

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Filers are members of an international group of companies offering investment services outside the U.S. and Canada. The International group are joint actors with a North American group of companies for the purposes of National Instrument 62-103. The Filers are not "eligible institutional investors" under NI 62-103 because they are not in a jurisdiction set out in the definition of "investment manager" in NI 62-103. Filers are exempt from the early warning requirements, moratorium provisions and insider reporting requirements and the Filers' officers and directors are exempt from the insider reporting requirements subject to conditions.

Statutes Cited

Securities Act (Ontario), R.S.O. 1990 c. S.5, as am., ss. 101, 104(2)(c), 107, 121(2)(a)(ii).

Rules Cited

National Instrument 62-103 The Early Warning System and Related Take-over Bid and Insider Reporting Issues, Parts 4 and 9 and ss. 10.1(4), 11.

April 4, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA
SCOTIA, AND NEWFOUNDLAND AND LABRADOR**

(THE JURISDICTIONS)

AND

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

AND

**IN THE MATTER OF
FIDELITY INTERNATIONAL LIMITED (FIL)
AND CERTAIN OF ITS AFFILIATES**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from FIL, on behalf of the Filers (as defined herein) for a decision under the securities legislation of the Jurisdictions (the Legislation) (i) exempting the Filers from the early warning requirements, the moratorium provisions and the insider reporting requirements of the Legislation, and (ii) exempting the respective directors and senior officers of the Filers from the insider reporting requirements in cases where they are insiders of a reporting issuer solely as a result of being a director or senior officer of the Filers, (the Requested Relief) in each case, provided that:

(a) the joint actors of the Filers which are eligible institutional investors as defined in NI 62-103 (an EII)

(i) are entitled to comply with the reporting requirements in Part 4 of National Instrument 62-103 (NI 62-103);

(ii) are entitled to relief from the moratorium provisions under section 10.1 of NI 62-103; and

(iii) are exempt from the insider reporting requirements in reliance on Part 9 of NI 62-103; and

(b) a Filer complies with, and otherwise meets, the reporting, filing, and the other applicable conditions of NI 62-103 in each case as if the Filer is an EII thereunder.

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions and in NI 62-103 have the same meaning in this decision unless they are defined in this decision. Filers means FIL, the affiliates of FIL set out in Appendix A and any future affiliates which are established and are not EII's.

Representations

This decision is based on the following facts represented by FIL, on behalf of the Filers:

1. FIL is a privately owned investment management company incorporated under the laws of Bermuda. It is the ultimate holding company of an international group of companies offering

investment services to investors outside the United States and Canada (FIL and its consolidated subsidiaries, together, the FIL Group).

2. FIL Group's primary business activities are providing, or arranging to provide, investment advisory and management services to open or closed end funds managed by FIL Group (the FIL Funds) and to institutional clients (the FIL Funds and the FIL institutional clients being together the FIL Accounts) and distributing funds. FIL is exempt from registration as an adviser pursuant to the laws of Bermuda.

3. FIL does not qualify as an EII as it is not an investment manager in a jurisdiction set forth in the definition of investment manager in NI 62-103.

4. While many of the members of the FIL Group are EIIs, there are others which are not EIIs. Each of the affiliates of FIL named in Schedule A manages FIL Funds or provides advice to FIL Accounts but does not qualify as an EII as it is not an investment manager in a jurisdiction set forth in the definition of investment manager in NI 62-103.

5. There are two groups of Fidelity companies, the international FIL Group and the North American (Canada and US) group, in respect of which latter group, FMR Corp. is the parent company (the FMR Group). Each of the FMR Group companies which manages an FMR fund or provides advice to accounts of the FMR Group or of the FIL Group is an EII. FIL Group and FMR Group use a common name in carrying on business, namely Fidelity and Fidelity Investments.

6. The Canadian securities in FIL Accounts included in the early warning reports of FIL Group is very small relative to the Canadian securities reported in the early warning report of FMR Group and FIL Group. The number of Canadian securities in such reports where a FIL Group member is not an EII but must report is even smaller.

