March 28, 2007

VIA COURIER

Nancy M. Morris, Esquire
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for Interpretive Guidance on Implementation of FASB Interpretation No. 48 by U.S. Registered Investment Companies and Withdrawal of Petition for Rulemaking

Dear Ms. Morris:

Fidelity Investments ("Fidelity"), Massachusetts Financial Services Company ("MFS") and OppenheimerFunds, Inc. ("OppenheimerFunds") respectfully request that the Commission provide written interpretive guidance relating to the implementation of Financial Accounting Standards Board ("FASB") Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48")[1] by investment companies registered under the Investment Company Act of 1940, as amended ("Funds"). In connection with this request, we hereby withdraw our petition to extend the effective date of FIN 48 and for additional relief filed with the Commission on December 22, 2006.[2]

We submitted our petition late last year, as the original effective date for FIN 48— January 2, 2007 for some Funds— was fast approaching and a number of issues and challenges remained unresolved. The Investment Company Institute ("ICI") had filed a separate submission earlier in

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1 FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (Jun. 2006) ("FIN 48").

2 Request for Rulemaking under the Investment Company Act of 1940 to Extend the Effective Date at Least Six Months for the Application of FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes ("FIN 48") to Investment Companies under the Investment Company Act of 1940, as Amended, and to Address other Issues Related to the Application of FIN 48 to Such Investment Companies *submitted by* Stephen D. Fisher, Senior Vice President & Deputy General Counsel, Fidelity Management & Research Company; Eric Roiter, Senior Vice President & General Counsel, Fidelity Management & Research Company; Maria Dwyer, Chief Regulatory Officer, Massachusetts Financial Services Company; Scott Huebl, Vice President, Tax, Oppenheimerfunds, Inc. *available at* http://www.sec.gov/rules/petitions/2006/petn4-528.pdf ("Rulemaking Request").

December seeking delay of FIN 48's effective date for Funds, as well as additional guidance and relief (the "ICI Letter").[3] On December 22, the Commission's staff ("Staff") responded to the ICI Letter by issuing a no-action letter acknowledging the difficulties FIN 48 raises for Funds and granting a six month delay (the "Staff Letter").[4] The Staff Letter also stated the Staff's expectation "that funds will make good use of this additional time to carefully assess all issues related to the implementation of [FIN] 48."

We greatly appreciate the Staff's responsiveness to the industry's concerns in this matter and the substantial guidance already provided in the Staff Letter. Because the Staff Letter provided the single most critical aspect of the relief we requested— delay of the impending effective date— we hereby withdraw our December 22, 2006 petition.

We also take to heart the Staff's exhortation to "make good use of this additional time." As valuable as the guidance provided in the Staff Letter may be, we believe that Funds continue to need additional guidance from the Commission in order to use this time appropriately. Indeed, we submit that the involvement of the Commission in this process is vital to preventing the occurrence, at the conclusion of the delay period, of a number of the harmful effects that the ICI and we outlined in urging a delay, which effects the Staff recognized in granting that request.

This letter sets forth the issues we believe still need to be addressed in order to prevent adverse effects from FIN 48 and suggests the additional guidance we respectfully request the Commission to provide.

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[3] Letter from Paul Schott Stevens, President, Investment Company Institute, to The Honorable Christopher Cox, Chairman, Securities and Exchange Commission, and Robert H. Herz, Chairman, Financial Accounting Standards Board (Dec. 11, 2006) *available at* http://www.sec.gov/divisions/investment/cox_herz_letter.pdf ("ICI Letter").

[4] *Investment Company Institute*, SEC No-Action Letter (Dec. 22, 2006) *available at* http://www.sec.gov/divisions/investment/letter_mutual_fund_fin_48.htm ("Staff Letter"). The Staff Letter stated that the Staff would not recommend enforcement action to the Commission under Sections 11(a), 16(c), 22(a), 23(b) and (c), 20, 61(a) and 63(2) and (3) of the Investment Company Act of 1940, as amended (the "1940 Act") and Rule 22c-1 thereunder against any Fund based solely on the Fund's implementation of FIN 48 under the timetable set forth in the Staff Letter, which would commence on June 29, 2007.

