

2002 BCSECCOM 359

Exemption Order

Fidelity Investments Canada Limited and Fidelity Retirement Services Company of Canada Limited

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Fidelity applied for an exemption from the requirement in sections 6(2)(c)(ii)(A) and 6(4) of the *Securities Rules*, B.C. Reg. 194/97, as varied by BC Instrument 33-503 (the MFDA Application Requirements), to be a member of the Mutual Fund Dealers Association (the MFDA) on and after July 2, 2002 and to apply for membership in the MFDA by May 23, 2001.

Representations

- ¶ 2 Fidelity Investments Canada Limited (the Registrant) represents that:
1. the Registrant is a company incorporated under the laws of Ontario and is registered under the Act as a dealer in the category of mutual fund dealer and as an investment counsel and portfolio manager;
 2. the Registrant is the manager of a number of mutual funds that it has established and will be the manager of other mutual funds it expects to establish in the future;
 3. the securities of the mutual funds managed by the Registrant are generally sold to the public through other registered dealers;
 4. currently, the Registrant sells securities of mutual funds that it manages to certain participants (Group Retirement Clients) in employer sponsored plans that include: registered pension plans, deferred profit sharing plans, registered retirement savings plans, registered retirement income funds, registered education savings plans, other deferred income plans registered under the *Income Tax Act* (Canada) and other savings plans (the Retail Distribution Activities);
 5. the Retail Distribution Activities currently represent and will continue to represent activities that are incidental to the Registrant's business activities;
 6. until approximately, December, 2001, the Registrant intended to transfer the Retail Distribution Activities to a wholly owned subsidiary, being Fidelity Retirement Services Company of Canada Limited (the Affiliate), that has

2002 BCSECCOM 359

applied for registration under the Act as a mutual fund dealer and has applied for membership in the MFDA;

7. subsequently, the Registrant determined that the Group Retirement Clients will be more appropriately serviced by an investment dealer that is a member of the Investment Dealers Association of Canada (the IDA); a significant portion of the Registrant's trading on behalf of the Group Retirement Clients involves the sale to them of non-mutual fund securities of their employer (or affiliate of an employer) under its employee share purchase plans; the Registrant is permitted to trade non-mutual fund securities in these circumstances under orders granted under sections 48 and 76 of the Act;
8. the Registrant has incorporated another wholly owned subsidiary, Fidelity Intermediary Securities Company Limited (the Investment Dealer) and submitted an application for registration as an investment dealer in each Canadian jurisdiction as well as an application to for membership to the IDA;
9. the Registrant proposes to transfer the Group Retirement Clients to the Investment Dealer once the Investment Dealer is registered in each Canadian jurisdiction, has been admitted as a member of the IDA and certain systems and other changes have been made to ensure that the operations of the Investment Dealer are in compliance with the by-laws, rules, regulations and policies of the IDA;
10. the Registrant is unable to transfer the Group Retirement Clients to the Investment Dealer by July 2, 2002 as the systems and operational changes will not be complete;
11. the Registrant would like to continue to be registered as a mutual fund dealer without being required to become a member of the MFDA;
12. the Registrant would like to continue to provide the Retail Distribution Activities to the Group Retirement Clients until they can be transferred to the Investment Dealer, which is anticipated to be on or before December 31, 2002;
13. the Registrant has agreed to the imposition of the terms and conditions on its registration as a mutual fund dealer set out in Schedule A;
14. any person that is not currently a client of the Registrant on the effective date of this order will, before they are accepted as a client of the Registrant, receive written notice from the Registrant that:

2002 BCSECCOM 359

The Registrant is not currently a member and does not intend to become a member of the Mutual Fund Dealers Association; consequently, clients of the Registrant will not have available to them investor protection benefits that would otherwise derive from membership of the Registrant in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA.

15. the Registrant has provided to any client that was a client of the Registrant on the effective date of this order, the written notice referred to in paragraph 13 above.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that effective May 23, 2001 under section 48 of the Act that the Registrant is exempt from the MFDA Application Requirements provided that the Registrant complies with the terms and conditions on its registration under the Act as a mutual fund dealer set out in the attached Schedule “A”.

¶ 4 May 2, 2002

L.E. Evans, C.A.
Director, Capital Markets Regulation

Schedule “A”

TERMS AND CONDITIONS OF REGISTRATION OF FIDELITY INVESTMENTS CANADA LIMITED AS A MUTUAL FUND DEALER

Definitions

1. For the purposes hereof, unless the context otherwise requires:
 - (a) “Act” means the Securities Act, R.S.B.C. 1996, c. 418, as amended;
 - (b) “Adviser” means an adviser as defined in subsection 1(1) of the Act;

2002 BCSECCOM 359

(c) “Client Name Trade” means, for the Registrant, a trade to, or on behalf of, a person, in securities of a mutual fund, that is managed by the Registrant or an affiliate of the Registrant, where immediately before the trade, the person is shown on the records of the mutual fund or of an other mutual fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund, and the trade consists of:

(A) a purchase, by the person, through the Registrant, of securities of the mutual fund; or

