

2006 BCSECCOM 563

August 31, 2006

Headnote

National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A mutual fund dealer wants relief from the provision in ss. 7.1(3) of NI 81-105 that prohibits a member of an organization of a mutual fund that is not also a participating dealer from paying a commission rebate to a securityholder on the redemption of securities of another fund that is not in the same fund family. - A client who wishes to reinvest redemption proceeds from other products in the affiliated funds would be prejudiced by being denied the rebate they would otherwise have received. The filer has controls in place to prevent representatives from being potentially influenced to recommend unjustified switches to affiliated funds.

National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A mutual fund dealer wants relief from the equity interest disclosure requirement in ss. 8.2(3) of NI 81-105 to permit modified disclosure for an employee's equity interest in an issuer that is a member of the fund organization. - The filer and its representatives will comply with the disclosure and consent provisions of Part 8 of NI 81-105 with respect to the equity interest disclosure prior to the completion of the trade; the related funds will comply with the equity interest disclosure obligations that apply to them regarding the prospectus as required by ss. 8.2(1) and (2) of NI 81-105; the filers will provide a disclosure document to clients showing a "range" for the equity interest held by the filer or their representatives; clients may call a specified toll-free number to obtain the specific amount of the equity interests held by representatives in the member of the fund organization.

Applicable Legislative Provisions

National Instrument 81-105 *Mutual Funds Sales Practices*, ss. 7.1(3), 8.2(3) and 9.1

Securities Act, R.S.B.C. 1996, c. 418, s. 171

**In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec,
New Brunswick, Nova Scotia, Prince Edward Island,
Newfoundland and Labrador, Northwest Territories, Yukon
and Nunavut (the Jurisdictions)**

and

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

2006 BCSECCOM 563

and

**In the Matter of IPC Securities Corporation (IPC Securities),
IPC Investment Corporation (IPC Investment) (collectively, the Filers) and
Counsel Group of Funds Inc. (Counsel)**

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 and Counsel for a decision under the securities legislation of the Jurisdictions (the Legislation) for:

1. an exemption under section 9.1 of National Instrument 81-105 Mutual Fund Sales Practices (NI 81-105) exempting the Filers and their representatives from:
 - (a) the prohibition contained in paragraph 7.1(3) of NI 81-105 prohibiting the Filers and their representatives from paying to a securityholder all or any part of a fee or commission payable by the securityholder on the redemption of securities of a mutual fund that occurs in connection with the purchase by the securityholder of securities of another mutual fund that is not in the same mutual fund family (a commission rebate) where the Filer is a member of the organization of the mutual fund the securities of which are being acquired (the Commission Rebate Relief); and
 - (b) the requirements to provide disclosure to clients of the Filers about equity interests held by certain representatives of the Filers required by subsection 8.2 (3) of NI 81-105 (the Equity Disclosure Relief); and
2. an order revoking a decision of the Decision Makers in favour of Counsel dated February 16, 2000 (the Original Decision) which granted an exemption from NI 81-105 concerning the payment by the Filers' sales representatives of certain commission rebates (the Revocation Order).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) The Ontario Securities Commission is the principal regulator for this application; and
- (b) This MRRS decision document evidences the decision of each Decision Maker.

2006 BCSECCOM 563

Interpretation

Defined terms contained in NI 81-105 and 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 Filers and Counsel:

1. IPC Investments is registered with the Decision Makers as a dealer in the category of mutual fund dealer (or equivalent). IPC Investments is also registered with the Ontario Securities Commission as a limited market dealer. IPC Investments is a member of the Mutual Fund Dealers Association of Canada.
2. IPC Securities is registered with the Decision Makers (other than the Decision Makers in Newfoundland and Labrador, Prince Edward Island and the three territories) as a dealer in the category of investment dealer (or the equivalent). IPC Securities is a member of the Investment Dealers Association of Canada.

Corporate Structure and Relationships

3. As a result of the corporate acquisition and the relationships described below, the Filers are members of the organization of:
 - (a) the mutual funds managed by Counsel (the Counsel Funds);
 - (b) the mutual funds managed by Mackenzie Financial Corporation (MFC and mutual funds shall be referred to as the Mackenzie Funds); and
 - (c) the mutual funds managed by I.G. Investment Management, Ltd. (IGIM and the mutual funds shall be referred to as the IG Funds).

The Filers may in the future become members of the organization of other mutual funds, since the parent companies or an affiliate of the IPC Dealers (defined below) may acquire interests in corporations that are managers of mutual funds (Future Affiliated Funds).

