

September 4, 2024

**In the Matter of  
the Securities Legislation of Ontario  
(the Jurisdiction)**

**and**

**In the Matter of  
the Process for Exemptive Relief  
Applications in Multiple Jurisdictions**

**and**

**In the Matter of  
Fidelity Investments Canada ULC  
(the Filer),**

**and**

**Fidelity Equity Premium Yield ETF, a new covered call ETF, and other existing and future  
investment funds subject to NI 81-102 managed by the Filer or an affiliate or successor of  
the Filer  
(collectively, Funds)**

**Decision**

## **Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of existing and future investment funds subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) managed by the Filer or an affiliate or successor of the Filer (collectively, **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (**Legislation**) exempting the Funds from:

- (a) Section 6.8(1) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer that is a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund for a transaction in Canada involving certain specified derivatives in excess of 10% of the net asset value (**NAV**) of the investment fund at the time of deposit; and
- (b) Section 6.8(2)(c) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer for a transaction outside of Canada involving certain specified derivatives in excess of 10% of the NAV of the investment fund as at the time of deposit,

to permit each Fund to deposit as margin portfolio assets of up to 35% of the Fund's NAV as at the time of deposit with any one futures commission merchant in Canada or the United States (each a **Dealer**) and up to 70% of each Fund's NAV at the time of deposit with all Dealers in the aggregate, for transactions involving standardized futures, clearing corporation options, options on futures, or cleared specified derivatives, such as cleared swaps, that are traded or cleared on or through a stock exchange or futures exchange, a recognized clearing agency, or a swap execution facility that is exempted from recognition as an exchange under subsection 21(1) of the *Securities Act* (Ontario) (together, **Exchange Traded Specified Derivatives**) (the **Requested Relief**).

### **Principal Jurisdiction**

In accordance with Part 4 of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) and section 3.6 of NP 11-203, the Ontario Securities Commission (the **OSC**) has been selected as the principal regulator (the **Principal Regulator**) for the purposes of this Application, as the head office of Fidelity is located in Toronto, Ontario.

In accordance with subsection 4.7(2) of MI 11-102, the Filer gives notice to the Principal Regulator pursuant to paragraph 4.7(1)(c) of MI 11-102 that the Requested Relief (as defined below) is to be relied upon by the Filer in each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

### **Interpretation**

Unless expressly defined herein, terms used in this Application have the respective meanings given to them in MI 11-102, National Instrument 14-101 *Definitions* and NI 81-102.

### **Representations**

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

#### *The Filer*

1. The Filer is a corporation amalgamated under the laws of the Province of Alberta with its head office located in Toronto, Ontario.
2. The Filer is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a portfolio manager in each of the Jurisdictions, as a commodity trading manager in Ontario and as a mutual fund dealer in each of the Jurisdictions.
3. The Filer is, or will be, the investment fund manager of the Funds and the Filer, an affiliate of the Filer or a third-party portfolio manager retained by the Filer is, or will be, the portfolio manager of the Funds.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.

