

# 2007 BCSECCOM 581

September 25, 2007

## **Headnote**

Mutual Reliance Review System for Exemption Relief Application - 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 and Alberta (the Jurisdictions)**

**and**

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

**and**

### **In the Matter of Qwest Investment Fund Management Ltd. (the Filer)**

## **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 the Filer on behalf of certain investment advisers (the Sub-Advisers) for an exemption from the requirement in the securities legislation of the Jurisdictions (the Legislation) to be registered as an adviser. The exemption will allow the Sub-Advisers to provide investment advisory services to the Filer for the benefit of certain clients who are resident in the Jurisdictions where the Sub-Advisers are not registered (the Registration Relief).

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### Under the System

- (a) the British Columbia Securities Commission 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 the Filer:
- 1. the Filer is a corporation organized under the laws of Canada; the head office of the Filer is located in British Columbia; the Filer also maintains an office and has registered portfolio managers located in Alberta;
  - 2. the Filer is registered as an adviser in the categories of investment counsel and portfolio manager (or equivalent) in every province and territory of Canada;
  - 3. the Filer provides or will provide investment counselling and portfolio management services to clients resident or otherwise located in the Jurisdictions;
  - 4. the Filer intends to retain the Sub-Advisers to provide investment advisory services for the benefit of clients (including limited partnerships and investment funds managed by affiliates of the Filer) (the “Clients”) who wish to benefit from the investment advisory services of the Sub-Advisers;
  - 5. each Sub-Adviser that is resident in a province or territory of Canada is or will be registered as an adviser under the securities legislation of that province or territory;
  - 6. each Sub-Adviser that is not resident in Canada is or will be registered, licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;
  - 7. the Filer will enter into an investment management agreement or similar agreement with respect to each Client that:

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- (a) provides the Filer with discretionary authority to purchase and sell securities on behalf of the Client;
  - (b) authorizes the Filer to retain Sub Advisers to provide investment advisory services for the benefit of the Client and in some cases, to delegate its discretionary authority over all or a portion of the Client's assets to Sub Advisers; and
  - (c) sets out the fees payable by the Client with respect to the services provided by the Filer and if applicable, any Sub-Adviser, such fees in most cases to be calculated based on the value of the Client's assets;
- 8. the Filer will enter a written agreement with each Sub-Adviser that sets out the obligations and duties of the Sub-Adviser for the investment advisory services it will provide to the Filer for the benefit of the Clients or to provide other investment advisory services to the Filer for the benefit of the Clients;
- 9. each Sub-Adviser will exercise discretionary authority over all or a portion of the assets of Clients who wish to benefit from the Sub-Adviser's investment advisory services;
- 10. the Filer will monitor the services provided by each Sub-Adviser to ensure compliance with the Legislation;
- 11. for each Client, the Filer will be responsible for complying with the "know your client" and suitability obligations and applicable reporting requirements under the Legislation;
- 12. the Filer will agree to be responsible for any loss that arises out of the failure of a Sub-Adviser:
  - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and each Client for whose benefit the investment advisory services are 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);
- 13. the Filer cannot be relieved from the Assumed Obligations by the Clients;

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14. if there is any direct contact between a Client and a Sub-Adviser, a representative of the Filer, duly registered to provide portfolio management and investment counseling services in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;
15. a Sub-Adviser that provides investment advisory services to the Filer for the benefit of the Clients is considered to be acting as an “adviser” within the meaning of the Legislation; in the absence of the relief requested by the Filer, a Sub-Adviser would be required to be registered, or exempt from registration, as an adviser under the Legislation;

### **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 to the Sub-Advisers provided that

- (i) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer;
- (ii) the Filer contractually agrees with respect to each Client, on whose behalf the Sub-Adviser will provide investment advisory services, to be responsible for any loss that arises out of the failure of the Sub-Adviser:
  - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and each Client for whose benefit the investment advisory 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;
- (iii) the Filer is not relieved by the Clients from the Filer’s responsibility for loss under paragraph (ii) above;
- (iv) each Sub-Adviser that is resident in a province or territory of Canada will be registered as an adviser under the securities legislation of that province or territory; and

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- (v) each Sub-Adviser that is not resident in Canada will be registered, licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides.

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British Columbia Securities Commission