

# 2005 BCSECCOM 10

January 6, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – 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, New Brunswick, Nova  
Scotia, Newfoundland and Labrador, and Yukon (the Jurisdictions)

and

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

and

In the Matter of Frank Russell Canada Limited (the Applicant)

## 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 Applicant for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the adviser registration requirement for investment advisers (the Sub-Advisers) who provide investment counselling and portfolio management services to the Applicant for the benefit of Investors (as defined below) resident in Jurisdictions where the Sub-Advisers are not registered (the Requested Relief).

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Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for the 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 Applicant:
1. the Applicant is a corporation incorporated under the laws of Canada with its head office located in Toronto, Ontario;
  2. the Applicant is registered under the Legislation in each of the Jurisdictions as an adviser in the categories of investment counsel and portfolio manager or its equivalent;
  3. the Applicant proposes to be retained from time to time by investors (Investors) in the Jurisdictions or by registered brokers and dealers of Investors in the Jurisdictions to provide investment counselling and portfolio management services to Investors;
  4. the Applicant wishes to retain Sub-Advisers from time to time to provide investment counselling and portfolio management services to the Applicant for the benefit of Investors;
  5. Sub-Advisers will be selected by the Applicant based on a variety of criteria developed by the Applicant and its affiliates for determining the suitability of Sub-Advisers for specific investment mandates; Sub-Advisers may be terminated from time to time by the Applicant in its discretion;
  6. the Applicant believes that the Sub-Advisers will provide the Applicant and Investors with access to specialized expertise;
  7. in retaining the Sub-Advisers, the Applicant will comply with the requirements of Section 7.3 of Ontario Securities Commission Rule 35-502 and, accordingly:

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- (a) the obligations and duties of each Sub-Adviser will be set out in a written agreement between the Sub-Adviser and the Applicant;
  - (b) the Applicant will contractually agree with each Investor 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 Applicant and the Investor 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 Applicant will not be relieved by Investors from its responsibility for loss under paragraph 7(b) above;
8. 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;
9. a Sub-Adviser that provides investment counselling or portfolio management services to the Applicant for the benefit of Investors may be considered to be acting as an “adviser” under the Legislation and, in the absence of the requested relief, would be subject to the adviser registration requirement.

### **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.
- ¶ 5 The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:
- (a) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Applicant;

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- (b) the Applicant contractually agrees with each Investor 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 Applicant and the Investor 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;
- (c) the Applicant is not relieved by Investors from its responsibility for loss under paragraph (b) above;
- (d) each Sub-Adviser that is resident in a province or territory of Canada is registered as an adviser under the securities legislation of that province or territory;
- (e) each Sub-Adviser that is not resident in Canada is licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;
- (f) a Sub-Adviser will not have any direct and personal contact with an Investor residing in New Brunswick or Alberta if the Sub-Adviser is not registered as an adviser under the securities legislation of that province; and
- (g) in Manitoba, the relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction.

Lang Evans, CA  
Director, Capital Markets Regulation