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December 21, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - Issuer wants relief from self-dealing requirements and conflict of interest reporting requirements in connection with mutual fund mergers - One of the funds that is merging is a non-redeemable investment fund or non-reporting issuer; if both funds were conventional mutual funds to which NI 81-102 applies, they would be able to rely on the exemption provided in NI 81-102; the self-dealing provisions only apply for a moment in time; the merger is required to be approved by unitholders of the terminating fund; unitholders of the terminating fund received an information circular for the unitholders meeting to approve the merger; the simplified prospectus and annual information form of the continuing fund was incorporated by reference in the information circular

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 127(1) and 130

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

and

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

and

In the Matter of
Acuity Investment Management 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”) granting

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relief from the restriction in the Legislation which prohibits a portfolio manager, or in British Columbia, a mutual fund or a responsible person, from purchasing or selling the securities of any issuer from or to the account of a responsible person or any associate of a responsible person in connection with the mergers (the “Mergers”) of Acuity All Cap & Income Trust, Acuity Diversified Total Return Trust and Acuity Multi-Cap Total Return Trust (collectively, the “Terminating Funds”) into Acuity Growth & Income Trust (the “Continuing Fund”) (the “Requested Relief”).

Under the Mutual Reliance Review System (“MRRS”) for Exemptive Relief Applications:

- (a) the Ontario 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 National Instrument 14-101 - *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations:

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

1. The Filer intends to merge the Terminating Funds into the Continuing Fund, which will involve the transfer of assets of the Terminating Funds in exchange for units of the Continuing Fund (the “Continuing Fund Units”).
2. At the time the Mergers are effected, the Filer will be the “portfolio manager”, or in British Columbia, a “responsible person”, for each of the Terminating Funds and the Continuing Fund (collectively, the “Funds”) for purposes of the Legislation.
3. Acuity Funds Ltd. (the “Manager”), is the manager and trustee of the Funds.
4. At the time that the Mergers are effected, the Manager will be an affiliate of the Filer that has access prior to the implementation to investment decisions made on behalf of clients of the Filer, and will therefore be a “responsible person” under the Legislation.

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5. At the time that the Mergers are effected, the Manager will be the trustee of the Funds, and therefore the Funds will be an “associate of a responsible person” under the Legislation.
6. The transfer of the investment portfolio of each Terminating Fund to the Continuing Fund by operation of the Mergers may be considered a sale of securities caused by the Filer from the Terminating Fund to the account of an associate of a responsible person, contrary to the Legislation.
7. Each Fund is a “non-redeemable investment fund” as defined in the Legislation and is not a mutual fund for the purposes of the Legislation. Each Fund’s units are traded on the Toronto Stock Exchange (“TSX”).
8. Each Fund was established pursuant to a declaration of trust under the laws of the Province of Ontario.
9. Acuity All Cap & Income Trust (a Terminating Fund) offered its units in all of the Provinces of Canada pursuant to a final prospectus dated April 29, 2004 and closed its initial public offering on May 17, 2004.
10. Acuity Diversified Total Return Trust (a Terminating Fund) offered its units in all of the Provinces of Canada pursuant to a final prospectus dated January 30, 2006 and closed its initial public offering on February 16, 2006.
11. Acuity Multi-Cap Total Return Trust (a Terminating Fund) offered its units in all of the Provinces of Canada pursuant to a final prospectus dated September 28, 2005 and closed its initial public offering on October 19, 2005.
12. Acuity Growth & Income Trust (the Continuing Fund) offered its units in all of the Provinces of Canada pursuant to a final prospectus dated November 27, 2003 and closed its initial public offering on December 17, 2003.
13. Unitholders of the Funds will approve the Mergers at special meetings of unitholders to be held on December 24, 2007 (the “Meetings”). In connection with the Meetings, the Manager is sending to the unitholders of each Fund a joint management information circular and Joint Notice of Special Unitholders Meeting each dated November 15, 2007 and a related form of proxy (collectively, the “Meeting Materials”). Once the unitholders approve the Mergers, it is proposed that each Merger will occur on or about December 28, 2007 (the “Effective Date”), subject to regulatory approvals, where necessary.
14. The declaration of trust of each of the Terminating Funds and the Continuing Fund will be amended as required in order to implement the Mergers.

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15. Unitholders of each of the Funds were provided with tax disclosure about the ramifications of the Mergers in the Meeting Materials delivered to them in connection with the Meetings.
16. On the Effective Date, each Terminating Fund will transfer all of its assets, except such cash required to extinguish any liabilities of the Terminating Fund, to the Continuing Fund in exchange for Continuing Fund Units. The Continuing Fund Units received by the Terminating Fund will have an aggregate net asset value equal to the net asset value of the Terminating Fund and will be issued at the net asset value per unit of the Continuing Fund in each case as of the close of business on the Effective Date.
17. Immediately thereafter, the Continuing Fund Units received by a Terminating Fund will be distributed to unitholders of the Terminating Fund in proportion to the number of units held in the Terminating Fund. Each unitholder will receive units of the Continuing Fund having the same aggregate net asset value per unit as their units of the Terminating Fund as of the close of business on the Effective Date.
18. Following the Mergers, the Continuing Fund will continue trading under the symbol "AIG.UN".
19. The Manager will file a press release and material change report to announce the approval of the Mergers.
20. The Mergers are being proposed to enable unitholders of the Terminating Funds to hold Continuing Fund Units. The larger asset base of the Continuing Fund following the Mergers is expected to reduce the operating costs of the Continuing Fund on a per unit basis and increase ongoing liquidity of the Continuing Fund Units on the TSX. Under a merged fund, administrative cost savings will be realized through eliminating the duplication of certain third party costs including transfer agent fees, audit fees, legal fees, exchange listing fees, printing fees and mailing and reporting costs. Any net cost savings will benefit Continuing Fund unitholders.
21. If approved, the merger of the Acuity All Cap & Income Trust (a Terminating Fund) into the Continuing Fund will be effected on a "qualifying exchange" basis which provides a tax-deferred "rollover" to unitholders of that Terminating Fund. This will allow unitholders of that Terminating Fund to defer any capital gain on the exchange of their units until they sell or redeem units of the Continuing Fund received under the exchange.

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22. If approved, the mergers of the Acuity Diversified Total Return Trust and Acuity Multi-Cap Total Return Trust into the Continuing Fund will be effected on a taxable basis.
23. The Funds have similar investment objectives, fee structures and valuation procedures.
24. No sales charges, redemption fees or other fees or commissions will be payable by unitholders of the Funds in connection with the Mergers. All costs and expenses associated with the Mergers will be borne by the Manager.
25. In the opinion of the Filer, the Mergers will not adversely affect unitholders of the relevant Terminating Fund or the Continuing Fund and will in fact be in the best interests of unitholders of each of the Funds.
26. In the absence of this order, the Filer would be prohibited from purchasing and selling the securities of the Terminating Funds in connection with the Mergers.

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 Requested Relief is granted.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

Margot C. Howard
Commissioner
Ontario Securities Commission