

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of Earliest Event Reported): February 29, 2024

Fidus Investment Corporation

(Exact Name of Registrant as Specified in its Charter)

Maryland
(State or Other Jurisdiction
of Incorporation)

814-00861
(Commission
File Number)

27-5017321
(I.R.S. Employer
Identification Number)

**1603 Orrington Avenue, Suite 1005
Evanston, Illinois 60201**
(Address of Principal Executive Offices, Including Zip Code)

(847) 859-3940
(Registrant's Telephone Number, Including Area Code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	FDUS	The NASDAQ Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On November 10, 2022, Fidus Investment Corporation (the “Company”) established an “at-the-market” offering (the “ATM Program”) through which the Company may sell, from time to time through the Sales Agents (as defined below), shares of the Company’s common stock, par value \$0.001 per share (the “Shares”).

On February 29, 2024, the Company increased the maximum amount of Shares to be sold through the ATM Program to \$300.0 million from \$150.0 million. In connection with the upsize of the ATM Program, the Company entered into amendment no. 2 (“Amendment No. 2”) to the equity distribution agreement, dated November 10, 2022 (the “Equity Distribution Agreement”) with Fidus Investment Advisors, LLC, Raymond James & Associates, Inc. (“Raymond James”) and B. Riley Securities, Inc. (“B. Riley” and together with Raymond James, the “Sales Agents”). Under the Equity Distribution Agreement, as amended by Amendment No. 2, the Company may, but has no obligation to, issue and sell up to \$300.0 million in aggregate amount of Shares in the ATM Program, from time to time through the Sales Agents, or to them, as principal for their own account. As of February 28, 2024 and after giving effect to Amendment No. 2, up to approximately \$178.1 million in aggregate amount of the Shares will remain available for sale under the ATM Program.

Further details regarding the Equity Distribution Agreement, as amended by Amendment No. 2, and the ATM Program are set forth in the Company’s prospectus supplement, dated November 10, 2022 (the “ATM Prospectus Supplement”), supplement no. 1 to the ATM Prospectus Supplement, dated March 2, 2023 (“Supplement No. 1”), supplement no. 2 to the ATM Prospectus Supplement, dated May 8, 2023 (“Supplement No. 2”), supplement no. 3 to the ATM Prospectus Supplement, dated August 4, 2023 (“Supplement No. 3”), supplement no. 4 to the ATM Prospectus Supplement, dated August 11, 2023 (“Supplement No. 4”), supplement no. 5 to the ATM Prospectus Supplement, dated November 2, 2023 (“Supplement No. 5”), and supplement no. 6 to the ATM Prospectus Supplement, dated February 29, 2024 (“Supplement No. 6” and together with the ATM Prospectus Supplement, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4, and Supplement No. 5 and including, in each case, any information incorporated by reference therein, the “Prospectus”), filed by the Company with the Securities and Exchange Commission.

The foregoing description of Amendment No. 2 is not complete and is qualified in its entirety by reference to the full text of Amendment No. 2, which is attached hereto as Exhibits 10.1 and is incorporated herein by reference. A copy of the opinion of Eversheds Sutherland (US) LLP relating to the legality of the issuance and sale of the Shares pursuant to the Prospectus is attached as Exhibit 5.1 hereto.

The Shares, if any, will be issued pursuant to the Company’s shelf registration statement on Form N-2 (File No. 333-253525), the prospectus, dated May 3, 2021, contained therein, and the Prospectus, as supplemented from time to time.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of these securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
5.1	Opinion of Eversheds Sutherland (US) LLP
10.1	Amendment No. 2, dated February 29, 2024, to Equity Distribution Agreement by and among Fidus Investment Corporation and Fidus Investment Advisors, LLC, on the one hand, and Raymond James & Associates, Inc. and B. Riley Securities, Inc., on the other hand
23.1	Consent of Eversheds Sutherland (US) LLP (contained in Exhibit 5.1 hereto)
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: February 29, 2024

Fidus Investment Corporation

By: /s/ Shelby E. Sherard
Shelby E. Sherard
Chief Financial Officer and Secretary

[Letterhead of Eversheds Sutherland (US) LLP]

February 29, 2024

Fidus Investment Corporation
1603 Orrington Avenue, Suite 820
Evanston, IL 60201

Ladies and Gentlemen:

We have acted as counsel to Fidus Investment Corporation, a Maryland corporation (the “*Company*”), in connection with the preparation and filing of the registration statement on Form N-2 (File No. 333-253525) (as amended as of the date hereof, the “*Registration Statement*”) filed under the Securities Act of 1933, as amended (the “*Securities Act*”), which Registration Statement was initially filed with the Securities and Exchange Commission (the “*Commission*”) on February 25, 2021 and amended by a pre-effective amendment on April 30, 2021 (such Registration Statement, at the time it become effective on May 3, 2021, including the exhibits and schedules thereto, the information incorporated or deemed to be incorporated into the Registration Statement by reference, any information contained in a prospectus supplement subsequently filed with the Commission pursuant to Rule 424 under the Securities Act and deemed to be a part of the Registration Statement at the time of effectiveness pursuant to Rule 430B under the Securities Act, and any registration statement filed pursuant to Rule 462(b) under the Securities Act, is hereinafter referred to as the “*Registration Statement*”). The Registration Statement relates to the public offering of securities of the Company that may be offered by the Company from time to time as set forth in the prospectus dated May 3, 2021, which forms a part of the Registration Statement, together with the information incorporated or deemed to be incorporated therein by reference (the “*Base Prospectus*”), and as may be set forth from time to time in one or more supplements to the Base Prospectus.

This opinion letter is rendered in connection with the issuance and sale, from time to time, of up to \$300,000,000 in aggregate offering price of shares (the “*Shares*”) of the Company’s common stock, par value \$0.001 per share, as described in the prospectus supplement, dated November 10, 2022 (together with the Base Prospectus included therein and the information incorporated by reference therein, the “*Prospectus Supplement*”), supplement no. 1 to the Prospectus Supplement, dated March 2, 2023 (“*Supplement No. 1*”), supplement no. 2 to the Prospectus Supplement, dated May 8, 2023 (“*Supplement No. 2*”), supplement no. 3 to the Prospectus Supplement, dated August 4, 2023 (“*Supplement No. 3*”), supplement no. 4 to the Prospectus Supplement, dated August 11, 2023 (“*Supplement No. 4*”), supplement no. 5 to the Prospectus Supplement, dated November 2, 2023 (“*Supplement No. 5*”) and supplement no. 6 to the Prospectus Supplement, dated February 29, 2024 (“*Supplement No. 6*” and together with the Prospectus Supplement, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4, and Supplement No. 5 and including, in each case, any information incorporated by reference therein, the “*Prospectus*”), each filed with the Commission pursuant to Rule 424 under the Securities Act. The Shares are to be sold by the Company pursuant to an equity distribution agreement, dated as of November 10, 2022, as amended on August 11, 2023 and February 29, 2024 (collectively, the “*Equity Distribution Agreement*”), by and among the Company and Fidus Investment Advisors, LLC (the “*Advisor*”), on the one hand, and Raymond James & Associates, Inc. and B. Riley Securities, Inc. (the “*Sales Agents*”), on the other hand.

As counsel to the Company, we have participated in the preparation of the Registration Statement and the Prospectus and have examined the originals or copies, certified or otherwise identified to our satisfaction as being true copies, of the following:

- (i) the Equity Distribution Agreement;
- (ii) the Articles of Amendment and Restatement of the Company (the “*Articles*”), certified as of a recent date by the State Department of Assessments and Taxation of Maryland (the “*SDAT*”);

- (iii) the Bylaws of the Company, certified as of the date hereof by an officer of the Company (the “*Bylaws*”);
- (iv) a Certificate of Good Standing with respect to the Company, issued by the SDAT as of the date hereof (the “*Certificate of Good Standing*”);
- (v) the resolutions of the board of directors of the Company relating to, among other things, (a) the authorization and approval of the preparation and filing of the Registration Statement, (b) the authorization of the issuance, offer and sale of the Shares pursuant to the Registration Statement, certified as of the date hereof by an officer of the Company, and (c) the execution and delivery of the Equity Distribution Agreement, certified as of the date hereof by an officer of the Company (collectively, the “*Resolutions*”).

As to certain matters of fact relevant to the opinions in this opinion letter, we have relied on certificates and confirmations of public officials (which we have assumed remain accurate as of the date of this opinion letter) and on certificates of an officer of the Company. We have not independently established the facts or, in the case of certificates or confirmations of public officials, the other statements so relied upon.

