

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

LORI BILEWICZ, <i>et al.</i> ,	)	
and all others similarly situated,	)	
	)	
Plaintiffs,	)	Civil Action No. 13-10636-DJC
vs.	)	
	)	
FMR LLC; FMR LLC INVESTMENT	)	
COMMITTEE;	)	
and John and Jane Does 1-25,	)	
	)	
Defendants.	)	

AIDEN YEAW, ALEX C. BROWN,	)	
and all others similarly situated,	)	
	)	
Plaintiffs,	)	Civil Action No. 14-10035-DJC
vs.	)	
	)	
FMR LLC; FMR LLC RETIREMENT	)	
COMMITTEE;	)	
and John and Jane Does 1-25,	)	
	)	
Defendants.	)	

**[PROPOSED] ORDER (1) CONSOLIDATING THE ACTIONS, (2) CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS AS A NON-OPT-OUT CLASS AND APPOINTING CLASS COUNSEL, (3) GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT, (4) DIRECTING NOTICE TO SETTLEMENT CLASS MEMBERS AND APPROVING THE PLAN AND FORM OF NOTICE, (5) APPOINTING A SETTLEMENT ADMINISTRATOR, (6) SCHEDULING A FAIRNESS HEARING, AND (7) SCHEDULING A HEARING ON CLASS COUNSEL’S MOTION FOR FEES AND COSTS AND THE PAYMENT OF SERVICE AWARDS FOR THE NAMED PLAINTIFFS**

The Court having received and considered the unopposed Motion (the “Motion”) by Plaintiffs in the above-captioned actions (the “Actions”) for an Order (1) consolidating the Actions; (2) conditionally certifying the Settlement Class as a non-opt-out class and appointing Class Counsel; (3) granting preliminary approval of the Settlement; (4) directing notice to Settlement Class Members

and approving the plan and form of notice; (5) appointing KCC Class Action Services LLC as Settlement Administrator; (6) scheduling a Fairness Hearing; and (7) scheduling a hearing on Class Counsel's impending motion for fees and costs and the payment of service awards for the Named Plaintiffs, and supporting papers including the Class Action Settlement Agreement dated July 1 2014 (the "Settlement Agreement") and the declarations of counsel, and having further considered the arguments of counsel and the pleadings and record in this case and finding good cause for granting the Motion,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. Capitalized terms used in this Order that are not otherwise identified herein have the meaning assigned to them in the Settlement Agreement.

2. This Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

3. Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

4. The Court grants the motion to consolidate *Bilewicz v. FMR LLC*, No. 13-10636-DJC (D. Mass.) and *Yean v. FMR LLC*, No. 14-10035-DJC (D. Mass.) for settlement purposes.

5. The terms of settlement ("Settlement") set forth in the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below. The Court concludes that the Settlement is sufficiently within the range of reasonableness to warrant the preliminary approval of the Settlement, the scheduling of the Fairness Hearing, and the mailing of notices to Settlement Class Members, each as provided for in this Order. The Court further finds that the formula proposed by Named Plaintiffs and Class Counsel for allocating the Net Settlement Fund among Settlement Class Members is fair and reasonable.

6. The Court approves the retention by Class Counsel of KCC Class Action Services LLC as the Settlement Administrator.

7. The Court approves the Notice of proposed Class Action Settlement (“Notice”) in substantially the form attached hereto as Exhibit 1.

**Class Certification for Settlement Purposes**

8. Pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the proposed Settlement, a non-opt-out Settlement Class consisting of all persons who participated in the Plan at any time during the Settlement Class Period (March 20, 2007 through [either (i) the date of the Settlement Agreement or (ii) or in the event that the preliminary approval order is not entered before July 28, 2014, then July 28, 2014], except for Committee Members<sup>1</sup>. A person has “participated” in the Plan for this purpose if he or she had a positive balance in the Plan at any time during the Settlement Class Period.

