

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

_____)	
IN THE MATTER OF:)	
)	
FIDELITY BROKERAGE SERVICES LLC,)	Docket No. E-2021-0030
)	
RESPONDENT.)	
_____)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the “Division”) and Fidelity Brokerage Services LLC (“Fidelity” or “Respondent”) with respect to the Administrative Complaint (the “Complaint”) filed by the Enforcement Section of the Division (the “Enforcement Section”) against Fidelity on January 26, 2022, alleging violations of Section 204 of the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”), and the regulations promulgated thereunder at 950 Code Mass. Regs. 10.01 – 14.413 (the “Regulations”).

On September 27, 2023, Fidelity submitted an Offer of Settlement (the “Offer”) to the Division. Fidelity neither admits nor denies the Statement of Facts set forth in Section V below or the Violations of Law set forth in Section VI below, and consents to the entry of this Order by the Division, consistent with the language and terms of this Offer, settling the claims brought against Fidelity hereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. The Division has jurisdiction over matters related to securities pursuant to the Act, codified at Chapter 110A of the Massachusetts General Laws.
2. The Offer was made and this Order is entered in accordance with the Act and Section 10.10 of the Regulations. Specifically, the acts and practices investigated took place in Massachusetts.
3. The acts and practices that are the subject of the Complaint occurred while Fidelity was registered as a broker-dealer in Massachusetts.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the acts and practices described herein occurred during the approximate time period of March 17, 2020 to June 30, 2021, inclusive (the “Relevant Time Period”).

IV. RESPONDENT

5. Fidelity is a limited liability company organized under the laws of Delaware on June 8, 2000. Respondent is headquartered at 900 Salem Street, Smithfield, Rhode Island 02917.

V. STATEMENT OF FACTS

A. Background

6. Respondent is a securities broker-dealer.
7. Respondent is a subsidiary of Fidelity Global Brokerage Group, Inc.
8. Fidelity Global Brokerage Group, Inc. is a subsidiary of FMR LLC.
9. Respondent has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 7784.

10. Respondent was a FINRA member firm throughout the entirety of the Relevant Time Period and continues to be a FINRA member firm as of the date of this Offer.

11. Respondent's predecessor entity originally became registered as a securities broker-dealer in Massachusetts on July 31, 1981.

B. Fidelity's Procedures to Approve Options Applications were not Reasonably Designed and Executed, Resulting in the Improper Approval of Customers.

12. Pursuant to securities industry regulations, Respondent must grant approval before a retail brokerage account may engage in the riskier practice of options trading.

13. Respondent has established an application review process for customers seeking to apply for options trading in a retail brokerage account.

14. During the Relevant Time Period, Respondent could approve a retail brokerage account for options trading at one of the following five (5) graduated levels, with each higher level permitting riskier types of options trades, as described below:

- Level 1 (a/k/a "Level A"): Covered call writing on equity options;
- Level 2 (a/k/a "Level B"): Purchases of calls and puts (equity and index); writing of cash covered puts; includes all trading capabilities under Level 1;
- Level 3 (a/k/a "Level C"): Equity and index spreads; covered put writing (selling puts against stock that is held short); includes all trading capabilities under Levels 1 and 2;
- Level 4 (a/k/a "Level D"): Uncovered writing of equity options; includes all trading capabilities under Levels 1, 2, and 3; and
- Level 5 (a/k/a "Level E"): Uncovered writing of index options; includes all trading capabilities under Levels 1, 2, 3, and 4.

15. The owner of a retail brokerage account may submit a combined options and margin application or a standalone options application electronically via Respondent's website or in paper format by mail or to one of Respondent's branch locations.

