

## 2008 BCSECCOM 443

May 14, 2008

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act

A mutual fund wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The purchase or sale is consistent with, or is necessary to meet, the investment objectives of the fund; the IRC of the fund has approved the transaction which involves a perceived or actual conflict of interest for the fund manager; the fund manager and the IRC follow any standing instructions that the IRC provides in connection with the transactions; the fund's continuous disclosure materials provide disclosure to fund investors about the transactions with related parties; and the fund keeps the written records required by NI 81-107

A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (c) of the Act - The fund is a reporting issuer and operates as a conventional mutual fund; the portfolio advisers of the mutual funds have discretion to allocate brokerage business in any manner consistent with the fund's best interests; the allocation of brokerage business represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the mutual funds; the management report of fund performance for the funds will disclose the names of and fees paid to related persons; the fund's records of portfolio transactions will include information about purchases or sales effected through a related person on a per transaction basis

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 126(a) and (c), 127(1)(b) and 130

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Ontario, Quebec,  
New Brunswick, Nova Scotia and Newfoundland and Labrador  
(the Jurisdictions)

and

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

and

# 2008 BCSECCOM 443

In the Matter of  
Jones Heward Investment Counsel Inc.,  
I.G. Investment Management, Ltd.  
and Mackenzie Financial Corporation  
(the Filers)

## 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 Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from:

- (a) the prohibition contained in the Legislation against a portfolio manager knowingly causing an investment portfolio managed by it to buy or sell securities of any issuer from or to the account of a responsible person, any associate of the responsible person or the portfolio manager in connection with the purchase and sale of mortgages between a Related Party (as defined below) and the Funds (as defined below);
  - (b) the prohibition contained in the Legislation of each of the Jurisdictions, except British Columbia and Quebec, against an investment counsel or any partner, officer or associate of an investment counsel purchasing or selling any security in which they have a beneficial interest from or to any portfolio managed or supervised by the investment counsel; ((a) and (b) are collectively the Related Party Relief) and
  - (c) the obligation contained in the Legislation of each of the Jurisdictions, except Quebec, to file monthly reports in respect of such related party transactions (the Reporting Relief),
- ( (a) ,(b), and (c) are collectively the Requested Relief).

### **Definitions**

Defined terms contained in National Instrument 14-101 *Definitions* (NI 14-101) have the same meaning in this Decision unless they are otherwise defined in this Decision. The following additional terms shall have the following meanings:

“Manager” means each of BMO Investments Inc., BMO Nesbitt Burns Inc., BMO Harris Investment Management Inc., I.G. Investment Management, Ltd. and Mackenzie Financial Corporation;

## 2008 BCSECCOM 443

“NI 81-106” means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“NI 81-107” means National Instrument 81-107 *Independent Review Committee for Investment Funds*; and

“Related Party” means each of Bank of Montreal and/or MCAP Financial Corporation, Investors Group Trust Co. Ltd. and its affiliates and M.R.S. Trust Company.

### **Representations**

This decision is based on the following facts represented by the Filers.

1. The Filers are the portfolio managers of the funds listed on Schedule A (the Funds). The manager and trustee (if applicable) of each Fund is also listed on Schedule A.
2. Each Manager is the manager of a Fund that has an investment objective that permits the Fund to invest in mortgages. The Funds, other than BMO Short-Term Income Class and Investors Mortgage and Short Term Income Fund, were established under the laws of Ontario. BMO Short-Term Income Class is a class of a corporation established under the laws of Canada and Investors Mortgage and Short Term Income Fund is a trust established under the laws of Manitoba.
3. Each Fund is an open-end mutual fund, organized as either a trust or a class of a corporation, and is a reporting issuer in each province and territory of Canada, other than BMO Harris Canadian Bond Income Portfolio, BMO Harris Canadian Total Return Bond Portfolio and BMO Harris Canadian Corpora
4. Each of the Filers and/or the Managers of the Funds is a “management company” or equivalent under the Legislation, and is registered under the Legislation as needed in connection with the services or advice provided to a Fund.
5. Each Manager has appointed an independent review committee (IRC) under NI 81-107 for each of its Funds.
6. Each Manager has appointed the Filer referenced in Schedule A to provide portfolio management and investment advisory services to the applicable Fund. As portfolio manager of such Fund, each Filer is a “responsible person” as defined in the Legislation.

## 2008 BCSECCOM 443

7. Each Related Party is an associate or affiliate of a Fund's manager, portfolio manager or trustee. Each of the Funds may purchase the mortgages for their portfolios from such Related Party, as set forth on Schedule A.
8. Bank of Montreal and/or MCAP Financial Corporation have agreed to repurchase from their applicable Funds any mortgage that is in default or is not a valid first mortgage. I.G. Investment Management Ltd. (or its affiliates) and M.R.S. Trust Company have agreed to repurchase from their applicable Funds any mortgage that is not a valid first mortgage.
9. Neither the Related Party, nor any of its directors, officers or employees participates in the formulation of investment decisions made on behalf of, or advice given to, the applicable Fund by the Filer, and in circumstances where the Related Party holds mortgages beneficially on behalf of the Filer, no director, officer or employee actively involved in the formulation of investment decisions for the Fund by the Filer is involved in the mortgage business of the Related Party. In all circumstances, the decisions to purchase mortgages for a Fund's portfolio from a Related Party are made based on the judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.
10. Each Filer and its Related Party are "affiliates" within the meaning of the Legislation and accordingly, the Filer is deemed to own securities beneficially owned by the Related Party.
11. Each Filer is prohibited under the Legislation from purchasing or selling on behalf of the Fund, the securities of any issuer from or to its own account. Accordingly, each Fund is prohibited from purchasing mortgages from, or selling mortgages to, its Related Party, as such mortgages are deemed to be beneficially owned by the Filer.
12. Jones Heward Investment Counsel Inc. and Mackenzie Financial Corporation each believe it received the Requested Relief previously for certain Funds (the Prior Relief). Section 7.2 of NI 81-107 terminated the Prior Relief.
13. NI 81-107 provides an exemption from the inter-fund self-dealing investment prohibitions, as defined under NI 81-107, to permit trades in securities between funds. NI 81-107 does not, however, provide an exemption for principal trading of the type contemplated by the Requested Relief.
14. The provisions of National Policy Statement No. 29 – Mutual Funds Investing in Mortgages (NP 29) set out guidelines relating to the acquisition of

