

# **2008 BCSECCOM 232**

## **Headnote**

Mutual Reliance Review System for Exemption Relief Application – National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A fund manager wants relief from the prospectus disclosure requirements in subsections 8.2(1) and (2) for a proposed distribution of securities by a member of the organization of the fund. - The fund's prospectus and website contain alternate disclosure that provides investors with adequate information regarding ownership of the member of the organization of the fund to address potential conflicts of interest.

## **Applicable British Columbia Provisions:**

NI 81-105, s. 8.2

**March 20, 2008**

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

**and**

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

**and**

**In the Matter of  
Value Partners Investments Inc.  
(the Filer)**

**MRRS Decision Document**

## **Background**

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) exempting the Pools as defined herein and certain dealers and their sales representatives defined in this Decision as the Dealers and the Equity Representatives, from specified requirements in Section 8.2 of National Instrument 81-105 *Mutual Funds Sales*

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*Practices* (NI 81-105) on the conditions to this Decision (the Disclosure and Consent Relief); and revoking the decision defined in this Application as the Existing Decision (the Revocation Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) The Manitoba 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 NI 81-105 and in National Instrument 14-101

*Definitions* have the same meaning in this decision unless they are defined in this decision.

- (a) “Equity Representative” means, as of any date, a sales representative of a registered dealer who beneficially owns Class A shares of the Filer.
- (b) “Existing Decision” means the Decision Document granted by the Decision Makers on November 1, 2005 in favour of the Filer.
- (c) “Dealer” means, as of any date, a registered dealer who has sales representatives who are Equity Representatives.
- (d) “Pools” means the mutual funds managed by the Filer whose securities are offered to the public under a simplified prospectus and annual information form.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the laws of Canada with its head office based in Winnipeg, Manitoba.
2. The Filer is the manager of the Pools, and may establish additional Pools from time to time. The Pools are currently distributed through registered dealers in the Jurisdictions pursuant to a simplified prospectus and annual information form dated September 27, 2007. As of January 31, 2008, the Pools had \$184 million in assets under management.

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3. The principal beneficial shareholders of the Filer are members of the Lawton family, including Sean Lawton and Paul Lawton. Paul Lawton is the Chief Operating Officer and Secretary of the Filer.
4. Since 2005, the Filer has offered its Class A shares to registered sales representatives of registered dealers pursuant to applicable prospectus and registration exemptions under an offering memorandum, which describes its business and provides information about its business to prospective investors. The Filer issues Class A shares to any sales representative of a registered dealer who wishes to invest pursuant to exemptions provided for in securities regulation in the applicable provinces. 40 percent of the common equity of the Filer is presently held by approximately 65 Equity Representatives, who are collectively associated with 14 Dealers. No Dealer has or will acquire shares in the Filer.
5. One of the Filer's central business principles is that ownership of the Filer's common equity by an Equity Representative will serve to align the interests of the Equity Representative with the interests of his or her client, being the investor in the Pools. For this reason, the Filer's and its principal shareholders' goal is to allow up to 40 percent of its common equity to be held by Equity Representatives. The majority shareholders of the Filer do not intend that Equity Representatives will hold more than 40 percent of the common equity of the Filer. The Filer does not expect any Equity Representative will hold more than five percent of the outstanding Class A shares of the Filer. A list is maintained by the Filer of the Dealers and the percentage of common equity held by the Equity Representatives of the Dealers, which is updated on a periodic basis and made available on its website – [www.valuepartnersinvestments.ca](http://www.valuepartnersinvestments.ca)
6. Sean Lawton is also a sales representative of Lawton Partners Financial Planning Services Ltd. (the Lawton Dealer). James Lawton, the Chairman and a director of the Filer is also the President, director and sales representative of the Lawton Dealer. Wayne Townsend, a director of the Filer is a sales representative of the Lawton Dealer. The Lawton Dealer is a registered mutual fund dealer in the provinces of Manitoba, Ontario, British Columbia and Saskatchewan and is a member of the Mutual Fund Dealers Association of Canada. Nine sales representatives of the Lawton Dealer, including James Lawton and Wayne Townsend, are equal beneficial shareholders in the Lawton Dealer (the Lawton Partners). The Lawton Dealer currently has thirteen sales representatives, including James Lawton, Sean Lawton and Wayne Townsend, located in the applicable provinces, twelve of whom are Equity Representatives.