16. Upon submission of a paper options application, one of Respondent's employees scans the document and uploads the file to Respondent's system, which then routes it to the "queue" for paper options applications in need of manual review.
17. Upon submission of an electronic options application, Respondent's algorithm extracts the relevant data and creates a composite of the customer's reported information.
18. After creating the composite, Respondent's computer system posts it to one of two queues depending on the application type.
19. Respondent's computer system runs an algorithm that prescreens electronic options applications for certain eligibility factors such as the customer's employment status or income source.
20. In order to qualify for options trading Level 3 or higher, Respondent requires a retail brokerage account owner to apply and be approved for margin trading.
21. During the Relevant Time Period, Respondent imposed minimum financial and investment-related requirements for each of the options levels referenced in Paragraph 14. These minimum requirements are not made publicly available.
22. During the Relevant Time Period, Respondent employed a group of approximately fifty-one (51) broker-dealer agents out of its office in Covington, Kentucky who reviewed options applications that retail brokerage account customers submitted. Respondent refers to this group as the Central Review Team (the "CRT").
23. CRT members who review options applications are all Series 9/10 delegates, meaning that they have each passed the FINRA General Securities Sales Supervisor Qualification Examination.
24. There are four (4) possible outcomes of an options application review:

- The retail brokerage account is approved for options trading at the level requested;
- the retail brokerage account is approved for options trading, but at a lower level than requested;
- the retail brokerage account is denied for options trading altogether; or
- the application is marked as “Not in Good Order” (“NIGO”).

25. Respondent’s unit of employees known as the Service Support Group (the “SSG”) attempts to resolve the deficiencies in electronic options applications that have been marked as NIGO, such as by reaching out to the customer to obtain missing information.

26. If the SSG is able to resolve the deficiencies in an electronic options application marked as NIGO, the application is subsequently routed to a special queue for re-review, at which point a CRT member renders an eligibility decision.

27. Certain CRT members are expected to review at least twelve (12) paper options applications per hour.

28. Certain CRT members are expected to review at least 300 electronic options applications per hour.

29. Certain CRT members are expected to review at least 50 electronic options applications per hour.

30. On June 22, 2021, Respondent began limiting how frequently retail brokerage accounts could submit electronic options applications. Fidelity’s new policy barred any retail brokerage account from submitting an electronic options application if the account had already submitted two (2) electronic options applications within the prior sixty (60) days.

31. Prior to June 22, 2021, Respondent did not impose any limits on the number of electronic options applications that a single retail brokerage account could submit within a given time period.

32. Dating back to July 14, 2016, Respondent's Options Application Review Compliance Policy (the "Policy") included a provision (the "Provision") instructing "Series 9/10 delegates" to "be alert to a customer initiating a pattern of reapplying for options approval by frequently increasing his or her financial or experience information in order to meet the approval standards."

33. The Policy cited FINRA Rule 2360(b)(16)(B) as a relevant rule.

34. FINRA Rule 2360(b)(16)(B) provides, in relevant part:

In approving a customer's account for options trading, a member or any person associated with a member shall exercise due diligence to ascertain the essential facts relative to the customer, his financial situation and investment objectives.

35. Sometime between July 29, 2021 and December 3, 2021, Respondent removed the Provision from the Policy.

36. Despite including the Provision within the Policy from July 14, 2016 until sometime between July 29, 2021, and December 3, 2021, Respondent did not enforce the Provision.

37. Respondent's computer system gives CRT members access to information about prior options applications that a retail brokerage account has submitted.

38. Despite having the capability to view prior options applications, Respondent's review process, as communicated to CRT members, did not require CRT members to look beyond the single application in front of them.

39. As a result, CRT members did not detect when the information contained in a customer's options application differed from other information the customer had previously provided to Fidelity.

40. Before April 2022, Respondent's automated system also did not flag customers who submitted multiple options applications during the prior six-month time period so that a manual review could be conducted for any financial and/or trading experience information that was materially different from the information that was contained in the customer's previous options trading application.

41. During the Relevant Time Period, Respondent failed to enforce certain of its options approval policies and procedures. This resulted in CRT members failing to flag different information submitted by retail brokerage customers across successive options applications.

42. As a result, Respondent approved certain customers for options trading authority based on financial and/or investment experience information that was materially different from the information submitted on prior options applications.

C. Respondent Made Numerous Enhancements to its System for Approving Customers for Options Trading.

43. Beginning in February 2021, Respondent made numerous enhancements to its system for approving customers for options trading. Respondent continued to enhance its options approval systems after the filing of the Division's Complaint in this matter.