7. None of the FIL Funds have an investment objective to invest solely in Canadian securities. To the extent that it is desired that investments include North American securities, the relevant FIL Group company will generally retain FMR or a FIL Group UK member which is an EII. FIL Group members which are not EIIs rarely make direct decisions to invest in Canadian equities. FIL does not itself make any investment decisions regarding Canadian securities; all such decisions are taken by the aforesaid regulated and licensed subsidiaries of the FMR Group or FIL Group.

8. Although a small number of FIL Group members are not EIIs, they follow the same processes and controls as other members of the FIL Group which are EIIs. In particular, with respect to the filing of early warning reports, all FIL Group companies provide their numbers for such purpose through the same internal FIL Group process so that they can be combined where required by law with the FMR Group numbers to determine whether reports have to be filed.

9. Members of the FIL Group acting as manager of the FIL Funds are required to file reports in respect of the holdings in FIL Funds advised by a FIL Group member because aggregation relief

is not available to them under section 5.2 of NI 62-103 due to the fact that the FIL Group advisory companies are controlled by FIL. As a result, condition (f) of section 5.2 is not met.

10. Aggregation relief under section 5.1 of NI 62-103 cannot be relied on due to the fact that an entity (i.e. an FMR Group advisory entity) that makes decisions with respect to securities controlled by the entity also makes decisions with respect to securities controlled by other business units. As a result, condition (c) of section 5.1 cannot be met.

11. Currently, the early warning requirements and insider reporting requirements have been satisfied by complying with the press release, early warning reporting and insider reporting requirements of securities legislation, where applicable. Such reports have been issued in the name of FMR and its affiliates and FIL and its affiliates and aggregate all of the positions of the joint actors.

12. Each of the Filers is not an EII and must issue a press release, file an early warning report, comply with the moratorium provisions and file insider reports, where applicable, whenever the relevant thresholds have been crossed.

13. Section 4.8 of NI 62-103 exempts joint actors with an EII from having to file multiple reports if the EII files a report at the time the joint actor would be required to file a report. In a situation where the EIIs of the FIL Group or the FMR Group are required to file reports in respect of the aggregated positions in a Canadian reporting issuer, which includes positions held by the FIL Accounts, and are entitled to do so under Part 4 using the alternative monthly reporting system, the early warning obligations of one or more of the Filers as non-EIIs result in the requirement for FIL and all of its affiliates and FMR and all of its affiliates to issue instead a press release and to file an early warning report in compliance with section 3 of NI 62-103 as the timing requirement for the Filers is different than for all of its other joint actors.

14. EIIs are not required to issue a press release promptly or to file the report within 2 days. As a result, positions in FIL Accounts (and FMR Group accounts) are being reported as though they are active, controlling investors in the Canadian reporting issuers, rather than as investments managed by a portfolio manager of a fund or account, where no control or direction over the issuer is sought.

Decision

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 the Decision Makers under the Legislation is that the Requested Relief is granted; in each case, provided that:

(a) the joint actors of the Filers which are EIIs

(i) are entitled to comply with the reporting requirements in Part 4 of NI 62-103,

(ii) are entitled to relief from the moratorium provisions under section 10.1 of NI 62-103, and

(iii) are exempt from the insider reporting requirements in reliance on Part 9 of NI 62-103,

(b) a Filer complies with, and otherwise meets, the reporting, filing, and the other applicable conditions of NI 62-103 in each case as if the Filer is an EII thereunder, and

(c) the Filer is licensed, qualified or registered to provide portfolio management, investment counselling or similar advisory services in respect of securities, or is exempt from the requirement to be so licensed, qualified or registered, in the jurisdiction where its head office is located.

"Paul M. Moore"
Ontario Securities Commission

"Wendell S. Wigle"
Ontario Securities Commission

Schedule A

Fidelity Investments Management (Hong Kong) Limited

Fidelity Investment Securities Investment Trust Co., Limited

Fidelity Investments Australia Limited

Fidelity Investment Management GmbH

Fidelity Investments Advisory (Korea) Limited

Fidelity Fund Management Private Limited