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7. Pursuant to the Existing Decision:
- (a) In substitution for the disclosure requirements of Section 8.2 of NI 81-105 that apply to prospectuses of mutual funds, the Filer has caused the Pools to include disclosure in their simplified prospectuses about the ownership of the Filer, including the beneficial ownership of the Filer by the Lawton Partners, officers of the Filer and the other Equity Representatives. The disclosure required by the Existing Decision has been provided in each simplified prospectus for the Pools and website disclosure has been provided by the Filer.
  - (b) In substitution for the disclosure requirements of Section 8.2 of NI 81-105 that apply to participating dealers and their sales representatives (as such terms are defined in NI 81-105), Dealers with Equity Representatives are required to provide specified disclosure to clients and obtain their consent only where the Equity Representative is making the recommendation to invest in the Pools. The Filer has complied with the conditions to the relief that are within its control and has no reason to believe that Dealers and Equity Representatives have not been complying with the conditions to the relief set out in the Existing Decision.
  - (c) Under the Existing Decision, the Lawton Dealer and the sales representatives of the Lawton Dealer are required to comply with the requirements applicable to dealers set out in Section 8.2 of NI 81-105.
8. The Filer understands from the Dealers and Equity Representatives that the Existing Decision requires disclosure that is administratively difficult to provide, given that the percentage ownership of Equity Representatives changes each time shares of the Filer are issued to a new Equity Representative. In particular, the requirement that the disclosure contain information about the aggregate holdings of all Equity Representatives of a Dealer is very difficult to ensure accurate compliance. The conditions to the Existing Decision necessitates that each time a percentage changes, the Equity Representative and the Dealer must provide the client with a new disclosure form and obtain a new consent from the client. This causes significant difficulties from a compliance perspective that are not justified by any perceived benefit from such continuous updated disclosure and consent.

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9. Allowing for a disclosure form to be as “evergreen” as possible would be of benefit to the Dealers, the Equity Representatives and the Filer to ensure compliance. Clients of the Dealers will be in the same position, if not a better position, to be able to analyze any potential conflict of interest that an Equity Representative is in, when recommending the Pools, due to his or her share ownership in the Filer.
10. The Filer wishes the Decision Makers to revoke the Existing Decision and substitute it with the Decision that would permit:
  - (a) More aggregated, and less technically precise, but, in the Filer’s view, equally meaningful, disclosure about the holdings of the Equity Representatives would be given by each Dealer and Equity Representatives. If an Equity Representative trades in a security of a Pool and that Equity Representative holds securities in the Filer, then that Equity Representative will provide a disclosure document to that client that discloses that:
    - (i) The Equity Representatives of the Dealer and their associates, in aggregate, hold no more than a stated percentage of the securities of the Filer;
    - (ii) The Equity Representative of the Dealer and his or her associates, in aggregate, who is acting on the trade hold no more than a stated percentage of the securities of the Filer.
    - (iii) The percentage ownership of the Equity Representatives of the Dealer, in aggregate, are disclosed on the website of the Filer (the website will be provided).
  - (b) If the branch manager of sales representatives is an Equity Representative, then the sales representatives who report to that branch manager must give the above-noted disclosure document to clients, modified as necessary to reflect the fact that the branch manager is the Equity Representative.
  - (c) The Dealers and the Equity Representatives would be responsible for choosing a percentage number that is accurate, but one that will not change regularly so that constant updating of the disclosure forms as well as constant renewals of client consent will not be necessary.