A. Background

1. FIN 48: Requirements

FASB adopted FIN 48 in June 2006 in order to address perceived inconsistencies, and the resulting lack of comparability, in the way issuers account in their financial statements for uncertainties relating to tax positions they may take in their tax returns. To this end, FIN 48 sets forth the method and criteria to be used by issuers when considering the recognition and measurement of these tax positions in their financial statements, and addresses the types of authorities on which issuers may rely when making FIN 48 determinations.

FIN 48 treats any tax position that reduces an issuer's income tax as a "benefit," and requires an issuer to carry out a two-step process when determining how to reflect this benefit in its financial statements. The first step ("recognition") requires an issuer to determine whether a tax position, based on "the technical merits," is "more likely than not" to be sustained upon examination by the relevant taxing authority. If the issuer does not determine that the tax position taken is more likely than not to be sustained, based on the technical merits, the issuer must record as a liability on its financial statements the entire amount of the tax benefit claimed on its return.

With respect to this first step, paragraph 7 of FIN 48 describes the process by which an issuer assesses the more likely than not recognition standard as follows:

a. It shall be presumed that the tax position will be examined by the relevant taxing authority that has full knowledge of all relevant information.

b. Technical merits of a tax position derive from sources of authorities in the tax law (legislation and statutes, legislative intent, regulations, rulings and case law) and their applicability to the facts and circumstances of the tax position. When the past administrative practices and precedents of the taxing authority in its dealings with the enterprise or similar enterprises are widely understood, those practices and precedents shall be taken into account.[5]

If the recognition threshold is satisfied, the second step ("measurement") requires the issuer to measure the amount of the tax benefit resulting from the tax position that should be reflected on its financial statements. Under FIN 48, the issuer may record as an asset only the largest amount of tax benefit that is greater than 50 percent likely to be realized upon "ultimate settlement" with the relevant taxing authority having full knowledge of all relevant information.

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[5] FIN 48, *supra* note 1, at ¶ 7.

2. FIN 48: Unique Impact on Funds

Because of the unique features of Funds and how they are taxed, the practical effect of FIN 48 on Funds is fundamentally different from its effect on operating companies, in ways that could have a direct adverse impact on Funds and their shareholders.

- ***Potential for false tax liabilities.*** First, because of the unique tax environment applicable to Funds, FIN 48 could require Funds to recognize tax liabilities that they, in fact, will never pay (we refer to tax liabilities that are unlikely to be paid as "false tax liabilities"). Unlike most operating companies, Funds typically have very little, if any, audit history and would in some cases have no definitive guidance upon which to rely in making a FIN 48 "more likely than not" determination (as explained in our December 22 petition, as a result of a Congressional policy determination that Fund investors, who themselves pay income taxes on Fund distributions, should not be subject to double taxation, Funds do not pay any income taxes if they meet certain qualification and distribution requirements).[6] The absence of definitive authority is particularly acute with respect to the tax treatment of investments in new and innovative financial instruments. In the absence of definitive guidance, the Fund industry has taken reasonable, well-founded and conservative positions and the IRS has typically issued any guidance objecting to these positions on a prospective basis. For these reasons, there may be situations where the affirmative determination required by FIN 48 to avoid recognition of a tax liability may be difficult, yet the real world likelihood that the Fund will ever be required to pay the tax liability is remote.

- ***Daily NAV Calculation and Impact on Share Pricing.*** Second, Funds not only will face unique difficulties in making the FIN 48 determinations, but also will have to make these

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[6] Funds normally elect to be taxed as regulated investment companies ("RICs") under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"), in order to take advantage of the "pass through" taxation regime available to RICs under Subchapter M. Congress provided this tax treatment for RICs in order to provide Fund investors tax treatment comparable to what they would achieve by direct investments in securities. A Fund will qualify as a RIC with respect to a taxable year if it satisfies certain requirements with respect to the source of its income and the diversification of its assets in that taxable year. *See* Code Sections 851(b)(2) and (3).