(B) a redemption, by the person, through the Registrant, of securities of the mutual fund;

and where, the person is either a client of the Registrant that was not solicited by the Registrant or was an existing client of the Registrant on the Effective Date;

(d) “Commission” means the British Columbia Securities Commission;

(e) “Effective Date” means May 23, 2001;

(f) “Employee”, for the Registrant, means:

(A) an employee of the Registrant;

(B) an employee of an affiliated entity of the Registrant; or

(C) an individual that is engaged to provide, on a bona fide basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;

(g) “Employee”, for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:

(A) the Registrant or an affiliated entity of the Registrant; or

2002 BCSECCOM 359

- (B) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;
- (h) “Employee Rule” means British Columbia Securities Commission Rule 45-507 Trades To Employees, Executives and Consultants;
- (i) “Executive”, for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;
- (j) “Executive”, for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;
- (k) “Exempt Trade”, for the Registrant, means:
 - (i) a trade in securities of a mutual fund that is made between a person and an underwriter acting as purchaser or between or among underwriters; or
 - (ii) any other trade for which the Registrant would have available to it an exemption from the registration requirements of the Act;
- (l) “Fund-on-Fund Trade”, for the Registrant, means a trade that consists of:
 - (i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;
 - (ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a counterparty, an affiliated entity of the counterparty or an other person, pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; or
 - (iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:
 - (A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or
 - (B) a counterparty, affiliated entity or other person that acquired the securities pursuant to an agreement to purchase the securities to

2002 BCSECCOM 359

effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; and

where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;

- (m) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of an other trade in securities of a mutual fund, where the other trade consists of:
 - (i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
 - (ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund; and

where, in each case, the purchase or sale is made by or through an other registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

- (n) “Mutual Fund Instrument” means National Instrument 81-102 Mutual Funds, as amended;
- (o) “Permitted Client” for the Registrant means a person that is a client of the Registrant and that is or was at the time that the person became a client of the Registrant;
 - (i) an Executive or Employee of the Registrant;
 - (ii) a Related Party of an Executive or Employee of the Registrant;
 - (iii) a Service Provider of the Registrant or an affiliated entity of a Service Provider of the Registrant;
 - (iv) an Executive or Employee of a Service Provider of the Registrant; or
 - (v) a Related Party of an Executive or Employee of a Service Provider of the Registrant;
- (p) “Permitted Client Trade”, means, for the Registrant, a trade to a person that is a Permitted Client, or that represents to the Registrant that they are a

2002 BCSECCOM 359

person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant, and the trade consists of:

- (i) a purchase, by the person, through the Registrant, of securities of the mutual fund; or
 - (ii) a redemption, by the person, through the Registrant of securities of the mutual fund;
- (q) “Registered Plan” means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the Income Tax Act (Canada);
- (r) “Registrant” means Fidelity Investment Canada Limited;
- (s) “Related Party”, for a person, means an other person who is:
- (i) the spouse of the person;
 - (ii) the issue of:
 - (A) the person,
 - (B) the spouse of the person, or
 - (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
 - (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
 - (iv) the issue of any person referred to in paragraph (iii) above; or
 - (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
 - (vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing;

2002 BCSECCOM 359

- (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
 - (t) “securities”, for a mutual fund, means shares or units of the mutual fund;
 - (u) “Seed Capital Trade” means a trade in securities of a mutual fund made to a person referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument;
 - (v) “Service Provider”, for the Registrant, means:
 - (i) a person that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;
 - (ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
 - (iii) a person that provides or has provided professional, consulting, technical, management or other services to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant
2. For the purposes hereof, a person is considered to be an “affiliated entity” of an other person if the person would be an affiliated entity of that other person for the purposes of the Employee Rule.
3. For the purposes hereof:
- (a) “issue”, “niece”, “nephew” and “sibling” includes any person having such relationship through adoption, whether legally or in fact;
 - (b) “parent” and “grandparent” includes a parent or grandparent through adoption, whether legally or in fact;
 - (c) “registered dealer” means a person that is registered under the Act as a dealer in a category that permits the person to act as dealer for the subject trade; and
 - (d) “spouse”, for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.
4. Any terms that are not specifically defined above shall, unless the context otherwise requires, have the meaning:

2002 BCSECCOM 359

- (a) specifically ascribed to such term in the Mutual Fund Instrument; or
- (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Act.

Restricted Registration

Permitted Activities

5. Subject to paragraph 6, the registration of the Registrant as a mutual fund dealer under the Act shall be for the purposes only of trading by the Registrant in securities of a mutual fund where the trade consists of:

- (a) a Client Name Trade;
- (b) an Exempt Trade;
- (c) a Fund-on-Fund Trade;
- (d) an In Furtherance Trade;
- (e) a Permitted Client Trade; or
- (f) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (e), the trades are limited and incidental to the principal business of the Registrant.

Permitted Activities for Transitional Period

6. For the purposes hereof, the trades listed in paragraph 5 shall also include trades in securities of mutual funds where the trade is made to a participant in an employee-sponsored Registered Plan or other savings plan until the earlier of:
- (i) the assumption of such trading activity by Fidelity Intermediary Securities Company Limited, a wholly-owned subsidiary of the Registrant, and
 - (ii) December 31, 2002.