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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain conflict provisions in connection with the distribution by a mutual fund dealer and portfolio manager of units of mutual funds which it manages – relief subject to certain conditions

Applicable British Columbia Provisions

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

Securities Rules, B.C. Reg. 194/97, ss. 77, 79, 81 and 82

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND ONTARIO

AND

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

AND

IN THE MATTER OF LEITH WHEELER INVESTMENT COUNSEL LTD.

MRRS DECISION DOCUMENT

¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta and Ontario (the “Jurisdictions”) has received an application from Leith Wheeler Investment Counsel Ltd. (“Leith Wheeler”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that certain of the conflict provisions contained in applicable legislation, namely:

- (a) the requirements that a registrant prepare a conflict of interest rules statement (or the equivalent) (“Conflicts Statement”) in the required form, revise its Conflicts Statement in the event of any significant change in the information, provide a copy of the current version of its Conflicts Statement and any revision of its Conflicts Statement to its customers and clients and file its Conflicts Statement and any revision of its Conflicts

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Statement with the applicable Decision Makers (the “Conflicts Statement Requirement”);

- (b) the requirement that the written confirmation of a securities transaction that is required to be sent or delivered by a registered dealer to its customers or clients contain certain disclosure if the security was a security of a related issuer, or in the course of an initial distribution or distribution (depending on the Jurisdiction), a security of a connected issuer, of the registrant (the “Trade Confirmation Requirement”);
- (c) the restriction against a registrant acting as an adviser in respect of securities of a related issuer, or in the course of an initial distribution or distribution (depending on the Jurisdiction), securities of a connected issuer, unless certain disclosure is made to the client (the “Adviser Disclosure Requirement”); or
- (d) the restriction that a registrant acting as an adviser, exercising discretionary authority with respect to the investment portfolio or account of a client, must not purchase or sell securities of a related issuer, or in the course of an initial distribution or distribution (depending on the Jurisdiction), securities of a connected issuer, of the registrant, unless it provides certain disclosure to the client and obtains the requisite specific and informed written consent of the client (the “Discretionary Management Requirement”);

should not apply to Leith Wheeler in connection with the distribution of units of Funds established or to be established by Leith Wheeler and managed by Leith Wheeler (collectively, the “Funds”), subject to certain conditions.

- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia 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;
- ¶ 4 AND WHEREAS Leith Wheeler has represented to the Decision Makers that:
 - 1. Leith Wheeler is a corporation incorporated under the laws of British Columbia and is registered as a mutual fund dealer and portfolio manager in British Columbia, as investment counsel in Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Yukon Territory and as a portfolio manager and limited market dealer in Ontario;

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2. Leith Wheeler is the manager, principal portfolio adviser and promoter of certain of the Funds and will be the manager, principal portfolio adviser and promoter of additional Funds which may be established from time to time;
3. each of the Funds is or will be, an open-end mutual fund trust established under the laws of British Columbia; the words “Leith Wheeler” is part of the name of each of the existing Funds and will be part of the name of any future Funds;
4. before making an investment in the Funds, all clients of Leith Wheeler receive either a prospectus or offering memorandum in respect of the applicable Fund which contains disclosure of the relationship between Leith Wheeler and the Fund;
5. Leith Wheeler manages the majority of its clients assets on a discretionary basis with either segregated, separate portfolios of securities for each client and/or using the Funds; all discretionary clients of Leith Wheeler enter into a fully managed account agreement with Leith Wheeler; each fully managed account agreement will contain specific disclosure of the relationship between Leith Wheeler and the Funds and each client will specifically consent in writing to Leith Wheeler investing in one or more of the Funds; Leith Wheeler believes that in the circumstances the consent of its discretionary clients is informed;
6. Leith Wheeler may also act as an adviser, and where required as a dealer, to clients who have not entered into discretionary management agreements with Leith Wheeler in connection with such clients’ investment in one or more Funds;
7. Leith Wheeler does not act as an adviser, dealer or underwriter for clients in connection with investments in issuers other than the Funds;
8. Leith Wheeler does not and will not act as an adviser, dealer or underwriter in respect of securities of Leith Wheeler or of a related issuer of Leith Wheeler, or in the course of a distribution, in respect of securities of connected issuers of Leith Wheeler other than in connection with the distribution of units of the Funds; the Funds do not hold and will not hold securities of any related issuer of Leith Wheeler, or in the course of a distribution, securities of a connected issuer of Leith Wheeler, other than the securities of another Fund; and

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9. units of each of the Funds may be offered on a continuous basis and will be acquired by residents of the Jurisdictions either under a prospectus filed by the Fund or on a private placement basis.
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 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:
- (a) Leith Wheeler is exempt from the Conflicts Statement Requirement;
 - (b) the Trade Confirmation Requirement and the Adviser Requirement shall not apply to the distribution of the Units of the Funds by Leith Wheeler; and
 - (c) Leith Wheeler is exempt from the Discretionary Management Requirement under the applicable Legislation in respect of the distribution of the Units of the Funds to an account of a client of Leith Wheeler provided Leith Wheeler secures the specific and informed consent of the client for the exercise of discretionary authority in respect of the Units of the Funds.
- ¶ 8 April 29, 2003

Adrienne Salvail-Lopez
Vice Chair