In accordance with this Congressional policy, a RIC that satisfies certain minimum distribution requirements is not required to pay tax at the RIC level to the extent that it distributes its net income and net gains to its shareholders. See Code Section 852(a)(1). As a result, almost all Funds taxed as RICs never pay any tax, since they distribute all of their income and gains to their shareholders. This treatment is achieved through the allowance of a deduction to a RIC for the amount of its dividends paid in a timely manner to its shareholders (the "dividends paid deduction") in computing the amount of its "investment company taxable income" and net capital gains. *See* Code Sections 852(b)(2) and (3).

determinations on a daily basis, with a direct impact on the pricing of their shares. Because Funds generally compute their net asset value ("NAV") on a daily basis in accordance with generally accepted accounting principles ("GAAP"), Funds would be required to make FIN 48 determinations every business day.[7] These determinations would then be used to calculate the price at which investors purchase and redeem Fund shares (*i.e.*, NAV), thereby having a direct impact on shareholder value. If a new tax issue arises, or if a past inadvertent error is discovered, Funds must make judgments involving potentially complex issues in a matter of hours, often without full information or analysis, and investors will immediately bear the brunt of these rushed judgments.

- ***Unintended Consequences – Potential Arbitrage and Frequent Trading.*** As a result of the timing, share-pricing and false-tax-liabilities issues described above, FIN 48 has the potential to create substantial arbitrage opportunities that could invite exploitation by sophisticated investors, encourage frequent trading, and deter investment by the long-term investors that Funds are designed to protect. This danger is exacerbated by the effect of the mechanical operation of tax-related statutes of limitation under FIN 48, whereby a recognized tax liability will automatically disappear—and, correspondingly, a Fund's NAV will immediately increase—upon expiration of the statute of limitations.[8]

As a result, sophisticated investors who are aware that application of FIN 48 to a Fund may result in an artificial decrease or increase in the Fund's NAV could redeem or purchase, respectively, shares of the Fund prior to this price movement.

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[7] This discussion applies primarily to open-end Funds. Open-end Funds are required to calculate NAV in accordance with the Commission's Rule 2a-4, which does not expressly mention GAAP but refers to items that will be on the Funds' financial statements at such times as they are issued. Many closed-end Funds also calculate NAV daily as a matter of practice.

[8] This movement in a Fund's NAV tied solely to the FIN 48 requirements has the effect of harming Fund shareholders that held shares while the Fund recorded the tax liability and redeemed their shares prior to the expiration of the applicable statute of limitations. These shareholders would be unable to attain the full economic benefit of their investment in the Fund even where the Fund knew, or had reason to believe, that it would never make a payment in connection with the artificially recorded tax liability. Further, shareholders that entered the Fund after the redeeming shareholders, and that remained in the Fund when the statute of limitations expired, would receive an economic benefit tied to Fund activities that took place prior to their purchase of Fund shares. This economic benefit would effectively accrue at the expense of the redeeming shareholders.

3. The ICI Letter

On December 11, 2006, the ICI submitted a letter to the Honorable Christopher Cox, Chairman of the Commission, and to Robert H. Herz, Chairman of FASB, requesting a delay of FIN 48's effective date as applied to Funds and additional written guidance on three specific aspects of the implementation of FIN 48 by Funds. The ICI Letter to the Commission requested a delay in the effective date of FIN 48 for Funds until supplemental written guidance could be provided. The ICI explained that FIN 48 uniquely affects the mutual fund industry because Funds must apply FIN 48 on a daily basis to determine NAV, and thus the prices at which Fund shares are purchased and redeemed. The ICI expressed concern that Fund share prices would be inaccurate, and thus harmful to Fund shareholders, whenever FIN 48 required a Fund to recognize tax liabilities that the Fund would not be required to pay (what we have called false tax liabilities), and described for the Commission three scenarios in which a literal application of FIN 48 could require Funds to reduce their NAVs inappropriately:

a. ***Tax is not paid because of Internal Revenue Service (IRS) administrative practices.*** FIN 48 limits the types of authorities on which a Fund may base its more likely than not determination to "specified authorities and, in limited circumstances, administrative practices and precedents."[9] In reality, however, because of the tax environment in which they function, Funds do and must rely on more informal guidance and practices, for example, the IRS's practice of providing guidance prospectively, in a manner that does not require the payment of tax for prior years.

