

2002 BCSECCOM 778

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - mutual fund sales representatives exempted from the prohibition against payment of rebates to clients who switch from third party mutual funds to mutual funds managed by affiliate of mutual fund dealer

Applicable British Columbia Provisions

National Instrument 81-105 *Mutual Fund Sales Practices*, ss. 7.1 and 9.1

IN THE MATTER OF NATIONAL INSTRUMENT 81-105 MUTUAL FUND SALES PRACTICES (“NI 81-105”)

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF AEGON DEALER SERVICES CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Prince Edward Island, (the “Jurisdictions”) has received an application from AEGON Dealer Services Canada Inc. (“ADSCI”) on behalf of itself and its current and future sales representatives (the “Representatives”) from time to time for a decision pursuant to section 9.1 of NI 81-105 that the prohibitions on certain rebates (“Rebates”) of redemption commissions or fees contained in paragraph 7.1(1)(b) of NI 81-105 shall not apply to Rebates paid by Representatives to clients who switch from Third Party Funds (defined below) to imaxxFunds (defined below) (the “Proprietary Rebates”);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS ADSCI has represented to the Decision Makers as follows:

1. ADSCI is registered as a mutual fund dealer in the Provinces of British Columbia, Prince Edward Island, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and Nova Scotia;

2002 BCSECCOM 778

2. AEGON Fund Management Inc. (“AFMI”) is the manager of the mutual funds known as the imaxxFunds (these mutual funds together with any mutual funds of which AFMI becomes manager in the future are referred to collectively as the “imaxxFunds”).
3. No Representative owns more than 10% of the outstanding voting or equity securities of ADSCI and no Representative owns any of the outstanding voting or equity securities of ADSCI;
4. ADSCI is an affiliate of AFMI and is therefore a “member of the organization” of the imaxxFunds pursuant to NI 81-105.
5. ADSCI is a participating dealer of the imaxxFunds as well as of other mutual funds not managed by AFMI (“Third Party Funds”);
6. Paragraph 7.1(1)(b) of NI 81-105 prohibits Representatives from paying Proprietary Rebates to clients who are switching from Third Party Funds to imaxxFunds;
7. The relief is being applied for in order to facilitate the Proprietary Rebates;
8. The decision to pay such Proprietary Rebates will be made by the Representatives based on the best interests of the particular client;
9. Representatives are not required by ADSCI or any of its affiliates to sell imaxxFunds to clients and do not have any quotas to sell imaxxFunds and are not provided with incentives by ADSCI (other than as permitted by NI 81-105) or any of its affiliates to sell imaxxFunds.

AND WHEREAS pursuant to the System this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in NI 81-105 that provides the Decision Maker with the jurisdiction to make the decision has been met;

THE DECISION of the Decision Makers pursuant to section 9.1 of NI 81-105 is that ADSCI is exempt from the prohibitions on payment of Rebates contained in paragraph 7.1(1)(b) of NI 81-105 to the extent necessary to allow Representatives to pay Proprietary Rebates;

PROVIDED that in respect of each such payment:

2002 BCSECCOM 778

- (i) ADSCI and the relevant Representative, as the case may be, complies with the informed written consent provisions of paragraph 7.1(1)(a) and the disclosure and consent provisions of Part 8 of NI 81-105;
- (ii) The Representative advises each client in advance that any Rebate proposed to be made available by a Representative in connection with the purchase of securities of imaxxFunds (a) will be available to the client regardless of whether the redemption proceeds are invested in an imaxxFund or a Third Party Fund (to a maximum of the commission earned by the Representative on the purchase), and (b) will not be conditional on a purchase of securities of the imaxxFunds;
- (iii) Representatives are not and shall not in the future be subject to quotas (either express or implied) in respect of the distribution of the imaxxFunds and shall continue to be entitled to offer competing Third Party Funds to their clients;
- (iv) Except as permitted by NI 81-105, neither ADSCI nor any of its affiliates shall provide an incentive (monetary or non-monetary) to any Representative to recommend the imaxxFunds over Third Party Funds;
- (v) The amount of the Proprietary Rebate that is borne by a Representative is determined by the Representative and the client; and
- (vi) The Representatives that pay the Proprietary Rebates are not and will not be reimbursed directly or indirectly for such payment by ADSCI or any of its affiliates.

AND PROVIDED FURTHER that this Decision shall cease to be operative with respect to a Decision Maker following the entry into force of a rule of that Decision Maker that replaces or amends section 7.1 of NI 81-105.

DATED at Toronto this 10th day of September, 2002

Robert W. Davis

H. Lorne Morphy