Fidelity Investments

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Office of Exemption Determinations
Employee Benefits Security Administration
Room N – 5700
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
ATTN: IRA Investment Advice RFI

Re: Response to Request for Information

Ladies and Gentlemen:

The U.S. Department of Labor ("Department") published a Request for Information ("RFI") in the Federal Register on December 4, 2006 (71 FR 70427). This response to the RFI is submitted on behalf of Fidelity Management Trust Company ("FMTC"), a Massachusetts chartered trust company.

Background:

FMTC is a wholly owned subsidiary of FMR Corp., the parent company of a group of financial service companies known as Fidelity Investments ("Fidelity"). Fidelity affiliates provide record keeping, investment management, and trustee or custodial services to thousands of Code Section 401(k) plans and Code Section 403(b) programs covering millions of employees and their beneficiaries. Fidelity affiliates also service millions of individual retirement accounts under Code Section 408 and Roth individual retirement accounts under Code Section 408A (collectively, "IRAs"). FMTC serves as the custodian for most IRAs that are serviced by Fidelity.

Strategic Advisers, Inc. ("Strategic") is a wholly-owned Fidelity company that provides investment advisory services and is registered under the Investment Advisers Act of 1940. It is contemplated that Strategic will develop a computer-based methodology for the provision of investment advice to workplace retirement plan participants and IRA investors.

For 401(k) and other employer-sponsored individual account plans, advice based on the Strategic computer-based methodology may be delivered electronically via a secure interactive website available to the participant. The participant may use the

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service either on their own or with the assistance of a Fidelity phone representative. For IRA investors, the Strategic computer-based methodology may be delivered via a secure website, through an interaction with a Fidelity phone representative, or in a face-to-face meeting with a brokerage representative of a Fidelity broker-dealer entity.

Pension Protection Act:

The RFI concerns the application of the so-called "computer model rule" in Section 408(g)(2)(A)(i) of the Employee Retirement Income Security Act of 1974 ("ERISA") and Section 4975(F)(8)(B)(i)(I) of the Internal Revenue Code ("Code"). These provisions were added by Section 601 of the Pension Protection Act of 2006 ("PPA" or the "Act") to provide an exemption for the provision of investment advice.

Prior to the passage of PPA, the ERISA and Code prohibited transaction provisions were considered to constitute a barrier to the provision of investment advice to plan participants by Strategic or brokerage representatives because other Fidelity entities or affiliates may receive compensation that varies depending on the investment option(s) in which a participant's account or IRA is invested pursuant to such advice. As an example, the level of compensation received by the investment adviser for Fidelity mutual funds may vary depending on the funds in which retirement accounts are invested.

New ERISA Section 408(g)(2)(A) states that a fiduciary adviser must satisfy either a computer model rule or a level compensation rule. The lengthy details of the computer model rule are set forth in new ERISA Section 408(g)(3). The Act includes the level compensation alternative in both exemptions but prohibits reliance on the computer model rule for IRAs until the Department confirms that a computer-based methodology will accommodate the investment universe for IRAs. A Department conclusion regarding computer-based methodology is due by the end of 2007.

In the event that the Department is unable to confirm that a computer-based methodology will work for IRAs, the Department is directed to issue a class exemption providing an undefined third alternative rule for IRAs. In a letter dated December 12, 2006, the Department informed FMTC that it appears to be among the top 50 trustees/custodians of IRA assets and, accordingly, that failure to respond to the RIF could adversely affect the ability of FMTC to rely on the class exemption to be issued in the absence of a favorable determination regarding computer models for IRAs.

Response to the RFI

The RFI solicits information concerning the feasibility of the application of computer model investment advice programs for IRA-based programs. Each answer is provided below ("Answer") following the appropriate RFI Question quoted below.

Request for Information

1. Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide investment advice to beneficiaries of plans described in section 4975(e)(1)(B)-(F) (and so much of subparagraph (G) as relates to such subparagraphs) (hereinafter ``IRAs'') of the Code which:

(a) Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time;

(b) Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments;

(c) Operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser;

(d) Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and

(e) Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.

At least in part because of prohibited transaction concerns under pre-PPA ERISA law, Fidelity does not currently offer a computer model investment advice program to IRA customers. Although such a program is under consideration, as

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discussed above, the criteria set forth in Question 1(d) appear to pose serious challenges.

In order to build a computer model that could credibly consider or recommend the purchase and sale of the full range of investments, particularly individual securities (as opposed to diversified investment options such as mutual funds), a security would need to be identifiable, and its value would have to be reasonably quantifiable in systematic fashion. Since most IRAs are essentially brokerage accounts and as such can invest in a wide range of investment vehicles, there could be non-standard securities eligible for purchase through such an account that a computer model would not be able to recognize, value or recognize, such as private placements, limited partnership holdings, certain option strategies, negotiated instruments such as swaps, and private company stock.

