

# 2005 BCSECCOM 111

February 3, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 Insiders - Exemption from the requirement to file insider reports - An issuer wants relief from the requirement to file insider reports for certain employees in relation to trades of securities of the issuer and/or in respect of trades of securities of reporting issuers of which the issuer is an insider - The employees are “vice-presidents”, or persons acting in a similar capacity, but are not in charge of a principal business unit or “major subsidiary” of the issuer; they do not in the ordinary course receive or have access to undisclosed material information about the issuer or the reporting issuers of which the issuer is an insider; they are not insiders of the issuer in any other capacity; the issuer will comply with the requirements contained in CSA Staff Notice 55-306 except that it will not file the initial list of the vice-presidents who will be relying on the Decision; the issuer will, upon request, make available to the regulators a list of all individuals who are relying on the Decision at the time of the request

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 87, 91

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

and

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

and

In the Matter of GMP Capital Corp. (the Filer)

## MRRS Decision Document

## **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting insiders of the Filer who satisfy the Exempt Officer Criteria (as defined below) from the

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insider reporting requirements of the Legislation, subject to certain conditions (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is 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 Filer:

1. The Filer is a corporation organized under the *Canada Business Corporations Act*, with its head office located at 145 King Street West, Suite 1100, Toronto, Ontario M5H 1J8.
2. The Filer is, through its wholly-owned subsidiary, GMP Securities Ltd. (GMP Securities), an independent Canadian investment dealer.
3. The Filer is a reporting issuer in all of the provinces and territories of Canada and its common shares are listed on the Toronto Stock Exchange. To the best of its knowledge, the Filer is not in default of any requirements under the Legislation.
4. GMP Securities and Griffiths McBurney Corp. (Griffiths) (collectively, the GMP Major Subsidiaries) are, as at January 31, 2004, the only “major subsidiaries” of the Filer within the meaning of National Instrument 55-101 – *Exemption from Certain Insider Reporting Requirements* (NI 55-101).
5. Currently, the Filer has approximately 76 persons who are “insiders” of the Filer under the Legislation by reason of being a director or senior officer of the Filer or a major subsidiary of the Filer (the Insiders).
6. None of the Insiders is exempt from the insider reporting requirements contained in the Legislation by reason of an existing exemption such as NI 55-101 or a previous decision or order.
7. The Filer has made this application to seek the Requested Relief in respect of approximately 63 Insiders who, in the opinion of the Chief Financial Officer

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(the CFO) and Chief Compliance Officer (the CCO) of the Filer, satisfy the Exempt Officer Criteria (as defined below).

8. The CFO and CCO of the Filer considered the job requirements and principal functions of the Insiders to determine which of them met the definition of “nominal vice president” contained in Canadian Securities Administrators Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents* and has compiled a list of those Insiders who, in the opinion of the CFO and the CCO, meet the criteria set out in the Staff Notice (the Exempted Officers).
9. Each of the Exempted Officers satisfies the following criteria (the Exempt Officer Criteria):
  - (a) the individual holds a title that consists of or includes the term “vice-president” or holds an analogous title, such as, for example, Managing Director, Director or Senior Vice-President (for greater certainty, an individual holding the title of “Managing Director” or “Director” is considered to be a “senior officer” and does not sit on the board of directors of the Filer or a major subsidiary of the Filer);
  - (b) the individual is not in charge of a principal business unit, division or function of the Filer or any of the GMP Major Subsidiaries;
  - (c) the individual does not in the ordinary course receive or have access to information as to material facts or material changes concerning the Filer before the material facts or material changes are generally disclosed; and
  - (d) the individual is not an insider of the Filer in any other capacity.
10. The CFO and the CCO of the Filer will assess any future employee of the Filer or of the GMP Major Subsidiaries who has the title of vice president or an analogous title on the same basis as set out above, and will re-assess all Exempted Officers who experience a change in job requirements or functions, to determine if such individuals meet, or continue to meet, the Exempt Officer Criteria.
11. If an individual who is designated as an Exempted Officer no longer satisfies the Exempt Officer Criteria, as a result of which the individual is subject to a renewed obligation to file insider reports, the Filer will immediately inform such individual of such renewed obligation.

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12. The Filer has developed a policy concerning confidentiality, fair disclosure and trading in securities which contains procedures and guidelines governing trading that apply to all employees of the GMP Group, including the Insiders (the Trading Policy). The Trading Policy applies to trading in securities of the Filer or other issuers in respect of which employees of the GMP Group may receive material, non-public information while representing the GMP Group (Special Relationship Issuers). The CFO together with the CCO of the Filer have been charged with responsibility for the administration of the Trading Policy.
13. The Filer has filed with the Decision Makers a copy of the Trading Policy.

### **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 this decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the Filer agrees to make available to the Decision Makers, upon request, a list of all individuals who are relying on the exemption granted by this decision as at the time of the request; and
- (b) the relief granted under this decision will cease to be effective on the date when NI 55-101 is amended.

Paul Moore  
Commissioner  
Ontario Securities Commission

Theresa McLeod  
Commissioner  
Ontario Securities Commission