

2002 BCSECCOM 1055

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – decision to extend previous orders granting relief from the requirement to be registered to trade for activities in connection with employee share purchase plans – relief extended until December 31, 2003

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 171

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NEW BRUNSWICK and NOVA SCOTIA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF FIDELITY INVESTMENTS CANADA LIMITED **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the Provinces of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick and Nova Scotia (individually, a “Jurisdiction”, and, collectively, the “Jurisdictions”) has received an application from Fidelity Investments Canada Limited (“FICL”) for decisions, pursuant to the securities legislation (the “Legislation”) of each of the Jurisdictions, to vary terms and conditions (the “Terms and Conditions”) attaching to and forming part of decisions (the “Previous Decisions”) previously granted by the Decision Makers in each of the Jurisdictions that are identified in the attached Schedule “A”, which also refers to the provisions of the Legislation pursuant to which the Previous Decisions were granted;

AND WHEREAS the local securities regulatory authority or regulator (the “Suitability Decision Maker”) in each of the Provinces of Alberta and Ontario (individually, a “Suitability Jurisdiction”, and, collectively, the “Suitability Jurisdictions”) has received an application from Fidelity Investments Canada Limited (“FICL”) for decisions, pursuant to the Legislation of each of the Suitability Jurisdictions, to vary terms and conditions (the “Suitability Terms and Conditions”) attaching to and forming part of decisions (the “Previous Suitability

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Decisions”) previously granted by the Suitability Decision Makers that are identified in the attached in Schedule “B”, which also refers to the provisions of the Legislation pursuant to which the Previous Suitability Decisions were granted;

AND WHEREAS the Previous Decisions provided for exemptions from the requirement (the “Dealer Registration Requirement”) in the Legislation that prohibits a person or company from trading in a security unless the person or company is registered in an appropriate category of registration under the Legislation for certain trading activities (the “Group Retirement Business”) in shares of common stock by FICL, in its capacity as the administrator for certain employer-sponsored registered plans or other savings plans (collectively, the “Programs” and individually, a “Program”) to participants (“Participants”) in the Program, where the issuer of the shares is the employer or an affiliate of the employer, subject to Terms and Conditions that provided for the termination of such exemptions upon the earlier of:

- (i) the assumption of such trading activity by Fidelity Intermediary Securities Company Limited (“FISCO”); and
- (ii) December 31, 2002 (the “Registration Exemption Deadline”);

AND WHEREAS the Previous Suitability Decisions provided exemptions from requirements in the corresponding Legislation for FICL to make certain enquiries in connection with trade activities, with or on behalf of Participants, provided that these exemptions would terminate on the earlier of:

- (i) the assumption of such trading activity by FISCO; and
- (ii) December 31, 2002 (the “Suitability Exemption Deadline”);

AND WHEREAS FICL has applied for variations to the Terms and Conditions and the Suitability Terms and Conditions so as to extend the corresponding Registration Exemption Deadline and Suitability Exemption Deadline from “December 31, 2002” to “December 31, 2003”;

AND WHEREAS pursuant to the Mutual Reliance Review System (“MRRS”) for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application.

AND UPON FICL having represented to the Decision Makers and the Suitability Decision Makers that:

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1. FICL is registered under the Legislation of each of the Jurisdictions as a dealer, in the category of a “mutual fund dealer” (or the equivalent), and as an adviser, in the categories of “investment counsel” and “portfolio manager” (or the equivalent). FICL is also registered as a commodity trading manager under the *Commodity Futures Act (Ontario)*.
2. FISCO is registered as dealer in the category of “investment dealer” under the Legislation of each Jurisdiction other than Quebec. FISCO has applied for registration as an investment dealer in Quebec.
3. FISCO is a member of the Investment Dealers Association of Canada (the “IDA”) and it is proposed that all trading activities in connection with the Group Retirement Business be transferred from FICL to FISCO.
4. The Group Retirement Business can only be transferred to FISCO once it is ensured that the systems used in these business operations are IDA-compliant.
5. FISCO has been engaged in setting up the requisite systems since the fall of 2001 and had, until recently, anticipated that it would be in a position to accept a transfer of the Group Retirement Business from FICL by December 31, 2002.
6. Due to unforeseen difficulties, the availability of the IDA-compliant systems necessary to permit the transfer of the Group Retirement Business to FISCO will be delayed until some time in 2003.
7. Except as modified by the foregoing, the representations made by FICL that are set out in the Previous Decisions and the Previous Suitability Decisions continue to be accurate.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of each of the Decision Makers, pursuant to the Legislation, is that the Terms and Conditions in the Previous Decisions made by the Decision Maker be varied by changing the Registration Exemption Deadline from “December 31, 2002” to “December 31, 2003”.

