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Rule 2-01(f)(14) of Regulation S-X

Mr. Douglas J. Scheidt
Associate Director and Chief Counsel
Division of Investment Management
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for no-action relief: Regulation S-X Rule 2-01

Ladies and Gentlemen:

We request assurance that the staff of the Division of Investment Management (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") would not recommend enforcement action to the Commission against an entity within the "investment company complex" (as defined in Rule 2-01(f)(14) of Regulation S-X) of which the Fidelity Funds[1] are a part (a "Fidelity Entity"), if that Fidelity Entity continues to fulfill its regulatory requirements under the federal securities laws by using the audit services performed by a registered public accounting firm ("Audit Firm"), where that firm has relationships that would cause noncompliance with Rule 2-01(c)(1)(ii)(A) of Regulation S-X (the "Loan Provision"), subject to certain conditions as described below.

I. Auditor Independence and the Loan Provision

The federal securities laws require certain Fidelity Entities to engage a public accounting firm registered with the Public Company Accounting Oversight Board ("PCAOB") that meets both Commission and PCAOB independence requirements. For example, the federal securities laws require the Fidelity Funds to transmit annually to shareholders and file with the Commission financial statements audited by an independent registered public accounting firm.[2] In addition, certain Fidelity Entities that are not registered investment companies engage independent public accounting firms to audit their financial statements and for a number of other reasons, including to satisfy Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended, or pursuant to other applicable federal securities laws. The financial statements of each Fidelity Entity to which these requirements apply are audited by an Audit Firm.

PCAOB Rule 3520 requires a registered public accounting firm and its associated persons to be independent of the firm's audit clients. Before providing audit services to a prospective audit client,

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1 The Fidelity Funds, as defined herein, are open-end investment companies sponsored by Fidelity Management & Research Company ("FMR") or an affiliate and registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act"). The Fidelity Funds include a number of exchange-traded funds ("Fidelity ETFs").

2 *See, e.g.*, Section 30(e) of the 1940 Act and Rule 30e-1 thereunder (requiring registered investment companies to transmit annually to shareholders financial statements audited by an independent accountant); Form N-1A (requiring audited financial statements to be included or incorporated by reference in open-end registered investment companies' registration statements); Regulation S-X. Regulation S-X sets forth the required content of financial statements of issuers of securities registered under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the 1940 Act, including registered investment companies, and establishes the qualifications for auditor independence.

PCAOB Rule 3526 requires that a registered public accounting firm provide its prospective clients with a statement affirming, in writing, that it is compliant with Rule 3520. In addition, Rule 3526 imposes an ongoing requirement for a registered public accounting firm to annually communicate with each of its audit clients regarding its independence. Such communication must include: (1) a written description of any relationships between the registered public accounting firm and the audit client (or certain audit client personnel) that may reasonably be thought to bear on independence; (2) a discussion with the client's audit committee regarding the potential effects of such relationships on its independence; and (3) a written affirmation that, as of the date of the communication, the registered public accounting firm is independent in compliance with Rule 3520.

Prior to engaging the Audit Firms, and annually during their audit engagement, the Audit Committee of the Board of Trustees of each Fidelity Fund (each an "Audit Committee") received from the relevant Audit Firm written communications in which the Audit Firm affirmed its independence under the relevant PCAOB and Commission independence standards.[3] As further described below, however, an Audit Firm recently advised the Fidelity Funds that, while it believes it is capable of exercising objective and impartial judgment with respect to such Fidelity Funds, it technically does not qualify as independent under Rule 2-01 because it may not be in compliance with the Loan Provision as a result of certain ownership relationships and underlying facts that, in the view of the Audit Firm, do not influence the audits or the objectivity and impartiality of the Audit Firm's judgment on issues encompassed within its audit engagement.[4] Those responsible for the oversight of the Fidelity Funds have not reached a different conclusion with respect to the Audit Firm's objectivity and impartiality.

The Loan Provision states, in relevant part:

> [a]n accountant is not independent when the accounting firm, any covered person in the firm, or any of his or her immediate family members has ... Any loan (including any margin loan) to or from an audit client, or an audit client's officers, directors, or record or beneficial owners of more than ten percent of the audit client's equity securities . . . .

Shares of the Fidelity Entities may be held by a wide range of institutions and individuals. Shares of certain Fidelity Entities are held by financial institutions or other entities either beneficially or as record owners for the benefit of their clients or customers. From time to time, some of these institutions, which may also be lenders to registered public accounting firms or their personnel, may hold more than ten percent of a Fidelity Entity's equity securities beneficially or of record, although in many circumstances the institutions will not have the authority to vote these shares or will not be a lender to the relevant Fidelity Entity's Audit Firm.

Except in limited circumstances that are not relevant to this discussion, Rule 2-01(f)(6) defines "audit client" to include the entity whose financial statements are being audited, reviewed, or attested, and any

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[3] The Commission has stated that audit committees "should engage in active discussions of independence-related issues with outside auditors." SEC Rel. No. 33-7919 (Nov. 21, 2000). Consistent with the Commission's views, the Audit Committees regularly engage in such discussions with the Audit Firms.

[4] Rule 2-01(b) of Regulation S-X, which sets forth the Commission's general standard for auditor independence, provides that "[t]he Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement."

"affiliates of the audit client," which includes any entity that is part of the audit client's "investment company complex."[5] Because the Fidelity Funds are investment companies, their affiliates for purposes of the Loan Provision include all of the other entities within the investment company complex (i.e., all of the Fidelity Entities), which include, among others, (1) any registered investment companies or other pooled investment vehicles managed by FMR or an investment adviser that controls, is controlled by, or under common control with, FMR and (2) FMR and certain of its affiliates.

