

2008 BCSECCOM 223

April 1, 2008

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 wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person or company which is a substantial security holder of the mutual fund - A portfolio manager, mutual fund or responsible person wants relief from s. 127(1)(a) of the Act so that it can invest in an issuer which has a responsible person as an officer or director of the issuer - A mutual fund manager wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The purchase or sale is consistent with, or is necessary to meet, the investment objectives of the fund; the IRC of the fund has approved the transaction which involves a perceived or actual conflict of interest for the fund manager; the fund manager and the IRC follow any standing instructions that the IRC provides in connection with the transactions; the fund's continuous disclosure materials provide disclosure to fund investors about the transactions with related parties; the fund keeps the written records required by NI 81-107; and if securities are traded from a managed account, the managed account holder must have consented to trades from that account to a fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(a), 127(1)(a), 127(1)(b), and 130

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Ontario,
Quebec, New Brunswick, Nova Scotia,
Newfoundland and Labrador
(Jurisdictions)

and

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

and

In the Matter of
UBS Global Asset Management (Canada) Co.
(the Filer)

2008 BCSECCOM 223

and

In the Matter of
UBS (Canada) Global Allocation Fund
(the Existing NI 81-102 Fund)

and

In the Matter of
the Funds Referenced in Schedule A
(each an Existing Public Fund)

and

In the Matter of
the Funds Referenced in Schedule B
(each an Existing Pooled Fund)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (Decision Maker) in each of the Jurisdictions received an application (the Application) from the Filer in respect of a group of investment funds (the Existing Funds) and managed accounts (the Existing Managed Accounts) that it, or an affiliate of it, manages or acts as portfolio manager for, and in respect of future investment funds (the Future Funds) and managed accounts (the Future Managed Accounts) that the Filer, or an affiliate of it, will manage or act as portfolio manager for, for an exemption from (the Requested Relief) from:

- (a) The prohibition (the Inter-Fund Trading Prohibition) in the securities legislation of the Jurisdictions (the Legislation) that prohibits a portfolio manager or a mutual fund (depending on the Jurisdiction) from knowingly causing the portfolio to purchase or sell securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager in order to permit trades (the Inter-Fund Trades) in securities between the Existing Funds, the Future Funds, the Existing Managed Accounts, and the Future Managed Accounts.
- (b) The prohibition (the Investment Counsel Prohibition) in the Legislation of the Jurisdictions other than British Columbia or Québec that prohibits a purchase or sale of a security in which an investment counsel, or any

2008 BCSECCOM 223

associate of an investment counsel, has a direct or indirect beneficial interest from or to any portfolio managed or supervised by the investment counsel in order to permit the Inter-Fund Trades.

- (c) The prohibition (the Substantial Security holder Prohibition) in the Legislation that prohibits a mutual fund from knowingly making or holding an investment in any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company in order to permit an Existing Pooled Fund or a future pooled fund (Future Pooled Fund) that the Filer, or an affiliate of the Filer, manages, to purchase securities of UBS AG on an exchange.
- (d) The prohibition (the Related Person Securities Prohibition) in the Legislation that prohibits a portfolio manager (or a mutual fund depending on the Jurisdiction) from knowingly causing any investment portfolio managed by it to invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase, in order to permit an Existing Pooled Fund or Future Pooled Fund (together, a Pooled Fund) to purchase securities of UBS AG on an exchange.

Under the MRRS:

- (i) the principal regulator for the Application is the Ontario Securities Commission (OSC); and
- (ii) this Decision Document represents the decision of each of the Decision Makers.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions*, in NI 81-102 and in National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this MRRS Decision Document unless they are otherwise defined in this Decision Document.

NI 81-102 Fund means each Existing NI 81-102 Fund and Future Fund that is subject to NI 81-102.

Public Fund means each Existing Public Fund and Future Fund that is a reporting issuer, but that is not subject to NI 81-102.

Representations

2008 BCSECCOM 223

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

1. Each NI 81-102 Fund, each Public Fund and each Pooled Fund (each, a Fund) is, or will be, an open-ended or closed-ended mutual fund trust, or an open-ended or closed-ended mutual fund corporation.
2. The Filer, or an affiliate of the Filer, is, or will be, the manager and/or the portfolio adviser of each Fund.
3. Each NI 81-102 Fund and each Public Fund is, or will be, a reporting issuer in one or more of the Jurisdictions. None of the Pooled Funds are, or will be, a reporting issuer in any of the Jurisdictions.
4. The Filer, or an affiliate of the Filer, is or will be the portfolio manager of the Existing Managed Accounts or Future Managed Accounts (each, a Managed Account).
5. A NI 81-102 Fund, a Public Fund, a Pooled Fund and/or a Managed Account may be an associate of the Filer, or an affiliate of the Filer, that is a responsible person, and/or an investment counsel in respect of the portfolio, in respect of another Fund and/or another Managed Account.
6. A responsible person, or an associate of a responsible person, of the Filer, or an affiliate of the Filer, may be an officer or a director of UBS AG in which a Pooled Fund may invest. UBS AG is a Swiss public company with its shares listed on the SWX Swiss Exchange, the New York Stock Exchange and the Tokyo Stock Exchange. UBS AG is a substantial securityholder of the Filer.
7. The Filer, or an affiliate of the Filer, has established, or will establish, an independent review committee (IRC) in respect of each NI 81-102 Fund and in respect of each Public Fund in accordance with the requirements of NI 81-107.
8. The Filer, or an affiliate of the Filer, will establish an IRC (which will likely also be the IRC in respect of the NI 81-102 Funds and the Public Funds) in respect of each Pooled Fund.
9. The mandate of the IRC of a Pooled Fund, among other things, will include approving purchases and sales of securities between the Pooled Fund and another Pooled Fund, an NI 81-102 Fund, a Public Fund and/or a Managed Account and approving purchases by a Pooled Fund of securities of UBS AG. The IRC of the Pooled Funds will be composed by the Filer, or an affiliate of the Filer, in accordance with the requirements of section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in section 3.9 of

2008 BCSECCOM 223

NI 81-107. Further, the IRC of the Pooled Funds will not approve purchases and/or sales of securities between a Pooled Fund, another Pooled Fund, a NI 81-102 Fund, a Public Fund and/or a Managed Accounts unless it has made the determination set out in section 5.2(2) of NI 81-107.

