

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

#### *Upon Written Request, Copies Available*

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

#### *Extension:*

Rule 17f–4; OMB Control No. 3235–0225, SEC File No. 270–232.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the “Paperwork Reduction Act”), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 17(f) (15 U.S.C. 80a–17(f)) under the Investment Company Act of 1940 (the “Act”) <sup>1</sup> permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities (“securities depositories”), subject to rules adopted by the Commission.

Rule 17f–4 (17 CFR 270.17f–4) under the Act specifies the conditions for the use of securities depositories by funds <sup>2</sup> and their custodians.

The Commission staff estimates that 140 respondents (including an estimated 79 active funds that may deal directly with a securities depository, an estimated 42 custodians, and 19 possible securities depositories) <sup>3</sup> are subject to the requirements in rule 17f–4. The rule is elective, but most, if not all, funds use depository custody arrangements. <sup>4</sup>

<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> As amended in 2003, rule 17f–4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. See Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The term “fund” is used in this Notice to mean a registered investment company.

<sup>3</sup> The Commission staff estimates that, as permitted by the rule, an estimated 2% of all active funds may deal directly with a securities depository instead of using an intermediary. The number of custodians is estimated based on information from Morningstar Direct<sup>SM</sup>. The Commission staff estimates the number of possible securities depositories by adding the 12 Federal Reserve Banks and 7 active registered clearing agencies. The Commission staff recognizes that not all of these entities may currently be acting as a securities depository for fund securities.

<sup>4</sup> Based on responses to Item 18 of Form N–SAR (17 CFR 274.101), approximately 98 percent of funds’ custodians maintain some or all fund

Rule 17f–4 contains two general conditions. First, a fund’s custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets. <sup>5</sup> This obligation does not contain a collection of information because it does not impose identical reporting, recordkeeping or disclosure requirements. Funds and custodians may determine the specific measures the custodian will take to comply with this obligation. <sup>6</sup> If the fund deals directly with a depository, the depository’s contract or written rules for its participants must provide that the depository will meet similar obligations, <sup>7</sup> which is a collection of information for purposes of the Paperwork Reduction Act. All funds that deal directly with securities depositories in reliance on rule 17f–4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository’s written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information. <sup>8</sup>

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian. <sup>9</sup> If a fund deals directly with a depository, the depository’s contract with or written rules for its participants must provide that the depository will provide similar financial reports, <sup>10</sup> which is a collection of information for purposes of the Paperwork Reduction Act. Custodians and depositories usually transmit financial reports to funds twice each

securities in a securities depository pursuant to rule 17f–4.

<sup>5</sup> Rule 17f–4(a)(1). This provision incorporates into the rule the standard of care provided by section 504(c) of Article 8 of the Uniform Commercial Code when the parties have not agreed to a standard. Rule 17f–4 does not impose any substantive obligations beyond those contained in Article 8. Uniform Commercial Code, Revised Article 8—Investment Securities (1994 Official Text with Comments) (“Revised Article 8”).

<sup>6</sup> Moreover, the rule does not impose any requirement regarding evidence of the obligation.

<sup>7</sup> Rule 17f–4(b)(1)(i).

<sup>8</sup> The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus, new funds would not be subject to this condition.

<sup>9</sup> Rule 17f–4(a)(2).

<sup>10</sup> Rule 17f–4(b)(1)(ii).

year. <sup>11</sup> The Commission staff estimates that 42 custodians spend approximately 787 hours (by support staff) annually in transmitting such reports to funds. <sup>12</sup> In addition, approximately 79 funds (*i.e.*, two percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that depositories spend approximately 18 hours (by support staff) annually transmitting reports to the 79 funds. <sup>13</sup> The total annual burden estimate for compliance with rule 17f–4’s reporting requirement is therefore 805 hours. <sup>14</sup>

If a fund deals directly with a securities depository, rule 17f–4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer’s instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers’ instructions). <sup>15</sup> All funds that seek to rely on rule 17f–4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement. <sup>16</sup>

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule’s collection of information requirement is 805 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. This estimate is not derived from a comprehensive or

<sup>11</sup> The estimated 42 custodians would handle requests for reports from an estimated 3,371 fund clients (approximately 80 fund clients per custodian) and the depositories from the remaining 79 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with industry representatives that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this Paperwork Reduction Act estimate, the Commission staff assumes that custodians transmit the reports to all fund clients.

<sup>12</sup> (3,371 fund clients × 2 reports) = 6,742 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 787 hours (7 minutes × 6,742 transmissions).

<sup>13</sup> (79 fund clients who may deal directly with a securities depository × 2 reports) = 158 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 18 hours (7 minutes × 158 transmissions).

<sup>14</sup> 787 hours for custodians and 18 hours for securities depositories.

<sup>15</sup> Rule 17f–4(b)(2).

<sup>16</sup> The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

even representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: April 16, 2013.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30464; 812-14104]

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

April 16, 2013.

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

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

**APPLICANTS:** Fidelity Merrimack Street Trust (the "Trust"), Fidelity Management & Research Company (the "Adviser") and Fidelity Distributors Corporation (the "Distributor").

**SUMMARY OF APPLICATION:** Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares ("Shares")

redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts to acquire Shares; and (f) certain series to perform creations and redemptions of Shares in-kind in a master-feeder structure.

**DATES: Filing Dates:** The application was filed on December 7, 2012, and amended on March 27, 2013. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief 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 May 9, 2013, 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:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: 82 Devonshire Street, V10E, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551-6817 or Daniele Marchesani, Branch Chief, 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 via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

## Applicants' Representations

1. The Trust will be registered as an open-end management investment company under the Act and is a business trust organized under the laws of Massachusetts. The Trust initially will offer one series, the Fidelity Corporate Bond ETF ("Initial Fund"), which will seek a high level of current income.

2. Fidelity Management & Research Company, a Massachusetts corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as investment adviser to the Initial Fund. The Adviser may in the future retain one or more sub-advisers (each a "Sub-Adviser") to manage the portfolios of the Funds, or its respective Master Fund (each as defined below). Any Sub-Adviser will be registered, or not subject to registration, under the Advisers Act. The Distributor, a registered broker-dealer ("Broker") under the Securities Exchange Act of 1934 ("Exchange Act"), is an affiliated person of the Adviser, and will act as the distributor and principal underwriter of the Funds.<sup>1</sup>

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust and to any other open-end management companies or series thereof that utilize active management investment strategies ("Future Funds"). Any Future Fund will (a) be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser (each, an "Adviser"), and (b) comply with the terms and conditions of the application.<sup>2</sup> The Initial Fund and Future Funds together are the "Funds." Each Fund will consist of a portfolio of securities and other assets and positions ("Portfolio Positions").<sup>3</sup> Funds may invest in "Depository Receipts."<sup>4</sup> Each

<sup>1</sup> Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

<sup>2</sup> Any Adviser to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

<sup>3</sup> If a Fund (or its respective Master Fund) invests in derivatives: (a) The board of trustees ("Board") of the Fund periodically will review and approve the Fund's (or its respective Master Fund's) use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's (or its respective Master Fund's) use of derivatives; and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and Commission staff guidance.

<sup>4</sup> Depository Receipts are typically issued by a financial institution, a "depository", and evidence ownership in a security or pool of securities that have been deposited with the depository. A Fund

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