

2005 BCSECCOM 64

January 6, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-105, s. 9.1 - Relief from the point of sale disclosure and consent requirements in ss. 8.2(3) and (4) of NI 81-105 - A mutual fund dealer wants relief from the point of sale disclosure and consent requirements in ss. 8.2(3) and (4) of NI 81-105 for an employee's equity interest in a corporation that is a member of a group of mutual funds - the employee does not have a direct interest in the relevant corporation; the interest is held by the employee's spouse - the percentage interest in the corporation is less than 1% - the employee is not an officer, director or sales representative of the mutual fund dealer and does not supervise sales representatives - no other representative of the mutual fund dealer owns any securities of the corporation or other members of the mutual fund group

Applicable British Columbia Provisions

National Instrument 81-105 *Mutual Fund Sales Practices*, ss. 8.2(3) and (4) and 9.1

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

and

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

and

In the Matter of Performa Financial Group Limited ("the Filer")

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the "Decision Maker") in British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, the Yukon Territories, the Northwest Territories, and Nunavut (the "Jurisdictions") has received an application from the Filer on its own behalf and on behalf of its current and future

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representatives from time to time (the “Representatives”) for a decision that the point of sale disclosure and consent requirements contained in NI 81-105 (the “Legislation”) shall not apply in respect of the equity interest of an employee of the Filer in ClaringtonFunds Inc. (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this 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. The Filer is registered as a mutual fund dealer (or the equivalent), in all of the provinces of Canada, other than Manitoba, and as a limited market dealer in Ontario and may in the future become registered in more or all of the remaining jurisdictions in Canada.
2. The spouse of an employee of the Filer (the “Spouse”) beneficially owns 0.01901% of the outstanding shares (the “Clarington Equity Interest”) of ClaringtonFunds Inc. (“Clarington”). The said employee (the “Employee”) is registered as a representative in Alberta and is engaged in the employment of the Filer in the capacity of Advisor Relations and is not an officer or director of the Filer and does not otherwise have a position of authority or supervision over the Representatives.
3. Clarington is a member of the organization (as that term is defined in NI 81-105) of the Clarington group of mutual funds (the “Clarington Funds”). The Clarington Funds are, and will continue to be, sold in all provinces and territories under one or more simplified prospectuses.
4. No Representative of the Filer holds shares of Clarington or has an equity interest (as defined in NI 81-105) of any other member of the organization of the Clarington Funds. The Spouse does not have an equity interest in any other member of the organization of the Clarington Funds.

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5. NI 81-105 would require: (a) the Representatives of the Filer to give those clients who wish to acquire securities of the Clarington Funds a disclosure statement outlining the Clarington Equity Interest of the spouse of the Employee, and (b) each of the Representatives of the Filer to obtain a consent from any client wishing to acquire securities of the Clarington Funds.

Decision

Each of the Decision Makers is satisfied that the test contained in NI 81-105 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 provided that:

1. In the event the Employee assumes a position of authority or supervision over the Representatives, the Representatives and the Filer comply with the Legislation.
2. Where clients of the Filer deal directly with the Employee in connection with the purchase of securities of Clarington Funds, the Filer and the Employee comply with the requirements of the Legislation.

Paul M. Moore
Vice-Chair
Ontario

Lorne Morphy
Commissioner
Ontario