

2007 BCSECCOM 704

September 20, 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 - A mutual fund wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The Filer manages funds that invested in ABCP that did, at the time of the investment, and does as of the date of the application, comply with the investment restrictions in NI 81-102; market conditions for the ABCP has deteriorated rapidly and unexpectedly, which is affecting the liquidity of the ABCP; the Filer is concerned that continuing to hold the ABCP may impact the confidence of investors in the Fund and may result in unusual levels of redemption requests; the Filer wants to act in the best interests of the Funds' investors; a party affiliated with the Filer will buy the ABCP from a fund managed by the Filer, if the Filer in its discretion determines it would be in the best interests of the investors in that fund to sell some or all of the ABCP; a Filer will sell the ABCP at a price equal to the cost plus accrued interest value; this value is determined in accordance with GAAP and is the same value used for other commercial paper investments held by the funds

Applicable British Columbia Provisions

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

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

and

In the Matter of
the Mutual Reliance Review System

and

In the Matter of
Mawer Investment Management Ltd.
(the Filer)

and

In the Matter of

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Mawer Canadian Money Market Fund
(the Fund)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filer on behalf of the Fund and an account managed by the Filer (the Account) for relief from the following prohibition in the securities legislation of the Jurisdictions (the Legislation) to permit a sale of asset-backed commercial paper (ABCP) issued by the issuers listed in Schedule A that is owned by the Fund and the Account to members of the Mawer Group (as defined below) (the Requested Relief):
 - (a) the provision that prohibits a portfolio manager or a responsible person (depending on the Jurisdiction) from causing a portfolio managed by it or a mutual fund (depending on the Jurisdiction) to purchase or sell securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager.
2. Under the MRRS:
 - (a) the principal regulator for the Application is the Alberta Securities Commission; and
 - (b) this MRRS decision document represents the decision of each of the Decision Makers.

Interpretation

3. Defined terms contained in National Instrument 14-101 Definitions and in National Instrument 81-102 Mutual Funds (NI 81-102) have the same meaning in this MRRS decision document unless they are otherwise defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filer:
 - (a) The Filer is the manager and portfolio manager of the Fund and provides discretionary investment management services to managed accounts, including the Account which currently holds ABCP. The Filer's registered office is located in Alberta.

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- (b) The term Mawer Group means (i) the Filer, (ii) the direct and indirect shareholders of the Filer, (iii) Mawer Investment Management (the Partnership), a partnership that provides certain services to the Filer, (iv) the partners of the Partnership and (v) any entity formed by members of the Mawer Group for the purposes of effecting the transactions contemplated by this decision document.
- (c) As of September 4, 2007, the Fund had a total net asset value of \$64.4 million, of which \$1.88 million (at face value) consisted of ABCP that were affected by liquidity problems in the market. In addition, the Account held a total of \$150,000 (at face value) of ABCP that were affected by such liquidity issues (such ABCP held by the Fund and the Account are the Specified ABCP).
- (d) The Fund is a reporting issuer in the Jurisdictions.
- (e) The Specified ABCP is short-term commercial paper with maturity dates of October 9 and October 11, 2007. The Specified ABCP had when acquired, and continues to have, an approved credit rating within the meaning of NI 81-102.
- (f) The Filer has determined that the appropriate method to value the Specified ABCP owned by the Fund and the Account is cost plus accrued interest which is the valuation methodology used in respect of other commercial paper investments held by the Fund.
- (g) Uncertainty concerning ABCP has arisen in the context of liquidity concerns that affected investors and capital markets worldwide in August 2007, including those in Canada, originating with concerns relating to subprime mortgages in the United States. The Toronto Stock Exchange, as with other exchanges worldwide, has suffered losses and increased volatility. Considerable media reports and articles have discussed these issues, and raised concerns about the quality and safety of Canadian money market funds and other investments.
- (h) The Filer wishes to protect the Fund and the Account from these concerns and ensure that investor confidence is not negatively affected. In addition, the Filer wishes to prevent an unwarranted increase in redemption requests in the Fund which could arise as a result of these wider concerns.
- (i) To alleviate these concerns, it is proposed that the Specified ABCP held by the Fund and the Account would be purchased by the Filer and/or some or all of the members of the Mawer Group. Such purchases would be effected

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if the Filer considered such purchases to be in the best interests of the Fund and the Account, and would be effected at the cost amount of the Specified ABCP plus accrued interest (the Proposed Transactions).

- (j) Members of the Mawer Group would acquire the Specified ABCP by payment of cash or in specie or partially in cash and partially in specie. If any part of the payment is in specie, the securities transferred to the Fund or the Account as consideration for the Specified ABCP would be in highly liquid government securities (as defined in NI 81-102) (the Government Securities) such as treasury bills. The Proposed Transactions would occur between the date the Requested Relief is granted and October 31, 2007. The Mawer Group may carry out the Proposed Transactions in one or several transactions.
- (k) Before effecting such transactions, the Filer will discuss the Proposed Transactions with members of the Independent Review Committee of the Fund for the purpose of receiving confirmation from each member that in each member's opinion, the Proposed Transactions will achieve a fair and reasonable result for the Fund.

Decision

- 5. 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.
- 6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted on the conditions that:
 - (a) the Filer determines that the Proposed Transactions are in the best interests of the Fund and the Account;
 - (b) the Proposed Transactions occur during the period between the date of this decision and October 31, 2007;
 - (c) the price per security is equal to cost plus accrued interest;
 - (d) if payment is made all or partially in specie, the securities transferred by the Mawer Group have a value equal to the value (on a cost plus accrued interest basis) of the Specified ABCP acquired by the Mawer Group for such purpose and are Government Securities; and
 - (e) the Filer shall have received confirmation from each member of the Independent Review Committee of the Fund that in each member's

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opinion, the Proposed Transactions relating to the Fund will achieve a fair and reasonable result for the Fund.

Blaine Young
Associate Director, Corporate Finance
Alberta Securities Commission

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SCHEDULE A

THIRD PARTY ASSET-BACKED COMMERCIAL PAPER CONDUITS

Asset-Backed Commercial Paper Held by the Fund

Aurora Trust
Planet Trust

Asset-Backed Commercial Paper Held by the Account

Aurora Trust