

2005 BCSECCOM 121

February 22, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 48 Adviser -Exemption from requirement to be registered as an adviser and from adviser requirements, person who resides outside BC wants to advise BC residents; the person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant and its BC clients; the person is registered or qualified to provide advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person.

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 48 Dealer -Exemption from dealer requirements; exemption from delivering confirmation statements; 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, ss. 34(1)(a) and (c) and 48

Securities Rules, B.C. Reg. 194/97, ss. 36(3) and 80(1)

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

and

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

and

In the Matter of GMP Private Client Ltd. (the Filer)

MRRS Decision Document

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Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement in the Legislation:
- (a) except in Ontario, to be registered as an adviser for certain investment advisers (Sub-Advisers) who provide investment counselling and portfolio management services to the Filer for the benefit of its clients (Clients) who are resident in Jurisdictions where the Sub-Advisers are not registered (Registration Relief); and
 - (b) except in Prince Edward Island, that a registered dealer send to its clients a written confirmation of any trade in securities for transactions that the Filer conducts on behalf of its Clients with respect to transactions under the Filer's managed account program (Confirmation Relief).

Under the System

- (a) the British Columbia 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 represented by the Filer:
- 1. the Filer is a corporation incorporated under the laws of Ontario with its head office located in Toronto, Ontario;
 - 2. the Filer is registered under the Legislation as an investment dealer or its equivalent and is a member of the Investment Dealers Association of Canada;
 - 3. the Filer is authorized to act as an adviser, without registering as an adviser, under exemptions in the Legislation;

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4. the Filer plans to offer its Clients a managed account program (Managed Account Program) comprised of two different types of managed accounts as part of its Managed Account Program:
 - (a) accounts that will be fully managed by a portfolio manager of the Filer (the PM Program); and
 - (b) accounts that will be invested by a portfolio manager of the Filer in a model portfolio(s) of a Sub-Adviser, which has entered into a sub-advisory agreement with the Filer (the Model Portfolio Program);
5. to participate in the Filer's Managed Account Program, the Client will:
 - (a) enter into a written agreement (the Managed Account Agreement) with the Filer establishing an account and setting out the terms and conditions and the respective rights, duties and obligations of the Client and the Filer; and
 - (b) with the assistance of the Filer, complete an investment policy statement that outlines the Client's investment objectives and level of risk tolerance;
6. under the Managed Account Agreement:
 - (a) the Client will grant full discretionary trading authority to the Filer and the Filer will be authorized to make investment decisions and to trade in securities on behalf of that Client's account without obtaining the specific consent of the Client to individual trades;
 - (b) the Client will agree to pay a flat annual fee and an annual fee calculated on the basis of the assets in the Client's account, which will be payable monthly or quarterly in arrears, and will not be based on transactions effected in the Client's account; and
 - (c) unless otherwise requested, the Client will waive receipt of trade confirmations as required under the Legislation;
7. for a Client that participates in the Filer's Model Portfolio Program, the Filer will, based on the Client's investment policy statement, choose which model portfolios that Client's account (a Model Portfolio Account) will track;
8. each model portfolio will have its own investment focus and will be comprised of a portfolio of securities compiled and maintained by a Sub-Adviser;

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9. based on the portfolio manager's assessment of which model portfolio(s) is appropriate for a Client, the portfolio manager will invest the Client's Model Portfolio Account in accordance with the securities and weightings used in that model portfolio(s);
10. a portfolio manager at the Filer will be responsible for reviewing and approving each trade for a Client's Model Portfolio Account to ensure that each trade meets the investment mandate of that Client;
11. Sub-Advisers will be selected by the Filer based on a variety of criteria developed by the Filer for determining their suitability for specific investment mandates;
12. in retaining the Sub-Advisers, the Filer will comply with the requirements of section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* and, accordingly:
 - (a) the obligations and duties of each Sub-Adviser will be set out in a written agreement between the Sub-Adviser and the Filer;
 - (b) the Filer will contractually agree with each Client on whose behalf investment counselling or portfolio management services are to be provided by a Sub-Adviser to be responsible for any loss that arises out of the failure of the Sub-Adviser:
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or
 - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; and
 - (c) the Filer will not be relieved by its Clients from its responsibility for loss under paragraph 12(b) above;
13. Sub-Advisers may or may not be resident in Canada; each Sub-Adviser that is resident in a province or territory of Canada will be registered as an adviser under the securities legislation of that province or territory; each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;

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14. if there is any direct contact between a Client and a Sub-Adviser, a representative of the Filer, duly registered to provide portfolio management and investment counselling services in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;
15. a Sub-Adviser that provides investment counselling or portfolio management services to the Filer for the benefit of its Clients would be considered to be acting as an “adviser” under the Legislation and, in the absence of the Registration Relief or an existing exemption, would be subject to the adviser registration requirement;
16. Sub-Advisers who are not registered in Ontario will not be required to register as advisers under the *Securities Act* (Ontario) as they can rely on the exemption from registration in section 7.3 of Ontario Rule 35-502 *Non-Resident Advisers*;
17. the Filer will send each Client participating in its Managed Account Program, who has waived receipt of trade confirmations, a statement of account, not less than once a month;
18. the monthly statement of account will identify the assets being managed on behalf of that Client, including for each trade made during that month the information that the Filer would otherwise have been required to provide to that Client in a trade confirmation in accordance with the Legislation, except for the following information (the Omitted Information):
 - (a) the day and the stock exchange or commodity futures exchange upon which the trade took place;
 - (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
 - (c) the name of the salesman, if any, in the transaction;
 - (d) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and
 - (e) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold;

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19. the Filer will maintain the Omitted Information with respect to a Client in its books and records and will make the Omitted Information available to the Client on request.

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

- (a) except in Ontario, the Registration Relief is granted provided that
 - (i) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer;
 - (ii) the Filer contractually agrees with each Client on whose behalf investment counselling or portfolio management services are to be provided by a Sub-Adviser to be responsible for any loss that arises out of the failure of the Sub-Adviser:
 - (A) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or
 - (B) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
 - (iii) the Filer is not relieved by its Clients from its responsibility for loss under paragraph (ii) above;
 - (iv) each Sub-Adviser that is resident in a province or territory of Canada will be registered as an adviser under the securities legislation of that province or territory;
 - (v) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;

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- (vi) a Sub-Adviser will not have any direct and personal contact with a Client residing in New Brunswick or Alberta if the Sub-Adviser is not registered under the securities legislation of that province;
 - (vii) in Manitoba, the Registration Relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction; and
- (b) except in Prince Edward Island, the Confirmation Relief is granted, provided that
 - (i) the Client has previously informed the Filer that the Client does not wish to receive trade confirmations for the Client's accounts under the Managed Account Program; and
 - (ii) in the case of each trade for an account under the Managed Account Program, the Filer sends to the Client the corresponding statement of account that includes the information for the trade referred to in paragraph 18.

L.E. Evans, CA
Director, Capital Markets Regulation
British Columbia Securities Commission