b. ***Tax paid by another party.*** In the case of mistakes, FIN 48 would require an immediate adjustment to a Fund's NAV, even if it is expected that another party (*e.g.*, the Fund's advisor) will pay any tax liability a Fund incurs.

c. ***Tax positions taken in prior years.*** In prior years, Funds may have legitimately taken tax positions on their returns based on the applicable "substantial authority" standard, which is lower than the FIN 48 more likely than not standard. Thus, Funds could be required to reduce NAVs on the first day FIN 48 applies, even though the position is unlikely to be challenged.

4. Our December 22, 2006 Petition

On December 22, 2006, in the absence of a Commission response to the ICI request, we filed a petition for rulemaking requesting an extension of the effective date of FIN 48 for Funds and additional relief. The purpose of the extension was "to give the entire mutual fund industry and

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[9] ICI Letter, *supra* note 3.

the Commission adequate time to address the unique interpretive and implementation issues relating to Funds that, absent Commission action, could adversely affect Fund shareholders as early as January 2, 2007."[10]

In that petition, we provided a fuller discussion of the unique situation of Funds (summarized above under Section A.2), an explanation of how Funds are taxed, and a discussion of our view that, in light of the matters addressed and the potential harm to shareholders, FIN 48 should not be applied to Funds at all. In addition to the requested delay, we suggested a number of alternatives for the Commission's consideration, designed to eliminate or reduce the potential for harm. As our preferred alternative, we asked the Commission to allow Funds to continue to use the accounting framework established by FASB Financial Accounting Statement No. 5, Accounting for Contingencies ("FAS 5"), under which Funds are required to record a tax liability and reflect that liability in NAV when, but only when, there is a real-world likelihood that the tax in question will be paid and shareholder value actually will be impaired.[11]

5. The Staff Letter

Later in the afternoon on the same day that we filed our petition, the Staff issued its response to the ICI Letter, granting the requested delay for, in effect, a six-month period, by means of a no-action position. In doing so, the Staff recognized the difficulties identified in the ICI Letter and our petition:

> In light of the unique issues and challenges that the application of Interpretation 48 present for funds (particularly with respect to the calculation of NAV), we would not object if a fund implements Interpretation 48 in its NAV calculation as late as its last NAV calculation in the first required financial statement reporting period for its fiscal year beginning after December 15, 2006.[12]

Under this extension, calendar year Funds, which would be the first group to be affected, would implement FIN 48 no later than their June 29, 2007 NAV calculation, and the effects of FIN 48

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[10] Rulemaking Request, *supra* note 2.

[11] FAS 5 employs a three-part test to determine whether an issuer should accrue a liability regarding a loss contingency involving the possible disallowance of a tax position: (1) it must be probable that the reported tax treatment will be challenged; (2) it must be probable that the future resolution of the challenge will confirm that a loss has been incurred; and (3) the amount of the loss must be reasonably estimable. As applied to tax uncertainties, when a Fund has a potential tax liability that is probable and the amount can be reasonably estimated, the Fund would generally record a liability in the amount reasonably estimated.

[12] Staff Letter, *supra* note 4.

would be reflected in the Funds' semiannual financial statements contained in their Form N-CSR filings for the first half of 2007.

In addition to granting the delay, the Staff Letter addressed the first of the three scenarios the ICI described as presenting the danger of a false tax liability under FIN 48, and in consequence an incorrect reduction in NAV— where the tax is not paid because of IRS administrative practices (this scenario is summarized in Section A.3.a above). The ICI had expressed concern that FIN 48 appeared to limit the types of authorities and administrative practice that may be relied on in making the more likely than not determination in a manner that would exclude the "less formal guidance and administrative practices" that, for Funds, comprise a significant component of the very sparse tax authority and precedents that are available to them on certain issues. In particular, it was not clear whether Funds could treat as permissible guidance, and continue to rely on as they have done in the past, the IRS's practice of providing tax guidance prospectively rather than imposing tax on past positions.