#### *The Funds*

5. Each Fund is, or will be, an open-ended mutual fund or a class of a mutual fund corporation, including an exchange-traded fund or an alternative mutual fund, organized and governed by the laws of a Jurisdiction or the laws of Canada.
6. No existing Fund is in default of securities legislation in any of the Jurisdictions.
7. The investment objective and strategies of each Fund permit or will permit the Fund to invest in Exchange Traded Specified Derivatives.
8. The investment objective of Fidelity Equity Premium Yield ETF will be to aim to provide income and long-term capital growth. It invests primarily in equity securities of U.S. companies with market capitalizations generally similar to companies in the S&P 500 Index or Russell 1000 Index either directly or indirectly through investments in underlying funds. This Fund uses quantitative techniques in the construction of its equity portfolio and employs a disciplined options-based derivatives strategy designed to enhance income and mitigate overall portfolio volatility by selling (writing) call options on a large capitalization equity index, such as the S&P 500 Index. This Fund aims to generate income from the premiums received from purchasers of the call options.
9. In order to achieve its investment objective, from time to time, each Fund will invest more than 10% of its NAV, and up to 50% of its NAV, in Exchange Traded Specified Derivatives. Each of these derivative positions will be entered into for hedging purposes and will otherwise comply with the NI 81-102 derivative provisions and restrictions for mutual funds that are not alternative mutual funds.
10. Except to the extent that the Requested Relief is granted and other exemptive relief is applicable, the investment strategies of the Funds are and will be limited to the investment practices permitted by NI 81-102.
11. The Filer is or will be authorized to establish, maintain, change and close brokerage accounts on behalf of the Funds. In order to facilitate transactions in Exchange Traded Specified Derivatives on behalf of the Funds, the Filer will establish one or more accounts (each an **Account**) with one or more Dealers. The Funds may use Canadian Dealers (as defined below) and/or U.S. Dealers (as defined below) for this purpose.
12. Each Dealer in Canada (each a **Canadian Dealer**) is a member of the Canadian Investment Regulatory Organization (CIRO), or successor to CIRO in Canada, and is registered in the applicable Jurisdictions as a futures commission merchant or equivalent.
13. Each Dealer in the United States (each a **U.S. Dealer**) is regulated by the Commodity Futures Trading Commission (the **CFTC**) and the National Futures Association (the **NFA**), or successor to the CFTC or the NFA in the United States and is required to segregate all assets held on behalf of clients, including the Funds. Each U.S. Dealer is subject to regulatory audit and must have insurance to guard against employee fraud. Each U.S. Dealer has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of C\$50 million. Each U.S. Dealer has an exchange assigned to it as its designated self-regulatory organization (the **DSRO**). As a member of a DSRO, each U.S. Dealer must meet capital requirements, comply with the conduct rules of the CFTC, NFA and its DSRO, and participate in an arbitration process with a complainant.

14. Each Dealer is a member of the exchanges, clearing agencies or swap execution facility through which the Exchange Traded Specified Derivatives are primarily traded. Each such exchange, clearing agency and swap execution facility is obliged to apply its surplus funds and the security deposits of its members to reimburse clients of failed members.
15. A Dealer will require, for each Account, that portfolio assets of the Fund be deposited with the Dealer as collateral for transactions in Exchange Traded Specified Derivatives (**Initial Margin**). Initial Margin represents the minimum initial amount of portfolio assets that must be deposited with a Dealer to initiate trading in specified derivatives transactions or to maintain the Dealer's open position in standardized futures.
16. Levels of Initial Margin are established at a Dealer's discretion. At no time will more than 70% of the NAV of each Fund be deposited as Initial Margin with one or more Dealers in the aggregate.
17. The records of each Dealer will show that the applicable Fund is the beneficial owner of the Initial Margin, and evidence that, subject to the satisfaction of the Dealer's applicable margin requirements, the applicable Fund will have the right to the return of the portfolio assets deposited as Initial Margin with the Dealer, such assets being of the same issue as the deposited margin, including the same class and series, if applicable, and having the same current aggregate market value of the deposited margin at the time of such return.

#### *Reasons for the Requested Relief*

18. The use of Initial Margin is an essential element of investing in Exchange Traded Specified Derivatives for the Funds.
19. The Requested Relief would allow the Funds to invest in Exchange Traded Specified Derivatives more extensively with any one Dealer, which would allow the Funds to pursue their investment strategies more efficiently and flexibly.
20. Opening Accounts and transacting with multiple Dealers adds complexity and cost to the management of the Funds. Using fewer Dealers will considerably simplify the Funds' investments and operations and will reduce the cost of implementing each Fund's strategy. Using fewer Dealers also simplifies compliance and risk management, as monitoring the data, controls and policies of a smaller number of Dealers is less complex.
21. The principal regulator is satisfied that it would not be prejudicial to the public interest for the Requested Relief to be granted.

#### **Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

- (a) each Fund relying on this decision does not invest in derivatives that are not Exchange Traded Specified Derivatives,
- (b) each Fund only uses Initial Margin such that the amount of Initial Margin held by any one Dealer on behalf of that Fund does not exceed 35% of the net assets of that Fund, taken at market value as at the time of the deposit, and
- (c) each Fund only uses Initial Margin such that the amount of Initial Margin held by Dealers in aggregate on behalf of that Fund does not exceed 70% of the NAV of that Fund as at the time of the deposit.

***“Darren McKall”***

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Darren McKall, Manager  
Investment Management Division  
Ontario Securities Commission

**Application No.: 2024/0436**  
**SEDAR+ No.: 6158794**