9. Solely for purposes of the proposed Settlement of these Actions, the Court finds that each element required for certification of the Settlement Class pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Actions would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Named Plaintiffs are typical of the claims of the Settlement Class; (d) Named Plaintiffs and Named Plaintiffs’ Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) prosecution of separate actions by individual members of the Settlement Class would create a risk of: (1) inconsistent or varying adjudications as to individual Settlement Class Members that would establish incompatible standards of conduct for the parties opposing the claims asserted in these Actions or (2) adjudications as to individual Settlement Class Members that

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<sup>1</sup> The Settlement Agreement defines Committee Members as members of the FMR LLC Investment Committee, during the period March 20, 2007 through March 19, 2013, and the FMR LLC Retirement Committee, during the period January 8, 2008 through January 7, 2014.

would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede the ability of such persons to protect their interests.

10. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Named Plaintiffs are adequate class representatives and certifies them as Class Representatives for the Settlement Class. The Court also appoints Named Plaintiffs' Counsel as Class Counsel for the Settlement Class.

**Manner of Giving Notice**

11. Not later than seven (7) days before Notice is to be supplied to Settlement Class Members, FMR LLC ("FMR") shall provide the Settlement Administrator with the names and last known addresses of the Settlement Class Members. The names and addresses that the Settlement Administrator obtains pursuant to this Order shall be used solely for the purpose of providing notice of this Settlement and for no other purpose.

12. Not later than ten (10) days after entry of this Order, the Settlement Administrator shall cause copies of the Notice to be mailed by first-class mail, postage pre-paid, to all Settlement Class Members through the notice procedure described in the Settlement Agreement.

13. Not later than \_\_\_\_\_, 2014, the Settlement Administrator shall provide to Class Counsel and to Defendants' Counsel a declaration attesting to compliance with the service of the Settlement Notices, as set forth above. The cost of giving notice to the Settlement Class Members as specified in this Order shall be paid as set forth in the Settlement Agreement.

14. The Court finds that the notice to be provided as set forth in this Order is the best means of providing notice to the Settlement Class Members as is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons affected by or entitled to participate in the Settlement, the

hearing on the motion for fees, or the Fairness Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

15. All reasonable costs incurred by Settling Plaintiffs' Counsel or the Settlement Administrator for providing the Notice as well as for administering the Settlement shall be paid as set forth in the Settlement Agreement without further order of the Court.

**Fairness Hearing**

16. The Court will hold a settlement hearing (the "Fairness Hearing") on \_\_\_\_\_, 2014 at \_\_:\_\_ .m. in Courtroom 11 of the John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, Massachusetts 02210, for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B to the Settlement Agreement should be entered dismissing with prejudice all claims asserted in the Actions against Defendants with respect to Settlement Class Members; (c) to determine whether the proposed Plan of Allocation for the net proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the motion by Settling Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of litigation expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Fairness Hearing shall be given to Settlement Class Members as set forth in Paragraph 12 of this Order.

17. The Court may adjourn the Fairness Hearing and approve the proposed Settlement with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Settlement Class.

18. Not later than [thirty days after Preliminary Approval Order], Class Counsel shall submit their papers in support of final approval of the Settlement, Class Counsel’s applications for attorneys’ fees, expenses, and service payments. Either or both of the Settling Parties may submit papers in response to any timely-filed objections on or before [seventy days after Preliminary Approval Order].

**Objections to the Settlement**

19. The Court will consider written comments and objections to the Settlement, to the proposed award of attorneys’ fees and expenses, or to the request for service payments for the Plaintiffs only if such written comments or objections are filed with the Court Clerk on or before [forty-five days after the Settlement Administrator issues the Notice], comply with the requirements of Paragraph 20 below, and are served on the Settling Parties at the following addresses:

For Filing with the Court:

Clerk of the U.S. District Court for the District of Massachusetts  
 Federal Building and United States Courthouse  
 1 Courthouse Way  
 Boston, Massachusetts 02210

Re: *Bilewicz, et al. v. FMR LLC, et al.*, Civil Action No. 13-10636-DJC  
*Yeaw, et al. v. FMR LLC, et al.*, Civil Action No. 14-10035-DJC

To Class Counsel:

Gregory Y. Porter BAILEY & GLASSER LLP 910 17th Street, NW Suite 800 Washington, DC 20006	Todd Schneider SCHNEIDER WALLACE COTTRELL KONECKY LLP 180 Montgomery Street, Suite 2000 San Francisco, CA 94104
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To Defendants’ Counsel:

James O. Fleckner, Esq. Goodwin Procter LLP 53 State Street Boston, MA 02109	Alison V. Douglass, Esq. Goodwin Procter LLP 53 State Street Boston, MA 02109
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20. The Court will only consider written comments and objections to the Settlement that are signed by the Settlement Class Member and are timely filed with the Court and include all of the following: (a) the name of the Actions; (b) the Settlement Class Member's full name, address, telephone number, and signature; (c) a statement that the writer is a Settlement Class Member and an explanation of the basis upon which the writer claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support known to the objector or his or her counsel, (e) a statement as to whether the Settlement Class Member or his or her counsel intends to personally appear and/or testify at the Fairness Hearing; and (f) a list of any persons the objector or his or her counsel may call to testify at the Fairness Hearing in support of the objection. Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred absent an order from the Court. The Named Plaintiffs and/or FMR may, at their own expense, take discovery, including depositions, from anyone who files an objection with respect to any of the issues raised in the objection.

21. Anyone who files and serves a timely, written comment or objection in accordance with this Order may also appear at the Fairness Hearing either in person or through qualified counsel retained at their own expense. Those persons or their attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention to appear setting forth, among other things, the name, address, and telephone number of the Settlement Class Member (and, if applicable, the name, address, and telephone number of that Settlement Class Member's attorney) on Class Counsel and Defendants' Counsel (at the addresses set out above) and file it with the Court Clerk by no later than forty-five days after the issuance of the Notice. Anyone who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to

appear at the Fairness Hearing, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class Member or that Settlement Class Member's counsel.

#### **Termination of Settlement**

22. This Order shall become null and void, ab initio, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective statuses as of April 24, 2014, prior to the Settlement, if the Settlement is terminated in accordance with the terms of the Settlement Agreement.

#### **Use of Order**

23. This Order is not admissible as evidence for any purpose against Defendants in any pending or future litigation involving any of the Parties. This Order (a) shall not give rise to any inference of, and shall not be construed or used as an admission, concession, or declaration against any Defendant of, wrongdoing or liability in the Actions or any other proceeding; (b) is not an admission of any liability of any kind, whether legal or factual; (c) shall not be used or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce the Settlement Agreement; (d) shall not be construed or used as an admission, concession, or declaration by or against Named Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Actions is inappropriate, improper or unavailable; (e) shall not be construed or used as an admission, concession, declaration or waiver by any party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by Defendants to class certification, in the event that the Settlement Agreement is terminated. This Order and the Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for settlement purposes only. Defendants specifically deny any fault, breach, liability or wrongdoing.



**Jurisdiction**

24. The Court hereby retains jurisdiction for purposes of implementing the Settlement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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The Honorable Denise J. Casper  
United States District Judge

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***EXHIBIT 1***

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LORI BILEWICZ, ET AL.,  
and all others similarly situated,

Plaintiffs,

vs.

CIVIL ACTION NO. 13-10636-DJC

FMR LLC; FMR LLC INVESTMENT  
COMMITTEE;  
and John and Jane Does 1-25,

Defendants.

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AIDEN YEAW, ET AL.,  
and all others similarly situated,

Plaintiffs,

vs.

CIVIL ACTION NO. 14-10035-DJC

FMR LLC; FMR LLC RETIREMENT  
COMMITTEE; and John and Jane Does 1-25,

Defendants.

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**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*A federal court has authorized this Notice. This is **not** a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.**

You are receiving this notice because the records maintained by the Defendants in the above-captioned federal lawsuits indicate that you are or have been a participant in the FMR LLC Profit Sharing Plan (“the Plan”) at some time during the period March 20, 2007 through [either (i) the date of the Settlement Agreement or (ii) in the event that the preliminary approval order is not entered before July 28, 2014, then July 28, 2014]. As such, your rights may be affected by a proposed class action settlement (“the Settlement”) of these two lawsuits, which have been consolidated by the Court for the purpose of settlement. **Please read the following information carefully to find out what the lawsuits are about, what the terms of the proposed settlement are, what rights you have to object**

**to the proposed settlement agreement if you disagree with its terms, and what deadlines apply to the right to object to the proposed settlement.**