The Staff Letter provided significant assurances on these issues, in an effort expressly designed to "alleviate[] [the Fund industry's] concerns about reliance upon less formal guidance and administrative practices and precedents to support their tax positions."[13] The Staff Letter confirmed both that FIN 48 does not limit the types of evidence that may be considered and that a taxing authority's practice of granting only prospective relief could be considered as an administrative practice.

With respect to the absence of limits on permissible evidence, the Staff Letter stated:

> We agree that informal guidance of the taxing authority is often an important form of evidence that one looks to when assessing the technical merits of a tax position. However, we believe that the provisions of Interpretation 48 do permit, and indeed necessitate, the consideration of such informal guidance. Specifically, we do not believe Interpretation 48 places any limits on the type of evidence that an enterprise can look to in making its determination of the technical merits of a tax position.[14]

The Staff explained that the list of certain forms of evidence provided in FIN 48— legislation and statutes, legislative intent, regulations, rulings, and case law— should not be viewed as an exclusive list. On the contrary, the Staff implied that it would be incorrect for Funds to so limit their consideration:

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13. *Id.*

14 *Id.*

> Less formal forms of guidance from the taxing authority **should be considered as well.** A fund's management **should weigh all available forms of evidence based on their persuasiveness.**[15]

With respect to the use of administrative practices and precedents of the taxing authority, the Staff noted the ICI's assertion that when the IRS objects to a Fund's tax position, "the IRS at times grants prospective transition to cure the underlying deficiency such that no additional taxes are due for prior periods."[16] The Staff stated that where this is the case, "funds can, **and should,** consider the taxing authority's practice of addressing fund industry issues on a prospective basis as part of the administrative practices and precedents of the taxing authority."[17] The Staff Letter explained further:

> We would expect a fund's management to analyze the technical merits of a particular tax position, any known views of the taxing authority with respect to the position, the history of the taxing authority with respecting to resolving fund tax issues with similar levels of technical support, and any other relevant information. Of course, when performing this analysis, pursuant to paragraph 7(a) of Interpretation 48, a fund must presume that the tax position will be examined by a taxing authority that has knowledge of all relevant information.[18]

Finally, the Staff Letter referred to discussions the Staff has had with representatives of the Fund industry regarding the importance of considering all available evidence:

> These discussions have given us the opportunity to note, as is summarized again in this letter, that Interpretation 48 should not be read to limit the types or forms of evidence that may be considered.[19]

The Staff Letter did not acknowledge or comment on the other two scenarios identified by the ICI. Rather the Staff urged the Fund industry to make good use of the additional time granted by its letter to carefully assess **all** issues related to the implementation of FIN 48.

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15 *Id.*(emphasis added).

16 *Id.*

17 Staff Letter, *supra* note 4 (emphasis added).

18 *Id.*

19 *Id.*

6. FASB's Determination not to Take Further Action

On January 17, 2007, FASB met to consider delaying the effective date of FIN 48 for one year and issuing additional implementation guidance. In the month preceding the meeting, FASB had received over 400 letters from various operating companies and industry groups requesting these actions.[20] Nonetheless, at the meeting FASB voted unanimously not to grant either the delay or additional implementation guidance, with one small exception not relevant to the Funds' concerns.[21] Generally, FASB concluded that other implementation issues raised in comment letters had been dealt with by staff or did not lend themselves to further general guidance because they were based on an issuer's particular facts and circumstances. At the January 17, 2007 meeting, FASB did not hold any substantive discussions relating to Funds.[22] We understand that FASB is now considering providing additional guidance on the treatment of third-party reimbursements (*see* Section B.2, *infra*).

B. Need for Interpretive Guidance

As discussed above, while the Staff Letter addressed some of the challenges FIN 48 presents to Funds, and took the critical step of giving Funds an additional six months to resolve these issues, we believe that additional guidance from the Commission remains necessary to ensure consistent application of FIN 48 in a manner that protects Funds and their shareholders.

