

2006 BCSECCOM 519

August 25, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – 1996 Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered dealer wants an exemption from delivering confirmation statements to clients. - The 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; the client agrees that the confirmation statements will not be delivered to them; the client is sent monthly statements that include the confirmation information (except for the Omitted Information); the dealer will maintain the Omitted Information in its records and make this information available to clients upon request.

Applicable Legislative Provisions

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

Securities Rules, B.C. Reg. 194/97, ss. 36(1) and (2) and 80(1)

**In the Matter of
the Securities Legislation
of Ontario, Alberta, British Columbia, Manitoba, New Brunswick,
Newfoundland and Labrador, northwest territories, Nunavut,
Nova Scotia, Québec, Saskatchewan and Yukon (the Jurisdictions)**

and

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

and

In the Matter of CIBC World Markets 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 in the Legislation that a registered dealer deliver a

2006 BCSECCOM 519

transaction confirmation statement to clients of the Filer (Clients) who receive discretionary managed services pursuant to a managed account program (Program) with respect to transactions under the Program (the Confirmation Relief).

Under the System

- (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.

Representations

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

1. the Filer is incorporated under the laws of Ontario and has its head office in Toronto, Ontario.
2. the Filer is registered under the Legislation of each Jurisdiction as a dealer in the categories of broker and investment dealer, or the equivalent and is a member of the Investment Dealers Association of Canada (the IDA). The Filer is authorized to act as an adviser pursuant to an exemption from the adviser registration requirement made available under the Legislation of each Jurisdiction to dealers who are members of the IDA.
3. the Filer offers the Program to its Clients who desire discretionary management services.
4. to participate in the Program, the Client:
 - (a) opens an account (the Account) which will be fully managed by a portfolio manager (the Portfolio Manager);
 - (b) enters into a written agreement with the Filer (the Managed Account Agreement) setting out the terms and conditions and the respective rights, duties and obligations of the Client and the Filer; and
 - (c) with the assistance of the Filer, completes an investment policy statement that outlines the Client's objectives and level of risk tolerance.

2006 BCSECCOM 519

5. the Portfolio Manager managing the Account is appropriately licensed as a portfolio manager with the IDA and is appropriately registered under the Legislation of each Jurisdiction.
6. the Accounts will be "managed accounts" as defined under Regulation 1300 of the IDA and the Filer will comply with applicable IDA requirements with respect to managed accounts.
7. under the Managed Account Agreement:
 - (a) the Client grants full discretionary trading authority to the Filer and the Filer is authorized to make investment decisions and to trade in securities on behalf of the Client's Account without obtaining the specific consent of the Client to individual trades, provided such investment decisions and trades are made in accordance with the Client's investment policy statement referred to in paragraph 4(c) hereof;
 - (b) the Client agrees to pay a non-transactional fee (the Fixed Percentage Fee) calculated on the basis of the assets in the Account which covers all charges for investment advice and ordinary brokerage, custodial and client reporting fees, and which will not be based on the value or volume of transactions effected in the Client's Account; and
 - (c) unless otherwise requested by the Client, the Client waives receipt of trade confirmations as required under the applicable Legislation.
8. the Fixed Percentage Fee is not intended to cover charges for minor items such as wire transfer requests, account transfers, withdrawals, de-registration and other administrative services (Administrative Charges). The Filer provides a list of Administrative Charges information to all Clients.
9. the Filer will send each Client participating in its Program, who has waived receipt of trade confirmations, a statement of account not less than once a month.
10. the monthly statement of account identifies the assets being managed on behalf of that Client, including for each trade made during the month the information that the Filer would otherwise have been required to provide to that Client in a trade confirmation in accordance with the applicable Legislation, except for the following (the Omitted Information):

2006 BCSECCOM 519

- (a) the day and the name of the stock exchange or commodity futures exchange upon 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 salesman, 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.
11. the Filer will maintain the Omitted Information with respect to a Client in its books and records and make the Omitted Information available to the Client on request.
12. the Filer performs daily reviews of all Account transactions in respect of suitability.
13. the Filer will also continue to comply with its obligations under IDA Regulation 1300, including the requirement to establish a managed account committee and to carry out a review, at least quarterly, in order to ensure that the investment objectives of the Client are being diligently pursued and that the Account is being conducted in accordance with applicable law.

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 pursuant to the Legislation is that the Confirmation Relief is granted provided that

- (a) the Client has previously informed the Filer that the Client does not wish to receive trade confirmations for the Client's Accounts under the Program; and

2006 BCSECCOM 519

- (b) in the case of each trade for an Account under the Program, the Filer sends to the Client the corresponding statement of account that includes the information referred to in paragraph 10.

Carol S. Perry
Commissioner
Ontario Securities Commission

Suresh Thakar
Commissioner
Ontario Securities Commission