

# 2004 BCSECCOM 136

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirement to report the distribution of units, including additional units, of certain funds provided report filed and fees paid within 30 days after financial year end of such funds

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 76

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, SASKATCHEWAN, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

### **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

### **IN THE MATTER OF UBS GLOBAL ASSET MANAGEMENT (CANADA) CO.**

### **MRRS DECISION DOCUMENT**

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Saskatchewan, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from UBS Global Asset Management (Canada) Co. (“UBS Canada”), the investment manager of the UBS (Canada) Funds and any additional pooled funds that it may establish in the future from time to time (individually, a “Fund” and collectively, the “Funds”), for a decision under the securities legislation (the “Legislation”) of the Jurisdictions that the requirement contained in the Legislation to file a report and pay fees within certain prescribed time periods (the “Reporting Requirement”) shall not apply to trades of units by the Funds under certain exemptions from the dealer registration requirement and the prospectus requirement under the Legislation;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

## 2004 BCSECCOM 136

- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS UBS Canada has represented to the Decision Makers that:
1. UBS Canada is a corporation amalgamated under the *Companies Act* (Nova Scotia) and is registered under the *Securities Act* (Ontario) as an adviser, in the categories of investment counsel and portfolio manager, and as a limited market dealer;
  2. UBS Canada and The Royal Trust Company are the investment manager and the trustee of the Funds, respectively, which have been or will be established pursuant to an amended and restated trust agreement dated April 8, 2002 and a separate supplemental trust agreement for each Fund;
  3. currently, the Funds consist of 25 pooled fund trusts;
  4. each Fund is or will be a “mutual fund” as defined in the Legislation;
  5. none of the Funds is or will become a reporting issuer, as such term is defined in the Legislation, and units of the Funds will not be listed on any stock exchange;
  6. the Funds will initially distribute units (the “Privately-Placed Units”) to investors in the Jurisdictions on a continuous basis in reliance on the private placement exemption (the “Private Placement Exemption”) in the Legislation where the purchaser purchases as principal and the aggregate acquisition cost of the Privately-Placed Units is not less than a prescribed amount (the “Prescribed Amount”);
  7. the minimum initial investment in Privately-Placed Units of a Fund by a resident of a Jurisdiction shall not be less than the Prescribed Amount in that Jurisdiction;
  8. UBS Canada uses registered dealers where necessary to assist it in selling Privately-Placed Units of the Funds to prospective purchasers in each Jurisdiction or relies on an exemption from the dealer registration requirement set out in the Legislation;
  9. following an initial investment in Privately-Placed Units of a Fund to an investor (a “Unitholder”) under the Private Placement Exemption, the Fund may distribute additional units of the Fund (the “Additional Units”) to the

## 2004 BCSECCOM 136

Unitholder in increments of less than the Prescribed Amount, provided the Unitholder holds units of the Fund having an aggregate acquisition cost or aggregate net asset value of not less than the amount prescribed by the Legislation of the Jurisdiction where the investor is resident;

10. the issuance of Additional Units of a Fund to a Unitholder in such circumstances is exempt from the dealer registration requirement and the prospectus requirement of the Jurisdictions;
11. the financial year-end of each Fund is currently December 31<sup>st</sup>;
12. the Legislation has a Reporting Requirement for distributions under the Private Placement Exemption and, except for Newfoundland and Labrador, for distributions of Additional Units;

- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 6 AND WHEREAS 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that the Reporting Requirement of the Legislation does not apply to a trade in Privately-Placed Units of a Fund under the Private Placement Exemption or to a trade in Additional Units of a Fund, provided that within 30 days after each financial year end of the Fund, such Fund:
- (a) files with the applicable Decision Maker a report in respect of all trades in Privately-Placed Units and Additional Units of that Fund in the applicable Jurisdiction during such financial year, in the form prescribed by the applicable Legislation; and
  - (b) remits to the applicable Decision Maker the fee prescribed by the applicable Legislation.
- ¶ 8 March 1, 2004.

Brenda Leong  
Director