We respectfully ask the Commission to provide interpretive guidance that includes the following:

1. Provision of adequate time to allow for accurate FIN 48 accruals.

The Staff Letter provides useful guidance for situations in which there is adequate lead time to identify an issue and make a determination (*e.g.*, when a Fund is determining whether to purchase

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[20] Generally, the letters were received from preparers of financial statements and from organizations that represent such preparers. FASB did not consider the letters to be concentrated to any specific industry demographic. Financial Accounting Standards Board, *Board Agenda Request—Delay the Effective Date of Interpretation 48*, FASB Board Minutes (Jan. 17, 2006) *available at* http://www.fasb.org/board_meeting_minutes/01-17-07_fin48.pdf.

[21] FASB agreed to consider potential implementation guidance to be drafted by its staff and presented for the board's consideration at a future meeting on the meaning of the phrase "the tax matter is ultimately settled through negotiation or litigation," which relates to the timing of when an issuer may recognize a tax benefit that had originally failed to meet the requirements of recognition. *See* FIN 48, *supra* note 1 at ¶ 10(b).

[22] There was a brief mention of the Fund industry and some uncertainty was expressed as to whether the industry's issues had been resolved by the SEC Letter.

a particular instrument). This situation is akin to the situation applicable to operating companies under FIN 48, since they need to make the determinations only at the end of each quarter.

Once the FIN 48 extension period for Funds ends, however, Funds may inadvertently find themselves in a position in which they are forced to make an immediate FIN 48 determination but have no way to assess either the threshold accrual issue or the appropriate amount to accrue within the one-day timeframe uniquely applicable to Funds.[23] This can occur, for example, when a mistake is uncovered, or when a Fund finds itself holding a particular instrument based on developments at the issuer level that are beyond the Fund's control (*e.g.*, a corporate action). In such circumstances, a Fund may be unable to make an immediate assessment for one of two reasons.

First, there may be a complete lack of authority and audit experience in a particular area. For example, assume that a Fund has invested in credit default swaps ("CDS") and has valued these instruments for purposes of meeting the tax-diversification requirements of the Code[24] on a net basis (*i.e.*, based on fair market value). The Fund believes that it is at least more likely than not that CDS can be valued in this manner. Assume that due to an operational error, the Fund fails the tax diversification requirements but that it would not fail if it were able to value the CDS on a gross basis (*i.e.*, based on notional exposure). Finally, assume that the Fund's auditors will not allow the Fund to take the position that gross valuation of CDS meets the more likely than not standard due to the fact that the Fund has taken the position that net valuation meets the more likely than not standard.[25]

Under these circumstances, FIN 48 could require the Fund to reduce its NAV immediately because of the potential diversification failure. One possible approach would be to reduce the Fund's NAV by the amount of tax potentially payable on its income for the year in which the

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[23] At present, tax uncertainties that arise in these circumstances generally need not be reflected immediately in NAV if they are unlikely to result in actual liability or the amount of the tax to be paid can not be reasonably estimated, since they are governed by FAS 5. *See supra* note 11 and accompanying text.

[24] Under section 851(b)(3) of the Code, among other requirements, at least 50 percent of the value of a Fund's total assets must be represented by (i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and (ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e), in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the Fund.

[25] It is currently unclear whether audit firms will allow a given client to assert that more than one approach to a given position can meet the more likely than not standard for FIN 48 purposes.

failure occurs, since a diversification failure could result in the Fund paying corporate tax.[26] Such an approach, however, would be grossly unfair to the existing shareholders of the Fund. There is a complete lack of authority on how to value CDS for purposes of the tax-diversification requirements. Additionally, there is no audit history. It is entirely possible that the IRS, when approached by the Fund, could conclude either that gross valuation of CDS is the correct method or that, in the absence of guidance, a Fund could adopt either a gross or net approach. If that were to occur, the Fund would then have to reverse the prior FIN 48 accrual, resulting in a completely unjust windfall for shareholders (many of whom may be savvy arbitrageurs) who acquired shares of the Fund in the period between the initial accrual and the reversal.

