

2007 BCSECCOM 508

August 24, 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 portfolio manager, mutual fund or “responsible person” wants relief from s. 127(1)(a) of the Act so that it can invest in an issuer which has a “responsible person” as an officer or director of the issuer - The Filer manages funds that invested in the asset-backed commercial paper (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 affecting the liquidity of the ABCP; the Filer is concerned that continuing to hold the ABCP may impact the confidence of investors in the Fund and may result in unusual levels of redemption requests; the Filer wants to act in the best interests of the Fund’s investors; a party affiliated with the Filer will buy the ABCP from a fund managed by the Filer, if the Filer in its discretion determines it would be in the best interests of the investors in that fund to sell some or all of the ABCP - An independent review committee (IRC) has been appointed but the committee is not yet fully compliant with NI 81-107 *Independent Review Committee for Investment Funds*; prior to completing the mutual fund’s sales, the Filer will consult with the IRC and will obtain the IRC’s recommendation that in the IRC’s opinion, the sales will achieve fair and reasonable results for the fund

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 Filer manages funds that invested in the asset-backed commercial paper (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 affecting the liquidity of the ABCP; the Filer is concerned that continuing to hold the ABCP may impact the confidence of investors in the Fund and may result in unusual levels of redemption requests; the Filer wants to act in the best interests of the Fund’s investors; a party affiliated with the Filer will buy the ABCP from a fund managed by the Filer, if the Filer in its discretion determines it would be in the best interests of the investors in that fund to sell some or all of the ABCP; a Filer will sell the ABCP at a price equal to the cost plus accrued interest value; this value is determined in accordance with GAAP and is the same value used for other commercial paper investments held by the funds

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Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
Alberta, British Columbia and Saskatchewan
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System

and

In the Matter of
ATB Investment Management Inc.
(the Filer)

and

In the Matter of
ATB Money Market Fund
(the Fund)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filer on behalf of the Fund and with respect to certain accounts over which the Filer exercises discretionary trading authority for clients of the Filer (the Clients) for relief in each Jurisdiction from the following prohibitions in the securities legislation of the Jurisdictions (the Requested Relief) in order to permit the sale of all or any of the asset-backed commercial paper (ABCP) issued by an issuer listed in Schedule A and owned by the Fund or a Client on the date of the Application to Alberta Treasury Branches (ATB):
 - (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 invest in an issuer in which a responsible person or an associate of a responsible person is an officer or a director unless (i) that specific fact is disclosed to the client, and (ii) the

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written consent of the client to the investment is obtained before the purchase; and

- (b) 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 securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager.

2. Under the MRRS:

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

Interpretation

- 3. 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

- 4. This decision is based on the following facts represented by the Filers:

- (a) The Filer is a corporation incorporated under the laws of Alberta, with a head office in Edmonton, Alberta.
- (b) The Filer is the trustee, manager and portfolio adviser of the Fund and also provides discretionary portfolio management services to Clients through individual accounts with the Applicant (Fully Managed Accounts).
- (c) The Filer is a wholly-owned subsidiary of ATB. ATB is a crown corporation established by the government of Alberta.
- (d) The Fund is a reporting issuer in each Jurisdiction.
- (e) The Fund and the Fully Managed Accounts of Clients resident in Alberta hold ABCP issued by one or more of the conduit issuers listed in Schedule A. As of the date of the Application, ABCP with an approximate total value of \$234,012,000 is held by the Fund and in the Fully Managed Accounts of the Clients.

