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COR#05/123

Headnote

Mutual Reliance Review System for Exemptive Relief Application – National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A fund manager wants relief from the prospectus disclosure requirements in subsections 8.2(1) and (2) for a proposed distribution of securities by a member of the organization of the fund - The fund's prospectus and website contain alternate disclosure that provides investors with adequate information regarding ownership of the member of the organization of the fund to address potential conflicts of interest.

Applicable British Columbia Provisions

National Instrument 81-105 *Mutual Fund Sales Practices*, s. 9.1

**In the Matter of the Securities Legislation of British Columbia,
Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia,
Newfoundland & Labrador and Prince Edward Island (the “Jurisdictions”)**

and

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

and

In the Matter of Value Partners Investments 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:

- (i) an exemption from the prospectus disclosure requirements pursuant to subsections 8.2(1) and (2) of National Instrument 81-105 – *Mutual Fund Sales Practices* (“NI 81-105”) on its own behalf, as manager of certain mutual funds known as the Value Partners Pools (the “Prospectus Disclosure Relief”); and
- (ii) an exemption from the point of sale disclosure and the consent requirements pursuant to subsections 8.2(3) and (4) of NI 81-105 on behalf of entities that are registered as mutual fund dealers or

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investment dealers (or the equivalent) in any of the Jurisdictions (the “Dealers”) which, from time to time, have sales representatives that own securities issued by the Filer (“Equity Representatives”) (the “Dealer Relief”).

Under the System:

- (a) the Manitoba 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 document unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is the manager of three mutual funds, known as the Value Partners Pools and may from time to time establish additional mutual funds (the existing Pools and any future Pools are referred to collectively herein as the “Pools”). The head office of the Filer is in Winnipeg, Manitoba.
2. The Royal Trust Company acts as trustee, custodian and recordkeeper for the Pools. Cardinal Capital Management, Inc, a registered adviser, acts as the Portfolio Manager for the Pools. A preliminary simplified prospectus and preliminary annual information form (collectively, the “Preliminary Prospectus”) for the Pools was filed on July 25, 2005 with each of the Decision Makers. The Filer filed a (final) simplified prospectus and annual information form (the “Final Prospectus”) for the existing Pools on October 18, 2005. The Final Prospectus discloses that as of September 30, 2005, the Filer is 100 percent beneficially owned by The Longton Trust, a discretionary family trust established for the benefit of specified members and friends of the Lawton family.
3. Messrs James and Sean Lawton and their associates are included as specified beneficiaries of The Longton Trust. James Lawton is a director and Sean Lawton is an officer of the Filer. In addition, Messrs James and Sean Lawton are also sales representatives and Mr. James Lawton is the President of Lawton Partners Financial Planning Services Ltd. (the “Lawton Dealer”). The Lawton Dealer is a registered mutual fund dealer in the provinces of

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Manitoba, Ontario, British Columbia and Saskatchewan and is a member of the Mutual Fund Dealers Association of Canada. Nine sales representatives of the Lawton Dealer are equal beneficial shareholders in the Lawton Dealer (the "Lawton Partners"). Messrs James and Sean Lawton together hold one of the nine equal beneficial shareholdings in the Lawton Dealer. The Lawton Dealer currently has fourteen sales representatives located in the applicable provinces.

4. The beneficial owners of the Filer intend that up to 40 percent of the common equity of the Filer will be issued to sales representatives of registered mutual fund dealers and of registered investment dealers, who may be located in any province of Canada, except Quebec. The Filer is preparing an offering memorandum, which will describe its business and provide information about its business to prospective investors. The Filer expects to solicit up to 350 sales representatives, including the Lawton Partners, who may be associated with up to 30 different dealers, including the Lawton Dealer, and give each sales representative the opportunity to acquire the Filer's common equity. The Filer will issue securities to an Equity Representative who wishes to invest pursuant to exemptions provided for in securities regulation in the applicable provinces. The Filer will not issue any shares in the Filer to any Dealer.
5. Each of the Lawton Partners is expected to be an Equity Representative.
6. One of the Filer's central business principles is that ownership by an Equity Representative of the Filer's securities will serve to align the interests of the Equity Representative with the interests of his or her client, being the investor in the Pools. For this reason, the Filer and its shareholders have a goal to allow up to 40 percent of the Filer's common equity to be held by sales representatives of dealers. The Filer does not expect any Equity Representative, including the Lawton Partners (other than Messrs James and Sean Lawton, who are beneficial owners of the Filer as described in paragraph 3 hereof), to hold more than five percent of the outstanding common equity of the Filer.
7. Without the exemption reflected in this decision document, the Legislation requires:
 - (a) The simplified prospectus of the Pools to disclose:
 - (i) the aggregate amount of securities of the Filer held by a Dealer and associates of the Dealer (the Filer does not expect any Dealer to acquire its securities);