Second, even if there is legal authority on a given issue, it may be impossible within the one-day time constraint of NAV calculations to determine how to apply that authority to the existing fact pattern in assessing whether the more likely than not standard has been met. Moreover, if a timely determination is made that the uncertainty does not meet the more likely that not standard, an additional calculation, again based on the facts, must be made under the same time constraint— a determination of the amount of the liability. This determination may take weeks or even months. If FIN 48 is applied to require the NAV reduction before complete information is available and the facts can be fully analyzed, one or more additional adjustments to NAV likely will be necessary as more facts are learned. In the meantime, shareholders will be paying and receiving prices that are artificial due to inaccurately calculated, difficult to estimate tax liabilities that had to be determined in haste.[27]

To avoid this artificial volatility, which affects only Funds, we request the Commission to incorporate into the implementation of FIN 48 for Funds some flexibility as to the time period for Funds to perform the necessary FIN 48 analysis, during which period the FIN 48 reduction need not be recorded as long as no reduction is required under FAS 5. That is, when a tax uncertainty first is noticed, the Fund must make a FAS 5 determination and, if it believes no accrual is required under those standards, it will be afforded a period until the end of the quarter but in any event no less than 45 days to resolve the issue prior to applying FIN 48. This period should be subject to extension under certain circumstances where appropriate to protect Fund and shareholder interests.

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[26] The administrative practices and precedents relief in the Staff Letter would not prevent the reduction in NAV given the assumption that the auditors would not agree that the position met the more likely that not threshold.

[27] As discussed above, sophisticated investors that may be aware of when a particular tax liability will not be paid (*e.g.*, the approaching expiration of the statute of limitations period) could potentially utilize an artificial reduction in NAV to receive an economic benefit from the sudden increase in a Fund's NAV as a result of the final resolution of the liability issue by purchasing Fund shares prior to the removal of the liability and the restoration of the Fund's true NAV.

2. Clarification that a Fund need not reduce its NAV in respect of a tax liability when it has been the administrative practice of the Fund's advisor or another relevant party to pay or reimburse the Fund in respect of errors the advisor or other party has made.

In some isolated cases, a reasonable application of FIN 48 may require a Fund to accrue a tax liability (*e.g.*, due to an internal compliance error by its advisor's personnel). In some of these situations, even though there may be no obligation to do so, the Fund's advisor or another party may step in and agree to pay any such tax liability. In such cases, there is debate as to whether, under GAAP, the Fund could immediately offset the tax liability with the anticipated payment from the advisor. Some view such an asset as a contingent gain that cannot immediately be recognized. Since this situation can lead to the same type of artificial volatility described above— the accrual would be made only to be eliminated at a future date, without any change in the underlying reality yet with a direct impact on shareholder pricing— additional guidance from the Commission is necessary to prevent potential harm to Funds and their shareholders.

In order to prevent this result, we believe that the concept of administrative practice, as described in paragraph 7(b) of FIN 48 and clarified in the Staff Letter,[28] should be extended to an advisor's (or other relevant party's) practice of making a Fund whole for tax liabilities or other harm the Fund has suffered as a result of the advisor's or other party's actions or inactions. Thus, to the extent an advisor or other party had a general disposition, upon discovery of an error or other issue, to make a Fund whole, the Fund could consider this in determining whether to reduce its NAV. If the advisor or other party subsequently determined that it would not reimburse the Fund (in whole or in part), the Fund would reduce its NAV accordingly at that time.

C. Conclusion

As indicated in the Staff Letter, the Staff expects Funds to utilize the additional time afforded by the delay of FIN 48's effectiveness to address their unique implementation issues. While we fully intend to tackle the complex issues raised by FIN 48, we believe the aspects of implementation described above require additional guidance from the Commission.

Thank you for your consideration of this request for interpretive guidance. If you need additional information, please contact Stephen D. Fisher at (617) 563-7139.

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[28] *See* Staff Letter, *supra* note 4 ("[W]e also believe that the administrative practices and precedents of the taxing authority should be considered in a fund's analysis").

Very truly yours,

FIDELITY INVESTMENTS:

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Eric Roiter
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MASSACHUSETTS FINANCIAL SERVICES COMPANY:

Maria Dwyer
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OPPENHEIMERFUNDS, INC.:

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