

2005 BCSECCOM 637

October 24, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Adviser - Exemption from s. 34(1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and rules - A 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 the 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.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1)(c) and 48

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

and

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

and

In the Matter of BMO Harris Investment Management Inc. (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 for a decision under the securities legislation of the Jurisdictions (the Legislation). The Filer seeks an exemption from the requirements in the Legislation to be registered as an adviser for certain investment advisers (the Sub-Advisers). The exemption will allow the Sub-Advisers to provide portfolio management services to the Filer for the benefit of certain clients who are resident in Jurisdictions in which the Sub-Advisers are not registered (the Registration Relief).

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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 as represented by the Filer:
- 1. the Filer is a corporation incorporated under the federal laws of Canada with its head office located in Toronto, Ontario; the Filer is an indirect, majority-owned subsidiary of Bank of Montreal;
 - 2. the Filer is registered under the Legislation as an adviser in the categories of investment counsel and portfolio manager;
 - 3. each Sub-Adviser is or will be registered or otherwise qualified to provide investment counselling and portfolio management services under applicable laws in the jurisdiction where the Sub-Adviser's head office is located;
 - 4. the Filer proposes to offer portfolio management services to clients (Participating Clients) who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Advisers have experience and expertise;
 - 5. each Participating Client will enter into an investment management agreement (Investment Management Agreement) with the Filer which:
 - (a) provides the Filer with complete discretionary authority to purchase and sell securities on behalf of the Participating Client, and
 - (b) authorizes the Filer to select and retain portfolio managers to invest all or a portion of the assets in a Participating Client's account (Portfolio);
 - 6. the Filer will enter into an agreement (Sub-Advisory Agreement) with each Sub-Adviser that sets out the obligations and duties of each party in connection with the investment services provided to the Participating Clients, and provides the Sub-Adviser with discretionary authority over the Portfolios;

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7. in retaining each Sub-Adviser, the Filer:
- (a) will agree under the Investment Management Agreement to be responsible for any loss that arises out of the failure of each Sub-Advisor:
 - (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 Participating 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,
 - (b) will not be relieved by the Participating Clients from this responsibility under 7(a) above (collectively, the Assumed Obligations);
8. if there is any direct contact between a Participating 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 Participating Client is resident, will be present at all times, either in person or by telephone;
9. a Sub-Adviser that provides investment counselling or portfolio management services to the Filer for the benefit of the Participating 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; and
10. 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*.

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 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 Filer;

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- (ii) the Filer contractually agrees with each Participating Client, on whose behalf the Sub-Adviser will provide investment counseling or portfolio management services, 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 Participating 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 Participating 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;
- (vi) a Sub-Adviser will not have any direct and personal contact with a Participating 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.

L.E. Evans, CA
Director