### **What the Lawsuits are About**

The proposed class action settlement involves two lawsuits that were filed in the same federal district court against the same or related defendants. Both cases involve claims that the Defendants violated a federal law, the Employee Retirement Income Security Act of 1974 (“ERISA”), by failing to comply with their responsibilities under ERISA as alleged fiduciaries to the Plan and Plan participants in the management of the Plan. In *Bilenicz, et al. v. FMR LLC, et al.*, Civil Action No. 13-10636-DJC, the Plan participants who filed the lawsuit (“Plaintiffs”) claim that Defendants acted in their own self-interest instead of the interests of Plan participants by including in the Plan’s investment options a disproportionate number of FMR LLC (“FMR”) mutual funds. As a result, the Plaintiffs claim, Plan participants paid higher fees and obtained less return on their investment while Defendants benefited from fees on these funds that were collected by Defendants or their subsidiaries. In the other case, *Yeaw, et al. v. FMR LLC, et al.*, Civil Action No. 14-10035-DJC, the Plaintiffs claim that Defendants breached their fiduciary duties by failing to obtain favorable revenue-sharing rebate arrangements.

The allegations in both cases are the bases for the Plaintiffs’ claims that the Defendants’ breached their fiduciary duty of loyalty to the Plan and Plan participants under ERISA and that they engaged in prohibited transactions. For these alleged violations, Plaintiffs seek damages and an Order from the Court requiring that Defendants restructure the Plan to rectify the alleged violations.

Defendants have asserted, or would assert should the litigation continue, a number of defenses to Plaintiffs’ claims. The Defendants deny the allegations made in both cases. Defendants maintain that their decision to offer a broad array of FMR mutual funds to Plan participants was not self-interested but, rather, was in the best interests of the Plan. Among the defenses that Defendants would have asserted are the following: Defendants believed that FMR provided an extensive platform of high quality mutual funds with an appropriate investment mix for its current and former employees; FMR offered a broad array of mutual funds to Plan participants, including funds in many different asset classes and with a wide variety of risk profiles and a range of fee structures; participants could select among these diverse options themselves, or to have an expert select and manage their investments for them, free of charge; and the investment objectives, risks and costs of those investments were fully disclosed in writing to all participants before they made any investment decisions. Defendants have already asserted a number of other defenses in the litigation that they would maintain should the case proceed: Fidelity contributed over \$2.5 billion of its own money to Plan participants’ accounts between 2007 and 2012; the Department of Labor expressly allows financial service providers who sponsor 401(k) plans to offer their own products to plan participants; the claims are time-barred under ERISA’s statutes of limitations and repose; and certain claims are barred by the constitutional standing doctrine.

### The Terms of the Settlement

Rather than proceed to trial in these lawsuits, which will involve the substantial expenditure of time and resources, Plaintiffs and FMR have agreed to a settlement that involves both monetary payments to Plan participants and acceleration of changes in the structure of the Plan. These and other terms of the Settlement are set forth in the Class Action Settlement Agreement dated July 1, 2014 (“Settlement Agreement”), and described below.

1. The Scope of the Class Covered by the Settlement. The proposed Settlement Agreement would be a class action settlement that would cover and be binding on the following class of individuals (“Settlement Class” or “Settlement Class Members”):

all persons who participated in the *Plan* (defined as the FMR LLC Profit Sharing Plan, and all predecessor plans or successor plans, individually and collectively, and any trust created under such Plan) during the *Settlement Class Period* (defined as March 20, 2007 through [either (i) the date of the Settlement Agreement or, (ii) in the event that the Court does not enter the preliminary approval order before July 28, 2014, then July 28, 2014]), except for *Committee Members* (defined as members of the FMR LLC Investment Committee from March 20, 2007 through March 19, 2013, and the FMR LLC Retirement Committee from January 8, 2008 through January 7, 2014). A person has “participated” in the *Plan* for this purpose if he or she had a positive balance in the *Plan* at any time during the *Settlement Class Period*.

Whether a person meets this definition or not will be based on the Plan’s records. You have received this notice because, based upon those records, you are believed to be a class member.