## 2008 BCSECCOM 443

mortgages by a mutual fund from lending institutions with whom such fund does not deal at arm's length and provide certain protections to the investing public. The Filers acquired mortgages from the Related Parties on behalf of the Funds in accordance with NP 29. The Filers will only acquire mortgages from the Related Parties in accordance with NP 29 under the Requested Relief.

15. The IRC of each Fund will consider the policies and procedures of the applicable Filer and will provide its approval on whether the proposed transactions in mortgages achieve a fair and reasonable result for the Fund in accordance with section 5.2(2) of NI-81-107.
16. To the extent that a Fund is purchasing mortgages from, or selling mortgages to, a Related Party, this fact is set out, and will continue to be set out, in the annual information form of the applicable Fund.
17. The Legislation requires the filing of a report by each Filer with respect to each transaction in mortgages between the applicable Fund and its Related Party and with respect to each transaction in mortgages effected by each Filer in respect of which the Related Party receives a fee either from the Filer or from the other party to the transaction or from both.
18. Such report is to be filed within 30 days after the end of the month in which the transaction occurs, disclosing the issuer of the securities purchased or sold, the class or designation of the securities, the amount and number of securities and the consideration paid, together with the name of any related person receiving a fee on the transaction, the name of the person or company that paid the fee and the amount of the fee paid.
19. NI 81-106 requires the Funds to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the Funds. When discussing portfolio transactions with related parties, NI 81-106 requires the Funds to include the dollar amount of commission, spread, or any other fee paid to a related party in connection with a portfolio transaction.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.

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

## 2008 BCSECCOM 443

- (1) With respect to the Related Party Relief for each Filer:
  - (a) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;
  - (b) the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;
  - (c) the Manager of the Fund, complies with section 5.1 of NI 81-107;
  - (d) the Manager of the Fund and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
  - (e) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107; and
  - (f) the mortgages are acquired from a Related Party or sold to a Related Party in accordance with NP 29 (or any successor policy or instrument) and disclosed in accordance with NP 29 (or any successor policy or instrument).
- (2) With respect to the Reporting Relief for each Filer:
  - (a) the annual and interim management reports of fund performance for the Fund disclose
    - (i) the name of the Related Party,
    - (ii) the amount of fees paid to each Related Party, and
    - (iii) the person or company who paid the fees if they were not paid by the Fund; and
  - (b) the records of portfolio transactions maintained by the Fund include, separately for every portfolio transaction effected by the Fund through a Related Party,
    - (i) the name of the Related Party,
    - (ii) the amount of fees paid to the Related Party, and

## **2008 BCSECCOM 443**

(iii) the person or company who paid the fees.

Lawrence E. Ritchie  
Ontario Securities Commission

David L. Knight  
Ontario Securities Commission

## 2008 BCSECCOM 443

### SCHEDULE “A”

#### List of Managers, Funds, Portfolio Managers, Trustees and Related Parties

Manager	Funds	Portfolio Manager	Trustee	Related Party
BMO Investments Inc.	<ul style="list-style-type: none"> <li>• BMO Mortgage and Short Term Income Fund</li> <li>• BMO Diversified Income Fund</li> <li>• BMO Short-Term Income Class</li> </ul>	Jones Heward Investment Counsel Inc.	BMO Investments Inc.	Bank of Montreal and/or MCAP Financial Corporation
BMO Nesbitt Burns Inc.	<ul style="list-style-type: none"> <li>• BMO Nesbitt Burns Bond Fund</li> <li>• BMO Nesbitt Burns Balanced Fund</li> </ul>	Jones Heward Investment Counsel Inc.	officers and/or directors of BMO Nesbitt Burns Inc.	Bank of Montreal and/or MCAP Financial Corporation
BMO Harris Investment Management Inc.	<ul style="list-style-type: none"> <li>• BMO Harris Canadian Bond Income Portfolio</li> <li>• BMO Harris Canadian Total Return Bond Portfolio</li> <li>• BMO Harris Canadian Corporate Bond Portfolio</li> </ul>	Jones Heward Investment Counsel Inc.	BMO Trust Company	Bank of Montreal and/or MCAP Financial Corporation
I.G. Investment Management, Ltd.	<ul style="list-style-type: none"> <li>• Investors Mortgage and Short Term Income Fund</li> </ul>	I.G. Investment Management, Ltd.	I.G. Investment Management, Ltd.	Investors Group Trust Co. Ltd. and its affiliates
Mackenzie Financial	<ul style="list-style-type: none"> <li>• Mackenzie Sentinel</li> </ul>	Mackenzie Financial	Mackenzie Financial	M.R.S. Trust Company and/or



<b>2008 BCSECCOM 443</b>
--------------------------

Corporation	Short-Term Income Fund	Corporation	Corporation	Investors Group Trust Co. Ltd. and its affiliates
-------------	---------------------------	-------------	-------------	---