

# 2006 BCSECCOM 16

January 4, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A mutual fund dealer wants relief from the provision in ss. 7.1(1)(b) of the Instrument that prohibits a participating dealer from making certain payments to a “member of the organization” of the mutual fund - A client who wishes to reinvest redemption proceeds of other products in the affiliated funds would be prejudiced by being denied the rebate they would have received if they were to invest in third party funds. The filers’ representatives have no equity interest in the filer or in any member of the organization of the affiliated funds. The filer has provisions in place to minimize concerns about representatives being potentially influenced by an affiliated fund manager to recommend unjustified switches to affiliated funds. The decision document contains conditions to address concerns regarding conflicts of interest.

## **Applicable British Columbia Provisions**

National Instrument 81-105 *Mutual Fund Sales Practices*, ss. 7.1 and 9.1

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

**and**

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

**and**

**In the Matter of Qtrade Asset 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, on its own behalf and on behalf of its present and future representatives from time to time, for a decision under the securities legislation of the Jurisdictions (the Legislation) to grant an exemption, pursuant to section 9.1 of National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105), from the prohibition against payment of certain

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rebates of redemption commissions or fees contained in subsection 7.1(1)(b) of NI 81-105 to the extent necessary to permit rebates of redemption commissions or fees to be paid by such representatives of the Filer to clients who purchase units of mutual funds managed by Qtrade Fund Management Inc. (“QFM”), an affiliate of the Filer, following an early redemption of mutual fund securities or units of an unaffiliated mutual fund family.

Under the Mutual reliance Review System for Exemptive Relief Applications

- (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 existing under the *Canada Business Corporations Act* with its head office in Vancouver, British Columbia; the Filer is registered under the securities laws of each of the Jurisdictions in the category of mutual fund dealer;
  - 2. the Filer is a wholly owned subsidiary of Qtrade Canada Inc. (“Qtrade Canada”); QFM is the manager of the QFM Funds, a family of open-ended mutual fund trusts (individually, a “Fund”, collectively, the “QFM Funds”) whose securities are offered under a simplified prospectus dated January 27, 2005, in the Provinces of British Columbia, Alberta, Manitoba and Ontario (the “Prospectus”); the Prospectus is currently in the process of being renewed on a proforma basis in these jurisdictions and filed on a preliminary basis in the Province of Saskatchewan; QFM and Qtrade Securities Inc., an entity which provides brokerage services to the QFM Funds, are also wholly owned subsidiaries of Qtrade Canada;
  - 3. the Filer is an affiliate of QFM and is therefore a “member of the organization” of the QFM Funds pursuant to NI 81-105;
  - 4. currently the QFM Funds offer A, B & F Series units and are offered on the basis of a front-end load or low deferred sales charge option; as part of the

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Prospectus renewal a deferred sales charge option will be introduced; when an investor purchases units of a Fund on a low deferred sales charge basis and, in the future on a deferred sales charge basis, the investor does not pay a sales charge at the time of purchase; under the low deferred sales charge or deferred sales charge (either, the “Redemption Charge”) option, a redemption fee, which diminishes annually as a percentage of the original cost of the Fund units so purchased, applies to redemptions, subject to an annual free redemption allowance of a prescribed number of units as disclosed in the Prospectus of the QFM Funds;

5. the Filer is a participating dealer for most mutual funds offered for sale in Canada, including the QFM Funds; the Filer is not a principal distributor for the QFM Funds;
6. paragraph 7.1(1)(b) of NI 81-105 prohibits the representatives of the Filer from paying rebates to clients who switch their investments from third party funds to QFM Funds;
7. the decision to pay rebates to clients will be made by the representatives based on the best interests of the particular client;
8. the Filer does not provide any incentive to its representatives to recommend units of the QFM Funds or any other securities or units of a mutual fund family over those of another mutual fund family;
9. no representative of the Filer has an equity interest in the Filer or any other member of the organization of the QFM Funds; and
10. unless the exemption applied for is granted, a client who effects an early redemption of mutual fund securities or units that are subject to a redemption charge and who uses the proceeds thereof to purchase units of a Fund could not have the benefit of a rebate from a Filer representative, while a client who uses the proceeds of such redemption to purchase securities or units of a mutual fund unrelated to the Filer could have the benefit of a rebate from the Filer representative.

### **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 Requested Relief is granted provided that:

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1. the cost of such rebate will be borne by the representative, and no direct or indirect reimbursement or other compensation will be payable by the Filer or any other member of the organization of the QFM Funds to the representative;
2. the representative and the Filer will comply with the provisions of clause 7.1(1)(a) of NI 81-105;
3. the Filer will comply with the disclosure and consent provisions of Part 8 of NI 81-105;
4. the clients of the Filer will be advised by the representative, in advance, that any rebate proposed to be made available by a representative in connection with the purchase of units of the QFM Funds:
  - (a) will be available to the client regardless of whether the redemption proceeds are invested in a Fund or a third party fund (to the maximum of the commission earned by the representative on the purchase); and
  - (b) will not be conditional upon the purchase of units of a Fund;
5. the Filer representatives are not, and shall not be in the future, subject to quotas (express or implied) in respect of the distribution of the QFM Funds and shall continue to be entitled to offer competing third party funds to their clients;
6. except as permitted by NI 81-105, neither the Filer nor any of its affiliates shall provide any incentive (express or implied) to any representative for recommending the QFM Funds over third party funds;
7. the amount of the rebate that is borne by a representative shall be determined by the representative and the client; and
8. this decision shall cease to be operative with respect to a Decision Maker following the entry into force of a rule of that Decision Maker which replaces or amends section 7.1 of NI 81-105.

L.E. Evans, CA  
Director  
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