January 23, 2004

Barbara Z. Sweeney
National Association of Securities Dealers
Office of the Corporate Secretary
1735 K Street, NW
Washington, D.C. 20006-1500

RE: *Request for Comment Regarding Disclosure of Mutual Fund Expense Ratios in Performance Advertising (NASD Notice to Members 03-77)*

Dear Ms. Sweeney:

Fidelity Investments[1] appreciates the opportunity to comment on NASD's proposed amendments to Rules 2210 (Communications With the Public) and 2211 (Institutional Sales Material).[2]

Fidelity agrees that amendments to NASD's rules governing member communications with the public are appropriate to improve investor awareness of the costs of buying and owning a mutual fund and to facilitate cost comparisons of mutual funds. We agree that member firms should be required to disclose prominently a fund's maximum sales charge and annual expense ratio in performance advertising. We also support NASD's decision to limit its proposal to communications containing performance. However, for the reasons explained in this letter, Fidelity urges NASD make the following revisions to its rule proposal:

- Require that the information mandated by proposed Rule 2210(d)(3)(A) be in close proximity to and in a type size no smaller than that of the performance data, rather than in a text box.
- If disclosure of the sales load is not removed from the rule proposal, add language indicated it is not required to be disclosed in communications limited to retirement plan participants or others who have the sales load waived.
- Require members to disclose a fund's expense ratio as disclosed in its most recent shareholder report, rather than as of the most recent calendar quarter.
- Exclude institutional sales material from the rule proposal.

[1] Fidelity Investments is composed of a group of financial services companies, including several NASD registered broker-dealers as well as the largest mutual fund complex in the United States.
[2] NASD Notice to Members 03-77 (December 2003)

We also ask that NASD harmonize its proposed rules concerning the disclosure of fund expenses with similar rule proposals currently being considered by the SEC. Fidelity's comments on each aspect of the rule proposal that we believe NASD needs to reconsider follows.

I. Text Box and Type Size Requirements

We recommend that NASD revise the rule proposal to require that the information mandated by proposed Rule 2210(d)(3)(A) be in close proximity to and in a type size no smaller than that of the performance data. Such a revision would make 2210's presentation requirements consistent with the presentation requirements mandated by amended SEC Rule 482.[3]

In its Notice to Members, NASD states that one of the main purposes of the proposed amendments is to make the presentation of standardized performance more prominent. Fidelity believes that the prominence requirements already contained in SEC Rule 482 and Rule 34b-1 are adequate to protect investors and that the NASD's additional prominence requirements could potentially promote unbalanced communications. As the NASD points out in its Notice, SEC Rule 482 and Rule 34b-1 already require that standardized performance figures be presented at least as prominently as any non-standard performance information included in advertisements or sales material. The NASD Investment Companies/Advertising Regulation Department regularly enforces these well-established SEC standards when reviewing member firms' communications. Requiring that a fund's standardized performance (as well as maximum sales load and expense ratio) be placed in a text box would make this information more prominent not only than any non-standardized performance, but also more prominent than any other information about the fund (i.e. investment objective, strategy, risk) that may be included in the communication. This requirement could have the unintended consequence of causing an investor to focus attention on the fund's performance at the expense of other fund information presented in the communication that is equally important.

In addition, the requirement to segregate a fund's standard performance, sales charge and expense ratio within a text box would make it nearly impossible to produce advertisements or sales literature that lists the performance data of multiple funds. In these communications, rows are titled with the fund name and vertical columns are titled with the name of the type of fund information that is provided (i.e., standard and non-standard performance data, expense ratio, sales charge, inception date, investment category, etc). These communications allow investors to see quickly a wide range of information about a fund and to easily compare that information to other funds. The rule proposal would have the consequence of requiring members to entirely redesign or abandon these communications. While this would result in significant costs to member firms, there would be little to no benefit to investors since, when presented in rows within a list, performance data, sales charges, and expense ratio are already equally prominent

[3] Release Nos. 33-8294 and 34-48558. Fidelity notes proposed 2210(d)(3)(C) is consistent with (b)(5) of amended SEC Rule 482 and therefore does not recommend revisions.

and in close proximity. In fact, the text box requirement would likely make it more difficult for investors to easily compare different mutual funds.

