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February 23, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 54-101, s. 9.2 - Intermediaries want relief from the requirement to obtain instructions from clients in the prescribed form - Intermediaries will arrange internally and with their service providers to have systems in place to comply with the requirement with respect to new clients by January 1, 2006.

Applicable British Columbia Provisions

National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, s. 9.2

**In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,
New Brunswick, Nova Scotia, Newfoundland and Labrador,
the Yukon Territory And Nunavut (the Jurisdictions)**

and

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

and

In the Matter of The Investment Dealers Association of Canada

MRRS Decision Document

The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application from the Investment Dealers Association of Canada (the IDA) on behalf of its intermediary members (collectively, the Members and individually, a Member) for a decision under Section 9.2 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (the Instrument) in connection with amendments (the Amendments) to the Instrument which came into force on February 9, 2005 (the Effective Date) to enable them:

- (i) to continue to rely on their clients' instructions received pursuant to Section 3.2 in the unamended Form 54-101F1 (the Unamended Form) after July 1, 2002 (the date the Instrument came into effect) but prior to the Effective Date without being required to obtain new instructions from such clients;

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- (ii) to continue to use and rely on the Unamended Form under the Instrument when obtaining new instructions from clients after the Effective Date until January 1, 2006, without being required to obtain new instructions from such clients thereafter, so as to be able to efficiently and economically implement the operational, systems and business changes required to comply with the requirement in Section 3.2 of the Instrument, with respect to the form amendments; and
- (iii) in connection with the foregoing to deem any client instructions obtained using the Unamended Form to represent choices under the amended Form 54-101F1 (the Amended Form).

Under the Mutual Reliance Review System for Exemptive Relief Applications the Ontario Securities Commission is the principal regulator for this application and this MRRS decision document evidences the decision of each Decision Maker.

Defined terms in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

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

1. The Decision Makers have published amendments to the Instrument (the Amendments) that came into force on the Effective Date.
2. Under section 3.2 of the Instrument, an intermediary that opens an account for a client shall send to the client an explanation to clients and a client response form (the Unamended Form) and, before the intermediary holds securities on behalf of that client, obtain instructions from the client on the matters to which the Unamended Form pertains.
3. The Amendments include amendments to the Unamended Form (the Amended Form), with the result that, as of the Effective Date, the Members will be required to use the Amended Form to comply with section 3.2 (the Amended Form Requirement).
4. The Amendments provide a transition for clients who provided instructions under National Policy 41 *Shareholder Communication*. The Amendments do not provide a transition for clients who provided instructions since the coming into force of the Instrument.
5. The Unamended Form provides two choices to the client in respect of the delivery of securityholder materials:

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- (i) receive all of the securityholder materials sent to beneficial owners of securities; or
- (ii) decline to receive, subject to specific requests, all (a) proxy-related materials¹ sent in connection with a securityholder meeting at which only “routine business”² is to be conducted, (b) financial statements and annual reports that are not part of proxy-related materials; and (c) materials sent to securityholders that are not required by corporate or securities law to be sent.

The result of these choices is that the intermediary must always deliver non-routine business materials to the client.

6. The Amended Form provides that clients may choose to:
 - (i) receive all securityholder materials sent to beneficial owners of securities;
 - (ii) decline to receive all securityholder materials sent to beneficial owners of securities; or
 - (iii) receive only proxy-related materials that are sent in connection with a special meeting, as defined in the Amendments.
7. The Amendments will require the Members to replace the Unamended Form with the Amended Form. The Members will have to make significant operational and systems changes to replace the Unamended Form and educate staff on the Amended Form. The Members currently have stocks of the Unamended Form that would have to be destroyed or supplemented if they must use the Amended Form.
8. The Members will be in a position to use the Amended Form by January 1, 2006.

1 This would include financial statements and annual reports that are proxy-related materials.

2 “Routine business” means: (i) consideration of the minutes of an earlier meeting; (ii) consideration of financial statements of the reporting issuer or an auditors' report on the financial statements of the reporting issuer; (iii) election of directors of the reporting issuer; (iv) the setting or changing of the number of directors to be elected within a range permitted by corporate law if no change to the constating documents of the reporting issuer is required in connection with that action; or (v) reappointment of an incumbent auditor of the reporting issuer.

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9. Clients who have provided instructions since the coming into force of the Instrument will not be prejudiced by the use of the Unamended Form, as section 3.4 of the Instrument provides that clients may at any time change their instructions.

Each of the Decision Makers is satisfied that the test contained in the Instrument that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Instrument is that:

1. the Amended Form Requirement shall not apply to the Members in respect of:
 - (a) clients for whom a Member opens an account between the date of this Decision and December 31, 2005;
 - (b) clients who have provided instructions since the coming into force of the Instrument; and
 - (c) clients who wish to change their instructions between the date of this Decision and December 31, 2005;

provided the Member obtains instructions using the Unamended Form.

2. The Members shall, where a client's instructions are given in the Unamended Form, deem the instructions given by the client:
 - (i) to deliver all materials sent to beneficial owners of securities, to continue to be instructions to deliver all materials sent to beneficial owners of securities in the Amended Form; and
 - (ii) to decline to receive (x) proxy-related materials sent in connection with a securityholder meeting at which only "routine business" is to be conducted; (y) financial statements and annual reports that are not part of proxy-related materials; and (z) materials sent to securityholders that are not required by corporate or securities law to be sent, to be an instruction to deliver only proxy-related materials that are sent in connection with a special meeting in the Amended Form.

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