10. Purchases and sales of securities involving a NI 81-102 Fund and/or a Public Fund will be referred to the IRC of the NI 81-102 Fund and the Public Fund, respectively, under section 5.2(1) of NI 81-107 and will be subject to the requirements of section 5.2(2) of NI 81-107.
11. The investment management agreement or other documentation in respect of a Managed Account will contain the authorization of the client for the portfolio manager to purchase securities from and/or to sell securities to another Managed Account, a NI 81-102 Fund, a Public Fund and/or a Pooled Fund.
12. The Filer has determined that it would be in the interests of the NI 81-102 Funds, the Public Funds, the Pooled Funds and the Managed Accounts to receive the Requested Relief.
13. The Filer is unable to rely upon the exemption from the Inter-Fund Trading Prohibition and Investment Counsel Prohibition codified under s. 6.1(4) of NI 81-107 in connection with the Inter-Fund Trades with or between the Pooled Funds or the Managed Accounts. Inter-Fund Trades involving only NI 81-102 Funds or Public Funds will be conducted in accordance with the exemption codified under s. 6.1(4) of NI 81-107.
14. The Filer is unable to rely upon the exemption from the Substantial Securityholder Prohibition and the Related Person Securities Prohibition codified under s. 6.2(2) of NI 81-107 because that exemption does not apply to purchases by the Pooled Funds.

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 is that the Requested Relief is granted in respect of each Fund and each Managed Account provided that:

- (a) In respect of the Inter-Fund Trading Prohibition and the Investment Counsel Prohibition as they apply to an NI 81-102 Fund or a Public Fund trading with a Pooled Fund or a Managed Account:

2008 BCSECCOM 223

- (i) if the transaction is with a Pooled Fund, the IRC of the Pooled Fund has approved the transaction in respect of the Pooled Fund on the same terms as are required under section 5.2 of NI 81-107;
 - (ii) if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and
 - (iii) the transaction complies with paragraphs (b) to (g) of subsection 6.1(2) of NI 81-107.
- (b) In respect of the Inter-Fund Trading Prohibition and the Investment Counsel Prohibition as they apply to a Pooled Fund:
 - (i) the IRC of the Pooled Fund has approved the transaction in respect of the Pooled Fund on the same terms as are required under section 5.2 of NI 81-107;
 - (ii) if the transaction is with another Pooled Fund, a NI 81-102 Fund and/or a Public Fund, the IRC of the other Fund has approved the transaction in respect of the other Fund on the same terms as are required under section 5.2 of NI 81-107;
 - (iii) if the transaction is with a Managed Account the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and
 - (iv) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107.
- (c) In respect of the Inter-Fund Trading Prohibition and the Investment Counsel Prohibition as they apply to a Managed Account:
 - (i) The investment management agreement or other documentation in respect of the Managed Account authorizes the transaction, as does the investment management agreement or other documentation in respect of the other Managed Account, if the transaction is with another Managed Account;
 - (ii) if the transaction is with a Fund, the IRC of the Fund has approved the transaction in respect of the Fund on the same terms as are required under section 5.2 of NI 81-107; and

2008 BCSECCOM 223

(iii) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107.

(d) In respect of the Substantial Securityholder Prohibition and the Related Person Securities Prohibition as it applies to a Pooled Fund buying and/or selling securities of UBS AG:

(i) the IRC of the Pooled Fund, as applicable, has approved the transaction in respect of the Pooled Fund on the same terms as are required under section 5.2 of NI 81-107;

(ii) the transaction is consistent with, or is necessary to meet, the investment objective of the Pooled Fund; and

(iii) the transaction complies with paragraphs 6.2(1)(a)(ii) and 6.2(1)(b) of NI 81-107.

Wendell S. Wigle

David L. Knight

2008 BCSECCOM 223

Schedule A

Public Funds

UBS Global Allocation Trust

UBS Total Return Trust

2008 BCSECCOM 223

Schedule B

Pooled Funds

UBS (Canada) American Equity Fund
UBS (Canada) Balanced Fund
UBS (Canada) Bond Fund
UBS (Canada) Canada Plus Equity Fund
UBS (Canada) Canadian Equity Fund
UBS (Canada) Cash in Action Fund
UBS (Canada) Cash Management Fund
UBS (Canada) Diversified Fund
UBS (Canada) Dynamic Alpha Strategies Fund
UBS (Canada) Emerging Markets Equity Fund
UBS (Canada) Emerging Technologies Fund
UBS (Canada) Global Bond Fund
UBS (Canada) Global Equity Fund
UBS (Canada) Global Large Cap Equity Fund
UBS (Canada) Global Allocation Fund
UBS (Canada) International Equity Fund
UBS (Canada) International Large Cap Equity Fund
UBS (Canada) Long Term Bond Fund
UBS (Canada) Money Market Fund
UBS (Canada) Short Term Bond Fund
UBS (Canada) Small Capitalization Fund
UBS (Canada) U.S. \$ Cash Management Fund
UBS (Canada) U.S. Equity Fund
UBS (Canada) U.S. Growth Equity Fund
UBS (Canada) U.S. 130/30 Fund