information regarding premiums and discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended; and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.<sup>3</sup>

The Funds will create and redeem Shares in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified in your request, purchasers will be required to purchase Creation Units by making an in-kind deposit of Deposit Instruments and redeeming shareholders will receive an in-kind transfer of Redemption Instruments. The names and quantities of the Deposit Instruments and Redemption Instruments (collectively, “Creation Basket”) will be the same as the Fund’s Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis, as described in your request.

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<sup>1</sup> See Fidelity Beach Street Trust, *et al.*, Investment Company Act Release Nos. 33683 (Nov. 14, 2019) (notice) and 33712 (Dec. 10, 2019) (order) and related application.

<sup>2</sup> See 1940 Act Rule 6c-11, 17 CFR 270.6c-11. See also, Exchange-Traded Funds, 1940 Act Rel. No. IC-33646 (Sept. 25, 2019) (adopting Rule 6c-11).

<sup>3</sup> See 1940 Act Rule 6c-11(c)(1)(ii) - (vi), 17 CFR 270.6c-11(c)(1)(ii) - (vi).

On September 25, 2019, the Commission issued an exemptive order granting relief substantially identical to the relief that you requested to Rule 6c-11 Funds (including actively-managed ETFs), subject to certain conditions (“Order”).<sup>4</sup>

Based on the facts and representations set forth in your letter, and without necessarily agreeing with your analysis, the Staff will not recommend enforcement action to the Commission if a broker-dealer treats Shares of a Fund, any Future Fund, or any other ETF operating in an substantially identical manner, as shares of a Rule 6c-11 Fund for purposes of the relief from Section 11(d)(1) of the Exchange Act and Rules 10b-10, 15c1-5, and 15c1-6 thereunder provided in the Order, notwithstanding the fact that the such ETFs will not publicly disclose their complete portfolio holdings on a daily basis. Accordingly, with respect to Shares of such ETFs, to the extent that the ETFs and any broker-dealer seeking to rely on the Order satisfy the other conditions of the Order, the broker-dealer could rely on the exemptive relief contained therein.

The foregoing no-action positions taken under Section 11(d)(1) of the Exchange Act, and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder, are based solely on your representations and the facts presented to the Staff, and are strictly limited to the application of those rules under the circumstances described above and in your letter. Any different facts or representations may require a different response.

These no-action positions are subject to modification or revocation if at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on these no-action positions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other provisions of the federal or state securities laws must rest with persons relying on these exemptions, interpretations, and no-action positions. The Staff expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal and state laws to, the proposed transactions.

Sincerely,

/s/

Joanne Rutkowski  
Assistant Chief Counsel

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<sup>4</sup> See Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 for Certain Exchange Traded Funds, Exchange Act Rel. No. 87110 (Sept. 25, 2019).