Fidelity would recommend that the Department give advisors the ability (with proper disclosure to investors) to limit the range of eligible investments considered in the course of offering computer model advice for IRAs. For example, the range of eligible investments could be limited to mutual funds only, or limited to a larger universe of most publicly traded, marketable securities--even some publicly traded, marketable securities could not feasibly be covered by a computer model due to the limited availability and quality of data.

Fidelity also would recommend, that the Department, in giving guidance on this matter, more clearly define what is meant by "taking into account" the full range of investments in determining the options for the portfolio.

As a general matter, a computer model can consider any security that it can recognize, value, and analyze. However, this does not mean that the computer model necessarily would recommend the purchase of the security. For example, while Fidelity's current educational tool recognizes individual securities in an investor's existing portfolio and provides the investor with the flexibility in modeling a portfolio to either hold these positions or purchase/sell the individual securities in order to see the impact of those actions on his or her portfolio, the model portfolio that the investor receives through the tool consists solely of mutual funds. In short, Fidelity's attempts to characterize the risk of all positions owned by the customer but limits its output (the buy universe), to mutual funds selected according to objective criteria.

2. If currently available computer models do not satisfy all of the criteria described above, which criteria are presently not considered by such computer models? Would it be possible to develop a model that satisfies all of the specified criteria? Which criteria would pose difficulties to developers and why?

Fidelity currently provides a computer model-based educational tool that considers some, but not necessarily all, of the criteria set forth in Question 1(b) and satisfies the criteria set forth in Questions 1(a), 1(c) and 1(e). Moreover, we believe that a computer model dealing with individual stocks and bonds that satisfies the criteria described in Question 1(d) would be possible if the criteria allows for the effective universe to be limited to most readily marketable, publicly traded instruments. For example, in the marketplace, there are computer programs in use for so-called "quantitatively" managed mutual funds that deal with individual securities within the context of these parameters; however, these mutual funds generally focus on a limited range of investments. If the universe cannot be limited in this way – if all instruments that *could* be owned in an IRA must be considered and must be individually characterized – then the requirement would impose an extreme burden and the resources to be expended on such a computer model are likely to be so substantial as to outweigh the economic benefits of building such a model.

The Department should also note the distinction between computer-based models that evaluate a wide range of individual securities for purposes of characterizing either portfolio or enterprise level risk, and computer-based models designed to deliver what could effectively be "turn-key" investment advice to investors. We do not believe that there is a computer-based model in place today that does the latter.

Again, we would recommend that the Department of Labor give advisors the ability (with proper disclosure to investors) to limit the range of eligible investments considered in the course of offering computer model advice for IRAs. In any event, we note that certain IRA investors may prefer an investment universe comprised entirely of mutual funds, rather than a portfolio of individual securities. The relevant language in PPA section 601 appears to support the implementation of such investor preferences. In such cases, a computer model that considers all of the available mutual funds would appear to satisfy the criteria set forth in Question 1(d).

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3. If there are any currently available computer model investment advice programs meeting the criteria described in Question 1 that may be utilized for providing investment advice to IRA beneficiaries, please provide a complete description of such programs and the extent to which they are available to IRA beneficiaries.

Fidelity does not currently have a computer model investment advice program meeting the criteria described in Question 1 that may be utilized for providing investment advice to IRA beneficiaries.

4. With respect to any programs described in response to Question 3, do any of such programs permit the IRA beneficiary to invest IRA assets in virtually any investment? If not, what are the difficulties, if any, in creating such a model?

See Answers 1 and 3 above.

5. If computer model investment advice programs are not currently available to IRA beneficiaries that permit the investment of IRA assets in virtually any investment, are there computer model investment advice programs currently available to IRA beneficiaries that, by design or operation, limit the investments modeled by the computer program to a subset of the investment universe? If so, who is responsible for the development of such investment limitations and how are the limitations developed? Is there any flexibility on the part of an IRA beneficiary to modify the computer model to take into account his or her preferences? Are such computer model investment advice programs available to the beneficiaries of IRAs that are not maintained by the persons offering such programs?

Fidelity does not currently offer a computer model investment advice program for IRA investors; however we use a computer model in the delivery of investment education that may provide some insight as to how a computer model investment advice program could be offered in the IRA context. As a practical matter, the computer model used in this program would not permit the investment of IRA assets in virtually any investment since, as mentioned in Question 1 above, not all investments available through a traditional IRA account are recognizable or quantifiable in a systematic fashion. In the case of investment positions in the account that the model cannot recognize, the model will suggest that the investor liquidate those holdings. Since this model is used for investment education, it does allow investors the flexibility to modify these suggestions if his or her preference is to hold the unrecognized position(s).

