decisions from the Independent Fiduciary of the Client Plan. Such approvals will typically be obtained from the Client Plan sponsor or an investment committee appointed by the Client Plan sponsor.

Single Client Accounts will be established pursuant to Agreements negotiated with the Independent Fiduciaries of the Client Plans. The terms of Fidelity's compensation will be established in the Agreements governing the Single Client Account and will be fully disclosed to the Independent Fiduciary prior to the investment of assets of the Client Plan in the Single Client Account. If agreed to by the Independent Fiduciary, the compensation arrangement involving the payment of the Performance Fee (as described in Item 5 below) will be included in the Agreement.3 The term of each Account will be predetermined in the Agreement and approved by the Independent Fiduciary of the Client Plan (see Item 8 below).

A Multiple Client Account typically will be organized either as a common law trust or a group trust as defined in IRS Revenue Ruling 81-100 (as to which Fidelity would serve as discretionary trustee), or as a limited partnership (as to which Fidelity would be general partner).⁴ For any Multiple Client Account, various decisions regarding the Account other than investment management decisions for the Account (such as the initial decision to allocate Client Plan assets to the Account, decisions with respect to the removal of Fidelity or the termination of the Account) will be made by the Responsible Independent Fiduciaries. Fidelity represents that in all instances the Responsible Independent Fiduciaries will be acting for Account investors that collectively hold at least 50% of the interests in the Account. The

⁴With respect to any Multiple Client Account organized by Fidelity as a limited partnership, Fidelity represents that its interest as a general partner will not exceed 1% of the aggregate outstanding partnership interests of such limited partnership at any time. exact percentage required for such decisions will be specified in the governing documents of the Account.

The decision to invest assets of a Client Plan in any Multiple Client Account will be made by the Independent Fiduciary of such Client Plan, based upon full written disclosure of the Performance Fee prior to such investment. Notwithstanding the foregoing, Fidelity may authorize the transfer of cash from a Single Client Account to a Multiple Client Account where: (i) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (ii) the Agreement governing the Single Client Account authorizes Fidelity to invest in a Multiple Client Account; (iii) Fidelity receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account; (iv) a binding commitment to make the transfer to the Multiple Client Account is made within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event Fidelity's binding commitment to make the transfer occurs more than six months after such fiduciary's decision, Fidelity obtains an additional authorization from the Independent Fiduciary; and (v) each transfer of assets from the Single Client Account to the Multiple Client Account occurs within sixty (60) days of the actual transfer of such assets to the Single Client Account. Fidelity represents that its commitment to invest the cash would normally occur within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account. However, if more than six months has transpired since the Independent Fiduciary's decision to invest the assets in the Single Client Account, Fidelity will obtain an additional authorization from such fiduciary. Such authorization will occur following written disclosure to the Independent Fiduciary of Fidelity's binding commitment to make a cash transfer to the Multiple Client Account which will be deemed approved unless such fiduciary objects within a reasonable time.

After a transfer of cash, the fee structure for the Multiple Client Account will govern all fees received by Fidelity for such Client Plan assets. The precise terms of Fidelity's compensation arrangement will be established as part of the documents pursuant to which the Multiple Client Account is organized and can be amended only with the affirmative approval of the Responsible Independent Fiduciaries.

4. The applicant represents that, in general, the investment objectives of each Account will be to obtain current income and/or capital appreciation through investments primarily in various types of private market securities and real estate related investments. Fidelity represents that it offers a wide range of investment services and utilizes a wide variety of investment approaches. While the bulk of Fidelity's business entails investing Client Plan assets in publicly-traded securities which are readily valued or easily liquidated, other aspects of its investment business entail, at least in part, investing Client Plan assets in nonpublicly-traded securities and other property.

Fidelity's objective with respect to the requested exemption is to achieve sufficient flexibility to respond to client demands and preferences for utilization of a Performance Fee arrangement of the type described below. Fidelity believes that such a fee arrangement may be attractive to Client Plans in situations involving Accounts which are to be invested primarily (i.e. more than 50%) in certain types of assets other than publicly-traded equity securities or publicly-traded, investment grade debt securities. For purposes of an Account meeting the 50% test for assets which are not "publicly-traded equity securities" or "publicly-traded, investment grade debt securities", any private market securities held by the Account that become publicly-traded securities shall not be considered as such for a period of thirty (30) months following the date such securities become publicly-traded so as to allow Fidelity sufficient time to dispose of such securities in order for the Account to remain primarily invested in assets which are not publicly-traded securities, including for such purposes any publicly-traded debt securities which are not investment grade.5

An Account could entail a wide range of types of investments, including privately placed debt and equity securities, high-yield fixed income securities, publicly-traded debt securities issued by distressed companies, partnership interests in venture capital operating companies, various real estate or real estate-related interests, and other "alternative investments" which have greater risk but potentially greater returns than traditional classes of equity or debt

³Section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performancebased compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide oversight of the investment manager during the course of the arrangement.

⁵The Department notes that a "publicly-traded security" would include any security that is a "publicly-offered security" as described in the Department's regulations relating to the definition of "plan assets" in the context of certain plan investments (see 29 CFR 2510.3–101(b) (2)–(4)).