

# 2007 BCSECCOM 754

December 19, 2007

## **Headnote**

Mutual Reliance Review System for Exemption Relief Application –  
1996 Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - A person who resides outside 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 and its BC clients; 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; the BC client will obtain advice from and give all instructions through the BC registrant.

## **Applicable British Columbia Provisions**

*Securities Act*, ss. 34(1)(c) and 48

## **In the Matter of the Securities Legislation of British Columbia, Alberta and Manitoba (the Jurisdictions)**

**and**

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

**and**

## **In the Matter of Deutsche Asset Management Canada Limited (DAMC)**

## **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 DAMC on behalf of certain affiliates of DAMC that are resident outside Canada (Sub-Advisers) for an exemption from the requirements in the securities legislation of the Jurisdictions (the Legislation) to be registered as advisers (the Registration Requirement) to provide investment counselling and portfolio management services to certain clients of DAMC who reside in the Jurisdictions in which the Sub Advisers are not registered (the Registration Relief).

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Under the System,

1. the British Columbia Securities Commission is the principal regulator for this application;
2. 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 otherwise defined in this decision.

### **Representations**

- ¶ 3 This decision is based on the following facts as represented by DAMC:
1. DAMC is a corporation existing under the *Canada Business Corporations Act*, with its head office in Toronto, Ontario;
  2. DAMC is an indirectly wholly owned subsidiary of Deutsche Bank AG, a global investment bank with its headquarters in Germany;
  3. DAMC is registered under the Legislation as: a portfolio manager and investment counsel in British Columbia, a portfolio manager and investment counsel in Alberta, a portfolio manager in Manitoba, an investment counsel and portfolio manager and limited market dealer in Ontario, and under the *Commodity Futures Act* (Ontario) as a commodity trading counsel and commodity trading manager;
  4. DAMC provides investment counselling and portfolio management services to its clients resident in the Jurisdictions and other Jurisdictions under the conditions of its registration in each Jurisdiction;
  5. DAMC intends to offer the investment counselling and portfolio management services of the Sub-Advisers to institutional clients resident in the Jurisdictions (Clients) who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Advisers have experience and expertise;
  6. the Sub-Advisers will not be residents of Canada;
  7. all Sub-Advisers will be affiliates of DAMC; for this purpose, an affiliate means any entity that is controlled by Deutsche Bank AG and “control” and any derivation thereof means the possession, directly or indirectly, of the power to direct or significantly influence the management and

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policies/business or affairs of an entity whether through ownership of voting securities or otherwise;

8. each Sub-Adviser is, or will be, registered, licensed or otherwise qualified under applicable laws in the foreign jurisdiction where its head office is located to provide investment counselling and portfolio management services;
9. each Client will enter into an investment management agreement (IMA) with DAMC which:
  - (a) provides DAMC with complete discretionary authority to purchase and sell securities on behalf of the Client, and
  - (b) authorizes DAMC to delegate its discretionary authority over all or a portion of the Client's assets to one or more of the Sub-Advisers;
10. DAMC will agree under the IMA to be responsible for any loss arising directly out of the failure of a Sub Adviser:
  - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of DAMC and the 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,and acknowledges that it cannot be relieved by Clients from this responsibility (collectively, the Assumed Obligations);
11. DAMC will be responsible for providing the Clients all applicable reports and statements required under the Legislation;
12. DAMC will enter into a separate agreement with each Sub Adviser which will set out the obligations of each party in connection with the investment counselling and portfolio management services provided to each Client and under which the Sub Adviser will agree to act as a Sub Adviser to DAMC for the benefit of Clients; such agreement will permit DAMC to exercise the degree of supervision and control it is required to exercise over what the Sub Advisers do for the Clients;
13. if there is any direct contact between a Client and a Sub-Adviser, a representative of the Applicant, duly registered to provide portfolio

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management and investment counselling services for securities in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;

14. each Sub-Adviser who provides investment counselling and portfolio management services with respect to the assets of Clients would be considered to be acting as an “adviser” within the meaning of the Legislation, and in the absence of the Registration Relief, would be subject to the Registration Requirement unless otherwise exempt; and
15. there are no exemptions from the registration requirement that the Sub Advisers may rely on to provide investment counselling and portfolio management services to the Clients.

### **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 Registration Relief be granted provided that:

1. the obligations and duties of each of the Sub-Advisers are set out in a written agreement with DAMC;
2. DAMC contractually agrees with each Client that DAMC will be responsible for the Assumed Obligations;
3. DAMC cannot be, and at no time is, relieved of the Assumed Obligations by Clients;
4. each Sub-Adviser not resident in Canada will be licensed, registered or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the foreign jurisdiction in which it is located to provide discretionary portfolio management services;
5. DAMC is registered under the Legislation as an adviser in the category of portfolio manager or its equivalent in good standing in the Jurisdictions in which Clients are resident;
6. if there is any direct contact between a Client and a Sub-Adviser, a representative of DAMC, duly registered to provide portfolio management and

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investment counselling services in the Jurisdiction where the Client is resident will be present at all times, either in person or by telephone; and

7. in Manitoba, the relief from the Registration Requirement, is available only to Sub-Advisers who are not registered in any Canadian Jurisdiction.

*“Sandy Jakab”*

Sandra Jakab

Director, Capital Markets Regulation

British Columbia Securities Commission