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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration requirements to permit trades by group plan administrator under a group retirement savings plan until operations can be transferred to a new subsidiary that will become a member of the IDA

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a) and 48

IN THE MATTER OF THE CANADIAN 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 AND
FORD MOTOR COMPANY OF CANADA, LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick and Nova Scotia (the "Jurisdictions") has received an application from Fidelity Investments Canada Limited ("Fidelity") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that 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 the appropriate category of registration under the Legislation shall not apply to certain trades in shares ("Common Shares") of common stock of Ford Motor Company ("Ford U.S.") to be made by Fidelity for, or on behalf of, persons that are Employees, Spouses, Former Employees, Former Employees' Spouses, the EPSP, Employee RRSPs and Employee Spouse RRSPs (as such terms are defined below) in its capacity as a group plan administrator of a group retirement savings plan (the "Program") of Ford Motor Company of Canada, Limited ("Ford Canada") (which includes the EPSP, Employee RRSPs, and Employee Spouse RRSPs);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Fidelity has represented to the Decision Makers that:

1. Fidelity, a corporation continued under the laws of Ontario, is registered in the Jurisdictions as a dealer in the category of "mutual fund dealer" and is also, or will be, registered in all Jurisdictions as an "adviser" in the categories of "investment counsel" and "portfolio manager".
2. Fidelity has applied, or will apply for relief pursuant to the Legislation of the Jurisdictions, exempting it from the requirements under the Legislation (the "MFDA Relief"): (i) to be a member of the Mutual Fund Dealers Association of Canada (the "MFDA") on or before July 2, 2002; and (ii) to file with the MFDA an application for membership and corresponding fees for membership before the required date under the Legislation of the Jurisdictions. Relief has been obtained from Ontario and Alberta.

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3. Fidelity's registration under the Legislation as a "mutual fund dealer" has been, or is expected to be, restricted to certain trades which are incidental to its principal business. The restricted trading activity includes trades by Fidelity to a participant in an employer-sponsored registered plan or other savings plan (the "Group Retirement Clients") until the earlier of: (i) the assumption of such trading activity by Fidelity Retirement Services Company of Canada Limited ("New Fidelity"), a wholly-owned subsidiary of Fidelity; and (ii) July 2, 2002.

4. At the time of receiving the MFDA Relief in Ontario and Alberta, and when making the application for the MFDA Relief in the other Jurisdictions, Fidelity intended to transfer its Group Retirement Clients to New Fidelity. However, upon review of the business needs of the Group Retirement Clients, Fidelity has determined that the Group Retirement Clients would be more appropriately serviced by a member of the Investment Dealers Association of Canada (the "IDA"), than a member of the MFDA.

5. As part of a separate business initiative, Fidelity has incorporated another wholly-owned subsidiary, Fidelity Intermediary Securities Company Limited (the "IDA Company"), which will submit an application for registration as an investment dealer in each Canadian jurisdiction and an application for membership in the IDA.

6. Fidelity proposes to transfer the Group Retirement Clients to the IDA Company and to run its business of servicing the group retirement business (the "Group Retirement Business") as a division of the IDA Company once the IDA Company has become registered in each Canadian jurisdiction and has been admitted to membership with the IDA and certain systems and other changes are made that will ensure the Group Retirement Business can be conducted in a manner which is compliant with the IDA By-laws and Rules.

7. Fidelity has applied in Ontario and Alberta for orders varying the terms of the MFDA Relief to allow Fidelity to trade in securities, where the trade is made to Group Retirement Clients until the earlier of the assumption of such trading activity by the IDA Company and December 31, 2002. Fidelity has applied or will apply for similar orders, as required, in certain other Canadian jurisdictions (collectively, the "Extension Applications").

8. Ford U.S. is a corporation incorporated under the laws of the State of Delaware.

9. Ford U.S. is not a reporting issuer (or the equivalent under the Legislation) in any of the Jurisdictions.

10. Ford Canada, a corporation incorporated under the laws of Ontario, is not a reporting issuer (or the equivalent under the Legislation) in any of the Jurisdictions.

11. Ford Canada is wholly-owned by Ford U.S.

12. The Common Shares are registered with the Securities and Exchange Commission in the United States of America (the "USA") under the Securities Exchange Act of 1934 and Ford U.S. is subject to the reporting requirements thereunder.

13. The Common Shares are listed and posted for trading on the New York Stock Exchange (the "NYSE").

14. Under the Program, Ford Canada selects mutual funds that persons (each an "Employee") who are employees of Ford Canada, and who participate in the Program, may purchase through payroll deductions or through lump sum payments.

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15. Investments made by Employees under the Program are made through the following plans:

- (i) an “employees profit sharing plan” (the “EPSP”), as defined in the *Income Tax Act* (Canada) (the “Tax Act”), that has been established for the benefit of persons who are Employees;
- (ii) “registered retirement savings plans” (each, an “Employee RRSP”), as defined in the Tax Act, that have been established by or for the benefit of Employees; and
- (iii) “registered retirement savings plans” (each, an “Employee Spouse RRSP”), as defined in the Tax Act, that have been established by or for the benefit of persons (collectively, “Spouses”) who are legally married to or are the “common law partners” (as defined in the Tax Act) of Employees.