2. The Payment and Allocation of a Settlement Fund. As part of the Settlement, FMR has agreed to make a payment of \$12 million for the benefit of the class. This sum, after the deduction of reasonable amounts to be approved by the Court for expenses, attorneys’ fees and a service award paid to the named Plaintiffs for services rendered in prosecuting this case on behalf of the Settlement Class (“Service Payments”), will be distributed to Settlement Class Members on a pro rata basis, based on their average account balances during the period of March 20, 2007 through December 31, 2013, except that no Settlement Class Member shall receive less than \$10. Settlement Class Members who did not have any balance in their accounts prior to January 1, 2014 will receive \$10. Settlement Class Members who have a positive account balance in their Plan account at the time of the distribution will receive settlement proceeds into their Plan account. To the extent feasible and ascertainable, those settlement proceeds will be invested based on the Settlement Class Member’s election mix for new contributions or, if no such election is in effect, to the applicable qualified default investment option. Settlement Class Members who no longer have a positive balance in their Plan account as of the date of distribution will receive a check from the Settlement Administrator.

In addition, FMR may select an independent fiduciary to provide such authorization as may be required by Prohibited Transaction Exemption 2003-39. All costs reasonably borne by the independent fiduciary, including the reasonable fees of the independent fiduciary for its service not to exceed \$50,000, shall be borne by the Settlement Fund.

3. Non-Monetary Relief: In addition to the monetary payment, FMR will be implementing the following changes to the Plan, and has agreed that such changes will be in effect for at least two years following the effective date of the amendment, unless otherwise noted:

- (1) The Plan will make available a wide selection of both Fidelity and non-Fidelity mutual funds.
- (2) The Plan will also continue to offer: (i) the Fidelity Freedom Funds – Class K as the Plan’s qualified default investment alternative; and (ii) Fidelity’s portfolio advisory service, Portfolio Advisory Services at Work (PAS-W). PAS-W will continue to be offered at no cost to participants.
- (3) Fidelity is increasing auto-enrollment for eligible employees from 3% to 7% of eligible compensation, and will default current participants who are currently deferring below 7% to 7% of eligible compensation. Fidelity will apply its match to those increased contributions.
- (4) The Plan shall provide that revenue sharing attributable to non-Fidelity mutual funds shall be credited to participants in the same way as revenue attributable to Fidelity mutual funds and collective trusts pursuant to the 8th amendment to the 2005 restatement of the Plan is credited to participants. This revision to the Plan shall remain in effect for at least three years. .

4. The Classwide Release of Claims. In exchange for payment of the Settlement Fund by FMR and the changes in the Plan structure required by the Settlement Agreement, all Settlement Class Members will release any claims they have related to these lawsuits and be prohibited from bringing or pursuing any other lawsuits or other actions based on such claims. The Releases are set forth in full in Section 3 of the Settlement Agreement, which can be viewed online at [www.fidelity401klawsuit.com](http://www.fidelity401klawsuit.com), or requested from Class Counsel.

### **The Settlement Approval Process**

The Court has granted preliminary approval of the proposed Settlement, finding that it is sufficiently within the range of reasonableness to warrant such preliminary approval, and has approved this notice to the Settlement Class. The Settlement will not take effect, however, until it receives final approval from the Court following an opportunity for Settlement Class Members to object to the Settlement, as described in detail below. Following the deadline for objecting to the Settlement, Class Counsel will file a Motion for Final Approval of the

Settlement. The Court will hold a Fairness Hearing on \_\_\_\_\_, 2014, which will take place at the John Joseph Moakley United States District Courthouse for the District of Massachusetts, located at 1 Courthouse Way, Courtroom 11, 5th Floor, Boston, Massachusetts, 02210. The date and location of the Fairness Hearing is subject to change by order of the Court, which will appear on the Court’s docket for these cases.

**The Opportunity to Object to the Settlement**

Prior to the Fairness Hearing, Settlement Class Members will have the opportunity to object to approval of the Settlement. Settlement Class Members can object to the Settlement and give reasons why they think the Court should not approve it. To object, you must send your objection to the Court, at the John Joseph Moakley United States District Courthouse for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts, 02210, and to the Parties at the following addresses:

To Class Counsel:

Gregory Y. Porter BAILEY & GLASSER LLP 910 17th Street, NW Suite 800 Washington, DC 20006	Todd Schneider SCHNEIDER WALLACE COTTRELL KONECKY LLP 180 Montgomery Street, Suite 2000 San Francisco, CA 94104
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To Defendants’ Counsel:

