

2008 BCSECCOM 490

August 28, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act s. 48 Dealer Obligations – Exemption from obligations in Part 5 of the Act and Rules for registered dealers – A BC registered dealer wants an exemption from delivering confirmation statements to clients. - The client's account is fully managed by the dealer; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; the client agrees that the confirmation statements will not be delivered to them; the client is sent monthly statements that include the confirmation information (except for the Omitted Information); the dealer will maintain the Omitted Information in its records and make this information available to clients upon request.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

Securities Rules, B.C. Reg. 194/97, s.36

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,
New Brunswick, Nova Scotia, and Newfoundland and Labrador
(the Jurisdictions)

and

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

and

In the Matter of
Raymond James Ltd.
(The Filer)

Decision

Background

- ¶ 1 The local securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an

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exemption from the requirements of the Legislation that a registered dealer send a written confirmation of any trade in securities (the **Trade Confirmation Requirement**) to clients of the Filer (**Participating Clients**) who receive discretionary managed services pursuant to the Filer's discretionary managed account and model portfolio account programs (collectively, the **Programs**) with respect to trades in securities in the accounts of Participating Clients under the Programs (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the British Columbia Securities Commission is the principal regulator for the application; and
- (b) the decision document is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 Definitions have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. The Filer is currently registered under the Legislation as an investment dealer, or equivalent thereof, in the Jurisdictions, is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and has a head office in British Columbia;
 2. the Filer is not, to its knowledge, in default of the Legislation of any Jurisdiction;
 3. the Filer is authorized to act as portfolio manager, pursuant to an exemption from the adviser registration requirement that is made available under the Legislation to dealers who are members of IIROC;
 4. the Filer provides investment dealer and portfolio management services to individuals and corporate clients resident in the Jurisdictions and other jurisdictions where it is qualified to provide such services;
 5. to participate in a Program:
 - (a) a Participating Client will enter into a written account agreement (an **Account Agreement**) with the Filer setting out the terms and conditions,

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and the respective rights, duties and obligations of the parties, regarding the respective Programs which Account Agreement is in a form acceptable to IIROC; and

- (b) based upon inquiries made by the Filer to determine the general investment needs, objectives and risk tolerance of the Participating Client, the Filer will assist the Participating Client to complete a statement of investment policy that outlines the Participating Client's investment objectives and level of risk tolerance;
- 6. the Filer will comply with the "know your client" and suitability obligations under the Legislation;
- 7. the Filer may engage external portfolio managers (the **External Advisers**) to create and manage model portfolios for the Programs. Any such External Advisers will be appropriately registered as an adviser under the Legislation of the applicable Jurisdictions;
- 8. the Programs offered to Participating Clients will generally be comprised of three different types of managed accounts:
 - (a) accounts that will be fully managed on a discretionary basis by a portfolio manager of the Filer;
 - (b) accounts that will be invested by the Filer in securities based on a model portfolio(s) of an External Adviser (the **Model Portfolio Program**); and
 - (c) accounts that will be invested by an External Adviser in accordance with the Model Portfolio Program of that External Adviser;
- 9. for each Participating Client, the Filer will open an account under the Program (the **Program Account**) which is separate and distinct from any other accounts the Participating Client may have with the Filer;
- 10. the Program Accounts will be "managed accounts" as defined under IIROC Rule 1300 and the Filer will comply with applicable IIROC requirements with respect to managed accounts;
- 11. under the Account Agreement for the Program Accounts:
 - (a) the Participating Client will (i) grant full discretionary authority to the Filer to make investment decisions and to trade in securities on behalf of the Participating Client without obtaining the specific consent of the

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Participating Client to individual trades, and depending on the Program may (ii) authorize the Filer to select and retain External Advisers;

- (b) the Filer or another recognized securities custodian will act as custodian of the securities and other assets in each Program Account;
 - (c) the Participating Client will acknowledge and agree that securities transactions in such Participating Client's Program Account will generally be executed through the Filer;
 - (d) unless the Participating Client requests otherwise, the Participating Client will waive receipt of all trade confirmations in respect of securities transactions conducted by the Filer for a Program Account; and
 - (e) the Participating Client will agree to pay a periodic fee (the **Fee**) to the Filer based on the assets of the Participating Client's Program Account, which Fee includes all custodial, transaction and brokerage fees and commissions and is not based on the volume or value of the transactions effected in the Participating Client's Program Account;
12. the Fee paid is for investment management services and annual registered plan fees, and does not cover charges for administrative services of the Filer such as wire transfer requests, account transfers, and other administrative services (**Administrative Charges**) payable by clients of the Filer whether or not participating in one of the Programs. The Filer provides a list of the Filer's Administrative Charges to a person at the time the person becomes a client of the Filer;
13. the Filer will enter into a written agreement (the **External Advisory Agreement**) with each External Adviser that sets out the obligations and duties of each party in connection with the investment management services or model portfolio services to be provided by the External Adviser;
14. for a Participating Client that participates in the Model Portfolio Program, the Filer will recommend to the Participating Client a suitable Model Portfolio Program(s) for the Participating Client's account (the **Model Portfolio Account**) based upon the investment objectives and risk tolerance of the Participating Client and based on the investment mandate of the Model Portfolios;
15. each model portfolio of an External Adviser has its own investment mandate and will be comprised of a portfolio of securities selected and monitored by an External Advisor. The Participating Client's Model Portfolio Account is

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invested by the Filer following the securities and weightings used in that External Adviser's model portfolio and is reviewed by the Filer for suitability of investment for the Participating Client;

16. a portfolio manager employed by the Filer conducts a quarterly review of the External Adviser's model portfolios to ensure that securities selections and weightings are in conformity with the model portfolio's investment mandate;
17. the Filer will provide to each Participating Client a monthly statement of account with respect to such Participating Client's Program Account as required under the Legislation, including a list of all transactions undertaken in the Program Account during the period covered by that statement and a statement of portfolio at the end of such period;
18. the monthly statement of account will identify the assets being managed on behalf of the Participating Client including for each trade made during that month the information that the Filer would otherwise have been required to provide to that Participating Client in a trade confirmation in accordance with the Legislation, except for the following information (collectively, the **Omitted Information**):
 - (a) the stock exchange or commodity futures exchange upon which the trade took place;
 - (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
 - (c) the name of the salesperson, if any, in the transaction;
 - (d) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and
 - (e) if acting as agent in a trade upon a stock exchange, the name of the person or company from or to or through whom the security was bought or sold;
19. the Filer will maintain the Omitted Information with respect to a Participating Client in its books and records and will make the Omitted Information available to the Participating Client upon request;
20. the Filer cannot rely on any Trade Confirmation Requirement exemption in the Legislation and, in the absence of the requested relief, would be subject to the Trade Confirmation Requirement in the Jurisdictions;

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21. IIROC Rule 200.1(h) prescribes circumstances in which IIROC permits the suppression of trade confirmations in respect of managed accounts, which circumstances are satisfied in respect of the Programs.

Decision

¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that:

1. the Participating Client has previously informed the Filer in writing that the Participating Client does not wish to receive trade confirmations for the Participating Client's Program Account; and
2. in the case of each trade for a Program Account, the Filer sends to the Participating Client the corresponding statement of account that includes the information referred to in representation 18.

"Mark Wang"

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British Columbia Securities Commission