

2012 BCSECCOM 339

May 17, 2012

Headnote

Multilateral Instrument 11-102 – *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 48 Adviser – Exemption from s. 34(b) requirement to be registered as an adviser – A person who resides outside of BC wants to advise BC residents – The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person

1996 *Securities Act* s. 171 - Revoke or vary a decision – A person wants to vary or repeal and replace a previous decision it received to revise the representations or conditions to the relief granted - The person previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but certain of the representations or conditions to the relief are no longer appropriate because of a change in the issuer's circumstances; alternative conditions can be structured that address the issuer's new circumstances

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 34(b), 48 and 171

In the Matter of
the Securities Legislation of
British Columbia (the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
RBC Dominion Securities Inc. (the Filer or RBC DS)

Decision

2012 BCSECCOM 339

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) revoking the previous order granted to the Filer on March 26, 2010 (Previous Order) and that the requirement in the Legislation to be registered as an adviser (the Adviser Registration Requirement) does not apply to advisory services provided to the Filer by advisers/portfolio managers carrying on business in Canada, the United States and elsewhere who act as sub-advisers to the Filer in providing portfolio management services, which may include asset allocation services and money manager due diligence, research and recommendation services (Portfolio Management Services), for the benefit of retail clients of the Filer (the Participating Clients) who participate in a managed account program designated as the Access Manager Selection Program (the Access Program), the Private Investment Management (the PIM Program) or the SMA+ Program (collectively, the Programs) (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (the Non-principal Jurisdictions and, together with the Jurisdiction, the Filing Jurisdictions).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. RBC DS is an investment dealer registered under the Legislation, is a member of the Investment Industry Regulatory Organization of Canada (IIROC), has its head office in Ontario and is not in default of any securities legislation in the Jurisdiction, the Non-principal Jurisdictions, Ontario or Québec;

2012 BCSECCOM 339

2. RBC DS is also registered as an investment dealer in Ontario, Québec and in each of the Non-principal Jurisdictions;
3. RBC DS is permitted to have managed accounts by virtue of being a member of IIROC and complying with the IIROC requirements with respect to managed accounts;
4. ordinarily the Ontario Securities Commission is the principal regulator for the Filer, however, since the Exemption Sought is not required in Ontario or Québec (the jurisdiction with which the Filer has the next most significant connection), British Columbia has been chosen as the principal regulator for this application on the basis that it is the jurisdiction in which relief is required and with which the Filer has the most significant connection outside of Ontario and Québec;
5. the Access Program is a discretionary, third-party managed account program whereby a number of non-affiliated third-party investment advisers/portfolio managers provide discretionary investment management services to Participating Clients;
6. the PIM Program is a managed account program whereby RBC DS provides discretionary investment management services to Participating Clients that may, in certain cases, be based upon investment models provided by a non-affiliated third-party investment adviser/portfolio manager;
7. the SMA+ Program is a discretionary managed account program whereby RBC Asset Management Inc., as well as a number of non-affiliated third-party investment advisers/portfolio managers, provides investment models to RBC DS who in turn provides discretionary management services on the basis of such models to Participating Clients;
8. each account in the Programs will be a fully managed account managed by RBC DS for the Participating Client under a client account agreement (a CAA) with the Participating Client;
9. each Participating Client will provide RBC DS with its investment objectives and other information necessary to enable RBC DS or another entity acting on behalf of RBC DS to prepare a client profile for the Participating Client;
10. RBC DS has entered into an agreement with an adviser/portfolio manager (the Master Sub-Adviser) in the United States to provide Portfolio Management Services pursuant to which the Master Sub-Adviser will, on

2012 BCSECCOM 339

its own behalf and as agent for RBC DS and its affiliates, enter into agreements with other non-affiliated advisers/portfolio managers carrying on business in Canada, the United States and elsewhere (each a Manager or Sub-Adviser) to provide Portfolio Management Services to RBC DS and its affiliates for the benefit of the managed account clients of RBC DS and its affiliates that have entered into the Programs;

11. the Master Sub-Adviser is licensed or otherwise legally permitted to provide investment advice and Portfolio Management Services under the applicable laws of the jurisdiction in which it resides;
12. the Master Sub-Adviser will enter into agreements with Managers that set out the terms on which the Managers agree to be available for selection by RBC DS or its affiliates for the provision of Portfolio Management Services to RBC DS and its affiliates for the benefit of the managed account clients of RBC DS and its affiliates that have entered into the Programs. Such agreements will include clauses to the effect that:
 - (a) the Master Sub-Adviser is entering into the agreement, on its own behalf and as an agent on behalf of RBC DS and its affiliates; and
 - (b) RBC DS is an intended third-party beneficiary of the agreement and has the right to enforce the Manager's obligations under the agreement;
13. the Master Sub-Adviser will enter into agreements with Sub-Advisers to provide Portfolio Management Services to RBC DS and its affiliates for the benefit of the managed account clients of RBC DS and its affiliates that have entered into the Programs. Such agreements will include clauses to the effect that:
 - (a) the Master Sub-Adviser is entering into the agreement as an agent on behalf of RBC DS and its affiliates;
 - (b) RBC DS is an intended third-party beneficiary of the agreement and has the right to enforce the Sub-Adviser's obligations under the agreement; and
 - (c) RBC DS is entitled to terminate the services of the Sub-Adviser upon notice;
14. each Participating Client will be provided with a list of one or more Managers and/or Sub-Advisers, as applicable, whose investment

2012 BCSECCOM 339

philosophy or strategy is appropriate to the Participating Client's investment objectives;

