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January 12, 2007

## Headnote

National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A mutual fund dealer wants relief from the provision in ss. 7.1(3) of NI 81-105 that prohibits a member of an organization of a mutual fund that is not also a participating dealer from paying a commission rebate to a securityholder on the redemption of securities of another fund that is not in the same fund family. - A client who wishes to reinvest redemption proceeds from other products in the affiliated funds would be prejudiced by being denied the rebate they would otherwise have received. The filer has controls in place to prevent representatives from being potentially influenced to recommend unjustified switches to affiliated funds.

## Applicable Legislative Provisions

National Instrument 81-105 *Mutual Funds Sales Practices*, ss. 7.1(3) and 9.1

*Securities Act*, R.S.B.C. 1996, c. 418, s. 171

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

**and**

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

**and**

**In the Matter of  
Quadrus Investment Services Ltd.  
(the Filer)**

## MRRS Decision Document

## Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer, on its own behalf

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and on behalf of its present and future Applicable Representatives (as defined below) from time to time, for a decision under the securities legislation of the Jurisdictions (the Legislation) to grant an exemption, pursuant to section 9.1 of National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105), exempting the Filer and its Applicable Representatives from the prohibition contained in paragraph 7.1(3) of NI 81-105 prohibiting the Filer and the Applicable Representatives from paying to a securityholder all or any part of a fee or commission payable by the securityholder on the redemption of securities of a mutual fund that occurs in connection with the purchase by the securityholder of securities of another mutual fund that is not in the same mutual fund family (a commission rebate) where the Filer is a member of the organization of the mutual fund the securities of which are being acquired (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**

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

### **Representations**

- ¶ 3 This decision is based on the following facts as represented by the Filer:
1. The Filer is a corporation existing under the *Canada Business Corporations Act* with its head office in London, Ontario. The Filer is registered under the Legislation of each of the Jurisdictions in the category of mutual fund dealer and in Ontario and Newfoundland as a limited market dealer.
  2. The Filer is a wholly owned subsidiary of London Life Insurance Company. Mackenzie Financial Corporation (Mackenzie) is the manager of the Quadrus Group of Funds, a family of open-ended mutual fund trusts and corporations (individually, a Fund, and collectively, the Quadrus Funds) whose securities are offered under a simplified prospectus in all provinces and territories of Canada. The Filer and Mackenzie are indirectly controlled by Power Financial Corporation.

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3. The Filer is the principal distributor for the Quadrus Funds and is an affiliate of Mackenzie, therefore, the Filer is a member of the organization of the Quadrus Funds pursuant to NI 81-105.
4. The Filer is also a member of the organization of:
  - (a) the mutual funds managed by Counsel Group of Funds Inc. (the Counsel Funds);
  - (b) other mutual funds managed by Mackenzie (the Other Mackenzie Funds); and
  - (c) the mutual funds managed by I.G. Management Ltd. (the IG Funds).
5. The Filer may in the future become a member of the organization of other mutual funds, since the parent company of the Filer may acquire interests in corporations that are managers of mutual funds (the Future Affiliated Funds) (the Quadrus Funds, Counsel Funds, Other Mackenzie Funds and Future Affiliated Funds are individually a Proprietary Fund, and collectively, the Proprietary Funds).
6. The Filer is a participating dealer for the Other Mackenzie Funds. The Filer is also a participating dealer for many mutual funds offered for sale in Canada that are managed by unrelated fund managers. The Filer does not distribute securities of the Counsel Funds or the IG Funds.
7. Some of the representatives of the Filer are, or in the future may be, permitted to sell all funds offered by the Filer (the Applicable Representatives).
8. The Filer and the Applicable Representatives are free to choose which mutual funds to recommend to their clients and consider recommending the Quadrus Funds and the Other Mackenzie Funds to their clients in the same way as they consider recommending other third party mutual funds. The Filer and the Applicable Representatives comply with their obligations at law and only recommend mutual funds that they believe would be suitable for their clients and in accordance with the clients' investment objectives. The decision to pay commission rebates to clients will be made by the Applicable Representatives based on the best interests of the particular client.
9. All compensation and sales incentives paid to the Filer by Mackenzie comply with NI 81-105. The Filer also complies with NI 81-105, in particular, with Part 4 of N 81-105, in its compensation practices with its sales representatives.

