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Headnote

Mutual Reliance Review System for Exemptive Relief Application – mutual fund sales representatives exempted from the prohibition against paying rebates to clients who switch from third party mutual funds to mutual funds managed by affiliate of mutual fund dealer

Applicable British Columbia Provisions

National Instrument 81-105 *Mutual Fund Sales Practices*, ss. 7.1, 9.1

IN THE MATTER OF NATIONAL INSTRUMENT 81-105 MUTUAL FUND SALES PRACTICES (“NI 81-105”)

AND

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

AND

IN THE MATTER OF ING WEALTH MANAGEMENT INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Ontario and Nova Scotia (the “Jurisdictions”) has received an application from ING Wealth Management Inc. (“ING WMI”) on its own behalf, and on behalf of its representatives from time to time, for a decision pursuant to section 9.1 of NI 81-105 that the prohibition against certain rebates of redemption commissions or fees shall not apply to rebates payable by representatives of ING WMI to clients who switch their investments from third party funds to mutual funds managed by an affiliate of ING WMI;

AND WHEREAS the Bureau des services financiers of Québec has been notified of such application;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

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AND WHEREAS ING WMI has represented to the Decision Makers as follows:

1. ING WMI is a corporation established under the laws of Canada. ING WMI is registered under the securities laws of each of the Jurisdictions in the category of mutual fund dealer except Ontario where ING WMI is also registered as a limited market dealer and except Québec where it is registered under the Act respecting the distribution of financial products and services as a firm in the categories of group saving plans brokerage, investment contracts brokerage and financial planning.
2. ING WMI is a wholly owned subsidiary of ING Canada Inc. (“ING Canada”). ING Investment Management, Inc. (“ING IM”) is the manager of the ING families of mutual funds, comprised of the ING Funds and the Ensemble Portfolios (individually or collectively, the “ING Funds”). ING Canada and ING IM are wholly owned subsidiaries of ING Canada Holdings Inc., which itself is an indirect subsidiary of ING Groep N.V.
3. ING WMI is an affiliate of ING IM and is therefore a “member of the organization” of the ING Funds pursuant to NI 81-105.
4. All ING Funds are available either on the basis of a sales charge or redemption charge option. When an investor purchases units of an ING Funds on a redemption charge basis, the investor does not pay a sales charge at the time of purchase. Under the redemption charge or low-load redemption charge option, a redemption charge, which diminishes annually as a percentage of the original cost of the ING Funds units so purchased, applies to redemptions, subject to an annual free redemption allowance of a prescribed number of units as disclosed in the prospectus of the ING Funds.
5. ING WMI is a participating dealer in the distribution of most mutual funds in Canada, including the ING Funds, and is not a principal distributor for the ING Funds.
6. Paragraph 7.1(1)(b) of NI 81-105 prohibits the representatives of ING WMI from paying rebates to clients who switch their investments from third party funds to an ING Fund.
7. The decision to pay rebates to clients will be made by the representatives based on the best interests of the particular client.
8. ING WMI does not provide any incentive to its representatives to recommend units of the ING Funds or any other securities or units of a mutual fund family over those of another mutual fund family.

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9. No representative of ING WMI has an equity interest in ING WMI or any other member of the organization of the ING Funds.
10. Unless the exemption applied for is granted, a client who effects an early redemption of mutual fund securities or units that are subject to a redemption charge and who uses the proceeds thereof to purchase units of an ING Fund could not have the benefit of a rebate from an ING WMI representative, while a client who uses the proceeds of such redemption to purchase securities or units of a mutual fund unrelated to ING WMI could have the benefit of a rebate from the ING WMI representative.

AND WHEREAS under 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 Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under subsection 9.1(1) of NI 81-105 is that the present and future representatives of ING WMI shall be exempt from the prohibition contained in clause 7.1(1)(b) of NI 81-105 against the payment of certain rebates to the extent necessary to permit rebates to be paid by such representatives to clients who purchase ING Funds units following a redemption of securities or units of another mutual fund that is unrelated to ING WMI, provided that, in respect of each rebate to be paid by an ING WMI representative to a client:

- (a) the cost of such rebate will be borne by the representative, and no direct or indirect reimbursement or other compensation will be payable by ING WMI or any other member of the organization of the ING Funds to the representative,
- (b) the representative and ING WMI will comply with the provisions of clause 7.1(1)(a) of NI 81-105;
- (c) ING WMI will comply with the disclosure and consent provisions of Part 8 of NI 81-105;
- (d) the clients of ING WMI will be advised by the representative, in advance, that any rebate proposed to be made available by a representative in connection with the purchase of units of the ING Funds:

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- (i) will be available to the client regardless of whether the redemption proceeds are invested in an ING Fund or a third party fund (to the maximum of the commission earned by the representative on the purchase); and
- (ii) will not be conditional upon the purchase of units of an ING Fund;
- (e) ING WMI representatives are not, and shall not be in the future, subject to quotas (express or implied) in respect of the distribution of the ING Funds and shall continue to be entitled to offer competing third party funds to their clients;
- (f) except as permitted by NI 81-105, neither ING WMI nor any of its affiliates shall provide any incentive (express or implied) to any representative for recommending the ING Funds over third party funds; and
- (g) the amount of the rebate that is borne by a representative shall be determined by the representative and the client;

AND PROVIDED FURTHER that this Decision shall cease to be operative with respect to a Decision Maker following the entry into force of a rule of that Decision Maker which replaces or amends section 7.1 of NI 81-105.

DATED June 27, 2003.

Robert L. Shirriff

Robert Korthals