

2006 BCSECCOM 496

August 3, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Application – 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 the delivery requirements for conflict of interest statements and other conflict of interest disclosure. - The clients are provided with alternative conflict of interest disclosure; the required form of disclosure would not provide any new information.

Securities Act s. 48 Adviser Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered Advisers - A registered adviser wants an exemption from the delivery requirements for conflict of interest statements and conflict of interest disclosure. - The clients are provided with alternative conflict of interest disclosure; the required form of disclosure would not provide any new 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. 77, 79, 81, 82

In the Matter of the Securities Legislation of British Columbia, Ontario, Québec and Nova Scotia (the Jurisdictions)

and

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

and

In the Matter of Heathbridge Capital Management Inc. (Heathbridge)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from Heathbridge for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the following conflict of interest provisions contained in the Legislation do not

2006 BCSECCOM 496

apply to Heathbridge (collectively, the **Requested Relief**) in connection with the distribution of units of the Funds, as defined below, by Heathbridge:

- (i) the requirement that a registrant prepare a conflict of interest statement of policies (or the equivalent) in the required form, revise the statement in the event of any significant change in the information, provide its customers and clients with a copy of the current version of the statement and file the statement with the applicable Decision Maker (the **Conflict Statement Requirement**);
- (ii) the requirement that a registrant send or deliver to its clients a written confirmation of a securities transaction that contains certain disclosure if the security is a security of a related issuer, or in the course of a distribution, a security of a connected issuer, of the registrant (the **Trade Confirmation Requirement**);
- (iii) the requirement that a registrant make certain disclosure to its client and obtain the requisite specific and informed written consent of its client if a registrant acts as an adviser, exercising discretionary authority with respect to the investment portfolio or account of its client, to purchase or sell securities of a related issuer, or in the course of a distribution, securities of a connected issuer of the registrant (the **Discretionary Management Disclosure Requirement**); and
- (iv) the requirement that a registrant make certain disclosure to its clients if the registrant acts as an adviser in respect of securities of a related issuer, or in the course of a distribution, securities of a connected issuer, of the registrant (the **Adviser Disclosure Requirement**).

Under the MRRS:

- (a) the Ontario Securities Commission is the principal regulator for this application;
- (b) this MRRS Decision Document evidences the decision of each Decision Maker.

2006 BCSECCOM 496

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* and National Instrument 33-105 – *Underwriting Conflicts* 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 Heathbridge to the Decision Makers:

1. Heathbridge was incorporated under the laws of Ontario and its head office is in Ontario. Heathbridge has no other office in Canada.
2. Heathbridge is registered in Ontario as an adviser, in the categories of investment counsel and portfolio manager and in equivalent categories in each of the Jurisdictions. In addition, Heathbridge is registered in Ontario as a dealer, in the category of limited market dealer.
3. Heathbridge is the trustee, manager, primary portfolio advisor and principal distributor of the Heathbridge U.S. Pooled Fund (the **Existing Fund**) and may in the future act in a similar capacity for investment funds established and managed by Heathbridge (each, a **Future Fund** and, together with the Existing Fund, the **Funds**). Heathbridge has not currently retained, but may retain, a sub-advisor, in respect of a Fund, to provide investment advice to the Fund.
4. Each of the Funds is or will be sold by Heathbridge to Managed Accounts of Clients pursuant to available exemptions from the prospectus requirement and/or dealer registration requirement contained in the Legislation or specifically granted to Heathbridge under the Legislation.
5. Heathbridge may, but does not currently intend to, distribute units of the Funds to investors who do not have a Managed Account with Heathbridge pursuant to available exemptions from the dealer registration requirement and/or prospectus requirement contained in the Legislation or specifically granted to Heathbridge under the Legislation.
6. Each of the Funds is or will be an open-end mutual fund established under the laws of Ontario and the word “Heathbridge” is or will be part of the name of each Fund.
7. Heathbridge provides discretionary investment management services to individuals (including tax deferred plans for which such individuals or their spouses or children are the beneficiaries), corporations, charitable foundations

2006 BCSECCOM 496

and other entities (each, a **Client**) seeking such services (**Managed Services**) through a managed account (a **Managed Account**).

8. The Managed Services are provided pursuant to an investment management agreement (the **IMA**) between Heathbridge and the Client which provides full discretionary authority for Heathbridge to trade in securities for the Managed Account in accordance with the investment guidelines established for the account without obtaining the consent of the Client to any specific trade. A Client for whom Heathbridge makes, or may make, investments in the Existing Fund or a Future Fund specifically authorizes Heathbridge to make such investments in the IMA.
9. Under the IMA, a Client provides specific and informed consent for Heathbridge to purchase or sell units of the Funds for the Managed Accounts.
10. All Clients that authorize investment of their assets in Funds receive an offering memorandum in respect of the Funds. Both the IMA and the offering memorandum disclose the relationship between Heathbridge and the Funds.
11. The IMA provides full disclosure of all fees payable by a Client in respect of the Managed Account and in respect of an investment in a Fund.
12. There is no duplication of fees paid by a Client in respect of the Managed Account and an investment in a Fund.
13. There will be no commission paid by a Client in respect of the purchase of units of a Fund.
14. Heathbridge does not and will not act as an adviser, dealer or underwriter in respect of securities of Heathbridge or of a related issuer of Heathbridge, or, in the course of a distribution, in respect of securities of connected issuers of Heathbridge, other than in connection with the distribution of units of the Funds and the funds do not hold and will not hold securities of any related issuer of Heathbridge, or in the course of a distribution, securities of a connected issuer of Heathbridge, other than the securities of another Fund.

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 is that the Requested Relief is granted, provided that:

2006 BCSECCOM 496

- (i) Heathbridge obtains the Client's specific and informed consent to purchase or sell units of the Funds;
- (ii) at least annually, Heathbridge delivers to Clients an annual statement of portfolio which discloses the securities of related issuers and connected issuers of Heathbridge that are: (a) held directly by the Client at any time during the preceding twelve-month period, or (b) held by the Client indirectly through the Funds as at the date of the statement; and
- (iii) Heathbridge advises Clients that hold units of a Fund no less frequently than annually that an offering memorandum is available in respect of the Funds and Clients may obtain a copy on request.

Carol S. Perry
Commissioner
Ontario Securities Commission

Paul K. Bates
Commissioner
Ontario Securities Commission