4. Effective May 10, 2004, IGM Financial Inc. (IGM), a public company listed on The Toronto Stock Exchange, acquired by way of a plan of arrangement approximately 75 percent of the outstanding securities of IPC Financial Network Inc. As a result of the plan of arrangement, IPC Financial Network

2006 BCSECCOM 563

Inc. became a wholly-owned subsidiary of Investment Planning Counsel Inc. (IPCI) and IGM acquired approximately 75 percent of IPCI. Counsel and the Filers are indirect subsidiaries of IPCI. IGM also owns IGIM, the manager of the IG Funds and MFC, the manager of the Mackenzie Funds.

5. The Filers act as participating dealers in respect of the Counsel Funds and the Mackenzie Funds, as well as for mutual funds managed by unrelated fund managers. The Filers do not distribute securities of the IG Funds.
6. The Filers act independently from Counsel and have no connection with MFC, other than through IGM, being their common ultimate parent company. The Filers and the representatives of the Filers are free to choose which mutual funds to recommend to their clients and consider recommending the Counsel Funds and the Mackenzie Funds to their clients in the same way as they consider recommending other third party mutual funds. The Filers and their representatives comply with their obligations at law and only recommend mutual funds that they believe would be suitable for their clients and in accordance with the clients' investment objectives. Counsel and MFC provide the Filers with the compensation and sales incentives described in the prospectus of the respective funds for distributing the Counsel Funds and the Mackenzie Funds in the same manner as Counsel and MFC do for any participating dealer selling securities of the Counsel Funds and the Mackenzie Funds to their clients. All compensation and sales incentives paid to the Filers by Counsel and MFC comply with NI 81-105.

The Commission Rebate Prohibition

7. The prohibition in paragraph 7.1(3) of NI 81-105 means that neither the Filers nor their representatives can provide commission rebates to their clients when those clients decide to switch into a Counsel Fund or a Mackenzie Fund from another mutual fund. Section 7.1 of NI 81-105 allows the Filers and their representatives to pay commission rebates when the client decides to switch from one third party fund to another third party fund, provided the disclosure and consent procedure established in section 7.1 is followed. Payment of commission rebates by the Filers and by their representatives benefit the client so that the client does not incur costs in switching from one fund to another.
8. Subsection 7.1(3) of NI 81-105 prohibits Counsel and MFC from paying any portion of the commission rebates and without this decision would prohibit the Filers and their representatives from providing a commission rebate in the circumstances described above.

2006 BCSECCOM 563

9. Following implementation of NI 81-105 in May 1998, the Filers and Counsel considered the prohibition contained in paragraph 7.1(3) and its implications for switches into the Counsel Funds. After the Decision Makers granted relief from this prohibition to certain other dealers, Counsel applied to the Decision Makers for a similar exemption, on behalf of all current and future dealer-affiliates of Counsel (which included the Filers), from the prohibition to allow representatives of those dealers to pay commission rebates to clients of those dealers who switch from third-party mutual funds to a Counsel Fund, provided certain conditions were met. This exemption was provided pursuant to the Original Decision.
10. The Original Decision exempted, on specified conditions, sales representatives of the Filers from the prohibitions on payment of certain client rebates contained in section 7.1 of NI 81-105 to the extent necessary to allow sales representatives to pay the fees and commissions payable by clients upon redemption of third-party mutual funds when the clients wish to switch from those third-party funds to the Counsel Funds, to a maximum amount of the commission earned on the purchase of the Counsel Funds. The Filers continue to be prohibited from paying, directly or indirectly, any portion of the commission rebate in these circumstances, which means that the Filers cannot “top-up” any payment to a client by a representative. Clients switching into the Counsel Funds from a third-party fund therefore may not receive the full amount of the commission rebate to which they would otherwise be entitled under section 7.1 of NI 81-105 if the switch were not to a Counsel Fund.
11. The Original Decision no longer reflects Counsel’s or the Filers’ business, operations or corporate structure because it does not permit commission rebates to be paid when clients are switching from a third-party fund into a Mackenzie Fund or a Future Affiliated Fund.
12. Further the Original Decision creates a “reverse” incentive for clients to move from one third-party fund into another third-party fund, rather than into a Counsel Fund or a Mackenzie Fund, since then, Filers and representatives will be permitted to give those clients a full commission rebate. In circumstances where the representative believes that a Counsel Fund or a Mackenzie Fund is the most suitable mutual fund for the client, the Filers believe the prohibition inherent in the Original Decision to be not in the best interests of clients.
13. Counsel and the Filers wish the Decision Makers to revoke the Original Decision and replace it with this decision document, which exempts the Filers from paragraph 7.1(3) of NI 81-105 on the conditions set out in this decision.

