

2006 BCSECCOM 315

August 4, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered dealer wants an exemption from delivering confirmation statements to clients - The client's account is fully managed by the dealer; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; trades in the account are only made on the client's adviser's instructions; the client agreed in writing that confirmation statements will not be delivered to them; confirmations are provided to the client's adviser; the client is sent monthly or quarterly statements that include the confirmation information.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1)(a) and 48

Securities Rules, B.C. Reg. 194/97, ss. 36 and 80(1)

**In the Matter of the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec,
New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward
Island, Northwest Territories, Nunavut, and Yukon**

and

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

and

In the Matter of Royal Mutual Funds Inc.

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut, and Yukon (the **Jurisdictions**) has received an application from Royal Mutual Funds Inc. (the **Applicant**) for a decision pursuant to the securities legislation of the Jurisdictions (the **Legislation**), that the provisions (the **Trade Confirmation Requirement**) contained in the Legislation that require a registered dealer who has acted as

2006 BCSECCOM 315

principal or agent in connection with a trade in a security to promptly send or deliver to the customer a written confirmation (a **Trade Confirmation**) of the transaction setting out certain information specified in the Legislation, shall not apply to the Applicant in respect of trades in securities of the Funds in connection with the Product (as defined and described below) distributed by the Applicant.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission has acted as the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

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

1. The Applicant is registered under the Legislation as a dealer in the category of mutual fund dealer or the equivalent.
2. RBC AM is registered under the Legislation as an adviser in the categories of investment counsel and portfolio manager or the equivalent.
3. The Applicant and RBC AM are affiliated entities.
4. The Applicant's salespersons propose to distribute the RBC Managed Portfolios (the **Product**) to their clients.
5. The Product consists of a number of model portfolios (the **Model Portfolios**), which together occupy successive portions of the investing spectrum from conservative, income-maintenance investing to aggressive growth investing. Each Model Portfolio is made up exclusively of units of RBC Private Pools or RBC Funds.
6. Any of the RBC Private Pools or RBC Funds that currently exist or that may be created in the future (the **Funds**) and that are used in the Program is and will be qualified under a simplified prospectus that has been receipted by the applicable securities regulators under the Legislation.

2006 BCSECCOM 315

7. If a client is interested in the Product, the client completes an investor profile form (the **Form**). The Form is used by the Applicant as a “know your client” form, to enable the Applicant to consider the client’s financial circumstances, investment knowledge, investment objectives and risk tolerance, and thereby assist in determining an appropriate Model Portfolio for the client. From and based on the information provided in the Form, the Applicant recommends one of the Model Portfolios as suitable for the client.
8. The client receives a description of the Model Portfolio selected by the client (the **Selected Model Portfolio**), completes the account application and enters into an agreement (the **Account Agreement**) with the Applicant.
9. The series of units of the Funds that are available under the Program enable management fees to be paid by the Applicant to RBC AM, as manager of the Funds, pursuant to an advisory agreement (the **Advisory Agreement**) between RBC AM and the Applicant. No management fees will be charged by RBC AM directly to the Funds or to the clients. No sales charges or trailing commissions will be payable in respect of any sales, redemptions or fund switches, and each Fund would pay its own operating expenses. As a result, there will be no duplication of any fees.
10. The client agrees to pay the Applicant a monthly fee outlined in the Account Agreement, which fee will be based on the net asset value of the client’s account and not on transactions effected in the client’s account. Fees could be changed from time to time, provided clients are given at least 30 days’ advance written notice.
11. The Account Agreement authorizes the Applicant to permit RBC AM, pursuant to the Advisory Agreement, to invest client monies in accordance with the terms of the Selected Model Portfolio.
12. Pursuant to the Advisory Agreement, RBC AM is responsible for developing and managing the Model Portfolios. Each Model Portfolio is broken down into different asset classes (**Asset Classes**). Each Asset Class is allocated a permitted range (**Permitted Range**), being a minimum and maximum percentage of the Model Portfolio that can be allocated to Funds of a particular Asset Class. The Asset Classes and Permitted Ranges are disclosed to the client in the Selected Model Portfolio and cannot be changed without the client’s prior approval.
13. RBC AM manages the Model Portfolios on a discretionary basis. In doing so, RBC AM determines a benchmark percentage (**Benchmark Percentage**) for each Asset Class, representing the target percentage within the Permitted

2006 BCSECCOM 315

Range, and adjusts that percentage at its discretion. RBC AM also uses its discretion in choosing which Funds will be used for each Asset Class, provided the involvement objective and strategies of any Fund are consistent with the Asset Class and any such Funds are listed in the Selected Model Portfolio for the client. RBC AM's actions will be carried out with a view to ensuring that the Model Portfolio continues to abide by the stated objectives. The above activities are herein defined as the **Investment Activities**.

14. The Account Agreement provides that the client will not receive Trade Confirmations for the trades carried out in connection with the Product, and that RBC AM will send the client a quarterly statement of account which will identify the assets being managed on behalf of the client through the Product, and include, for each trade made during the period, the information which the Applicant would otherwise have been required to include in a Trade Confirmation in accordance with the Trade Confirmation Requirement, except for the following information (which will be maintained by RBC AM in its books and records and made available to the client upon request):
 - (i) the name of the dealer, if any, used by RBC AM as its agent to effect the trade; and
 - (ii) the name of the salesperson, if any, in the trade.
15. All trades in connection with the Product will be reflected in the client's account on the day following the trade, and will also be reflected in the trade blotter to be shared by the Applicant and RBC AM in connection with the Product.
16. RBC AM is responsible for ensuring that the client monies are invested in accordance with the terms of the Selected Model Portfolio. Notwithstanding that there is no direct relationship between the client and RBC AM, the client will be entitled to treat RBC AM as if RBC AM were a party to the Account Agreement with respect to its responsibilities in this regard.
17. The client is provided with a simplified prospectus for the Funds on an annual basis. In addition, if and when new Funds are created and qualified under the simplified prospectus, and are intended to be used in the Model Portfolio, the Applicant will provide clients of the Model Portfolio with a new or amended simplified prospectus which includes those new Funds prior to investing any of the Model Portfolio in such Funds.

2006 BCSECCOM 315

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 under the Legislation is that the Applicant is exempt from the Trade Confirmation Requirement under the Legislation in connection with the trades carried out in connection with the Product, provided that the Account Agreement discloses that the client will not receive Trade Confirmations for such trades, and that they will receive quarterly statements from RBC AM.

Paul M. Moore
Commissioner
Ontario Securities Commission

Harold P. Hands
Commissioner
Ontario Securities Commission