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### **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 Disclosure and Consent Relief and the Revocation Relief is granted provided that:

1. The simplified prospectus of the Pools contains disclosure that describes, as of a date that is within 30 days of the date of the simplified prospectus:
  - (i) The aggregate percentage ownership of the Filer held by its controlling beneficial shareholders and the potential that up to a maximum of 40 percent of the common equity of the Filer may be held by Equity Representatives, who may be located in any Jurisdiction.
  - (ii) The names of any Dealer who has Equity Representatives and the aggregate amount held by those Equity Representatives and the fact that up –to-date information can be obtained from the Web site of the Filer, which will be updated on a monthly basis, as shares of the Filer are issued.
  - (iii) That the Lawton Partners are Equity Representatives and the aggregate amount held by the Lawton Partners.
  - (iv) The relationships of Messrs. James and Sean Lawton with the Filer, as applicable, as beneficial shareholders, officers and/or directors, and as sales representatives, shareholders and/or officers of the Lawton Dealer.
  - (v) That no Equity Representative is expected to hold more than five percent of the common equity of the Filer.
  - (vi) That as a shareholder of the Filer, an Equity Representative will stand to benefit from the inflow of client money to the Pools.
  - (vii) That if an investor's sales representative is an Equity Representative, then that investor will receive a disclosure statement describing the equity interest held by that Equity Representative before he or she invests in the Pools and that he or she must consent to the trade of units of the Pools.

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- (viii) That if the branch manager or other supervisor of the investor's sales representative is an Equity Representative, the investor will also receive a disclosure statement describing the equity interest that the branch manager or supervisor holds before he or she invests in the Pools and that he or she must consent to the trade of units of the Pools.
- 2. The Filer updates its Website to provide the aggregate percentage interests held by Equity Representatives and the names of the applicable Dealers on a monthly basis as shares are issued by the Filer.
- 3. Prior to a Dealer relying on this Decision, the Filer has provided a copy of this Decision to the Dealer together with a disclosure statement informing the Dealer of the ramifications of the Disclosure and Consent Relief.
- 4. Any Dealer wishing to rely on this Decision shall:
  - (a) send a written consent to the Filer agreeing to comply with the conditions of this decision as they relate to the Dealer and its Equity Representatives and
  - (b) have in place written policies and procedures to ensure that there is compliance with the conditions of this Decision.
- 5. Before completing a trade in a security of a Pool acted on by any Equity Representative, the Dealer and the Equity Representative wishing to rely on this Decision, shall:
  - (a) Provide the client with a disclosure statement that discloses:
    - (i) that representatives of the Dealer and their associates hold, in the aggregate, no more than a stated percentage of the securities of the Filer
    - (ii) that the representative acting on the trade holds no more than a stated percentage of the securities of the Filer.
    - (iii) that the client may go to the website of the Filer, which will be disclosed, to obtain additional information about the holdings of the Dealer and its sales representatives in the Filer.
  - (b) The stated percentage that must be disclosed pursuant to (a)(i) above, shall be that number determined by the Dealer that reasonably and

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accurately represents the maximum amount that it expects its sales representatives will from time to time hold in the Filer. The stated percentage that must be disclosed pursuant to (a)(ii) above, shall be that number determined by the Equity Representative that reasonably and accurately represents the maximum amount that he or she expect to hold from time to time in the Filer, and shall be not more than five percent.

- (c) Comply with the requirements of subsection 8.2(4) of NI 81-105, unless subsection 8.2(5) of NI 81-105 applies in respect of that trade.
  - (d) In the event an Equity Representative assumes a position of authority or supervision over other sales representatives of the Dealer, before completing a trade in a security of a Pool that is acted on by one of those other sales representatives, the Dealer and the other sales representative shall comply with the requirements of Condition 5 (a) (b) and (c) above, to disclose the amount held by the specific Equity Representative in that position of authority.
- 6. Condition 5 does not apply for any trade by a Dealer and an Equity Representative in securities of a Pool, where the Dealer and the Equity Representative previously gave the client the disclosure document required under the Existing Decision and obtained the client's consent to trades in the Pools as required by subsection 8.2(4) of NI 81-105, provided that the Dealer is satisfied that the previous disclosure document so provided contained information that is substantially and materially the same as, or less than, the level of equity ownership by the sales representatives of the Dealer and the Equity Representative acting on the trade, as of the time of the trade.
- 7. The Disclosure and Consent Relief does not apply to the Lawton Dealer or any of its sales representatives.

*"R. B. Bouchard"*

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R. B. Bouchard  
Director

The Manitoba Securities Commission