

# 2007 BCSECCOM 524

July 26, 2007

## **Headnote**

Mutual Reliance Review System for Exemption Relief Application – Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered dealer wants an exemption from delivering confirmation statements to clients. - The client's account is fully managed by the dealer; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; the client agrees that the confirmation statements will not be delivered to them; the client is sent monthly statements that include the confirmation information (except for the Omitted Information); the dealer will maintain the Omitted Information in its records and make this information available to clients upon request.

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 48

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

**and**

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

**and**

**In the Matter of HSBC Securities (Canada) 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) for an exemption from the requirements of the Legislation that a registered dealer send a written confirmation of any trade in securities (the Trade Confirmation Requirement) from transactions that the Filer conducts on behalf of its clients (Participating Clients) with respect to a managed account program (the Insignia Program) (the Requested Relief).

## 2007 BCSECCOM 524

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for the 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 is a dealer registered under the Legislation in the categories of broker and investment dealer, or the equivalent thereof, in the Jurisdictions, is a member of the Investment Dealers Association of Canada (the IDA) and has its head office in Ontario.
2. Each of the employees of the Filer who conduct adviser activities under the Insignia Program will meet the proficiency requirements of a portfolio manager or associate portfolio manager under the Legislation of the Jurisdiction.
3. The Filer provides investment dealer and portfolio management services to individuals and corporate clients resident in the Jurisdictions and other jurisdictions where it is qualified to provide such services.
4. Accounts under the Insignia Program (each an Insignia Account) will be 'managed accounts' as defined under Regulation 1300 of the IDA and the Filer will comply with the applicable IDA requirements with respect to managed accounts.
5. To participate in the Insignia Program, each Participating Client will enter into a written Managed Account Agreement (MAA) with the Filer setting out the terms and conditions, and the respective rights, duties and obligations of the parties, regarding the Insignia Program in a form of agreement approved by the IDA.
6. For each Participating Client, the Filer will:
  - (a) make inquiries to learn the essential facts about each Participating Client, to determine the general investment needs and objectives of,

## 2007 BCSECCOM 524

the appropriateness of the recommendations made to and the suitability of proposed transactions for the Participating Client, and to otherwise comply with the “know your client” obligations under the Legislation; and

(b) send quarterly statements and performance reports prepared by the Filer.

7. For each Participating Client, the Filer will open an Insignia Account which is separate and distinct from any other accounts the Client may have with the Filer. Under the MAA, the Participating Client will grant full discretionary authority to the Filer to make investment decisions and to trade in securities on behalf of the Participating Client without obtaining the specific consent of the Participating Client to individual trades, provided such investment decisions are made in accordance with the information obtained by the Filer referred to in paragraph 7 hereof.
8. Under the MAA, the Filer or another recognized securities custodian will act as custodian of the securities and other assets in each Insignia Account. Furthermore, each Participating Client will acknowledge and agree that securities transactions in such Participating Client’s Insignia Account will generally be executed through the Filer. Unless a Participating Client requests otherwise, each Participating Client will waive under the MAA receipt of all trade confirmations in respect of securities transactions conducted by the Filer for a Insignia Account. Each Participating Client agrees to pay a fee to the Filer based on the assets of such Participating Client’s Insignia Account at the end of each quarterly period. Such fee includes custodial, transaction and brokerage fees and commissions and is not based on the volume or value of the transactions effected in the Participating Client’s Account. The fees are not intended to cover charges for minor items such as wire transfer requests, account transfers, withdrawals, de-registration and other administrative services (Administrative Charges). The Filer will provide a list of the Administrative Charges to a Participating Client if Administrative Charges are charged.
9. The Filer will provide to each Participating Client a monthly statement of account with respect to such Participating Client’s Insignia Account as required under the Legislation, including a list of all transactions undertaken in the Insignia Account during the period covered by that statement and a statement of portfolio for each Insignia Account at the end of each calendar quarter.

## 2007 BCSECCOM 524

10. The monthly statement of account will identify the asset being managed on behalf of the Participating Client including for each trade made during that month the information that the Filer would otherwise have been required to provide to that Participating Client in a trade confirmation in accordance with the Legislation, except for the following information (collectively, the Omitted Information):
  - (a) the stock exchange or commodity futures exchange upon which the trade took place
  - (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
  - (c) the name of the salesman, if any, in the transaction;
  - (d) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and
  - (e) if acting as agent in a trade upon a stock exchange, the name of the person or company from or to or through whom the security was bought or sold.
11. The Filer will maintain the Omitted Information with respect to a Participating Client in its books and records and will make the Omitted Information available to the Participating Client upon request.
12. The Filer will perform daily reviews of all the Insignia Account transactions in respect of suitability.
13. The Filer cannot rely on any Trade Confirmation Requirement exemption in the Legislation and, in the absence of the requested relief, would be subject to the Trade Confirmation Requirement in the Jurisdictions.
14. IDA Regulation 200.1(h) prescribes circumstances in which the IDA permits the suppression of trade confirmations in respect of managed accounts (the IDA Trade Confirmation Exemption), which circumstances are satisfied in respect of the Insignia Program.

### **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.

## **2007 BCSECCOM 524**

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the Participating Client has previously informed the Filer that the Participating Client does not wish to receive trade confirmations for the Participating Client's Insignia Account; and
- (b) in the case of each trade for a Insignia Account under the Insignia Program, the Filer sends to the Participating Client the corresponding statement of account that includes the information referred to in paragraph 11.

Robert L. Shirriff  
Commissioner  
Ontario Securities  
Commission

Paul K. Bates  
Commissioner  
Ontario Securities  
Commission