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The computer model currently used in Fidelity's educational tool also limits the investments in the portfolio that is modeled for participants to a subset of the universe consisting of mutual funds that are available through Fidelity FundsNetwork®[1] that do not have transaction fees – mutual funds with transaction fees or sales loads are excluded to avoid the resulting complexity of factoring in the economic impact of such fees. Within those limits, an IRA beneficiary can choose whether to view model portfolios consisting of Fidelity funds only or a mix of Fidelity and non-Fidelity funds. In addition, the tool allows investors to express certain preferences in defining the universe for these mutual fund model portfolios. Investors can chose to focus on funds with below average expense ratios, funds with above average style consistency, funds with above average performance or any combination of these three.

The limitation of the investment universe to mutual funds available through Fidelity FundsNetwork® is a function of Fidelity's belief that asset allocation across a set of diversified investment options is most suitable for the majority of its customers. Access to Fidelity's educational tool, known as Portfolio Review, is available to investors on Fidelity's public website without regard to whether an investor has a Fidelity IRA.

6. <u>If you offer a computer model investment advice program based on nonproprietary investment products, do you make the program available to investment accounts maintained by you on behalf of IRA beneficiaries?</u>

If Fidelity decides to offer a computer model investment advice program, it will consider non-proprietary investment products and these will be made available to Fidelity IRA beneficiaries. Fidelity's discretionary managed account services and Fidelity's investment educational tools currently take account of such non-proprietary investment products.

However, we assume that an IRA investor may be permitted to request investment advice based solely on proprietary funds, and that the resulting advice may still qualify for exemption under PPA Section 601.

[1] The Fidelity FundsNetwork® provides Fidelity's retail customers with access to over 4500 mutual funds from over 350 unrelated mutual fund companies.

7. What are the investment options considered by computer investment advice programs? What information on such options is needed? How is the information obtained and made part of the programs? Is the information publicly available or available to IRA beneficiaries?

As discussed above, to include individual securities in the computer investment advice program, the security would need to be identifiable, and its value would have to be reasonably quantifiable in a systematic fashion. Consequently, only publicly traded, marketable securities for which data is available, including both debt and equity securities, should be considered as part of the computer investment advice program. Information including prospectuses and return history would be required for the inclusion of these securities. Fidelity would also obtain certain data through third-party data providers such as Morningstar. Prospectuses are available through the brokerage business on Fidelity.com. In general, all information used by the computer investment advice program would be publicly available.

8. How should the Department or a third party evaluate a computer model investment advice program to determine whether a program satisfies the criteria described in Question 1 or any other similar criteria established to evaluate such programs?

We believe that the Department should provide flexibility in PPA guidance in order to permit the certifying individual or organization to exercise its professional judgment to determine the most effective manner in which to review the computer model methodology. Thus, for example, the certifying person may decide to review the methodology documentation or to run a comprehensive set of test case scenarios or fact patterns (hypothetical plan and participant information) through the program to analyze the results.

9. How do computer model investment advice programs present advice to IRA beneficiaries? How do such programs allow beneficiaries to refine, amend or override provided advice?

While Fidelity does not currently offer an investment advice program, the educational tool currently in use may provide some insight as to how such an advice program might work. Fidelity's Portfolio Review tool presents model portfolios as a list of mutual fund names and ticker symbols, with their Morningstar categories and the percentage weight to be applied to each. Once the

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model portfolio is presented, the investor then has the option to substitute each of the suggested funds with an alternate from a pre-screened list of funds from the Morningstar category that corresponds to the originally suggested fund. In addition, the investor has the option to use a "hypothetical trade" functionality that allows him or her to further refine the resultant trade list by adding a purchase of any security available on the Fidelity trading platform or deleting any suggested trade they do not want to make.

The computer model investment advice programs contemplated by Fidelity may allow the IRA investor to obtain advice by using an interactive website, by talking to a phone representative, or in person by meeting with a Fidelity representative. This is currently how Fidelity's educational tool delivers investment education to investors.

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Finally, no one can anticipate the outcome of the Department determination regarding IRA computer models under PPA Section 601. Fidelity respectfully asks that the Department begin consideration of a proposed class exemption in advance of a formal determination in consideration of the immediacy of the potential need for relief. This is particularly important given that IRA advisers have only the option of using the level compensation rule absent a favorable determination on the computer model rule.

We would be pleased to provide additional information or to meet with you to discuss this matter at your convenience.

Sincerely,

Douglas O. Kant

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