With respect to such examination and our opinion expressed in this opinion letter, we have assumed, without any independent investigation or verification, (i) the genuineness of all signatures on all documents submitted to us for examination, (ii) the legal capacity of all natural persons, (iii) the authenticity of all documents submitted to us as originals, (iv) the conformity to original documents of all documents submitted to us as conformed or reproduced copies and the authenticity of the originals of such copied documents, (v) that all certificates issued by public officials have been properly issued and that such certificates remain accurate as of the date of this letter, and (vi) the accuracy and completeness of all corporate records made available to us by the Company.

The opinion set forth below is limited to the effect of the Maryland General Corporation Law, as in effect as of the date hereof, and we express no opinion as to the applicability or effect of any other laws of such jurisdiction or the laws of any other jurisdictions. Without limiting the preceding sentence, we express no opinion as to any state securities or broker-dealer laws or regulations thereunder relating to the offer, issuance and sale of the Shares.

This opinion letter has been prepared, and should be interpreted, in accordance with customary practice followed in the preparation of opinion letters by lawyers who regularly give, and such customary practice followed by lawyers who on behalf of their clients regularly advise opinion recipients regarding, opinion letters of this kind.

On the basis of and subject to the foregoing, and in reliance thereon, and subject to the assumptions, limitations and qualifications set forth in this opinion letter, we are of the opinion that the Shares have been duly authorized for issuance and, when issued and delivered against payment thereof in accordance with the terms and conditions of the Equity Distribution Agreement, the Shares will be validly issued, fully paid and non-assessable.

The opinions expressed in this opinion letter are (i) strictly limited to the matters stated in this opinion letter, and without limiting the foregoing, no other opinions are to be inferred and (ii) only as of the date of this opinion letter, and we are under no obligation, and do not undertake, to advise the Company or any other person or entity either of any change of law or fact that occurs, or of any fact that comes to our attention, after the date of this opinion letter, even though such change or such fact may affect the legal analysis or a legal conclusion in this opinion letter.

We hereby consent to the filing of this opinion letter as an exhibit to the Company’s Current Report on Form 8-K filed with the Commission for incorporation by reference in the Registration Statement, and to the reference to our firm in the “Legal Matters” section of the Prospectus Supplement. We do not admit by giving this consent that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ EVERSHEDES SUTHERLAND (US) LLP

FIDUS INVESTMENT CORPORATION
(a Maryland Corporation)

Common Stock, Par Value \$0.001 Per Share

AMENDMENT NO. 2 TO
EQUITY DISTRIBUTION AGREEMENT

Dated as of February 29, 2024

This Amendment No. 2, dated February 29, 2024 (the "**Amendment**"), is to the Equity Distribution Agreement, dated November 10, 2022, as amended by Amendment No. 1 to Equity Distribution Agreement, dated August 11, 2023 (as amended to date, the "**Equity Distribution Agreement**"), by and among Fidus Investment Corporation, a Maryland corporation (the "**Company**"), Fidus Investment Advisors, LLC, a Delaware limited liability company (the "**Adviser**"), and each of Raymond James & Associates, Inc. and B. Riley Securities, Inc. (the "**Sales Agents**").

WHEREAS, the Company, the Adviser and the Sales Agents have entered into the Equity Distribution Agreement, pursuant to which from time to time during the term of the Equity Distribution Agreement, on the terms and subject to the conditions set forth therein, the Company may issue and sell through the Sales Agents, acting as agents and/or principals, shares of the Company's common stock, par value \$0.001 per share (the "**Securities**"), having an aggregate offering price of up to \$150,000,000; and

WHEREAS, the Company, the Adviser and the Sales Agents desire to amend the Equity Distribution Agreement to provide that the Company may issue and sell through the Sales Agents, acting as agents and/or principals, Securities having an aggregate offering price of up to \$300,000,000.

NOW THEREFORE, in consideration of the mutual promises contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Amendment, intending to be legally bound, hereby amend the Equity Distribution Agreement and agree as follows:

Amendment of Preamble. Effective as of the date hereof, the first and second paragraphs of the preamble to the Equity Distribution Agreement are replaced in their entirety with the following:

Each of Fidus Investment Corporation, a Maryland corporation (the "**Company**"), and Fidus Investment Advisors, LLC, a Delaware limited liability company (the "**Adviser**"), registered as an investment adviser under the Investment Advisers Act of 1940, as amended (collectively with the rules and regulations of the Commission (as defined below) promulgated thereunder, the "**Advisers Act**"), confirms its agreement with the several sales agents named in Schedule A hereto (each, a "**Sales Agent**" and together, the "**Sales Agents**") with respect to the sale by the Company of shares of common stock, par value \$0.001 per share, of the Company ("**Common Stock**"), having an aggregate offering price of up to \$300,000,000. The shares of Common Stock to be sold by the Sales Agents are herein called the "**Securities**." The aggregate amount of Securities that may be sold collectively pursuant to this Agreement shall not exceed the lesser of \$300,000,000 and the dollar amount of Securities permitted to be sold under the Registration Statement (as defined below).