2006 BCSECCOM 563

14. Neither the Filers, nor any representative of the Filers, are or will be subject to quotas (whether express or implied) in respect of selling securities of the Counsel Funds or the Mackenzie Funds. None of the Filers, Counsel or MFC or any other member of the respective mutual fund organizations, provide any incentive (whether express or implied) to any representative of the Filers, or to the Filers to encourage those representatives or the Filers to recommend to clients the Counsel Funds or the Mackenzie Funds over third-party managed mutual funds.
15. Counsel and MFC comply with NI 81-105 in respect of sales incentives provided to the Filers in connection with sales of the applicable mutual funds. The Filers also comply with NI 81-105; in particular, section 4.1 of NI 81-105 in their compensation practices with their representatives.
16. The Filers believe that by imposing conditions that prohibit the members of the mutual fund organization, which would include the managers of the mutual funds, from reimbursing the Filers or their representatives for the commission rebates paid to the Filers' clients and requiring the Filers and their representatives to offer commission rebates on identical terms to the Filers' clients without having such commission rebates conditional upon a switch to a related fund and regardless of whether the client switches to a third-party fund or a related fund, any potential for undue influence on the client is sufficiently mitigated. The conditions will not allow a Filer or its representatives to give commission rebates only when a client is switching to a related fund, or a Filer or its representatives to pay more of a commission rebate provided that the client switches to a related fund.

The Equity Interest Disclosure Requirement

17. As of July 20, 2006, Christopher Reynolds and Stephen Meehan are representatives and directors of IPC Investment. Messrs Reynolds and Meehan and their respective associates each hold securities of IPCI, representing approximately 7.67 percent of the outstanding securities of IPCI for a total of 15.34 percent. Sixty representatives of the Filers (49 representatives of IPC Investment and 11 representatives of IPC Securities) and their associates (other than Messrs Reynolds and Meehan) hold, collectively, approximately 8.13 percent of the outstanding securities of IPCI. No one representative and his or her associates (other than Messrs Reynolds and Meehan) hold more than 1 percent of the outstanding securities of IPCI. Other employees of IPCI or its subsidiaries and their respective associates hold, collectively, approximately 0.24 percent of the outstanding securities of IPCI. IPCI is in the process of introducing a stock option plan for its executive officers and employees with a total aggregate allotment of 6,500,000 common shares, which represents

2006 BCSECCOM 563

approximately 10 percent of the existing outstanding securities of IPCI. The number of securities of IPCI held by representatives, agents and employees, including Messrs Reynolds and Meehan, as well as the number of representatives holding shares of IPCI, changes from time to time, but given IGM's shareholdings, it is unlikely that the aggregate total shareholdings will be in excess of 35 percent of the outstanding securities of IPCI.

18. Representatives of the Filers hold equity interests in IPCI. Without this Decision, subsections 8.2 (3), (4) and (5) of NI 81-105 would require the following:
- (a) if a security of one of Counsel Funds, the Mackenzie Funds or a Future Affiliated Fund is traded by any representative of a Filer, the Filer must deliver to the purchaser of that security, a document that discloses:
 - (i) the amount of shares of IPCI owned by
 - (1) the representatives of that Filer and their associates, in aggregate;
 - (2) Messrs Reynolds and Meehan and their respective associates (together with any other shareholder holding a more than 5 percent equity interest in IPCI); and
 - (3) the sales representative of that Filer and his or her associates, in aggregate, who is acting on the trade; and
 - (ii) that IGM holds approximately 76 percent of the securities issued by IPCI (as of July 20, 2006), which is the parent company of the Filers and of Counsel;
 - (b) pursuant to subsection 8.2(4), a purchaser of a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund from a Filer must consent to the trade after he or she receives the disclosure document before the trade can be completed; and
 - (c) pursuant to subsection 8.2(5), a Filer is not required to deliver the disclosure document or obtain the consent of a purchaser of securities of one of the Counsel Funds, the Mackenzie Funds or a Future Affiliated Fund if that purchaser has previously acquired such securities and received a disclosure document, if the information contained in that disclosure document has not changed.

