

## **2002 BCSECCOM 480**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from certain disclosure statement and client consent requirements in National Instrument 81-105 for a registered representative's equity interest in a corporation that is a member of a group of mutual funds

### **Applicable British Columbia Provisions**

National Instrument 81-105, ss. 8.2(3), 8.2(4), 9.1

### **IN THE MATTER OF NATIONAL INSTRUMENT 81-105 MUTUAL FUND SALES PRACTICES**

**AND**

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

**AND**

### **IN THE MATTER OF DUNDEE SECURITIES CORPORATION**

### **MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authorities or regulators (the "Decision Makers") in the jurisdictions of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, the Yukon Territory, the Northwest Territories, and Nunavut have received an application from Dundee Securities Corporation ("Dundee") on behalf of its current and future representatives (the "Representatives") from time to time for a decision pursuant to section 9.1 of National Instrument 81-105 Mutual Fund Sales Practices ("NI 81-105") that the point of sale disclosure and consent requirements contained in subsections 8.2(3) and 8.2(4) of NI 81-105 shall not apply in respect of the equity interest of a registered representative of Dundee in ClaringtonFunds Inc. ("Clarington");

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Dundee has represented to the Decision Makers as follows:

1. Dundee is registered as an investment dealer in, and has offices and representatives located in, each of the provinces of Canada except for Prince

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Edward Island and may in the future become registered in all of the jurisdictions in Canada.

2. A registered representative of Dundee resident in Ontario and associated with the North York sub-branch of Dundee (the “Ontario Representative”) beneficially owns 1.57% of the outstanding shares of Clarington (the “Clarington Equity Interest”). The Ontario Representative is not an officer, director or branch manager of Dundee and does not otherwise have a position of influence over other registered representatives of Dundee.
3. Clarington is a member of the organization (as that term is defined in NI 81-105) of the Clarington group of mutual funds (the “Clarington Funds”). The Clarington Funds are, and will continue to be, sold in all provinces and territories of Canada under one or more simplified prospectuses.
4. No registered representative of Dundee, other than the Ontario Representative, holds shares of Clarington or has an equity interest (as defined in NI 81-105) of any other member of the organization of the Clarington Funds. The Ontario Representative does not have an equity interest in any other member of the organization of the Clarington Funds.
5. Subsection 8.2(3) of NI 81-105 would require of the Representatives of Dundee in all applicable jurisdictions of Canada to give those clients who wish to acquire units of the Clarington Funds a disclosure statement outlining the Ontario Representative’s Clarington Equity Interest. Subsection 8.2(4) of NI 81-105 would require each of the Representatives of Dundee to obtain a consent from any client wishing to acquire units of the Clarington Funds.
6. Dundee seeks an exemption from subsections 8.2(3) and 8.2(4) of NI 81-105 so that only the Ontario Representative and Dundee itself will be required to give the required disclosure statement to clients of the Ontario Representative who wish to acquire securities of the Clarington Funds. Similarly, only the Ontario Representative and Dundee will obtain the client’s consent before finalizing any acquisition by the client of units of the Clarington Funds.
7. Having regard to the size of the Clarington Equity Interest, the Ontario Representative’s registration status with Dundee and the large number of representatives of Dundee located across Canada, Dundee submits that compliance with subsections 8.2(3) and 8.2(4) of NI 81-105 would be unduly onerous and is not necessary in order to meet the policy underpinning section 8.2 of NI 81-105.

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AND WHEREAS pursuant to the System this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in NI 81-105 that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to section 9.1 of NI 81-105 is that Dundee and its Representatives are exempted from compliance with subsections 8.2(3) and 8.2(4) of NI 81-105 with respect to the Clarington Equity Interest of the Ontario Representative;

PROVIDED that in respect of such Clarington Equity Interest:

- (i) the Ontario Representative complies with the requirements of subsections 8.2(3) and 8.2(4) of NI 81-105;
- (ii) Dundee complies with the requirements of subsections 8.2(3) and 8.2(4) of NI 81-105 in connection with clients of Dundee who deal with the Ontario Representative; and
- (iii) in the event the Ontario Representative assumes a position of authority or supervision over other registered representatives of Dundee, those other registered representatives and Dundee comply with subsections 8.2(3) and 8.2(4) of NI 81-105.

DATED June 11, 2002.

Paul M. Moore

Howard I. Wetston