

2007 BCSECCOM 512

August 29, 2007

Headnote

Mutual Reliance Review System for Exemption Relief Application - 1996 Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - 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; the BC client will obtain advice from and give all instructions through the BC registrant.

Applicable British Columbia Provisions

Securities Act, 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 and Yukon Territory (the Jurisdictions)

and

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

and

In the Matter of Union Securities Ltd. (Union)

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 Union on behalf of certain advisers (the Advisers) for an exemption from the requirements in the securities legislation of the Jurisdictions (the Legislation) to be registered as an adviser; the exemption will allow the Advisers to provide investment counselling and portfolio management services to certain clients of Union who reside in Jurisdictions in which the Advisers are not registered (the Registration Relief).

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Under the System,

- (a) British Columbia 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 represented by Union:
1. Union is a company incorporated under the laws of Canada with its head office in Vancouver, British Columbia;
 2. Union is registered under the Legislation as an investment dealer or equivalent in each of the Jurisdictions. Union is also a member of the Investment Dealers Association of Canada;
 3. each Adviser is, or will be, registered or otherwise qualified under applicable laws in the jurisdiction in which its head office is located to provide investment counselling and portfolio management services;
 4. Union provides investment counselling and portfolio management services to its clients resident in the Jurisdictions under the conditions of its registration in each Jurisdiction;
 5. Union intends to offer the investment counselling and portfolio management services of the Advisers to those clients resident in the Jurisdictions (the Clients) who wish to have exposure to the portfolio management services of the Advisers;
 6. each Client will enter into an investment management agreement (IMA) with Union which:
 - (a) provides Union with complete discretionary authority to purchase and sell securities on behalf of the Client, and
 - (b) authorizes Union to delegate its discretionary authority over all or a portion of the Client's assets to one or more of the Advisers;

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7. Union will agree under the IMA to be responsible for any loss arising directly out of the failure of an Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of Union and the Client for whose benefit the investment advice is, 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,(collectively, the Assumed Obligations);
8. Union will not be relieved by Clients from the Assumed Obligations;
9. Union will enter into an agreement with each Adviser which will set out the obligations and duties of each party in connection with the investment counselling and portfolio management services provided to Clients and pursuant to which the Adviser will agree to act as a sub-adviser to Union for the benefit of Clients;
10. the Advisers who provide investment counselling and portfolio management services to Clients would be considered to be acting as an “adviser” within the meaning of the Legislation, and in the absence of the Registration Relief or an existing exemption, would be required to be registered as an adviser under the Legislation;
11. the Advisers are not registered under the Legislation; and
12. there are no exemptions from the adviser registration requirement that the Advisers may rely on to provide investment counselling and portfolio management services to Clients.

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:

1. the obligations and duties of each Adviser are set out in a written agreement with Union;

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2. Union contractually agrees with each Client that Union will be responsible for the Assumed Obligations;
3. Union cannot be relieved of the Assumed Obligations by Clients;
4. Union is registered under the Legislation in the appropriate category of registration having regard to the type of advisory services being provided to the Client;
5. each Adviser 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;
6. if there is any direct contact between a Client and an Adviser, a representative of Union, duly registered to provide portfolio and investment counseling services for securities and/or exchange contracts in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone; and
7. in Manitoba, the Registration Relief is available only to Advisers that are not registered in any Canadian jurisdiction.

Michael Sorbo, CGA, CFA
Acting Director, Capital Markets Regulation