"Guest, Martin"
<Martin.Guest@fmr.com>

26/08/2005 03:28 PM

To: Canadian Securities Administrators

c/o John Stevenson, Secretary, Ontario Securities Commission and

Anne-Marie Beaudoin, Directrice du secretariat, Autorité des marchés financiers

This letter is in response to your request for comments on Proposed National Instrument 81-107 (Independent Review Committee for Investment Funds) published in the Ontario Securities Commission Bulletin on May 27, 2005 at (2005) 28 OSCB (Supp 2) (the "Proposals"). The following are the comments of Fidelity Investments Canada Limited ("Fidelity").

Inter-fund Trades

Fidelity has consistently argued that no regulation, including the Proposals, should be implemented unless it is clear that the benefit of the new regulation outweigh its costs. In our view, one of the most significant potential benefits to investors as a result of the Proposals will be the prospect of cost savings due to the ability for Canadian mutual funds to engage in inter-fund trading.

As we have indicated in numerous contexts over a period of many years, Fidelity believes that inter-fund trading represents a significant opportunity to save costs to fund investors, and we are a strong advocate of permitting inter-fund trading for Canadian mutual funds. Consequently, we are pleased to see section 6.1 of the Proposals contemplate the possibility of inter-fund trading in Canada. We do, however, remain frustrated by the CSA's unwillingness to adopt the well proven U.S. model for inter-fund trading.

As indicated in our previous comment letter on the 2004 version of NI 81-107, we believe that the framework established under U.S. legislation for inter-fund trading is time tested and well proven to operate efficiently and fairly. We urge the CSA not to "reinvent the wheel" and to simply adopt the U.S. model to the maximum extent possible. Unfortunately, the Proposals as currently drafted reflect a continued – and in our view unwarranted – drift away from the U.S. framework, with the result that the benefits to be enjoyed by fund investors from inter-fund trading may be significantly undermined. In this regard, we have three specific comments.

First, we strongly urge the CSA to follow the U.S. model and require that inter-fund trades be effected at "the independent current market price" of the security, rather than "the closing sale price". Fidelity has very significant inter-fund trading experience in the U.S. market and in our experience the vast majority of inter-fund trades take place during the trading day. Indeed, there are very few circumstances in which we would expect an

inter-fund trade to take place on the close of trading, rather than earlier in the day. In our submission, there are ample protections built in to the U.S. approach, which requires that inter-fund trades be done only in liquid securities, where an arms-length price can be ascertained, and subject to appropriate controls and recordkeeping. We would urge the CSA to review section 6.1 of the Proposals in comparison to Rule 17a-7 under the Investment Company Act of 1940 with a view to adopting a pricing requirement that is substantially similar to the notion of "independent current market price", as used in the U.S. rule.

Second, we are disappointed to note that the scope of the proposed inter-fund trading exemption would be restricted to just investment funds that are subject to NI 81-107. In our submission, this is an unnecessary constraint that will significantly reduce the universe of inter-fund trades open to Canadian mutual funds. As indicated above, U.S. mutual funds that are governed by the Investment Company Act of 1940 are subject to a sophisticated and substantive inter-fund trading regime and, in our view, there is no legitimate policy consideration that would justify excluding such U.S. mutual funds from the universe of eligible counterparties for inter-fund trading with Canadian funds. When done within an appropriate regulatory framework, inter-fund trading represents a clear and significant cost savings for investors. The greater the universe of eligible counterparties, the greater the savings to fund investors. Consequently, we submit that it is in the best interests of Canadian investors to enlarge, rather than restrict, the universe of inter-fund counterparties. We urge the CSA to revisit the restrictions set out in section 6.1(1)(a) of the Proposals to permit a broader universe of potential counterparties, at the very least to permit inter-fund trading with U.S. mutual funds.

Third, we continue to oppose the obligation set out in section 6.1 that inter-fund trades be "printed", on the basis that there is no sound rationale for that requirement. The primary benefit of inter-fund trading is the commission savings where an informed buyer and informed seller are able to freely transact at a current market price determined by reference to third party sources. In our submission, such a transaction does not represent meaningful market information, since the price is determined by an independent third party (i.e. not by the buyer and seller) and the order volume is not made available to the market. In other words, there is no benefit to printing inter-fund trades, but there is a cost. Our expectation is that the cost of printing inter-fund trades will be less than the cost of normal market orders, but will nonetheless represent a significant reduction in the cost savings that investors would otherwise enjoy. Consequently, we continue to oppose the printing obligation, which we note is entirely absent under U.S. law, on the basis that it serves no sound purpose and cannot be justified on a cost-benefit analysis.

In summary, we strongly urge the CSA to review its inter-fund trading proposals in comparison to the U.S. regime established by Rule 17a-7 and to revise Section 6.1 to make it as consistent as possible with Rule 17a-7. The U.S. regime is well tested and well proven: we submit that there is no good reason to develop a Canadian approach to inter-fund trading that differs in material respects, and that there are good reasons, as outlined above, to make the two regimes consistent.

Meaning of Independent

The revised definition of "independent" in section 1.5 reflects a principles-based approach to this important term, which we support. Although principles-based drafting is, by its nature, susceptible to different interpretations, we believe that the flexibility inherent in this approach is important in this area. We are, however, concerned that the value of the principles-based definition has been somewhat undermined by the extensive and detailed commentary provided. We would recommend the deletion of all such commentary to allow for the definition to speak for itself and to be interpreted, as appropriate, in different circumstances.

If, however, the CSA decides to retain detailed commentary to section 1.5, then we would suggest the inclusion of additional language to clarify that it will be permissible for funds to seed their initial IRC with former directors of the mutual fund manager who would otherwise satisfy the definition of "independent". As currently drafted, the commentary to section 1.5 seems to contemplate that a current director of a fund manager would be unlikely to be independent, but the commentary provides no guidance as to the status of former directors of a fund manager.

In Fidelity's case, Fidelity Canada has long had two outside directors on its Board even though it is a private company. An important purpose served by these outside directors is to provide an unconflicted opinion on matters relating to the Fidelity Funds and their investors. As such, these individuals have excellent backgrounds and training to serve as members of an IRC. In our submission, it would be a shame to arbitrarily preclude these well qualified candidates from eligibility for service on a Fidelity IRC.

We believe that once these persons resigned from Fidelity's board they could satisfy the definition of "independent" because they would have no relationship with Fidelity that would interfere with their judgment regarding conflict of interest matters. The commentary, however, throws doubt on this conclusion, even though the commentary is not legally binding. Consequently, we recommend the deletion of the overly specific commentary to section 1.5 to allow the principles-based definition to stand on its own merit. In the alternative, we recommend that the commentary to section 1.5 be amended to permit the possibility of former (but not current) directors of a manager serving as IRC members.

Conclusion

Fidelity is one of the largest managers of mutual funds in Canada, with more than $30 billion under management in Canada. We are part of a group of companies known as Fidelity Investments, the head office of which is located in Boston, Massachusetts. Fidelity Investments is one of the world's largest providers of financial services, with managed assets of $1.1 trillion as of June 30, 2005. Fidelity offers investment management, retirement planning, brokerage, and human resources and benefits outsourcing services to more than 20 million individuals and institutions.

We appreciate the opportunity to comment on these Proposals, and we look forward to being able to continue our contribution to the development of this National Instrument,

Yours very truly,

Martin T. Guest

Vice President, Corporate Counsel

Fidelity Investments Canada Limited

800 - 250 Yonge St.

Toronto, ON M5B 2L7

t: 416 307 5216
e: martin.guest@fidelity.com