

# 2003 BCSECCOM 360

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief to permit funds to file reports of exempt distributions within 30 days of fund's year end

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 74(2)(4), 76

*Securities Rules*, BC Reg. 194/97, s. 139

Multilateral Instrument 45-103 *Capital Raising Exemptions*, Part 5 and Part 7

## IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, YUKON, NORTHWEST TERRITORIES, NUNAVUT, QUÉBEC, NOVA SCOTIA, AND NEWFOUNDLAND AND LABRADOR

AND

## IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

## IN THE MATTER OF OLYMPUS UNITED FUNDS CORPORATION

## MRRS DECISION DOCUMENT

- 1.1 WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in Alberta, British Columbia, Saskatchewan, Nunavut, Northwest Territories, Yukon, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Olympus United Funds Corporation ("Olympus") for a decision:
  - 1.1.1 under the securities legislation of the Jurisdictions (the "Legislation") that certain trades in securities of Olympus are not subject to the requirements of the Legislation relating to the filing of forms and the payment of fees within certain prescribed time periods (the "Reporting Requirements"); and
  - 1.1.2 under the securities legislation of Alberta that the restrictions contained in the securities legislation of Alberta prohibiting a mutual fund from knowingly making or holding an investment

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in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder (the “Alberta Self Dealing Restriction”) will not apply to investments by Olympus in securities of its wholly-owned subsidiary, First Horizon Bank (Barbados) Inc. (“Barbados Bank”);

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 - Definitions or in Québec Securities Commission Notice 14-101;
4. AND WHEREAS Olympus has represented to the Decision Makers that:
  - 4.1 Olympus is a corporation established under the laws of Canada;
  - 4.2 Olympus’s head office is in Toronto, Ontario;
  - 4.3 until February 20, 2003, the name of Olympus was First Horizon Holdings Ltd.;
  - 4.4 the authorized share capital of Olympus consists of 1,000 common shares and an unlimited number of redeemable convertible non-voting shares (the “Redeemable Shares”), of which two common shares and 16,787,335 Redeemable Shares were issued and outstanding as at December 31, 2002;
  - 4.5 the two common shares of Olympus are currently held by Olympus United Funds Holdings Corporation;
  - 4.6 Olympus is a “mutual fund” as defined in the securities legislation of Alberta, British Columbia, Saskatchewan, Nunavut, Northwest Territories, Québec, Nova Scotia and Newfoundland and Labrador;
  - 4.7 Olympus is a “commodity pool” as defined in section 1.1 of National Instrument 81-101;
  - 4.8 Olympus is not, and does not expect to be, a reporting issuer in any province or territory of Canada;

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- 4.9 Olympus is a holding company that holds as its only asset all of the issued and outstanding shares in the capital of Barbados Bank;
- 4.10 Olympus raises capital for investment in Barbados Bank and carries on no other business;
- 4.11 Barbados Bank conducts business as a licensed offshore bank in Barbados. Its principal activity is to own and manage segregated asset pools, which are represented by shares of its own issue (the “Barbados Bank Shares”);
- 4.12 all of the Barbados Bank Shares are held by Olympus;
- 4.13 the Barbados Bank Shares correspond to the Redeemable Shares such that each class of Redeemable Shares represents an investment in a particular segregated asset pool held by Barbados Bank;
- 4.14 the segregated pools of assets (the “Funds”) are managed in accordance with investment objectives and criteria established for each Fund by the Barbados Bank;
- 4.15 Olympus distributes the Redeemable Shares solely through dealers holding registration in a province or territory of Canada to trade in the securities of Olympus, on a continuous basis and pursuant to offering memoranda to residents of the Jurisdictions (such distribution of Redeemable Shares in the Jurisdictions is hereinafter called the “Offering”);
- 4.16 the Redeemable Shares are distributed in the Jurisdictions on a continuous basis in reliance on the “accredited investor” exemption (the “Accredited Investor Exemption”), the “private placement exemption” (the “Private Placement Exemption”) and the “offering memorandum exemption” (the “Offering Memorandum Exemption”) from the prospectus requirement of the Legislation;
- 4.17 where Redeemable Shares are distributed to a purchaser in reliance on the Private Placement Exemption, the minimum initial investment by a resident of a Jurisdiction will not be less than the prescribed amount in that Jurisdiction;

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- 4.18 following an initial investment under the Private Placement Exemption, additional Redeemable Shares may be distributed to existing holders in increments of less than the amount prescribed by the Legislation in reliance on an exemption or a decision of the Decision Makers providing an exemption (the “Additional Redeemable Shares Exemption”) from the prospectus requirements of the Legislation, provided the existing holder holds such Redeemable Shares having an aggregate acquisition cost or aggregate net asset value of not less than the amount prescribed by the Legislation in the Jurisdiction where the holder is resident;
- 4.19 the net proceeds received by Olympus from the Offering are used to purchase the Barbados Bank Shares;
- 4.20 the Redeemable Shares are not transferable;
- 4.21 under the Legislation, the Reporting Requirements apply to distributions under the Private Placement Exemption, the Accredited Investor Exemption, the Additional Shares Exemption and the Offering Memorandum Exemption;
- 4.22 in the absence of this Decision (as defined below), pursuant to the securities legislation of Alberta, Olympus is prohibited from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder. As a result, in the absence of this Decision Olympus would be required to divest itself of its investments in the Barbados Bank Shares;
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision (collectively, the “Decision”) of each Decision Maker;
- 6. AND WHEREAS 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;
- 7. THE DECISION of the Decision Makers under the Legislation is that:

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- 7.1 the Reporting Requirements will not apply to a trade in Redeemable Shares under the Private Placement Exemption, the Accredited Investor Exemption, or the Additional Redeemable Shares Exemption, provided that within 30 days after the financial year end of Olympus, Olympus:
  - 7.1.1 files with the applicable Decision Maker a report in respect of all trades in Redeemable Shares during such financial year, in the form prescribed by the applicable Legislation,
  - 7.1.2 remits to the applicable Decision Maker the fee prescribed by the applicable Legislation, and
  - 7.1.3 files with the applicable Decision Makers two copies of the offering memoranda, including any amendments to the offering memoranda, sent to investors in connection with trades in the Redeemable Shares;
- 7.2 the Alberta Self Dealing Restriction will not apply to Olympus in respect of investments by Olympus in the Barbados Bank Shares, provided that:
  - 7.2.1 the investment by Olympus in the Barbados Bank Shares is compatible with the fundamental investment objective of each Fund; and
  - 7.2.2 the offering memoranda of Olympus discloses the intent of Olympus to invest substantially all of its assets in the Barbados Bank Shares;

DATED this 26<sup>th</sup> day of May, 2003

Glenda A. Campbell, Q.C., Vice-Chair

John W. Cranston, Member