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10. No Applicable Representative has an equity interest in the Filer or any other member of the organization of the Proprietary Funds.
11. Paragraph 7.1(3) of NI 81-105 prohibits the Filer or representatives of the Filer from paying commission rebates to clients who switch their investments from third party funds to the Proprietary Funds.
12. Unless the Requested Relief is granted, a client who effects an early redemption of mutual fund securities that are subject to a redemption charge and who uses the proceeds thereof to purchase securities of a Proprietary Fund would not have the benefit of a commission rebate from the Filer or an Applicable Representative, while a client who uses the proceeds of such redemption to purchase securities of a mutual fund unrelated to the Filer could have the benefit of a commission rebate from the Filer or an Applicable Representative. In circumstances where the Applicable Representative believes that a Proprietary Fund is the most suitable fund for the client, the Filer believes that the prohibition in paragraph 7.1(3) of NI 81-105 to be not in the best interests of clients.
13. The Filer believes that by imposing conditions that prohibit members of the mutual fund organization (which would include the managers of the Proprietary Funds) from reimbursing the Filer or the Applicable Representatives for the commission rebates paid to the Filer's clients and requiring the Filer and the Applicable Representatives to offer commission rebates on identical terms to the Filer's clients without having such commission rebates conditional upon a switch to a Proprietary Fund, any potential for undue influence upon the client is sufficiently mitigated. Further, the Filer or the Applicable Representatives will not pay a greater commission rebate if the client switches to a Proprietary Fund.

### **Decision**

- ¶ 4 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 provided that:

1. For each switch made by a client of the Filer from an unrelated third party fund to a Proprietary Fund where the Filer or an Applicable Representative agrees to pay a commission rebate to that client, the Filer and the Applicable Representative will:

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- (a) comply with the informed written consent provisions of s.7.1(1)(a) of NI 81-105 and the disclosure and consent provisions of Part 8 of NI 81-105;
  - (b) advise the client, in writing and in advance of finalizing the switch, that any commission rebate proposed to be made available in connection with the purchase of a Proprietary Fund will:
    - (i) be available to the client regardless of which mutual fund the redemption proceeds are to be invested in;
    - (ii) not be conditional upon the purchase of the securities of a Proprietary Fund; and
    - (iii) in all cases, be not more than the amount of the gross sales commission earned by the Filer on the client's purchase of a Proprietary Fund; and
  - (c) in respect of the switch, not pay a commission rebate more than the amount referred to in paragraph 1(b)(iii) above.
2. The Filer or the Applicable Representative that provides a commission rebate will not be reimbursed directly or indirectly in respect of that commission rebate in connection with a switch to a Proprietary Fund by any member of the organization of the Proprietary Fund.
  3. Neither the Filer nor any Applicable Representative of the Filer is, or will be, subject to quotas (whether express or implied) in respect of selling securities of the Proprietary Funds.
  4. Except as permitted by NI 81-105, none of the Filer, Mackenzie or any other member of the organization of the Proprietary Funds provides or will provide any incentive (whether express or implied) to any Applicable Representative or to the Filer (as applicable) to encourage the Applicable Representative to recommend to clients the Proprietary Funds over third party mutual funds.
  5. The Filer's compliance policies and procedures that relate to this Decision will emphasize that any commission rebate agreed to be paid to a client by an Applicable Representative cannot be conditional on the client acquiring a Proprietary Fund and will be made available to the client if the client wishes to switch to an unrelated third party fund.

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This Decision shall cease to be operative with respect to a Decision Maker following the coming into force of a rule of that Decision Maker which replaces or amends section 7.1 of NI 81-105.

Paul M. Moore  
Vice-Chair  
Ontario Securities Commission

Robert L. Sherriff  
Ontario Securities Commission