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- (ii) the aggregate amount of securities of the Filer held by all Equity Representatives of a Dealer and associates of those Equity Representatives of the Dealer; and
 - (iii) the aggregate amount held by any Equity Representative and his or her associates, where such Equity Representative and his or associates hold more than five percent of the common equity of the Filer.
 - (b) If a security of a Pool is traded, the Dealer to deliver to the purchaser of that security, a document that discloses the amount of securities of the Filer owned by:
 - (i) the Dealer and its associates, in aggregate (the Filer does not expect any Dealer to acquire its securities);
 - (ii) the Equity Representatives of that Dealer and their associates, in aggregate; and
 - (iii) the Equity Representative of that Dealer and his or her associates, in aggregate, who is acting on the trade.
 - (c) If a Dealer is required to give the disclosure document described above to a purchaser of securities of a Pool, then the purchaser must consent to the trade after he or she receives the disclosure document before the trade can be completed.
 - (d) A Dealer is not required to deliver the disclosure document or obtain the consent of a purchaser of securities of a Pool if that purchaser has previously acquired such securities and received a disclosure document, if the information contained in that disclosure document has not changed.
8. Given the expected number of securities of the Filer that will be held by any one Equity Representative, together with the expected number of Equity Representatives who will hold securities of the Filer, the requirements of the Legislation will lead to an undue regulatory burden both on the Pools and on the Dealers and sales
9. The Legislation may require the Filer to amend the simplified prospectus to disclose the name of a Dealer and the aggregate amounts held by Equity Representatives of that Dealer each time that the Filer issues securities to an Equity Representative. This requirement would cause the Filer and the Pools to bear a disproportionate regulatory burden.

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10. From the perspective of a Dealer, so long as one Equity Representative of that Dealer holds securities of the Filer, pursuant to the Legislation, the Dealer must ensure that all of its sales representatives give the required disclosure statement and obtain the required consent of purchasers, when those purchasers are acquiring securities of the Pools. This will be unduly onerous considering that the Filer expects that many Dealers will have sales representatives located in more than one province and may have many sales representatives who are not Equity Representatives. The more significant and relevant information for an investor in the Pools is the equity interest held by the sales representative acting on the trade, or held by the supervisor of the sales representative that is acting on the trade.
11. The Lawton Dealer and the sales representatives of the Lawton Dealer will comply with the requirements applicable to dealers set out in the Legislation. The Dealer Relief will not apply to the Lawton Dealer and its sales representatives.

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 the Prospectus Disclosure Relief is granted provided that:

- (a) The simplified prospectus of the Pools contains disclosure that describes, as of a date that is within 30 days of the date of the simplified prospectus:
 - (i) The aggregate percentage ownership of the Filer held by its controlling beneficial shareholders and the potential that up to a maximum of 40 percent of the common equity of the Filer may be held by Equity Representatives, who may be located in any province of Canada, except Quebec.
 - (ii) The names of any Dealer who has Equity Representatives and the aggregate amount held by those Equity Representatives and the fact that more up-to-date information can be obtained from the Web site of the Filer, which will be updated on a weekly basis.
 - (iii) That the Lawton Partners are or will be Equity Representatives and if they are Equity Representatives, the aggregate amount held by the Lawton Partners.

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- (iv) The relationships of Messrs. James and Sean Lawton with the Filer, as beneficial shareholders and officers and directors, and as sales representatives, shareholders and officers of the Lawton Dealer.
 - (v) That no Equity Representative is expected to hold more than five percent of the securities of the Filer, unless this statement is no longer accurate, in which case the name of the Equity Representative holding more than five percent of the securities of the Filer will be identified in the simplified prospectus and on the Web site of the Filer, which will be updated weekly
 - (vi) That as a shareholder of the Filer, an Equity Representative will stand to benefit from the inflow of client money to the Pools.
 - (vii) That if an investor's sales representative holds an equity interest in the Filer, then that investor will receive a disclosure statement describing the equity interest held by that sales representative before he or she invests in the Pools and that he or she must consent to the trade of units of the Pools.
 - (viii) That if the branch manager or other supervisor of the investor's sales representative holds an equity interest in the Filer, the investor will also receive a disclosure statement describing the equity interest that branch manager or supervisor holds before he or she invests in the Pools and that he or she must consent to the trade of units of the Pools.
- (b) The Filer updates its Web site with the information described in paragraphs (a) (i), (ii), (iii) and (v) on a weekly basis.

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

- (a) Prior to a Dealer relying on this Decision, the Filer has provided a copy of this Decision to the Dealer together with a disclosure statement informing the Dealer of the ramifications of the Dealer Relief.
- (b) The Filer has obtained express written consent from the Dealer that the Dealer will comply with all the conditions of this Decision as they apply to the Dealer and any sales representative of the Dealer who is an Equity Representative.

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- (c) Prior to relying on this Decision, the Dealer has in place written policies and procedures to ensure that there is compliance with the conditions of this Decision.
- (d) Before completing a trade in a security of a Pool acted on by any sales representative of the Dealer who is an Equity Representative, the Dealer and the Equity Representative
 - (i) Comply with the requirements of subsection 8.2(3) and subsection 8.2(4) of NI 81-105, unless subsection 8.2(5) of NI 81-105 applies in respect of that trade; and
 - (ii) In the event an Equity Representative assumes a position of authority or supervision over other sales representatives of the Dealer, before completing a trade in a security of a Pool that is acted on by one of those other sales representatives, the Dealer and the other sales representative comply with the requirements of subsection 8.2(3) and subsection 8.2(4) of NI 81-105, unless subsection 8.2(5) of NI 81-105 applies in respect of that trade.
- (e) The Dealer Relief does not apply to the Lawton Dealer or any of its sales representatives.

Dated this 1st day of November, 2005

R.B. Bouchard
Director – Corporate Finance
The Manitoba Securities Commission