James O. Fleckner, Esq. Goodwin Procter LLP 53 State Street Boston, MA 02109	Alison V. Douglass, Esq. Goodwin Procter LLP 53 State Street Boston, MA 02109
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Objections must be filed with the Court Clerk on or before \_\_\_\_\_, 2014. Objections filed after that date will not be considered. Any Settlement Class Member failing to submit a timely objection will be deemed to have waived any objection they might have, and any untimely objection will be barred absent an order from the Court. Objections must include: (1) the name of one or both of the cases, “*Bilenicz, et al. v. FMR, et al.*, Case No. 13-10636” and/or “*Yean, et al. v. FMR LLC, et al.*, Civil Action No. 14-10035-DJC”; (2) your full name, current address, telephone number and signature; (3) a statement that you are a Settlement Class Member and an explanation of the basis upon which you claim to be a Settlement Class Member; (4) all grounds for the objection, accompanied by any legal support known to you or your counsel; (5) a statement as to whether you or your counsel intends to personally

appear and/or testify at the Fairness Hearing; and (6) a list of any persons you or your counsel may call to testify at the Fairness Hearing in support of your objection.

Anyone who files and serves a timely written objection in accordance with the instructions above may also appear at the Fairness Hearing either in person or through qualified counsel retained at their own expense. Those persons or their attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention to appear setting forth: (1) the name, address, and telephone number of the Settlement Class Member, and (2) if applicable, the name, address, and telephone number of that Settlement Class Member's attorney on Class Counsel and Defendants' counsel (at the addresses set out above) and file it with the Court Clerk by no later than \_\_\_\_\_, 2014. Anyone who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class member or that Settlement Class member's counsel.

The Court will consider Settlement Class Member objections in deciding whether to grant final approval. Objectors are not required to attend the Fairness Hearing, but if you intend to appear you must state your intention to do so in the manner described above. Settlement Class Members who do not comply with these procedures, or who miss the deadline to file an objection, lose the opportunity to have their objection considered by the Court or to appeal from any order or judgment entered by the Court regarding the Settlement.

**Attorney's Fees and Service Payments for Named Plaintiffs**

In granting preliminary approval of the proposed Settlement, the Court appointed the Plaintiffs' lawyers to serve as "Class Counsel" for the Settlement Class. The attorneys for the Settlement Class include the following attorneys and law firms:

Gregory Y. Porter  
BAILEY & GLASSER LLP  
910 17th Street, NW  
Suite 800  
Washington, DC 20006

Todd M. Schneider  
SCHNEIDER WALLACE COTTRELL  
BRAYTON KONECKY LLP  
180 Montgomery Street, Suite 2000  
San Francisco, CA 94104

Peter Mougey  
LEVIN, PAPANTONIO, THOMAS,  
MITCHELL, RAFFERTY & PROCTOR  
316 S. Baylen Street, Suite 600  
Pensacola, FL 32502

Joseph C. Peiffer  
PEIFFER ROSCA ABDULLAH  
CARR & KANE, LLC  
201 St. Charles Avenue, Suite 4610  
New Orleans, LA 70170

Class Counsel will file a motion with the Court seeking approval of payment from the Settlement Fund of the expenses they incurred in prosecuting the case, reasonable attorneys' fees and a service payment not to exceed \$5,000 for each of the named Plaintiffs and class representatives. The motion and supporting papers will be filed on or before



\_\_\_\_\_, 2014 [30 days from the date of preliminary approval]. After that date you may review the motion and supporting papers at [www.fidelity401klawsuit.com](http://www.fidelity401klawsuit.com). Any attorney's fees, expenses and Service Payments approved by the Court, in addition to the fee for the independent fiduciary and the expenses incurred by the Settlement Administrator in sending this notice and administering the Settlement, will be paid from the Settlement Fund.

**Getting More Information**

You can visit the website at [www.fidelity401klawsuit.com](http://www.fidelity401klawsuit.com), where you will find the full Settlement Agreement, the Court's order granting preliminary approval, this notice and other relevant pleadings and documents. If you cannot find the information you need on the website, you may also contact Class Counsel for more information. Do not contact the Court to get additional information.

Dated: \_\_\_\_\_, 2014

By Order of the United States District Court  
Of Massachusetts, Honorable Denise J.  
Casper

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