

2005 BCSECCOM 47

January 20, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 48 Adviser -Exemption from requirement to be registered as an adviser and from adviser requirements, 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 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.

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 48 Dealer -Exemption from dealer requirements; exemption from delivering confirmation statements; 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 statements that include the confirmation information.

Applicable British Columbia Provisions

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

Securities Rules, B.C. Reg. 194/97, ss. 36(3) and 80(1)

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

and

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

and

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In the Matter of First Associates Investments Inc. (Filer)

MRRS Decision Document

Background

¶ 1 The local securities regulatory authority or regulator (Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (Legislation) for an exemption from the requirement in the Legislation:

- (a) except in Ontario and Québec, to be registered as an adviser for certain portfolio managers (Sub-Advisers) who provide portfolio management services to the Filer for the benefit of the Filer and the Filer's clients (Clients) in Jurisdictions where the portfolio managers are not registered (Registration Relief); and
- (b) to provide Clients with a written confirmation of the trade setting out certain information specified in the Legislation with respect to transactions under a managed account program (IMA Platform) created by the Filer (Confirmation Relief).

Under the System

- (a) the British Columbia 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 otherwise defined in this decision.

Representations

¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer is registered under the Legislation as a dealer in the category of investment dealer, or equivalent, and is a member of the Investment Dealers Association of Canada (IDA);
2. the Filer is authorized to act as an adviser, without registering as an adviser, under exemptions in the Legislation;

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3. the Filer proposes to offer Clients a discretionary asset management service through which they may invest in a portfolio of securities based on the advice of recognized Canadian and non-Canadian portfolio managers through arrangements the Filer has made with the Sub-Advisers;
4. to participate in the IMA Platform, the Client will
 - (a) open a managed account (IMA Account) that is separate from any other account the Client has with the Filer;
 - (b) enter into a written agreement (IMA Agreement) with the Filer setting out the terms and conditions, and the rights, duties and obligations of the parties, regarding the IMA Account; and
 - (c) provide sufficient information regarding the Client's investment objectives, preferences and restrictions from which the Filer will develop, along with the Client, a written investment policy statement and investor profile;
5. the Filer will assist the Client in selecting one or more model portfolios provided by one or more Sub-Advisers, according to
 - (a) the Client's investor profile; and
 - (b) the expertise and investment style of the Sub-Adviser;
6. under the IMA Agreement,
 - (a) the Client will grant full discretionary authority over the assets in the Client's IMA Account to the Filer and the Filer will be authorized to make investment decisions and trades in securities for the IMA Account;
 - (b) the Client will acknowledge and agree that securities transactions in the Client's IMA Account will be executed through the Filer;
 - (c) the Filer or another recognized securities custodian will act as custodian of the securities and other assets in the IMA Account;
 - (d) the Client will agree to pay a non-transactional fee to the Filer based on a fixed percentage of the market value of the Client's IMA Account at the end of each quarterly period, which fee will include all custodial, reporting, transaction and brokerage fees and commissions; and

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- (e) unless otherwise requested, the Client will waive receipt of trade confirmations as required under applicable Legislation;
- 7. the Filer will send to the Client a monthly statement of account which identifies the assets of the Client being managed through the IMA Account, and includes, for each trade during the period, the information required under the trade confirmation requirement in the Legislation, except
 - (a) the day and the stock exchange on which the trade took place;
 - (b) the fee or other charge, if any, in connection with the trade;
 - (c) the name of the salesperson, if any, in the transaction;
 - (d) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and
 - (e) if acting as agent, the name of the person or company from or to or through whom the security was bought or sold,

(Omitted Information);
- 8. the Filer will maintain the Omitted Information in its books and records and make the Omitted Information available to the Client on request;
- 9. under the IMA Agreement, the Filer will be responsible for any loss that arises out of the failure of a Sub-Adviser to exercise
 - (a) the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Clients; or
 - (b) 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 its Clients from this responsibility (collectively, Assumed Obligations);
- 10. to participate in the IMA Platform, each Sub-Adviser will enter into a written agreement (Sub-Adviser Agreement) with the Filer setting out the terms and conditions, and the respective rights, duties and obligations of the parties;
- 11. under the Sub-Adviser Agreement, the Sub-Adviser will

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- (a) provide to the Filer a model portfolio of securities which is consistent with the mandate established by the Filer;
 - (b) communicate appropriate trading recommendations to the Filer with respect to the model portfolio of securities (including, where necessary, explaining the rationale for the transactions); and
 - (c) otherwise participate or assist the Filer in providing periodic performance reports or other related information to the Clients;
12. Clients will not have direct contact with the Sub-Advisers, and will obtain all advice and information, and give all instructions and directions, through the Filer;
13. the Filer will effect trades in IMA Accounts at its discretion, despite receiving trading recommendations from the Sub-Advisers;
14. each Sub-Adviser will be licensed, qualified or registered as a portfolio manager, investment counsel, or equivalent, under the
- (a) Legislation in its home Jurisdiction if a Canadian resident; or
 - (b) under the legislation in its home jurisdiction if not a Canadian resident,
- to provide discretionary investment counselling and portfolio management services to the Filer for the benefit of the Filer and Clients as contemplated by the IMA Platform;
15. Sub-Advisers who are not registered in Ontario will not be required to register as advisers under the *Securities Act* (Ontario) as they can rely on the exemption from registration in section 7.3 of Ontario Rule 35-502 *Non-Resident Advisers*; and
16. Sub-Advisers who are not registered in Québec will not be required to register as advisers under the *Securities Act* (Québec) as they can rely on the exemption from registration in section 157 of the *Securities Act* (Québec).

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.

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The decision of the Decision Makers under the Legislation is that

- (a) except in Ontario and Québec, the Registration Relief is granted provided that
 - (i) the obligations and duties of each Sub-Adviser are set out in a written agreement with the Filer;
 - (ii) the Filer contractually agrees with each Client that it will be responsible for the Assumed Obligations;
 - (iii) the Filer is not relieved of the Assumed Obligations by Clients;
 - (iv) the Filer is registered under the Legislation as an investment dealer, or equivalent, in the Jurisdictions where Clients are resident; and
 - (v) in Manitoba, the relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction; and
- (b) the Confirmation Relief is granted provided that
 - (i) the Client has previously informed the Filer that the Client does not wish to receive trade confirmations for the Client's IMA Account; and
 - (ii) in the case of each IMA Account trade, the Filer sends to the Client the corresponding statement of account that includes the information for the trade referred to in this decision.

L.E. Evans, C.A.
Director
British Columbia Securities Commission