

2005 BCSECCOM 245

April 19, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – 1996 Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - A BC registered dealer wants an exemption from delivering confirmation statements to clients. - The client's account is fully managed by the dealer; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; trades in the account are only made on the client's adviser's instructions; the client agreed in writing that confirmation statements will not be delivered to them; confirmations are provided to the client's adviser; the client is sent monthly statements that include the confirmation information.

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,
Newfoundland and Labrador, Nova Scotia, New Brunswick and Yukon Territory

and

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

and

In the Matter of Frank Russell Canada Limited

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador, Nova Scotia, New Brunswick and Yukon Territory (the Jurisdictions) has received an application from Frank Russell Canada Limited (FRCL) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirement contained in the Legislation that a dealer, that is registered in their respective jurisdiction and is a member of the Investment Dealers Association (a Dealer), promptly send to the client a written confirmation of a trade, (a Trade Confirmation) setting forth certain information specified in the

2005 BCSECCOM 245

Legislation, (the Trade Confirmation Requirement) shall not apply to trades executed by FRCL for accounts of its customers (the Client or Clients) that have discretionary management accounts (a Wrap Account) with a Dealer, that grant full discretionary authority over the accounts to FRCL (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 as represented by FRCL:

1. FRCL is an adviser registered under the applicable Legislation in each of the Jurisdictions.
2. FRCL offers its clients discretionary portfolio management services directly or through a Dealer.
3. To participate in the Wrap program each Client enters a written discretionary portfolio management agreement (a Wrap Account Agreement) with the Dealer, or with FRCL, setting out the terms and conditions and the respective rights, duties and obligations of the parties.
4. For each Client, a Dealer will open an account (the Account) separate and distinct from any other accounts the Client may have with the Dealer. Under the Wrap Account Agreement, the Client will grant full discretionary authority over the assets in the Account to FRCL. These Accounts will be operated in full compliance with the Legislation of the Jurisdictions and the rules and by-laws of the Investment Dealers Association of Canada.
5. The Client will provide to the Dealer sufficient information regarding the Client's investment objectives, preferences and restrictions from which FRCL will develop, along with the Client, a written investment policy statement and investor profile.

2005 BCSECCOM 245

6. The Wrap Account Agreement will stipulate that the Client will pay a non-transactional fee to the Dealer and FRCL based on a fixed percentage of the market value of the Client's Account, which will include all custodial, reporting, transaction and brokerage fees and commissions. The Client may be responsible for other charges relating to administration fees for deferred income plans, NSF cheques, or client initiated transactions or services.
7. Under the Wrap Account Agreement, the Dealer, or another recognized securities custodian, will act as custodian of the securities and other assets in the Account. The Client will acknowledge and agree that transactions in the Account directed by FRCL will generally be executed through the Dealer or one of its affiliates.
8. The Dealer will provide to the Client a statement of account with respect to their Account as frequently as and containing the information required under the Legislation of the applicable Jurisdiction, including a list of all transactions undertaken in the Account during the period covered by that statement, and a statement of portfolio for the Account at the end of such period.
9. With respect to securities transactions conducted through the Dealer for a Client's Account, the Dealer will provide to FRCL the Trade Confirmations in the form and containing the information required under the Legislation of each applicable Jurisdiction. Unless otherwise requested, Clients will explicitly waive receipt of the Trade Confirmations under the Wrap Account Agreement.

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 and that with respect to any trade in a Clients Account initiated by FRCL, the Trade Confirmation Requirement shall not apply to a Dealer with respect to that trade provided that:

- (a) Clients have consented in writing to the waiver of the Trade Confirmation Requirement; and
- (b) the Dealer delivers the Trade Confirmation to FRCL.

Paul M. Moore
Commissioner
Ontario Securities Commission

Wendell S. Wigle
Commissioner
Ontario Securities Commission