

# 2007 BCSECCOM 165

April 10, 2007

## **Headnote**

1996 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; the client agrees that the confirmation statements will not be delivered to them; the client is sent monthly statements that include the confirmation information (except for the Omitted Information); the dealer will maintain the Omitted Information in its records and make this information available to clients upon request.

## **Applicable Legislative Provisions**

*Securities Act*, RSBC 1996, s. 48

**In the Matter of the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,  
Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador,  
Yukon Territory, Northwest Territories and Nunavut  
(the Jurisdictions)**

**and**

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

**and**

**In the Matter of  
HSBC Securities (Canada) Inc. (the Filer)**

## **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 the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirements of the Legislation that a registered dealer send a written confirmation of any trade in securities (the Trade Confirmation Requirement) from transactions that the Filer conducts on behalf of its clients (Participating

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Clients) with respect to a managed account program (the Diamond Portfolios Platform) (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**

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

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a dealer registered under the Legislation in the categories of broker and investment dealer, or the equivalent thereof, in the Jurisdictions, is a member of the Investment Dealers Association of Canada (the IDA) and has its head office in Ontario;
  2. the Filer provides investment dealer and portfolio management services to individuals and corporate clients resident in the Jurisdictions and other jurisdictions where it is qualified to provide such services;
  3. accounts under the Diamond Portfolios Platform (each a Diamond Portfolios Account) are 'managed accounts' as defined under Regulation 1300 of the IDA and the Filer complies with the applicable IDA requirements with respect to managed accounts;
  4. to participate in the Diamond Portfolios Platform, each Participating Client enters into a written Managed Account Agreement (MAA) with the Filer setting out the terms and conditions, and the respective rights, duties and obligations of the parties, regarding the Diamond Portfolios Platform in a form of agreement approved by the IDA;
  5. For each Participating Client, the Filer:
    - (a) makes inquiries to learn the essential facts about each Participating Client, to determine the general investment needs and objectives of, the appropriateness of the recommendations made to and the suitability of

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proposed transactions for the Participating Client, and to otherwise comply with the “know your client” obligations under the Legislation, and provides the information to each Sub-Adviser (defined below) who exercises discretionary authority over the assets of the Participating Clients; and

- (b) sends quarterly statements and performance reports prepared by the Filer.
6. For each Participating Client, the Filer opens a Diamond Portfolios Account which is separate and distinct from any other accounts the Client may have through the Filer; under the MAA:
- (a) the Participating Client grants full discretionary authority to the Filer to make investment decisions and to trade in securities on behalf of the Participating Client without obtaining the specific consent of the Participating Client to individual trades, provided such investment decisions are made in accordance with the information obtained by the Filer referred to in paragraph 5 hereof; and
  - (b) authorizes the Filer to delegate its discretionary authority over all or a portion of the Participating Client's assets to foreign portfolio managers and Canadian portfolio managers (collectively, the Sub-Advisers, each a Sub-Adviser).
7. under the MAA, the Filer or another recognized securities custodian acts as custodian of the securities and other assets in each Diamond Portfolios Account; furthermore, each Participating Client acknowledges and agrees that securities transactions in such Participating Client's Diamond Portfolios Account will generally be executed through the Filer; unless a Participating Client requests otherwise, each Participating Client waives under the MAA receipt of all trade confirmations in respect of securities transactions conducted through the Filer for a Diamond Portfolios Account; each Participating Client agrees to pay a fee to the Filer based on the assets of such Participating Client's Diamond Portfolios Account at the end of each quarterly period; such fees include all professional or other fees of the participating Sub-Advisers, as well as custodial, transaction and brokerage fees and commissions and is not based on the volume or value of the transactions effected in the Participating Client's Account; the fees are not intended to cover charges for minor items such as wire transfer requests, account transfers, withdrawals, de-registration and other administrative services (Administrative Charges); the Filer provides a list of Administrative Charges information to all Clients;

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8. the Filer provides to each Participating Client a monthly statement of account with respect to such Participating Client's Diamond Portfolios Account as required under the Legislation, including a list of all transactions undertaken in the Diamond Portfolios Account during the period covered by that statement and a statement of portfolio for the Diamond Portfolios Account at the end of such period;
9. the Filer provides trade confirmations required under the applicable Legislation to the Sub-Advisers directing a trade on behalf of Participating Clients through its Abacus system; Sub-Advisers are able to access trade confirmations electronically in a contemporaneous fashion as trades occur and run reports evidencing trade confirmations when desired;
10. The monthly statement of account will identify the asset being managed on behalf of the Participating Client including for each trade made during that month the information that the Filer would otherwise have been required to provide to that Participating Client in a trade confirmation in accordance with the Legislation, except for the following information (collectively, the Omitted Information):
  - (a) the stock exchange or commodity futures exchange upon which the trade took place;
  - (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
  - (c) the name of the salesman, if any, in the transaction;
  - (d) the name of the dealer, if any, used by the Filer or the Sub-Adviser as its agent to effect the trade; and
  - (e) if acting as agent in a trade upon a stock exchange, the name of the person or company from or to or through whom the security was bought or sold.
11. the Filer will maintain the Omitted Information with respect to a Participating Client in its books and records and will make the Omitted Information available to the Participating Client upon request;
12. the Filer performs daily reviews of all Diamond Portfolios Account transactions in respect of suitability;

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13. the Filer cannot rely on any Trade Confirmation Requirement exemption in the Legislation and, in the absence of the requested relief, would be subject to the Trade Confirmation Requirement in the Jurisdictions; and
14. IDA Regulation 200.1(h) prescribes circumstances in which the IDA permits the suppression of trade confirmations in respect of managed accounts (the IDA Trade Confirmation Exemption), which circumstances are satisfied in respect of the Diamond Portfolios Platform.

### **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 Requested Relief is granted provided that:

- (a) the Participating Client has previously informed the Filer that the Participating Client does not wish to receive trade confirmations for the Participating Client's Diamond Portfolios Account; and
- (b) in the case of each trade for a Diamond Portfolios Account under the Diamond Portfolios Platform, the Filer sends to the Participating Client the corresponding statement of account that includes the information referred to in paragraph 10.

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission

David L. Knight  
Commissioner  
Ontario Securities Commission