2006 BCSECCOM 563

19. With respect to trades in the Mackenzie Funds or a Future Affiliated Fund that is not managed by a subsidiary of IPCI (a Non-IPCI Fund), due to the only tangential connection between the Filers and MFC and the manager of the Non-IPCI Fund, as applicable, and, hence, the technical application only of the relevant sections of NI 81-105, the Filers seek a complete exemption from subsection 8.2(3)(4) and (5). Representatives hold equity interests in IPCI, which is a subsidiary of IGM and an affiliate of MFC. The performance of the representatives' equity interest in IPCI is not related to or dependent upon the performance of MFC or any manager of a Non-IPCI Fund.
20. The Mackenzie Funds, the Counsel Funds and the Future Affiliated Funds will comply with the disclosure obligations that apply to them as required by subsection 8.2(1) and (2) of NI 81-105. In this way, clients of the Filers making investments in these Funds will have access to complete information about the relationships between the relevant parties.

Decision

Each of the Decision Makers is satisfied that the test contained in NI 81-105 and the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under NI 81-105 and under the Legislation is that:

1. The Revocation Order is granted.
2. The Commission Rebate Relief is granted provided that
 - (a) For each switch made by a client of a Filer from an unrelated third-party fund to a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund or from a Counsel Fund to a Mackenzie Fund or a Future Affiliated Fund and vice versa where the Filer or one of its representatives agrees to pay a commission rebate to that client, the Filer and the representative will:
 - (i) comply with the informed written consent provisions of paragraph 7.1 (1)(a) and the disclosure and consent provisions of Part 8 of NI 81-105 (modified by the Equity Disclosure Relief);
 - (ii) advise the client, in writing and in advance of finalizing the switch, that any commission rebate proposed to be made available in connection with the purchase of a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund will

2006 BCSECCOM 563

- (A) be available to the client regardless of which mutual fund the redemption proceeds are to be invested in
 - (B) not be conditional on a purchase of a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund and
 - (C) in all cases, be not more than the amount of the gross sales commission earned by the Filer on the client's purchase of a Counsel Fund, Mackenzie Fund or Future Affiliated Fund and
- (iii) in respect of the switch, not pay a commission rebate more than the amount referred to in paragraph (ii) (C) above.
- (b) A Filer or its representatives that provide commission rebates will not be reimbursed directly or indirectly in respect of that commission rebate in connection with a switch to a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund by any member of the organization of that fund.
- (c) Each Filer's compliance policies and procedures that relate to this decision will emphasize that any commission rebate agreed to be paid to a client by a representative cannot be conditional on the client acquiring a Counsel Fund, a Mackenzie Fund or a Future Affiliated Fund and will be made available to the client if the client wishes to switch to a unrelated third-party fund.
3. The Equity Disclosure Relief is granted provided that with respect to trades in the Counsel Funds or in a Future Affiliated Fund that is managed by a subsidiary of IPCI (an IPCI Fund):
- (a) If a representative, other than Messrs. Reynolds and Meehan, trades in a security of a Counsel Fund or an IPCI Fund and that representative and/or the branch manager of that representative, holds securities in IPCI, then that representative will provide a disclosure document to that client that discloses that:
 - (i) the representatives of the Filer and their associates, in aggregate, hold no more than 35 percent of the securities of IPCI;
 - (ii) either or both, as applicable,

2006 BCSECCOM 563

- (A) the representative of the Filer, who is acting on the trade, and his or her associates, in aggregate, hold no more than 5 percent of the securities of IPCI and
 - (B) the branch manager of the representative of the Filer, who is acting on the trade, and his or her associates, in aggregate, hold no more than 5 percent of the securities of ICPI; and
 - (iii) the client may call a specified toll-free number and obtain the actual amount of the equity interests held in IPCI by above-noted individuals or groups of individuals.
- (b) If either of Messrs. Reynolds or Meehan trades in a security of a Counsel Fund or an IPCI Fund when he or any of his associates holds securities in IPCI, then he will provide a disclosure document to that client that discloses that:
- (i) the representatives of the Filer and their associates, in aggregate, hold no more than 35 percent of the securities of IPCI;
 - (ii) he and his associates, in aggregate, hold no more than 10 percent of the securities of IPCI; and
 - (iii) the client may call a specified toll-free number and obtain the actual amount of the equity interests held in IPCI by above-noted individuals or groups of individuals.
- (c) The Filers will comply with subsection 8.2(4) of NI 81-105 as modified by subsection 8.2(5) of NI 81-105, when they are required to give disclosure to clients in the circumstances set out above.

Carol S. Perry
Commissioner
Ontario Securities Commission

Wendell S. Wigle
Commissioner
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