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April 27, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 88 - Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer is a mutual fund; the issuer will not be a reporting issuer in any jurisdiction; the issuer distributes its securities only to client accounts that are fully managed by the issuer's manager; the manager controls all trading in the issuer's securities

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
Alberta and British Columbia (the Jurisdictions)

and

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

and

In the Matter of
Jones Collombin Balanced Fund (the Balanced 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 from Jones Collombin Investment Counsel Inc. (JCIC/the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Balanced Fund be deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation.
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):
 - 2.1 the Alberta Securities Commission (ASC) is the principal regulator for this application; and

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- 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14 -101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Balanced Fund:
- 4.1 The Balanced Fund is an open-ended mutual fund trust established under the laws of Ontario by way of a declaration of trust dated September 25, 2003.
- 4.2 JCIC is the manager of the Balanced Fund.
- 4.3 JCIC is a corporation incorporated under the Business Corporations Act (Ontario) that provides discretionary portfolio management services (the Portfolio Management Operations) to investment portfolio accounts of clients (Managed Accounts).
- 4.4 Pursuant to a written agreement made between JCIC and each client, JCIC makes investment decisions for the client's Managed Account and has full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the client for each trade.
- 4.5 JCIC conducts its Portfolio Management Operations in accordance with its registrations as an adviser in the categories of investment counsel and portfolio manager or their equivalent under the securities legislation of Alberta, British Columbia, Ontario and Quebec as well as its registration as a limited market dealer under the securities legislation of Ontario.
- 4.6 In 2002 JCIC obtained an exemption from the dealer registration requirements of the securities legislation of Alberta and Ontario to distribute units of prospectus qualified mutual funds managed by it (JCIC Funds) to its Managed Accounts (2002 Ruling).
- 4.7 JCIC sought and obtained the 2002 Ruling in Ontario because it could not rely on the accredited investor exemption in Ontario under Ontario Securities Commission Rule 45-501 when acquiring shares or units of a

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mutual fund or non-redeemable investment fund in respect of its Managed Accounts.

- 4.8 JCIC sought and obtained the 2002 Ruling in Alberta because Alberta did not have a dealer registration or prospectus exemption for trades by persons acting on behalf of Managed Accounts until Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103) became effective on June 30, 2003.
- 4.9 The 2002 Ruling enabled JCIC to establish Managed Accounts for smaller accounts whose asset value was not large enough to hold portfolio securities directly (the Smaller Accounts) by utilizing one or more JCIC Funds. Once the Smaller Accounts grew to a sufficient size, they would become eligible for JCIC's individual stock selection services.
- 4.10 JCIC established the Balanced Fund which was qualified for distribution pursuant to a simplified prospectus and annual information form (Balanced Fund Prospectus) on October 1, 2003.
- 4.11 JCIC obtained a receipt for the Balanced Fund Prospectus from the Alberta Securities Commission (ASC), the Ontario Securities Commission (OSC) and the British Columbia Securities Commission (BCSC) and the Balanced Fund became a reporting issuer in each of Alberta, Ontario and British Columbia on October 1, 2003.
- 4.12 When MI 45-103 became effective on June 20, 2003, it provided that the dealer registration and prospectus requirements of the securities legislation of Alberta and British Columbia did not apply to a trade in a security of an issuer if the purchaser of the security was an accredited investor.
- 4.13 Included in MI 45-103's list of accredited investors was a person or company, such as JCIC, that was registered or authorized to carry on business under the securities legislation of a jurisdiction or foreign jurisdiction as a portfolio manager when trading as agent on behalf of fully managed accounts.
- 4.14 When the ASC adopted MI 45-103, it caused the 2002 Ruling to terminate in regard to the exemption that was granted from the dealer registration requirements of the securities legislation of Alberta as a result of a sunset clause that formed part of the 2002 Ruling.

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- 4.15 From the time the Balanced Fund became a reporting issuer in Alberta, Ontario and British Columbia on October 1, 2003 until National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) became effective on September 14, 2005, units of the Balanced Fund were qualified under the Balanced Fund Prospectus and distributed to Managed Accounts and Smaller Accounts pursuant to the 2002 Ruling in Ontario and MI 45-103 in Alberta and British Columbia.
- 4.16 For purposes of all jurisdictions other than Ontario, NI 45-106 includes on its list of accredited investors a person acting on behalf of a fully managed account managed by that person provided the person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction. In Ontario, such a person is only considered to be an accredited investor for purposes of NI 45-106 when it is purchasing a security that is not a security of an investment fund. Therefore, JCIC cannot rely upon the accredited investor exemption in Ontario to distribute JCIC Funds to its Managed Accounts and Smaller Accounts.
- 4.17 JCIC applied to the OSC to effectively amend the 2002 Ruling to delete all references to Alberta and to incorporate a prospectus exemption to complement the dealer registration exemption already granted by the 2002 Ruling.
- 4.18 By way of a ruling and order dated October 6, 2005 (2005 Ruling) the OSC reaffirmed the dealer registration exemption granted pursuant to the 2002 Ruling and granted a prospectus exemption to permit JCIC to distribute units of the Balanced Fund and any future JCIC Funds to its Managed Accounts and Smaller Accounts subject to certain terms and conditions.
- 4.19 The 2005 Ruling also deemed the Balanced Fund to have ceased being a reporting issuer in Ontario.
- 4.20 As a result of the combined effect of NI 45-106 and the 2005 Ruling:
- 4.20.1 JCIC refrained from renewing the Balanced Fund Prospectus in September 2005;
- 4.20.2 JCIC can now facilitate the distribution of Balanced Fund units to all of its Managed Accounts and Smaller Accounts in reliance upon dealer registration and prospectus exemptions that are

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available in Alberta, British Columbia and Quebec pursuant to NI 45-106 and in Ontario pursuant to the 2005 Ruling; and

4.20.3 Although the Balanced Fund is still a reporting issuer in Alberta and British Columbia, it has ceased to be a reporting issuer in Ontario and it has never been a reporting issuer in Quebec.

4.21 All unit holders of the Balanced Fund are Managed Accounts (including Smaller Accounts).

4.22 All outstanding units of the Balanced Fund are held by Managed Accounts (including Smaller Accounts).

4.23 Units of Balanced Fund are not traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

4.24 JCIC has 7 Managed Accounts (including Smaller Accounts) in Alberta and 7 Managed Accounts (including Smaller Accounts) in British Columbia. JCIC has always been an accredited investor in respect of each of these Managed Accounts (including Smaller Accounts) for purposes of the securities legislation of Alberta and British Columbia.

4.25 The Balanced Fund is not in default of securities legislation in any of the Jurisdictions.

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 Balanced Fund be deemed to have ceased to be a reporting issuer in each of the Jurisdictions.

Blaine Young
Associate Director, Corporate Finance
Alberta Securities Commission