

2005 BCSECCOM 721

December 7, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Section 123 relief - An investment fund and its manager want relief from sections 121(2)(b) and 121(3) of the Act so that the fund, alone or together with other related mutual funds, can invest in and hold more than 20% of the votes attached to securities of an issuer - The fund's investors have received disclosure about the specific investment by the fund, and the investment does not adversely affect the liquidity of the fund

Section 130 relief - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - The underlying fund will invest only in investments permitted under NI 81-102 - the simplified prospectus of the top funds discloses that the top funds invest in securities of the underlying fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 121(3), 123, 126(a) and (d), 130

In the Matter of
the Securities Legislation
of British Columbia and Saskatchewan (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System For Exemptive Relief Applications

and

In the Matter of
ATB Investment Management Inc. (the Filer) and
Compass Conservative Portfolio, Compass Conservative Balanced Portfolio,
Compass Balanced Portfolio, Compass Balanced Growth Portfolio, Compass
Growth Portfolio and Compass Maximum Growth Portfolio
(collectively the Compass Portfolios)

MRRS Decision Document

Background

- ¶ 1 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

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the securities legislation of the Jurisdictions (the Legislation) that that the Compass Portfolios and any other mutual funds managed by the Filer from time to time in a similar manner (the Future Portfolios) (the Compass Portfolios and the Future Portfolios collectively, the Portfolios) be exempt from the following requirements and restrictions contained in the Legislation (the Requested Relief):

- (a) the restriction prohibiting a mutual fund or its management company or its distribution company from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and
- (b) the requirement for a management company or, in British Columbia, a mutual fund manager, to file a report of the following matters within 30 days from the end of the month in which the matter occurred:
 - (i) every transaction of purchase or sale of securities between the mutual fund and any related person or company; and
 - (ii) every transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- (1) the Filer is a corporation incorporated under the laws of Alberta, and is the manager and portfolio adviser of the Compass Portfolios and will be the manager and portfolio adviser of any Future Portfolios;
 - (2) each of the Compass Portfolios is, and any Future Portfolios will be an open-ended mutual fund with a head office in Alberta;

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- (3) the securities of the Compass Portfolios will be qualified for distribution in the Jurisdictions under a simplified prospectus and annual information form filed with and accepted by the Decision Makers;
- (4) to achieve the investment objectives of each Portfolio, the Filer invests the assets of the Portfolio in, among other things, securities of mutual funds subject to National Instrument 81-102 *Mutual Funds* (NI 81-102) and pooled funds that are not subject to NI 81-102 (Underlying Pooled Funds);
- (5) the Filer wishes to actively manage its investments in any Underlying Pooled Fund with discretion to buy and sell securities of the Underlying Pooled Fund; the investment of the Portfolios in Underlying Pooled Funds will be limited to investments in Underlying Pooled Funds managed by Barclay's Global Investors Canada Limited (or its affiliates) (Barclay's);
- (6) the Filer is not related to Barclay's;
- (7) the Underlying Pooled Funds will be:
 - (a) organized under the laws of Canada or a Canadian province or territory;
 - (b) mutual funds within the meaning of the Legislation; and
 - (c) sold to investors in reliance on exemptions from the prospectus requirements under the Legislation and therefore not subject to NI 81-102 or National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*.
- (8) a contract between the Filer and Barclay's provides that the assets of each Underlying Pooled Fund will be invested only in investments permitted by NI 81-102; the Filer monitors the investments held by the Underlying Pooled Funds to ensure that they have been invested only in investments permitted by NI 81-102;
- (9) except to the extent evidenced by this order and specific approvals granted by the Decision Makers under NI 81-102, the investments by a Portfolio in the Underlying Pooled Funds will comply with applicable investment restrictions under the Legislation;

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- (10) the Filer believes that investing in securities of Underlying Pooled Funds is more efficient and cost-effective than purchasing individual securities directly or investing in securities of mutual funds subject to NI 81-102;
- (11) a Portfolio's investments in securities of an Underlying Pooled Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Portfolio;
- (12) under the Legislation, in the absence of the relief requested by this application:
 - (a) the Portfolios would be prohibited from knowingly making or holding an investment in an Underlying Pooled Fund in which a Portfolio, alone or together with one or more related mutual funds, is a substantial security holder; and
 - (b) the Filer would be required to file a report of (i) every transaction of purchase or sale of securities between a Portfolio and any related person or company, and (ii) every transaction other than an arrangement related to insider trading in portfolio securities, in which the Portfolio is a joint participant with one or more of its related person or companies, within 30 days from the end of the month in which the transaction occurred;
- (13) the Compass Portfolios were first offered in Alberta by simplified prospectus dated November 14, 2002, with investment portfolios established in reliance on similar relief in an order of the ASC; at the time they were established, investing in these Underlying Pooled Funds was the most efficient and in some cases the only means by which the Portfolios could obtain exposure to the performance of investments underlying certain market indices without investing directly in individual securities.

Decision

- ¶ 4 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 Portfolio's investment in securities of an Underlying Pooled Fund is in accordance with the provisions of section 2.5 of NI 81-102,

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except to the extent the Portfolio has been granted specific exemptions from those provisions by the Decision Makers;

- (b) the Underlying Pooled Fund is organized or created under the laws of Canada or a Canadian province or territory;
- (c) the Underlying Pooled Fund is a mutual fund as defined in the Legislation;
- (d) the securities of the Portfolio are offered for sale in the Jurisdictions under a simplified prospectus and annual information form which has been filed with and accepted by the Decision Maker;
- (e) the simplified prospectus of the Portfolio discloses the intent of the Portfolio to invest in securities of Underlying Pooled Funds and will also disclose the information specified in paragraph (i) below under Item 8, Part B of Form 81-101F1;
- (f) the Portfolio's investment in the Underlying Pooled Fund is compatible with the fundamental investment objectives of the Portfolio;
- (g) the assets of the Underlying Pooled Fund are only invested in investments permitted by NI 81-102;
- (h) the Portfolio and the Filer are at arms-length from the Underlying Pooled Fund and Barclay's; and
- (i) if available, securityholders of the Portfolio may obtain, upon request, a copy of the offering memorandum (or other similar document) of the Underlying Pooled Fund and the audited annual financial statements and semi-annual financial statements of the Underlying Pooled Fund.

Andrew Richardson
Acting Director, Corporate Finance
British Columbia Securities Commission