December 20, 2002

Robert W. Korthals

Theresa McLeod

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AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Suitability Decision Maker (collectively, the “Suitability Decision”);

AND WHEREAS each of the Suitability Decision Makers is satisfied that the test contained in the Legislation that provides the Suitability Decision Maker with the jurisdiction to make the Suitability Decision has been met;

THE DECISION of each of the Suitability Decision Makers, pursuant to the Legislation, is that the Suitability Terms and Conditions in the Previous Suitability Decisions made by the Suitability Decision Maker be varied by changing the Suitability Exemption Deadline from “December 31, 2002” to “December 31, 2003”.

December 20, 2002

David M. Gilkes

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SCHEDULE “A”

PREVIOUS DECISIONS TO BE VARIED

Jurisdiction	Date	Subject	Legislation*
Alberta, Saskatchewan, Manitoba, Ontario and Quebec	August 1, 2001 varied May 14, 2002	Fidelity Investments Canada Limited (in respect of Dow AgroSciences Canada Inc.)	Alta. – s. 116(1) Sask. – s. 83 Man. – S. 20(1) Ont. – s. 74 Que. S. 263
Ontario and Alberta	September 14, 2001 varied May 31, 2002	Fidelity Investments Canada Limited (in respect of Textron Canada Limited)	Ont. – s. 74(1) Alta. – s 116(1)
Ontario and Alberta	February 12, 2002	Fidelity Investments Canada Limited (in respect of Valspar Inc.)	Ont. – s. 74(1) Alta. – s. 116(1)
British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick and Nova Scotia	March 13, 2002	Fidelity Investments Canada Limited (in respect of Ford Motor Company of Canada, Limited)	B.C. – s. 48 Alta. – s. 116(1) Sask. – s. 83 Ont. – s. 74 N.B. – s. 4(f) and s. 13 of the regulations N.S. – s. 79(1)

* Legislation refers to the securities act of the applicable province, unless otherwise stated.

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SCHEDULE “B”

PREVIOUS SUITABILITY DECISIONS TO BE VARIED

Jurisdiction	Date	Subject	Legislation*
Alberta	July 31, 2001, varied May 14, 2002	Fidelity Investments Canada Limited (in respect of Dow AgroSciences Canada Inc.)	s. 185
Ontario	August 1, 2001 varied May 14, 2002	Fidelity Investments Canada Limited (in respect of Dow AgroSciences Canada Inc.)	s. 4.1 of Ontario Securities Commission Rule 31-505
Ontario and Alberta	September 14, 2001 varied May 31, 2002	Fidelity Investments Canada Limited (in respect of Textron Canada Limited)	Ont. – s. 4.1 of Ontario Securities Commission Rule 31-505 Alta. – s. 185
Ontario and Alberta	February 12, 2002	Fidelity Investments Canada Limited (in respect of Valspar Inc.)	Ont. – s. 4.1 of Ontario Securities Commission Rule 31-505 Alta. – s. 185
Ontario and Alberta	March 13, 2002	Fidelity Investments Canada Limited (in respect of Ford Motor Company of Canada, Limited)	Ont. – s. 4.1 of Ontario Securities Commission Rule 31-505 Alta. – s. 185

* Legislation refers to the securities act of the applicable province, unless otherwise stated.