

2007 BCSECCOM 638

September 30, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 88 - Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer is a mutual fund; the issuer will not be a reporting issuer in any jurisdiction; the issuer distributes its securities only to client accounts that are fully managed by the issuer's manager; the manager controls all trading in the issuer's securities

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

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

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications
(the "MRRS")

and

In the Matter of
Newport Investment Counsel Inc.
("Newport")

and

The Newport Fixed Income Fund
The Newport Canadian Equity Fund
The Newport Global Equity Fund
The Newport Yield Fund
(together, the "Funds")

MRRS Decision Document

2007 BCSECCOM 638

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application (the “Application”) from Newport (also, the “Filer”) for a decision (the “Decision”) under the securities legislation of each of the Jurisdictions (the “Legislation”) revoking the reporting issuer status of the Funds or deeming the Funds to have ceased to be reporting issuers, as applicable (the “Requested Relief”).

Under the MRRS:

- (a) the Ontario Securities Commission (the “OSC”) is the principal regulator for the Application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning in this Decision unless they are defined in this decision.

Representations

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

1. Newport is a corporation incorporated under the laws of the Province of Ontario with its head office located in Toronto, Ontario.
2. Newport is registered as an adviser in the categories of investment counsel and portfolio manager or their equivalent in Ontario, British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island and is also registered in Ontario as a dealer in the category of limited market dealer. Newport has applied to the Manitoba Securities Commission to become registered in the categories of Adviser and Portfolio Manager.
3. Newport, as manager of the Funds, engages in a number of advisory activities, including as an investment counsel and/or portfolio manager for its clients.
4. Newport offers personal and corporate wealth management services to individuals and families under the terms of discretionary managed account agreements (“Managed Account Agreements”) which provide Newport with full discretionary authority over such clients’ accounts. Newport also advises certain clients on a non-discretionary basis.

2007 BCSECCOM 638

5. Newport acts as manager, trustee and principal distributor for the Funds. The Funds are only offered to clients of Newport and are therefore not widely distributed.
6. Each Fund is an open-ended mutual fund trust established under the laws of the Province of Ontario.
7. The Funds are “reporting issuers” in the Jurisdictions and are therefore subject to the provisions of National Instrument 81-102 – *Mutual Funds*. Units of the Funds are qualified for distribution under an amended and restated simplified prospectus and annual information form dated March 12, 2007, filed in each of the Jurisdictions.
8. From September 30, 2007 onward, unitholders in the Funds may be comprised of persons from the following categories:
 - (a) Investors who qualify as “accredited investors”, as defined in National Instrument 45-106 - *Prospectus and Registration Exemptions* (“NI 45-106”);
 - (b) Investors who have entered into a Managed Account Agreement with Newport, making Newport the accredited investor pursuant to paragraph (q) of the “accredited investor” definition in NI 45-106;
 - (c) Investors who qualify under the “minimum amount investment” exemption under section 2.10 of NI 45-106; and
 - (d) Employees of Newport.
9. In addition, Newport filed an application to the OSC for exemptive relief to allow it to have certain clients, from September 30, 2007 onward, who do not or will not qualify as accredited investors under the Legislation or whose investments do not meet the minimum investment amount threshold set out in NI 45-106 or who are not employees of Newport invest in the Funds. Such clients would consist of family members of persons from category 8(a) above, and other persons who have a relationship with persons in category 8(a), where there are exceptional factors that have persuaded Newport for business reasons to accept such persons as clients.
10. From September 30, 2007 onward, Newport will ensure that all trades of units of the Funds are made pursuant to an exemption from the prospectus requirements, which is either available under the Legislation or pursuant to a decision granting exemptive relief.

2007 BCSECCOM 638

11. Each of the Funds has less than 15 unitholders in each of the Jurisdictions other than British Columbia, Alberta and Ontario.
12. The Funds are not eligible for relief pursuant to CSA Staff Notice 12-307 – *Ceasing to be a Reporting Issuer under the Mutual Reliance Review System for Exemptive Relief Applications* (“CSAN 12-307”) solely because of the number of unitholders of the Funds and because this Decision was not granted prior to May 1, 2007, the date by which the first members of the Funds’ independent review committee were to be appointed in accordance with National Instrument 81-107 – *Independent Review Committee for Investment Funds* (“NI 81-107”).
13. Newport filed a separate application on April 30, 2007 for a decision exempting it from the requirements contained in sections 3.2 and 8.2(2) of NI 81-107.
14. Newport notified its investors as at July 16, 2007, and has continued to notify any new investors from that date to September 30, 2007, regarding its intention to cease to be a reporting issuer and redeem the units of investors who do not fit within one of the categories set out in paragraphs 8 and 9, above, prior to September 30, 2007. There are no redemption fees payable by investors whose units Newport redeems. Newport has also disclosed its intention to have the Funds deemed to have ceased to be a reporting issuer in the Funds’ prospectus.
15. If the Decision is granted, the financial statements of the Funds will be prepared and delivered to unitholders in accordance with the requirements of the applicable securities legislation that apply to mutual funds that are not reporting issuers. The Funds intend to rely on a filing exemption set forth therein.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

Robert L. Shirriff
Ontario Securities Commission

Suresh Thakrar
Ontario Securities Commission