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- (f) ABCP is short-term commercial paper with terms to maturity of up to 90 days.
- (g) As of the date of the Application, of the ABCP owned by the Fund and the Clients, ABCP with an approximate total value of \$16,745,203 has matured. The balance of the ABCP owned by the Fund and the Clients has a remaining term to maturity as of the date of the Application of between one and 78 days.
- (h) The ABCP owned by the Fund and the Clients had an “approved credit rating” within the meaning of NI 81-102 when acquired and as of the date of the Application, continues to have such rating.
- (i) The Filer has determined that the appropriate method to value the ABCP owned by the Fund and the Clients is cost plus accrued interest which is the valuation methodology used in respect of other commercial paper investments held by the Fund.
- (j) ATB has determined that the ABCP owned by the Fund and the Clients is appropriately valued at cost plus accrued interest.
- (k) The Filer has determined that the current liquidity problems affecting the ABCP market may have an impact on the confidence of investors in the Fund and of the Clients, and may result in unusual levels of redemption requests by investors in the Fund and requests by Clients to withdraw cash from their Fully Managed Accounts.
- (l) The Filer wants to ensure that the Fund is able to meet redemption requests received by the Fund and that the Filer is in a position to satisfy requests by Clients to withdraw cash from their Fully Managed Accounts.
- (m) The Filer and ATB have agreed that, in order to ensure an appropriate level of confidence of investors in the Fund and of Clients, if the Filer determines that a sale of all or any of the ABCP held by the Fund or the Clients to ATB is in the best interests of the Fund or the Clients, as the case may be, ATB will acquire all, or such lesser portion as the Filer may determine, of the ABCP held by the Fund or the Clients, as the case may be, as of the date of the Application and issued by the issuers listed on Schedule A, at a price per security equal to cost plus accrued interest (the Sale). These Sales may occur during the period between the date the Requested Relief is granted and October 31, 2007.

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- (n) ATB may acquire the ABCP by payment in cash or *in specie* or partially in cash and partially *in specie*. If all or part of the payment is *in specie*, the securities transferred by ATB will have a value equal to the value (on a cost plus accrued interest basis) of the ABCP acquired by ATB for such payment, and will be either:
 - (i) guaranteed deposit certificates issued by ATB (ATB Deposit Certificates); or
 - (ii) treasury bills issued by the Government of Canada or another similar highly liquid “government security” as defined in NI 81-102 (Government Securities). The ATB Deposit Certificates and the Government Securities will be valued by the Fund and for the Clients on the same basis as if the Fund or the Clients, as the case may be, had paid cash to acquire them.
- (o) ATB Deposit Certificates are evidence of indebtedness issued by ATB that entitle the holder upon maturity to receive a cash amount equal to the principal amount of the certificate, plus accrued interest. The term to maturity of the ATB Deposit Certificates will be 90 days or less. Each ATB Deposit Certificate is guaranteed as to principal and interest by the government of the province of Alberta, and therefore is a “government security” within the meaning of NI 81-102.
- (p) ATB Deposit Certificates are “illiquid assets” within the meaning of NI 81-102 because they cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the ATB Deposit Certificates are valued in calculating the net asset value per security of the Fund.
- (q) The Filer has appointed the initial members of the independent review committee (IRC) for the Fund but as of the date of the Application, the IRC is not operational.
- (r) In the absence of the relief requested by the Application, the Filer would be prohibited from causing the Fund and the Fully Managed Accounts of the Clients to:
 - (i) sell the ABCP to ATB; and
 - (ii) acquire or otherwise invest in ATB Deposit Receipts.

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Decision

5. 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.
6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted in respect of the Fund and Fully Managed Accounts on the following conditions:
 - (a) the Filer determines that the Sale is in the best interests of the Fund;
 - (b) the Sale occurs during the period between the date hereof and October 31, 2007;
 - (c) the price per security is equal to cost plus accrued interest;
 - (d) if payment is made all or partially *in specie* the securities transferred by ATB have a value equal to the value (on a cost plus accrued interest basis) of the ABCP acquired by ATB for such payment and are ATB Deposit Certificates or Government Securities;
 - (e) if payment for certain ABCP is made by way of ATB Deposit Certificates, the term to maturity of the ATB Deposit Certificates will mirror the term to maturity of the specific ABCPs for which the ATB Certificates are exchanged; and
 - (f) with respect to a Sale with the Fund, the IRC for the Fund has been consulted with respect to the Sale and provided its recommendation that, in the IRC's opinion, the Sale will achieve a fair and reasonable result for the Fund.

Blaine Young
Associate Director, Corporate Finance
Alberta Securities Commission

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SCHEDULE A THIRD PARTY ABCP CONDUITS

Aria Trust
Aurora Trust
Comet Trust
Encore Trust
Gemini Trust
Lafayette Structured Trust
Opus Trust
Rocket Trust
Structured Asset Trust
Structured Investment Trust III
Skeena Capital Trust
Symphony Trust
Whitehall Trust