

# 2006 BCSECCOM 746

December 12, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - Issuer wants relief from self-dealing requirements and conflict of interest reporting requirements in connection with mutual fund mergers - One of the funds that is merging is a non-redeemable investment fund or non-reporting issuer; if both funds were conventional mutual funds to which NI 81-102 applies, they would be able to rely on the exemption provided in NI 81-102; the self-dealing provisions only apply for a moment in time; the merger is required to be approved by unitholders of the terminating fund; unitholders of the terminating fund received an information circular for the unitholders meeting to approve the merger; the simplified prospectus and annual information form of the continuing fund was incorporated by reference in the information circular

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 127(1) and 130

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

and

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

and

In the Matter of  
AIC American Focused Plus Fund  
(the “AIC Alternative Fund”)

and

AIC American Focused Fund  
(the “AIC Mutual Fund”) (collectively, the “Funds”)

and

# 2006 BCSECCOM 746

AIC Investment Services Inc.  
(the “Applicant”)

## 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 Applicant for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, for the purpose of the merger transaction described below, the Applicant be exempt from the restriction contained in the Legislation prohibiting a portfolio manager, or in British Columbia, a mutual fund or a responsible person, from knowingly causing an investment portfolio managed by it to purchase or sell the securities of any issuer from or to the account of a responsible person, or any associate of a responsible person or the portfolio manager (collectively, 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 Applicant:

1. AIC Limited (“AIC”) intends to merge the AIC Alternative Fund and the AIC Mutual Fund (the “Proposed Merger”), which will involve the transfer of the assets and liabilities of the AIC Alternative Fund in exchange for units of the AIC Mutual Fund.
2. At the time the Proposed Merger is effected, AIC Investment Services Inc. (“AIS”) will be the “portfolio manager” for the Funds for purposes of the Legislation. As portfolio manager, AIS will be considered a “responsible person” for purposes of the Legislation.

## **2006 BCSECCOM 746**

3. The transfer of the investment portfolio of the AIC Alternative Fund to the AIC Mutual Fund by operation of the Proposed Merger may be considered a sale of securities caused by AIS from the AIC Alternative Fund to the account of an associate of AIS, contrary to the Legislation.
4. The AIC Mutual Fund is an “associate” of AIS due to the fact that AIC, an affiliate of AIS, is the trustee and manager of the AIC Mutual Fund.
5. Each of the Funds were established pursuant to a Declaration of Trust under the laws of the Province of Ontario and AIC is the trustee and manager of the Funds.
6. The AIC Mutual Fund distributes securities under a simplified prospectus, dated May 29, 2006, as amended. It is a reporting issuer, or equivalent, in the Jurisdictions. The AIC Alternative Fund is distributed pursuant to prospectus exemptions and is not a reporting issuer in any of the Jurisdictions. The AIC Alternative Fund prepares an offering memorandum that is available for investors in the AIC Alternative Fund.
7. The Applicant manages the portfolio of the AIC Alternative Fund in the same way it manages the portfolio of the AIC Mutual Fund.
8. Notice of the Proposed Merger was sent to the unitholders on November 10th, 2006, which included a summary of the principal Canadian federal income tax considerations of the merger for the AIC Alternative Fund and for investors in the AIC Alternative Fund.
9. It is anticipated that the following events will occur in order to give effect to the Proposed Merger:
  - The declaration of trust of the AIC Alternative Fund will be amended as required in order to implement the merger;
  - Prior to the date of the merger, securities in the portfolio of the AIC Alternative Fund will be liquidated to the extent they do not meet the investment objectives or restrictions of the AIC Mutual Fund;
  - The value of the AIC Alternative Fund and the AIC Mutual Fund will be determined immediately prior to the merger;

## 2006 BCSECCOM 746

- The AIC Alternative Fund will transfer all of its portfolio assets, less an amount required to satisfy the liabilities of the AIC Alternative Fund, to the AIC Mutual Fund in exchange for units of the AIC Mutual Fund;
  - The units of the AIC Mutual Fund received in exchange for the assets of the AIC Alternative Fund will have an aggregate net asset value equal to the value of the AIC Alternative Fund assets being exchanged and will be issued at the net asset value per unit of the AIC Mutual Fund determined immediately prior to the merger;
  - The AIC Alternative Fund will declare, pay and automatically reinvest a distribution to its unitholders of net capital gain and income (if any) so that it will not be subject to tax under Part I of the *Income Tax Act* (Canada) for its taxation year ending on the date of the merger;
  - Immediately thereafter, the AIC Alternative Fund will distribute its portfolio assets (which would consist solely of units of the AIC Mutual Fund) to its unitholders on a dollar-for-dollar basis so that they will become direct unitholders of the AIC Mutual Fund; and
  - Forthwith, the AIC Alternative Fund will be wound up.
10. The Proposed Merger has been proposed by AIC, as trustee and manager of the AIC Alternative Fund to increase flexibility for investors in the AIC Alternative Fund. The AIC Mutual Fund is a publicly available mutual fund with low minimums for initial or additional investments. Accordingly, following the Proposed Merger investors in the AIC Alternative Fund will have increased flexibility to make additional investments in the AIC Mutual Fund than currently permitted in respect of the AIC Alternative Fund, while maintaining similar investment objectives.
  11. The Proposed Merger will not proceed until December 15, 2006 and unitholders in the AIC Alternative Fund will be entitled to redeem units of the AIC Alternative Fund up to the end of business on December 15, 2006.
  12. No sales charges will be payable in connection with the acquisition by the AIC Mutual Fund of the investment portfolio of the AIC Alternative Fund and AIC will bear all costs relating to effecting the Proposed Merger.
  13. If approved, the Proposed Merger will be effected on a qualifying exchange basis that provides a tax-deferred rollover to unitholders of the AIC Alternative Fund. This will allow unitholders of the AIC Alternative Fund to

## 2006 BCSECCOM 746

defer any capital gain on the exchange of their units until they sell or redeem units of the AIC Mutual Fund.

14. In the opinion of the Applicant, the Proposed Merger is in the best interest of the AIC Alternative Fund and its unitholders.
15. In the absence of this order, AIS would be prohibited from purchasing and selling the securities of the AIC Alternative Fund in connection with the Proposed Merger.

### **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 Requested Relief is granted.

Wendell S. Wigle  
Ontario Securities Commission

David L. Knight  
Ontario Securities Commission