16. Under the Program, Spouses are also permitted to invest amounts in their Employee Spouse RRSPs in certain mutual funds offered through Fidelity.

17. The Program also offers participating employees the opportunity to invest in units of the Ford Stock Fund (the “Fund”), a single stock fund that invests in the common shares of Ford U.S. (“Common Shares”). The Fund was established as a single purpose trust, the sole purpose of which is to acquire and hold Common Shares. Going forward, Ford Canada would like to be able to allow Employees and Spouses to invest contributions and balances directly in Common Shares. Investments in the Fund will remain; however, future contributions will be invested directly in Common Shares rather than in units of the Fund.

18. Ford Canada also proposes to match a specified portion of an Employee’s purchase of Common Shares under the Program.

19. Under the Program, it is proposed that Fidelity carry out the following activities:

- (i) receive orders from Employees to purchase Common Shares (including Common Shares to be purchased with employer matching contributions through the EPSP or upon the automatic reinvestment of dividends paid in respect of Common Shares) on behalf of Employees through the EPSP or for their Employee RRSPs or Employee Spouse RRSPs;
- (ii) receive orders from Spouses to purchase Common Shares (including Common Shares to be purchased upon the automatic reinvestment of dividends paid in respect of Common Shares) for their Employee Spouse RRSPs;
- (iii) receive orders from Employees, and from persons (“Former Employees”) that were, but have since ceased to be, Employees, to sell Common Shares on their behalf through the EPSP or through their Employee RRSPs;
- (iv) receive orders from Spouses, Former Employees or persons (“Former Employee Spouses”) who are legally married to or are “common law partners” of Former Employees, to sell Common Shares held through their Employee Spouse RRSPs;
- (v) “match” the orders to purchase Common Shares, referred to in subparagraphs (i) or (ii), against orders to sell Common Shares, referred to in subparagraphs (iii) or (iv), with the offsetting purchases and sales (a “Matching Transaction”) effected by way of book entries in the corresponding accounts maintained by Fidelity under the Program and the funds received in respect of the purchase remitted by Fidelity to the vendor;

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(vi) where the number of Common Shares not affected in a Matching Transaction is less than 50 and if Fidelity deems it to be appropriate, satisfy the purchase or sale of Common Shares from or to Common Shares held by Fidelity in the name of Fidelity (a "Float Transaction");

(vii) transmit orders to purchase or sell Common Shares, referred to above, which are not effected in a Matching Transaction or Float Transaction, either:

(A) for execution in a Jurisdiction through a registered dealer that is registered under the Legislation, in each of the Jurisdictions where the order is received or executed, as a dealer in a category that permits it to act as a dealer for the subject trade; or

(B) for execution through the facilities of the NYSE or another stock exchange outside of Canada through a person or company that is appropriately licensed to carry on the business of a broker/dealer under the applicable securities legislation in the jurisdiction where the trade is executed;

(viii) maintain books and records in respect of the foregoing, reflecting, among other things: all related payments, receipts, account entries and adjustments;

20. Records of Common Shares held under the Program on behalf of Employees, Former Employees, Spouses, Former Employee Spouses, the EPSP, Employee RRSPs and Employee Spouse RRSPs (collectively, "Program Participants") will be maintained by Fidelity, and the Common Shares will be held by a custodian that is not affiliated with Fidelity, Ford U.S. or Ford Canada.

21. When an Employee becomes a Former Employee, the Former Employee, the EPSP in respect of the Former Employee, the Employee RRSP of the Former Employee, the Former Employee Spouse and the corresponding Employee Spouse RRSP of the Former Employee will not be permitted to make further purchases of Common Shares under the Program, other than Common Shares to be purchased upon the automatic reinvestment of dividends paid in respect of Common Shares, but, subject to time limitations in certain cases, the foregoing will be permitted to continue to hold, through Fidelity, Common Shares previously purchased on their behalf under the Program, to instruct Fidelity from time to time to sell Common Shares then held on their behalf by Fidelity, or to transfer such Common Shares to an account with another dealer.

22. To participate in the Program, Employees and Spouses must enrol through Fidelity by application, which may be completed: in writing; on the telephone, by way of a recorded call; or, through the Internet, by way of secure access to Fidelity's website.

23. Employees and Spouses who enrol in the Program will be required when completing the enrolment application to acknowledge that Fidelity will not be performing any "suitability" analysis with respect to any purchase or sale of Common Shares on their behalf, or on behalf of their Spouse, under the Program: by signing the application form, where the application is completed in writing; orally, where the application is completed on the telephone or, by making the appropriate selection on Fidelity's website, where the application is completed on the Internet.