The Company has filed with the U.S. Securities and Exchange Commission (the "**Commission**") a shelf registration statement on Form N-2 (File No. 333-253525), relating to the registration of the Securities and certain of the Company's other securities to be issued from time to time by the Company under the Securities Act of 1933, as amended (collectively with the rules and regulations of the Commission (the "**1933 Act Regulations**") promulgated thereunder, the "**1933 Act**"), which registration statement was initially declared effective on May 3, 2021 (the "**Effective Date**") and remains effective. The Company has also filed with the Commission a prospectus supplement, dated the date hereof, as such prospectus supplement may be amended (the "**Prospectus**"), which contains a base prospectus, dated May 3, 2021, in accordance with the

provisions of Rule 430B (“**Rule 430B**”) and Rule 424(b) (“**Rule 424(b)**”) of the 1933 Act Regulations. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable (which shall be a Prospectus), with respect to the Securities. The information, if any, included or incorporated by reference in the Prospectus that was omitted from the registration statement at the time it became effective but that is deemed to be a part of the registration statement pursuant to Rule 430B is referred to as “**430B Information**.” Unless the context otherwise requires, such registration statement, including any such additional registration statements filed from time to time with respect to the Securities, all documents filed as part thereof or incorporated by reference therein and any Rule 430B Information contained in a prospectus subsequently filed with the Commission pursuant to Rule 424(b) under the 1933 Act and deemed to be part of the registration statement, is herein called the “**Registration Statement**,” and any registration statement filed pursuant to Rule 462(b) of the 1933 Act Regulations (“**Rule 462(b)**”), is herein called the “**Rule 462(b) Registration Statement**” and after such filing the term “**Registration Statement**” shall include the Rule 462(b) Registration Statement. All references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus, including those made pursuant to Rule 424(b) or such other rule of the 1933 Act Regulations as may be applicable to the Company, shall be deemed to mean and include, without limitation, the filing of any document under the Securities Exchange Act of 1934, as amended (collectively with the rules and regulations of the Commission (the “**1934 Act Regulations**”) promulgated thereunder, the “**1934 Act**”), which is or is deemed to be incorporated by reference in or otherwise to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system (“**EDGAR**”).

Waivers for Amendment; Consent. Each of the Company, the Adviser and the Sales Agents by the execution of this Amendment, hereby consent to the amendments, modifications and supplements to the Equity Distribution Agreement contemplated herein.

No Other Amendments. No other amendments to the Equity Distribution Agreement are intended by the parties hereto, are made, or shall be deemed to be made, pursuant to this Amendment, and all provisions of the Equity Distribution Agreement, including all Exhibits thereto, unaffected by this Amendment shall remain in full force and effect.

Governing Law; Headings. This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflicts of laws principles. The section headings in this Amendment have been inserted as a matter of convenience of reference and are not a part of this Amendment.

Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Equity Distribution Agreement.

Counterparts and Electronic Signatures. This Amendment may be signed by the parties in counterparts which together shall constitute one and the same agreement among the parties. An electronic or facsimile signature shall constitute an original signature for all purposes.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Amendment No. 2 to Equity Distribution Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

Very truly yours,

FIDUS INVESTMENT CORPORATION

By: /s/ Shelby E. Sherard

Name: Shelby E. Sherard

Title: Chief Financial Officer, Chief Compliance Officer
and Corporate Secretary

FIDUS INVESTMENT ADVISORS, LLC

By: /s/ Edward H. Ross

Name: Edward H. Ross

Title: Chief Executive Officer

[Signature Page to Amendment No. 2 to Equity Distribution Agreement]

Confirmed and accepted as of the date first-written above:

RAYMOND JAMES & ASSOCIATES, INC.

By: /s/ Larry Herman

Name: Larry Herman

Title: Managing Director

B. RILEY SECURITIES, INC.

By: /s/ Michael Cavanagh

Name: Michael Cavanagh

Title: Managing Director

[Signature Page to Amendment No. 2 to Equity Distribution Agreement]