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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirement to be registered as an adviser in connection with providing certain proxy advisory services

Applicable British Columbia Provisions

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

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, ONTARIO,
PRINCE EDWARD ISLAND, QUEBEC, SASKATCHEWAN,
NORTHWEST TERRITORIES AND NUNAVUT**

AND

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

AND

**IN THE MATTER OF FAIRVEST CORPORATION AND
INSTITUTIONAL SHAREHOLDER SERVICES, INC.**

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from Fairvest Corporation (“Fairvest”) and Institutional Shareholder Services, Inc. (“ISS”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered as an advisor (the “Registration Requirements”) do not apply to Fairvest, ISS or their officers and employees;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;

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3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 or in Quebec Securities Commission Notice 14-101;
4. AND WHEREAS Fairvest and ISS have represented to the Decision Makers that:
 - 4.1. Fairvest is a corporation, incorporated under the Nova Scotia Companies Act and a wholly owned subsidiary of ISS, carrying on business as a proxy advisory service in which it provides proxy voting advice to institutional investors in Canada with respect to matters to be voted on at meetings of shareholders of issuers incorporated or organized in Canada;
 - 4.2. Fairvest advises its institutional clients with respect to their voting as shareholders of public issuers on issues presented to them in management proxy circulars in connection with annual and other shareholder meetings;
 - 4.3. Fairvest's advice is usually based on corporate governance considerations and is provided to its clients by electronic means;
 - 4.4. in some instances Fairvest undertakes to exercise voting rights on behalf of an institutional client in accordance with the client's proxy voting guidelines, in which case the voting is administered by employees of ISS in Rockville, Maryland;
 - 4.5. ISS is a Delaware Corporation with its head office in Rockville, Maryland, U.S.A., which provides similar proxy advisory services to institutional investors;
 - 4.6. Fairvest also provides its proxy advisory services under the ISS rubric to institutional clients of ISS;
 - 4.7. the majority of ISS's clients are institutional investors in the United States, including pension funds subject to the U.S. Employee Retirement Income Security Act of 1974 ("ERISA"), as a result of which ISS is subject to supervision by the U.S. Department of Labor with respect to services performed for such pension funds;
 - 4.8. ISS is registered as an investment adviser under the U.S. Investment Advisers Act of 1940 and is therefore also subject to supervision by the U.S. Securities and Exchange Commission ("SEC");

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- 4.9. apart from services performed by Fairvest for ISS's institutional clients, ISS provides its proxy advisory services with respect to shareholder issues relating to corporations incorporated in the United States, the United Kingdom, Europe, Japan and emerging markets;
- 4.10. most of the clients who receive these services are institutional investors in the United States, but a few of these clients are institutional investors in Canada, some of which are also clients of Fairvest;
- 4.11. Fairvest's institutional clients and ISS's institutional clients in Canada include public and private pension funds, managers of mutual funds and portfolio managers registered as advisors under applicable securities legislation, all of whom hold investment assets of at least \$100 million;
- 4.12. these institutional clients look to Fairvest or ISS for proxy voting advice with respect to corporate proposals coming before meetings of shareholders of issuers in which they hold securities, but not for advice with respect to investing in such issuers or the merits of such investments, as they have internal or external portfolio managers who perform their own investment analysis concerning investments or are themselves registered portfolio managers;
- 4.13. although a number of portfolio managers provide Fairvest or ISS with their corporate governance guidelines on the basis of which Fairvest or ISS may exercise proxies on their behalf, Fairvest and ISS do not consider their investment guidelines in providing services to them;
- 4.14. Fairvest also provides access to its proxy voting advice to a small number of subscribers who are interested in its voting recommendations for informational purposes;
- 4.15. in the course of their proxy advisory services, Fairvest and ISS sometimes provide advice on corporate transactions such as amalgamations, mergers and other types of reorganizations which may result in a trade in securities by their institutional clients;
- 4.16. voting advice on such transactions may take into account the merits of a proposed transaction;
- 4.17. such transactions represent a small proportion of the proposals on which Fairvest and ISS provide proxy voting advice (less than two per cent in 2002), and any trades that may result from a vote by shareholders on an

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amalgamation, merger or similar transaction are incidental to their business of providing proxy advisory services;

4.18. because a vote on an amalgamation, merger or similar transaction may result in a trade in securities, some doubt exists whether Fairvest and ISS are “advisors” under the Legislation and, therefore, whether they are subject to the Registration Requirements;

5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

6. AND WHEREAS 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;

7. THE DECISION of the Decision Makers under the Legislation is that the Registration Requirements shall not apply to Fairvest, ISS or their officers and employees, provided that proposals to approve corporate transactions of the type described in paragraph 4.15 do not exceed five per cent of the proposals on which Fairvest and ISS provide proxy voting advice to clients in Canada in any year.

DATED this 19th day of February, 2003.

Glenda A. Campbell, Q.C., Vice-Chair

Jerry A. Bennis, FCA, Member