



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

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# MFDA Bulletin

## Policy

**For Distribution to Relevant Parties within your Firm**

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### Notice of Exemption Granted Pursuant to Section 37 of By-law No.1

The Regulatory Issues Committee of the MFDA Board of Directors has granted an exemption from the requirements of MFDA Rule 2.2.1 (“Know-Your-Client”) to Fidelity Retirement Services of Canada Limited (“Fidelity”) for trades in mutual funds to employee sponsored group retirement and savings plans administered by Fidelity. The Decision Document of the Regulatory Issues Committee of the MFDA Board of Directors is attached to this Bulletin.

DOCS #124840



**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**DECISION DOCUMENT**

**In the Matter of the Application of Fidelity Retirement Services of Canada Limited (the "Applicant") for exemptive relief from the requirements of MFDA Rule 2.2.1 with respect to Employee Sponsored Group Retirement and Savings Plans**

**Background**

- (a) The MFDA has received an application for exemptive relief from the Applicant from the requirements under MFDA Rule 2.2.1 including the requirement to make "know-your-client" and "suitability" enquiries ("KYC information") with respect to trades in mutual funds to employee sponsored group retirement and savings plans administered by the Applicant (the "Group Plans").
- (b) MFDA Rule 2.2.1 provides as follows:

"Each Member shall use due diligence:

  - (a) to learn the essential facts relative to each client and to each order or account accepted;
  - (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice; and
  - (c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives; and
  - (d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof."
- (c) The intention of MFDA Rule 2.2.1 is to ensure that in appropriate circumstances a mutual fund dealer has sufficient knowledge and understanding of its clients in order to be satisfied that trades by the clients are suitable.
- (d) Members of the Canadian Securities Administrators ("CSA") in several jurisdictions have issued blanket orders providing exemptions from registration and prospectus

requirements for certain capital accumulation plans (the "CAP Exemption"). For the purposes of the CAP Exemption, a capital accumulation plan is defined as a tax assisted investment or savings plan established by a plan sponsor that permits the participant to make investment decisions among two or more investments options offered within the plan.

- (e) Pursuant to section 37 of MFDA By-law No. 1, the MFDA Board of Directors may exempt any Member, Approved Person or any other person subject to the jurisdiction of the Corporation, or any group or class of the foregoing persons, from the requirements of the provisions of the By-laws, Rules and Forms where it is satisfied that to do so would not be prejudicial to the interests of the Members, their clients or the public, and in granting such an exemption the Board of Directors may impose such terms and conditions as are considered necessary and desirable. The MFDA Board of Directors has delegated the consideration and disposition of exemptive relief applications to the Regulatory Issues Committee of the Board pursuant to section 3.6.4 of MFDA By-law No. 1.

## **Representations**

This decision is based on the following facts represented by the Applicant:

- (a) Fidelity does not provide advice or recommendations regarding the purchase of mutual fund securities within Group Plans;
- (b) Members of the CSA, through the capital accumulation plans CAP Exemption have recognized that record keepers, like the Applicant, who distribute mutual funds to participants in CAP plans, should not be required to carry out suitability analysis or comply with KYC requirements. The Group Plans are capital accumulation plans for the purposes of the CAP Exemption.
- (c) If the relief is granted, the Applicant will undertake to provide notice to each participant that the Applicant does not collect KYC information or conduct suitability analysis in respect of trades on the relevant accounts.
- (d) The MFDA recognized the specialized nature of the Applicant's business in the terms of its admission to the MFDA, which provide as follows:

[Fidelity] shall not be required to comply with MFDA Rule 2.2.1(c) for trades in employer stock and employer stock funds provided [Fidelity] has obtained exemptive relief from the applicable securities regulatory authorities respecting its obligation to comply with suitability requirements for such trades.
- (e) The Applicant applied for exemptive relief with respect to the Group Plans from the suitability requirements under provincial securities legislation through the Mutual Reliance Review System for Exemptive Relief Applications. The requested relief was granted pursuant to an MRRS Decision Document dated May 16, 2007 (the "MRRS Decision").

## Decision

The Regulatory Issues Committee of the MFDA Board of Directors concluded at its meeting held on September 24, 2007 that providing the Applicant with an exemption from the requirements of Rule 2.2.1 with respect to trades in mutual funds to Group Plans would not be prejudicial to the interests of the Members, their clients or the public.

The MFDA Regulatory Issues Committee of the MFDA Board of Directors hereby grants exemptive relief to the Applicant referred to in the foregoing paragraph provided that:

- (a) any trade must be made in accordance with the requirements that would, if the Applicant and the relevant registered representative were not registered to make the trade, have to be satisfied in order for the trade to be exempt from the dealer registration requirement pursuant to the CAP Exemption, except for any requirements established through the definition of a capital accumulation plan in the CAP Exemption that the subject investment or savings plan be "tax assisted";
- (b) prior to relying on the relief, the Applicant must provide notice to the member or participant of each Group Plan that for any trade effected by the Applicant that consists of a purchase or redemption of mutual fund securities under the Group Plan, where the Applicant has not provided investment advice or recommendations to the client in respect of the particular trade, the Applicant will not make, and is not obliged by law to make, any inquiries to determine:
  - (i) the general investment needs and objectives of the client; or
  - (ii) the suitability of the trade for the client;
- (c) neither the Applicant nor any of its registered representatives will provide any investment advice or recommendations to the client in respect of the trade; and
- (d) the relief granted will terminate immediately upon the termination of the relief granted to the Applicant under the MRRS Decision.

Signed on behalf of the Committee the 6th day of November, 2007

“Robert B. MacLellan”

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Robert B. MacLellan  
Chair