Accordingly, under the Loan Provision, a Fidelity Entity's Audit Firm could be deemed to be not independent with respect to that Fidelity Entity if the Audit Firm or certain of its personnel have a lending relationship[6] with any entity that: (1) holds of record more than ten percent of the shares of any Fidelity Entity; or (2) beneficially owns more than ten percent of the shares of a Fidelity Entity. This would be the case regardless of whether the lender is capable of influencing the Audit Firm or any Fidelity Entity.

II. Discussion

Pursuant to PCAOB Rule 3526, an Audit Firm recently advised the Fidelity Funds of the existence of a lending relationship between the Audit Firm and an institution that owned of record on behalf of its customers (but did not beneficially own) more than ten percent of the shares of a Fidelity Fund audited by the Audit Firm. Notwithstanding this instance of noncompliance with the Loan Provision that the Audit Firm has identified, the Audit Firm has represented to the Fidelity Funds that, following an evaluation of the impact of this lending relationship on its independence, it has concluded that it has been able to maintain its impartiality and objectivity with respect to the planning for and execution of the Fidelity Funds' audits. In support of this conclusion, the Audit Firm has emphasized, among other things, that the institution with which it has a lending relationship is not able to impact the impartiality of the Audit Firm or assert any influence over the Fidelity Fund whose shares the institution owned or its investment adviser, under the circumstances.

Following discussions with the Audit Firms about the scope of their lending relationships, we believe it is possible that, now or in the future, the Fidelity Entities may face one or more of the following circumstances, each of which could have potential implications under the Loan Provision (collectively, "Lending Relationships")[7]:

- An institution that has a lending relationship with an Audit Firm holds of record, for the benefit of its clients or customers (for example, as an omnibus account holder or custodian), more than ten percent of the shares of a Fidelity Entity.

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5 "Investment company complex" is defined in Rule 2-01(f)(14) to include: "(A) An investment company and its investment adviser or sponsor; (B) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (f)(14)(i)(A) of this section, or any entity under common control with an investment adviser or sponsor in paragraph (f)(14)(i)(A) of this section if the entity: (1) Is an investment adviser or sponsor; or (2) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and (C) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the [1940 Act] that has an investment adviser or sponsor included in this definition by either paragraph (f)(14)(i)(A) or (f)(14)(i)(B) of this section."

6 References in this letter to loans to, or lending relationships with, an Audit Firm may include holding debt securities issued by the Audit Firm.

7 There may be other similar circumstances that cause noncompliance with the Loan Provision where the lending entity cannot exert undue influence on the Fidelity Entity.

- An insurance company that has a lending relationship with an Audit Firm holds more than ten percent of the shares of a Fidelity Fund in separate accounts that it maintains on behalf of its insurance contract holders.

- An institution that has a lending relationship with an Audit Firm acts as an authorized participant or market maker to a Fidelity ETF and holds of record or beneficially more than 10% of the shares of a Fidelity ETF.

If one or more matters relating to (i) the election of trustees or directors, (ii) the appointment of an independent auditor, or (iii) other matters that similarly could influence the objectivity and impartiality of the independent auditor are put before shareholders of a Fidelity Entity for vote, the Fidelity Entity will make reasonable inquiry as of the record date about the impact of the Loan Provision. If the Fidelity Entity determines as part of that inquiry that an institution in a Lending Relationship in fact exercises discretionary voting authority with respect to at least 10% of the Fidelity Entity's shares, the Fidelity Entity would not rely on this relief and would instead take other appropriate action, consistent with its obligations under the federal securities laws.

We believe that the concerns underlying the Loan Provision are generally not implicated with respect to Lending Relationships when the record or beneficial owner of shares of a Fidelity Entity is not able to exercise undue influence over the Fidelity Entity, and the objectivity and impartiality of the audits performed for any Fidelity Entities are not impaired.[8] Absent relief from compliance under these circumstances that in our view generally do not compromise the objectivity and impartiality of the audits performed for any Fidelity Entities, given the manner in which their shares are held and sold, it may not be possible for many Fidelity Entities to engage a registered public accounting firm that could reasonably provide assurances of ongoing compliance with the Loan Provision despite the firm's efforts.

III. Conclusion and Request for Relief

Based on the foregoing, we respectfully request confirmation that the Staff will not recommend enforcement action to the Commission against a Fidelity Entity if that Fidelity Entity continues to fulfill its regulatory requirements under the federal securities laws by using the audit services performed by an Audit Firm that is not in compliance with the Loan Provision under the circumstances described herein.

We believe that the requested relief is appropriate, subject to the following conditions:

1. the Audit Firm has complied with PCAOB Rule 3526(b)(1) and (2) (or, with respect to a Fidelity Entity to which Rule 3526 does not apply, has provided a substantially equivalent communications)[9];

2. the noncompliance of the Audit Firm is with respect to the Lending Relationships; and

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[8] We also believe that the concerns underlying the Loan Provision are not implicated when an institution that has a lending relationship with an Audit Firm holds more than ten percent of the shares of a Fidelity Entity that is audited by a different Audit Firm.

[9] Prior to engaging the Audit Firms, and annually during their audit engagement, the Audit Committee (or relevant management committee, in the case of a Fidelity Entity that is not a Fidelity Fund) will continue to receive from the relevant Audit Firm written communications in which the Audit Firm represented that it complied with PCAOB Rules 3526(b)(1) and (2) or substantially equivalent communications, as applicable.

3. notwithstanding such noncompliance, the Audit Firm has concluded that it is objective and impartial with respect to the issues encompassed within its engagement.

If you have any questions or need additional information, please contact the undersigned at (617) 563-2076.

Sincerely,

Marc Bryant