

written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising, subadvising, and distributing the Funds, and acting as a depositor to registered separate accounts. Applicants further state that prohibiting them from providing advisory and distribution services or acting as a depositor to the registered separate accounts would not only adversely affect their businesses, but would also adversely affect over 2000 employees that are involved in those activities. Applicants state that they have not previously applied for an exemptive order under section 9(c) of the Act. Applicants state that an affiliate of Prudential previously obtained an order under section 9(c) of the Act.<sup>3</sup>

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### Temporary Order

The Commission has considered the matter and finds that the Applicants

have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from September 5, 2008, until the Commission takes final action on their application for a permanent order.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28376; 812-13505]

#### Fidelity Aberdeen Street Trust, et al.; Notice of Application

September 5, 2008.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1-2(a) under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit registered open-end management investment companies relying on rule 12d1-2 under the Act to invest in certain financial instruments.

**APPLICANTS:** Fidelity Management & Research Company ("FMR"), Strategic Advisers, Inc. ("SAI"), FMR Co., Inc. ("FMRC") (each, an "Adviser"); Fidelity Distributors Corporation ("FDC") and National Financial Services LLC ("NFS") (each, a "Distributor"); and Fidelity Aberdeen Street Trust, Fidelity Fixed-Income Trust, Fidelity Income Fund, and Variable Insurance Products Fund V (each, a "Trust").

**FILING DATES:** The application was filed on February 29, 2008, and amended on June 18, 2008, and September 2, 2008.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2008 and should be accompanied by proof of

service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, 82 Devonshire Street, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:**

Keith A. Gregory, Senior Counsel, at (202) 551-6815, or Michael W. Mundt, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1520 (telephone (202) 551-5850).

#### Applicants' Representations

1. Each Trust is organized as either a Delaware statutory trust or a Massachusetts business trust and is registered under the Act as an open-end management investment company. Applicants request an exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof advised by an Adviser or an entity controlling, controlled by, or under common control with an Adviser and that invests in other investment companies in reliance on section 12(d)(1)(G) of the Act, and that is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1-2 under the Act (together with the Trusts and their series, the "Funds"), to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").<sup>1</sup>

2. SAI or FMRC currently serves as the investment adviser to each of the Funds. Each Adviser is an investment adviser registered under the Investment Advisers Act of 1940 and a direct or indirect subsidiary of FMR LLC, a

<sup>1</sup> Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any other existing or future registered open-end management investment company that subsequently relies on the order will do so only in accordance with the terms and conditions of the application.

<sup>3</sup> In the Matter of Prudential Securities Incorporated, Investment Company Act Rel. Nos. 18031 (Mar. 6, 1991) (notice) and 18096 (Apr. 15, 2005) (order).

Delaware limited liability company ("FMR LLC"). Each Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") and a direct or indirect subsidiary of FMR LLC. FDC is currently the distributor of the Funds.

3. Consistent with its fiduciary obligations under the Act, each Fund's board of trustees will review the advisory fees charged by the Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund may invest.

#### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is made in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as that term is defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1-2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Lynn Taylor,**

*Assistant Secretary.*

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final action regarding technical and conforming amendments to federal sentencing guidelines effective November 1, 2008.

**SUMMARY:** On May 1, 2008, the Commission submitted to Congress amendments to the federal sentencing guidelines and published these amendments in the **Federal Register** on May 9, 2008. *See* 73 FR 26924. The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

**DATES:** The Commission has specified an effective date of November 1, 2008, for the amendments set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). *See* 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary. This notice sets forth technical and conforming amendments to commentary that will become effective on November 1, 2008.