

2007 BCSECCOM 772

December 12, 2007

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 manager wants relief from the requirement in section 126(c) of the Act to report any purchase or sale effected through a related person of the 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(c), 130

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan,
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

In the Matter of
RBC Asset Management 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), that the provisions of the Legislation requiring a management company, or in British Columbia and

2007 BCSECCOM 772

New Brunswick, a mutual fund manager, to file a report within thirty days after each month end and in respect of each mutual fund to which it provides services, relating to every purchase or sale effected by such mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the Reporting Requirement) shall not apply to purchases and sales effected by the Funds through any Related Party (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (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.

Interpretation

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

Funds means the current and future mutual funds for which the Filer acts as a “management company” as such term is defined in the Legislation or, in British Columbia and New Brunswick, for which the Filer acts as a mutual fund manager.

NI 81-106 means National Instrument 81-106 *Investment Fund Continuous Disclosure*.

Portfolio Advisors means the Filer and any portfolio manager or sub-advisor to the Funds appointed by the Filer.

RBC Dain means RBC Dain Rauscher Inc.

RBC Group of Companies means Royal Bank of Canada and its subsidiaries, including the Filer, RBC Dain, RBCDS and RBCCMC.

RBCCMC means RBC Capital Markets Corporation.

RBCDS means RBC Dominion Securities Inc.

Related Party means RBC Dain, RBCDS, RBCCMC or other related brokers or dealers that are members of the RBC Group of Companies.

2007 BCSECCOM 772

Representations

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

Facts

1. The Filer is a corporation existing under the laws of Ontario. The Filer's head office is located in Ontario.
2. The Filer is registered as an investment counsel and portfolio manager (or equivalent) under the securities legislation of each province and territory of Canada. It is also registered as a limited market dealer in Ontario and Newfoundland and Labrador and as a commodity trading manager in Ontario.
3. The Funds are or will be mutual funds that are reporting issuers in each province and territory of Canada.
4. The Filer is the manager of, and portfolio advisor to, the Funds and accordingly is a "management company" or equivalent under the Legislation. From time to time, the Filer may hire Portfolio Advisors for the Funds.
5. RBCDS is an affiliate of the Filer and is registered as an investment dealer under the securities legislation of each province and territory of Canada.
6. RBCCMC and RBC Dain are U.S.-affiliates of the Filer that act as broker-dealers.
7. RBCDS, RBCCMC and RBC Dain are "related persons or companies" to the Funds within the meaning of the Legislation as RBCDS, RBCCMC and RBC Dain and the Filer are all subsidiaries of Royal Bank of Canada.
8. As disclosed in the annual information forms or prospectuses of the Funds, the Portfolio Advisors may allocate brokerage business of the Funds to a Related Party, provided that such transactions are made on terms and conditions comparable to those offered by unrelated brokers and dealers.
9. The Portfolio Advisors of the Funds have discretion to allocate the brokerage transactions of each Fund in any manner that they believe to be in the Fund's best interests. The purchase or sale of securities effected through a Related Party reflects the business judgement of the Portfolio Advisors uninfluenced by considerations other than the best interests of the Funds. In allocating brokerage, consideration is given to commission rates and to research, execution and other services offered.

2007 BCSECCOM 772

10. The Funds prepare and file interim and annual management reports of fund performance (MRFPs) that disclose any transactions involving the Related Parties, including the identity of the Related Party, its relationship to the Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount and any ongoing commitments to the Related Party. A discussion of portfolio transactions with a Related Party must include the dollar amount of commission, spread or any other fee that the Fund paid to any Related Party in connection with the transaction.
11. In the absence of the Requested Relief, the Reporting Requirement would obligate the Filer to prepare a report of any purchase or sale of securities by a Fund that is effected through a Related Party and file the report with the Decision Makers within 30 days of the end of the month in which the transaction occurs. This report would have to disclose the issuer of the securities purchased or sold, the class or designation of the securities, the amount or number of securities, the consideration, the name of the Related Party, the name of the person or company that paid the fee to the Related Party and the amount of the fee received by the Related Party.
12. It would be costly and time consuming to provide the information required by the Reporting Requirement on a monthly and segregated basis for each Fund.
13. Exemptive relief from the Reporting Requirement was previously granted to the Filer in 1997 (the Prior Relief). The Prior Relief required that the Funds disclose on a semi-annual basis in their statements of portfolio transactions: (i) the total number of securities purchased or sold through a Related Party; (ii) the total consideration for securities purchased or sold through a Related Party; and (iii) the total fees paid by a Fund, the other party to the transaction, or both, to the Related Party.
14. Until NI 81-106 came into force on June 1, 2005, the Legislation required public mutual funds to prepare and file a statement of portfolio transactions on an interim and annual basis.
15. Since the introduction of NI 81-106, mutual funds are no longer required to prepare and file a statement of portfolio transactions. Therefore, the Filer is no longer able to comply with the Prior Relief. However, NI 81-106 now requires mutual funds to prepare and file annual and interim MRFPs that provide disclosure involving related party transactions, including disclosure of portfolio transactions effected through Related Parties, as outlined in paragraph 10 above. NI 81-106 also requires the Funds to disclose whether

2007 BCSECCOM 772

they have relied on the positive recommendation or approval of the independent review committee to proceed with a related party transaction.

16. The elimination of the requirement to file a statement of portfolio transactions resulted in the Filer being required to file monthly reports regarding purchases and sales of securities effected through a Related Party, and each Fund having to provide similar disclosure regarding such transactions in its interim and annual MRFPs.

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 Requested Relief is granted provided that:

- (a) the annual and interim MRFPs for each 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 each 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
 - (iii) the person or company who paid the fees.

Kevin J. Kelly
Commissioner

James E. A. Turner
Vice-Chair
Ontario Securities Commission