24. Employees and Spouses who are enrolled in the Program and whose enrolment in the Program occurred on or prior to the date of this decision will be sent, not less than 5 days before the date of this decision, written or electronic notice from Fidelity (or Ford Canada on behalf of Fidelity) that Fidelity will not perform "suitability" analysis with respect to any purchase or sale of Common Shares on their behalf under the Program.

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25. No Program Participant will be charged any trading commissions, fees, costs or other expenses in respect of the purchase or sale of any Common Shares on behalf of the Program Participant under the Program.

26. Except for ascertaining the "suitability" of trades made under the Program, Fidelity will comply with all other conditions or other requirements under the Legislation that would be applicable to it as a mutual fund dealer as if the Common Shares were shares or units of a mutual fund, with respect to any purchase, sale or holding of Common Shares, by Fidelity on behalf of Program Participants under the Program, including requirements relating to, but not limited to: capital requirements; record keeping; account supervision; segregation of funds and securities; confirmations of trades; "know your client" and statements of account.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "MRRS 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 MRRS Decision has been met;

THE MRRS DECISION of the Decision Makers under the Legislation is that the Dealer Registration Requirement under the Legislation shall not apply to the trades by Fidelity in Common Shares, as referred to in paragraph 19, on behalf of Program Participants under the Program, provided that:

1. in the case of each trade in Common Shares in a Jurisdiction, Fidelity is, at the time of the trade, registered under the Legislation of the Jurisdiction as a dealer in the category of "mutual fund dealer", and, the trade is made on behalf of Fidelity by a person that is registered under the Legislation to trade mutual funds on behalf of Fidelity as a salesperson or officer;

2. in the case of a trades that consist of the sale of Common Shares transmitted for execution outside of the Jurisdiction, as described in paragraph 19(vii)(b):

(a) at the time of the trade, Ford U.S. is not a reporting issuer (or the equivalent) under the Legislation of the Jurisdiction;

(b) at the time of the acquisition of the Common Shares by the selling Program Participant, there was a *de minimis* market in the Jurisdiction (as defined below), where, for the purposes of the above, there shall be a *de minimis* market in a Jurisdiction if, at the relevant time:

(i) persons or companies whose last address as shown on the books of Ford U.S. was in the Jurisdiction and who held Common Shares:

(A) did not own directly or indirectly more than 10 per cent of the outstanding Common Shares; and

(B) did not represent in number more than 10 per cent of the total number of owners directly or indirectly of the Common Shares;

PROVIDED ALSO THAT, this MRRS Decision will terminate upon the earlier of:

1. the assumption of the activities referred to in paragraph 19 by the IDA Company; and
2. December 31, 2002; or
3. in respect of Alberta and Ontario;

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- (a) the assumption of the activities referred to in paragraph 19 by the IDA Company; and
- (b) July 2, 2002 or December 31, 2002 [if the relief requested under the Extension Application is granted].

March 13, 2002

R. Stephen Paddon

H. Lorne Morphy

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO AND ALBERTA

WHEREAS Fidelity has made an application to the Director of the Ontario Securities Commission (the "Director") for a decision of the Director, pursuant to section 4.1 of Ontario Securities Commission Rule 31-505 Conditions of Registration and to the Alberta Securities Commission (the "ASC") pursuant to section 185 of the *Securities Act* (Alberta) (collectively, the "Registration Legislation"), that the requirements of the Registration Legislation (the "Suitability Requirements") to make enquiries of each Program Participant, that would otherwise arise as a result of Fidelity purchasing or selling Common Shares on behalf of the Program Participant, as described in the MRRS Decision above, to determine (a) the general investment needs and objectives of the Program Participants; and (b) the suitability of a proposed purchase or sale of Common Shares for the Program Participants, do not apply to Fidelity, subject to certain terms and conditions;

AND WHEREAS, Fidelity has made to the Director and the ASC the same representations referred to in the above MRRS Decision;

AND WHEREAS, this Decision Document evidences the decision of each of the Director and the ASC;

AND WHEREAS, each of the Director and the ASC is satisfied that to do so would not be prejudicial to the public interest;

IT IS THE DECISION of the Director and the ASC that, pursuant to the Registration Legislation, effective on the effective date of the above MRRS Decision, the Suitability Requirements of the Registration Legislation shall not apply to Fidelity as a result of Fidelity purchasing or selling Common Shares on behalf of the Program Participant, as described in the above MRRS Decision, provided that, in the circumstances of each such purchase or sale:

- (i) the Program Participant, or, in the case of a Program Participant that is the EPSP, an Employee RRSP or an Employee Spouse RRSP, the corresponding Employee or Spouse, has given the corresponding acknowledgement or has been sent the corresponding notice, referred to in paragraphs 23 or 24 of the above MRRS Decision; and
- (ii) Fidelity does not make any recommendation or give any investment advice with respect to the purchase or sale.

AND PROVIDED ALSO THAT, this Decision will terminate upon the earlier of:

1. the assumption of the activity referred to in paragraph 19 of the above MRRS Decision by the IDA Company; and
2. July 2, 2002 or December 31, 2002 [if the relief requested under the Extension Application is granted].

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March 13, 2002

David M. Gilkes