A text box would also require major revisions to fund fact sheets that provide performance information. Fact sheets typically include each fund's standard returns, maximum sales charge, and expense ratio, often placed in different sections. For example, a fund's standard returns may be placed under the heading "Average Annual Total Returns" and the sales load and expense ratio might be placed under the heading "Fees and Expenses." We believe that revising these fact sheets so that the data is placed within a single text box would result in increased costs to fund companies without providing a commensurate benefit to investors. Provided that the expense ratio and maximum sales charge are disclosed in a type size equal to the type size of the fund's standard performance, we don't believe moving the three items so that they are placed within a single text box would increase investor awareness of mutual fund costs. In fact, it may diminish investor awareness as there would no longer be a unique section in the fact sheet dedicated entirely to fees and expenses.

We believe that NASD can rectify these problems easily by revising the rule proposal so that the presentation requirements are consistent with the presentation requirements of amended SEC Rule 482.

II. Disclosure of Maximum Sales Charge or Maximum Contingent Deferred Sales Charge

Fidelity believes it is unnecessary for NASD to amend its rules to state that performance communications must include the prominent disclosure of a fund's maximum sales charge or maximum contingent deferred sales charge. This information will be required to be disclosed prominently and in close proximity to performance data in sales material by the presentation requirements of SEC Rule 482 when amendments to the rule become effective on April 1, 2004.

Should NASD not remove the requirement that the sales load be disclosed in performance communications from the rule proposal, we urge NASD to make the presentation requirement consistent with amended SEC Rule 482's presentation requirements (see item IV below). Additionally, if NASD decides not to remove this requirement from the rule proposal, we urge it to add language clarifying that the sales load does not need to be disclosed in member firms' performance communications that are limited to audiences who have the sales charge waived (i.e., retirement plan participants). The purpose of the NASD's rule proposal is to ensure investors are aware of the fees charged to purchase and own a fund. Requiring that members prominently disclose a fee in performance communications that doesn't apply to the audience receiving that communication would be counter-productive to the intent of the rule proposal.

III. Disclosure of Annual Fund Operating Expenses

Fidelity urges NASD to revise the rule proposal to require that the expense ratio from the fund's most recent shareholder report be disclosed in performance communications rather than the fund's expense ratio as of the most recent calendar quarter. A fund's fiscal year often differs from the calendar year. Funds currently are required to calculate expense ratios twice a year using fiscal year data for inclusion in their shareholder reports and prospectuses. Requiring expense ratios calculated as of calendar quarter end would serve no purpose. It would not result in better investor awareness of mutual fund costs than would shareholder report ratios. The rule proposal would result in significant systems development costs for funds without providing a commensurate benefit to investors. We feel that NASD can easily rectify this by replacing "as of the most recent calendar quarter" in the rule proposal with "as disclosed in the fund's most recent shareholder report."

We agree with NASD's decision to limit this requirement to performance communications. Fund advertisements and sales literature that do not include performance information often include limited information about a fund. Requiring that fund expenses be disclosed in these communications could lead investors to the incorrect conclusion that the fund expense ratio is more important than the other fund information that is disclosed in the prospectus. It is also important to note that amended SEC Rule 482 will require all advertisements and sales literature that include an offer of a fund (irrespective of whether or not it contains fund performance data) disclose prominently a statement advising investors to consider the investment objectives, risks and charges and expenses of the fund carefully before investing and directing the investor to the prospectus to obtain this information.

IV. Institutional Sales Material

Fidelity does not believe that the rule amendments should apply to sales material that falls under the NASD's definition of institutional sales material. We note that NASD currently exempts institutional sales material from many of its content standards Furthermore, the primary goal of the rule amendments is to improve investor awareness of the costs of buying and owning mutual funds. We believe that sophisticated individuals who fall under the definition of institutional investor would not benefit by this rule proposal as they already intimately understand mutual fund costs. In fact, institutional investors (at whose request member firms often create customized communications) would likely take issue with member firms making performance information and fees more prominent than other fund information they may find equally important.

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We appreciate the opportunity to comment on this important rule proposal. If we may be of further assistance, please contact me at 617 563-0188.

Sincerely yours,

James Maloney
Director