15. all Managers and Sub-Advisers in the United States (U.S.) will be U.S. portfolio managers registered as advisers in the U.S. under the Investment Advisers Act of 1940, or other applicable legislation, who will provide Portfolio Management Services for accounts investing primarily in non-Canadian securities, or in global or international strategies;
16. all Managers and Sub-Advisers in Canada will be Canadian portfolio managers registered as advisers under the securities legislation of one or more provinces or territories, who will provide Portfolio Management Services for accounts investing primarily in Canadian securities, or in global or international strategies;
17. all Managers and Sub-Advisers who are not resident in Ontario and are not otherwise registered in Ontario will not be required to register as advisers under the Securities Act (Ontario) as the terms of the Programs and their agreements with RBC DS will bring them within the exemption from registration in section 7.3 of OSC Rule 35-502 — Non-Resident Advisers;
18. all Managers and Sub-Advisers who are not resident in Québec and not otherwise registered in Québec will not be required to register as advisers under the Securities Act (Québec) as they are able to rely on a general registration exemption order (Decision # 2009-PDG-0191) for an exemption from adviser registration;
19. all Managers and Sub-Advisers in jurisdictions other than the U.S. or Canada will be portfolio managers registered as advisers, or otherwise licensed or legally qualified to provide Portfolio Management Services under applicable legislation, in the jurisdiction in which they carry on business and will provide Portfolio Management Services for accounts investing primarily in non-Canadian securities, or in global or international strategies;
20. the Participating Client will, with the assistance of RBC DS, select one or more strategies or one or more Managers and/or Sub-Advisers, as applicable, to manage its account with RBC DS;
21. if the Participating Client selects one or more strategies, RBC DS will manage the Participating Client's account on the basis of advice received by it from a Manager and/or Sub-Adviser, as applicable, concerning the strategy;

2012 BCSECCOM 339

22. if the Participating Client selects a Manager and/or Sub-Adviser to manage its account with RBC DS, the Manager and/or Sub-Adviser, as applicable, selected will manage the Participating Client's account with respect to investments and voting of securities held in the account and will maintain separate accounts and records for each Participating Client;
23. RBC DS will:
 - (a) execute all transactions in the Participating Clients' accounts unless better execution can be obtained elsewhere;
 - (b) act as custodian for all securities held in its accounts unless the Participating Client directs otherwise; and
 - (c) send monthly statements and quarterly performance reports prepared by RBC DS for each account to the relevant Participating Client;
24. a Participating Client must obtain all advice and information and give all instructions and directions through RBC DS and may meet with a Master Sub-Adviser, Manager and/or Sub-Adviser only if the registered representative of RBC DS responsible for the Participating Client's account is present at all times;
25. a single wrap fee will be charged to Participating Clients for Portfolio Management Services in the Programs, which fee will be calculated on the basis of assets under administration in the Participating Client's account, will include all fees payable to the Master Sub-Adviser, Managers and Sub-Advisers and will not be based on the transactions effected in the account;
26. RBC DS will assume responsibility in the CAA to Participating Clients for any loss arising directly out of the failure of a Master Sub-Adviser, Manager or Sub-Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Participating Client for whose benefit the investment advice is, or Portfolio Management Services are, to be provided; or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

2012 BCSECCOM 339

and acknowledges that it cannot be relieved by Participating Clients from this responsibility.

27. RBC DS intends to expand Portfolio Management Services to be provided by Managers and Sub-advisers to include global or international strategies (Revised Strategies) as described in paragraphs 15, 16 and 19 above. The Previous Order does not contemplate the Revised Strategies and cannot be relied on for the Revised Strategies.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted in respect of the Master Sub-Adviser, Managers and Sub-Advisers provided that:

- (a) the Filer is registered in good standing under the Legislation in a category that permits it to provide Portfolio Management Services;
- (b) the obligations and duties of each Master Sub-Adviser, Manager and Sub-Adviser, as applicable, are set out in a written agreement entered into by RBC DS, directly or through an agent of RBC DS, and each Master Sub-Adviser, Manager and Sub-Adviser, as applicable;
- (c) RBC DS contractually agrees with its Participating Clients to be responsible for any loss that arises out of the Master Sub-Adviser, Manager or Sub-Adviser's failure:
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interest of RBC DS and the Participating Client for whose benefit the investment advice is, or Portfolio Management Services are, to be provided, or
 - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (d) RBC DS is not relieved by the Participating Client from its responsibility for loss under paragraph (c) above;

2012 BCSECCOM 339

- (e) each Master Sub-Adviser, Manager and Sub-Adviser will not have any direct contact with a Participating Client in connection with the provision of Portfolio Management Services unless a representative of the Filer, duly registered to provide Portfolio Management Services for securities in the Filing Jurisdiction where the Participating Client is resident, is present at all times, either in person or by telephone;
- (f) each Master Sub-Adviser, Manager and Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and Portfolio Management Services under the applicable laws of the jurisdiction in which it resides;
- (g) each Master Sub-Adviser, Manager and Sub-Adviser, if resident in a jurisdiction of Canada, is registered as an adviser in such jurisdiction; and
- (h) for each Filing Jurisdiction, this decision will terminate 90 days after the coming into force of any rule, regulation or blanket order or ruling under the securities legislation of the Filing Jurisdiction that provides equivalent exemption.

The Previous Order is revoked under section 171 of the Securities Act (British Columbia).

Mark Wang
Acting Director, Capital Markets Regulation
British Columbia Securities Commission