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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 48 Dealer -Exemption from dealer requirements; exemption from delivering confirmation statements; 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; trades in the account are only made on the client's adviser's instructions; the client agreed in writing that confirmation statements will not be delivered to them; confirmations are provided to the client's adviser; the client is sent monthly statements that include the confirmation information.

Applicable British Columbia Provisions

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

Securities Rules, B.C. Reg. 194/97, ss. 36(3) and 80(1)

December 3, 2004

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

and

In the Matter of Haywood Securities 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 requirement that a registered dealer who has acted as principal or agent in connection with a trade in a security must promptly send or deliver to the customer a written confirmation with certain information specified (the Trade Confirmation Requirement) in respect of trades where the customer holds a discretionary managed account (Managed Account) with the Filer (the Requested Relief).

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Under the Mutual Reliance Review System for Exemptive Relief Applications

- (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

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 incorporated under the laws of Canada and has its head office in Vancouver, British Columbia;
2. the Filer is registered under the Legislation as a dealer in the category of investment dealer (or equivalent) and is a member of the Investment Dealers Association of Canada (IDA);
3. the Filer is authorized to act as an adviser, without registering as an adviser, under exemptions in the Legislation;
4. the Filer offers Managed Accounts and acts as portfolio manager for customers in the Jurisdictions;
5. under a written agreement between the Filer and the customer, the Filer
 - (a) makes investment decisions for the Managed Account and has full discretionary authority to trade in securities for the account without obtaining the specific consent of the customer to the trade, and
 - (b) provides services including investment research, portfolio selection and management, custody, reporting, and except as described below, trade execution (included services);
6. the customer pays a management fee for the included services calculated based on assets in the account and not on the number of transactions (Management Fee), and may also pay the following:
 - (a) additional fees for administrative services,

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- (b) a fee based on performance of the Managed Account,
 - (c) commissions on a cost-recovery basis only for selling securities that were transferred into the managed account when it was opened, where an arm's-length third-party broker is required to settle the trade;
7. the Managed Accounts are subject to IDA Regulation 1300 *Supervision of Accounts* and employees of the Filer who meet the proficiency requirements of a portfolio manager or associate portfolio manager under the Legislation of the Jurisdiction provide all adviser activities in respect of the Managed Accounts;
8. the Filer will send to the customer a monthly statement of account which identifies the assets of the customer being managed through the Managed Account, and for each trade during the period, information required under the Trade Confirmation Requirement except:
- (a) the day and the stock exchange or commodity futures exchange on 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 salesperson, 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,
- (the Omitted Information);
9. the Filer will maintain the Omitted Information in its books and records and make the Omitted Information available to the customer on request;
10. customers paying a Management Fee for included services have advised the Filer that they would prefer not to receive trade confirmations for the Managed Account trades; and

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11. there will be no impact on fees or expenses to be paid by a customer resulting from the customer instructing the Filer that the customer does not wish to receive trade confirmations for trades of Managed Account.

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 Requested Relief is granted provided that:

- (a) the customer has previously informed the Filer that the customer does not wish to receive trade confirmations for Managed Account trades; and
- (b) in the case of each such Managed Account trade, the Filer sends to the customer the corresponding statement of account that includes the information for the trade referred to in this decision.

L.E. Evans, CA
Director
British Columbia Securities Commission