

# 2007 BCSECCOM 675

October 31, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A mutual fund wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The fund manager manages funds that invested in ABCP that did, at the time of the investment, and does as of the date of the application, comply with the investment restrictions in NI 81-102; market conditions for the ABCP has deteriorated rapidly and unexpectedly, which is adversely affecting the liquidity of the ABCP; the fund manager is concerned that continuing to hold the ABCP may impact the confidence of investors in the funds and may result in excessive redemption requests; the fund manager or an affiliate of the fund manager wants to purchase the ABCP from the funds at a price equal to the cost plus accrued interest; this value is determined in accordance with GAAP and is the same value used for other commercial paper investments held by the funds; an independent review committee (IRC) has been appointed for the funds; the IRC has reviewed and approves selling the ABCP to the fund manager or an affiliate of the fund manager as being in the best interests of the funds and achieving a fair and reasonable result for the funds

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s.127(1)(b), and s. 130

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, New Brunswick,  
Ontario, Nova Scotia, Newfoundland and Labrador,  
Northwest Territories, Nunavut and Yukon  
(the “Jurisdictions”)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Meritas Financial Inc.  
(the “Filer”)

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and

Meritas Canadian Bond Fund  
and Meritas Money Market Fund  
(the “Funds”)

## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (“Decision Maker”) in each of the Jurisdictions has received an application (the “Application”) from the Filer on behalf of the Funds for relief in each Jurisdiction from the following prohibition in the securities legislation of the Jurisdictions (the “Legislation”) to permit a sale of asset-backed commercial paper (“ABCP”) issued by the issuers listed in Schedule A that is owned by the Funds to the Filer (the “Requested Relief”):

- (a) the provision that prohibits a portfolio manager or a responsible person (depending on the Jurisdiction) from causing a portfolio managed by it or a mutual fund (depending on the Jurisdiction) to purchase or sell the securities of any issuer from or to the account of a responsible person or the portfolio manager.

Under the Mutual Reliance Review System (MRRS) for Exemptive Relief Applications:

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

### **Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions* and in National Instrument 81-102 *Mutual Funds* (“NI 81-102”) have the same meaning in this MRRS decision document unless they are otherwise defined in this decision.

### **Representations**

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

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1. The Filer is the manager and portfolio manager of the Funds. The Filer's registered office is located in Ontario.
2. The Funds are open-ended mutual fund trusts established under the laws of the Province of Ontario, and are reporting issuers in the Jurisdictions.
3. As of September 19, 2007, the Meritas Canadian Bond Fund owned third party (non-bank) ABCP worth approximately \$550,000.00 comprising approximately 1.7% of the Fund's total assets, and the Meritas Money Market Fund owned third party ABCP worth approximately \$1,350,000.00 or 30% of the Fund's total assets.
4. The ABCP is short-term commercial paper with maturity dates ranging from October 10, 2007 to October 29, 2007. The ABCP had when acquired, and continues to have, an approved credit rating within the meaning of NI 81-102.
5. The Filer has determined that the appropriate method to value the ABCP owned by the Funds is cost plus accrued interest which is the valuation methodology used in respect of other commercial paper investments held by the Funds.
6. Uncertainty concerning ABCP has arisen in the context of liquidity concerns that affected investors and capital markets worldwide in August 2007, including those in Canada, originating with concerns relating to subprime mortgages in the United States. The Toronto Stock Exchange, as with other exchanges worldwide, has suffered losses and increased volatility. Considerable media reports and articles have discussed these issues, and raised concerns about the quality and safety of Canadian money market funds and other investments.
7. The Filer wishes to protect the Funds from these concerns and ensure that investor confidence is not negatively affected. In addition, the Filer wishes to prevent an unwarranted increase in redemption requests in the Funds which could arise as a result of these wider concerns.
8. To alleviate these concerns, it is proposed that the ABCP held by the Funds would be purchased by the Filer. Such purchases would be effected if the Filer considered such purchases to be in the best interests of the Funds, and would be effected at the cost amount of the ABCP plus accrued interest (the "Proposed Transactions").
9. The Filer would acquire the ABCP by cash payment in the full amount, as determined under representation 5, to the Funds. The Proposed Transactions

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would occur upon receiving regulatory approval and be completed no later than November 15, 2007. The Filer may carry out the Proposed Transactions in one or several transactions.

10. The Filer referred the Proposed Transactions to the independent review committee of the Funds (the "Independent Review Committee") for review and approval. The Independent Review Committee has approved the application on behalf of the Funds and the Proposed Transactions as being in the best interests of the Funds and as achieving a fair and reasonable result for the Funds.

### **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 on the following conditions:

- (a) the Filer, as portfolio manager of the Funds, determines that the Proposed Transactions are in the best interests of the Funds;
- (b) the Proposed Transactions occur during the period between the date of the decision and November 15, 2007;
- (c) the price per security is equal to cost plus accrued interest; and
- (d) the Filer shall have received confirmation that the Independent Review Committee of the Funds has approved the Proposed Transactions.

Paul K. Bates  
Commissioner  
Ontario Securities Commission

Carol S. Perry  
Commissioner  
Ontario Securities Commission

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## SCHEDULE A

### THIRD PARTY ASSET-BACKED

### COMMERCIAL PAPER CONDUITS

#### ISSUERS

##### Meritas Canadian Bond Fund

|              |           |
|--------------|-----------|
| Apsley Trust | \$100,000 |
| Opus Trust   | \$150,000 |
| Skeena Trust | \$100,000 |
| Aria Trust   | \$100,000 |
| Slate Trust  | \$100,000 |
| Total        | \$550,000 |

##### Meritas Money Market Fund

|                 |             |
|-----------------|-------------|
| Apsley Trust    | \$200,000   |
| Whitehall Trust | \$200,000   |
| Symphony Trust  | \$150,000   |
| MMAI-I Trust    | \$100,000   |
| Rocket Trust    | \$100,000   |
| Aurora Trust    | \$200,000   |
| Comet Trust     | \$200,000   |
| Slate Trust     | \$200,000   |
| Total           | \$1,350,000 |