44. The enhancements include limitations on how often customers can submit applications for options trading authority in a given time period, placing hard-blocks on customer accounts that attempt to exceed the limit on options application submissions, requiring customers to certify the accuracy of information submitted on an options

application, amending the firm's online options application system to remind customers to verify the accuracy of the information provided, and enhancing the firm's verification processes for customers who make material changes to their financial or investment experience in a given time period.

VI. VIOLATIONS OF LAW

Mass. Gen. Laws c. 110A, § 204(a)(2)(J)

45. Section 204 of the Act provides:

The [S]ecretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the . . . registrant

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with [the Act] . . .

Mass. Gen. Laws c. 110A § 204(a)(2)(J).

46. Section 12.203 of the Regulations provides:

Each broker-dealer [registered with the Division] must comply with the supervision requirements set forth in the FINRA member conduct rules.

950 Code Mass. Regs. 12.203(3)(a).

47. Fidelity's acts and practices, as described above, constitute violations of Section 204(a)(2)(J) of the Act.

VII. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides:

If the [S]ecretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of [the Act] or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

Mass. Gen. Laws c. 110A, § 407A(a).

VIII. ORDER

IT IS HEREBY ORDERED:

A. Fidelity shall permanently cease and desist from violations of the Act and Regulations in Massachusetts;

B. Fidelity is censured by the Division;

C. Fidelity has conducted a comprehensive internal review of its policies and written supervisory procedures related to its options trading compliance, including: the review and approval of options trading applications for retail brokerage customer accounts; due diligence when reviewing and approving applications for options trading; and training of broker-dealer agents, including the Fidelity teams that review and approve options trading applications (the “Review”):

a. Fidelity shall submit a report to the Division containing the findings of the Review (the “Report”). The Report shall address the changes in or improvements to Fidelity policies, compliance training, and written supervisory procedures that Fidelity implemented; and

b. The Report’s changes and improvements shall not be unacceptable to the Division, provided that the Division will not unreasonably withhold its consent of the changes and improvements.

D. Within fifteen (15) business days of the entry of this Order, Fidelity shall pay an administrative fine in the amount of \$750,000 (USD) to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier’s check, bank money order, or wire transfer; (2) made payable to the

Commonwealth of Massachusetts; (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the payor making the payment and the docket number of the proceedings. Additionally, Fidelity shall provide the Division with notice at least twenty-four (24) hours prior to the payment;

E. Fidelity shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that Fidelity shall pay pursuant to this Order;

F. Fidelity shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that Fidelity shall pay pursuant to this Order;

G. If Fidelity fails to comply with any of the terms set forth in this Order, the Division may institute an action to have this agreement declared null and void. Additionally, after a full and fair hearing and the issuance of an order finding that Fidelity has not complied with the Order, the Division may move to have the Order declared null and void, in whole or in part, and re-institute the associated proceeding that the Division had brought against Fidelity; and

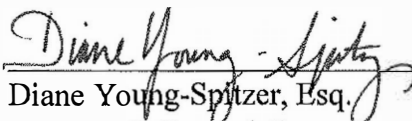
H. For good cause shown, the Division may extend any of the procedural dates set forth above. Fidelity agrees to make any requests for extensions of the dates set forth above in writing to the Division.

IX. NO DISQUALIFICATION

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualification from relying upon the registration

exemptions or safe harbor provisions to which Respondent may be subject. This Order is not intended to be a final order based upon violations of the Act that prohibit fraudulent, manipulative, or deceptive conduct. This Order is not intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934; or Rules 504(b)(3) and 506(d)(1) of Regulation D, Rule 262(a) of Regulation A and Rule 503(a) of Regulation CF under the Securities Act of 1933. This Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under SRO rules prohibiting continuance in membership. This Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002. Except in an action by the Division to enforce the obligations of this Order, any acts performed or documents executed in furtherance of the Order: (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) may not be deemed or used as an admission of, or evidence of, any such alleged fault or omission of Respondent in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH



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Dated: October 2, 2023