

2008 BCSECCOM 34

September 4, 2007

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 - A mutual fund wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The Filer manages funds that invested in ABCP that did, at the time of the investment, and does as of the date of the application, comply with the investment restrictions in NI 81-102; market conditions for the ABCP has deteriorated rapidly and unexpectedly, which is affecting the liquidity of the ABCP; the Filer is concerned that continuing to hold the ABCP may impact the confidence of investors in the Fund and may result in unusual levels of redemption requests; the Filer wants to act in the best interests of the Funds' investors; a party affiliated with the Filer will buy the ABCP from a fund managed by the Filer, if the Filer in its discretion determines it would be in the best interests of the investors in that fund to sell some or all of the ABCP; a Filer will sell the ABCP at a price equal to the cost plus accrued interest value; this value is determined in accordance with GAAP and is the same value used for other commercial paper investments held by the funds

An independent review committee (IRC) has been appointed but the committee is not yet fully compliant with NI 81-107 – *Independent Review Committee for Investment Funds*; prior to completing the mutual fund's sales, the Filer will consult with the IRC and will obtain the IRC's recommendation that in the IRC's opinion, the sales will achieve fair and reasonable results for the fund; the IRC is not operational and is unable to review the transaction; the IRC members are not able to make a recommendation about the transaction

Applicable British Columbia Provisions

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

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

and

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

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and

In the matter Of
IA Clarington Investment Inc.
(the Filer)

and

In the Matter of
IA Clarington Money Market Fund and
IA Clarington Short Term Income Class of Clarington Sector Fund Inc.
IAFM Money Market Fund
(each, a Fund and, collectively, the Funds)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filer on behalf of each Fund for relief from the prohibition in the securities legislation of the Jurisdictions against a portfolio manager or a mutual fund (depending upon the Jurisdiction) from causing the portfolio of the mutual fund to purchase or sell securities of any issuer from or to the account of a responsible person, any associate or a responsible person or the portfolio manager in order to permit the sale to Industrial Alliance Insurance and Financial Services Inc. (Industrial Alliance) of asset-backed commercial paper (ABCP) issued by an issuer listed in Schedule A and owned by a Fund on the date of the Application (the Requested Relief).

Under the MRRS:

- (i) the principal regulator for the Application is the Autorité des marchés financiers; and
- (ii) this MRRS decision document represents the decision of each of the Decision Makers.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this MRRS Decision Document unless they are otherwise defined in this herein.

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Representations

This decision is based on the following facts represented by the Filers:

1. The Filer is the manager of each of the Funds;
2. Industrial Alliance calculates the net asset value of each of the Funds;
3. Industrial Alliance Investment Management Inc («IAIM») is the portfolio manager of each of the Funds;
4. The Filer and IAIM are each affiliates of the Industrial Alliance;
5. Each of IA Clarington Money Market Fund and IA Clarington Short-Term Income Class of Clarington Sector Fund Inc. is a reporting issuer in the Jurisdictions;
6. Each of the Funds owns ABCP issued by one or more of the conduit issuers listed in Schedule A;
7. ABCP is short-term commercial paper with terms to maturity of not more than one year from the date of issue;
8. The ABCP owned by the Funds has a remaining term to maturity as to the date of the Application of between 12 to 115 days;
9. The ABCP owned by the Funds had, when acquired, and continues to have, as of the date of the Application, an approved credit rating;
10. The Filer and Industrial Alliance have determined that the appropriate method to value the ABCP owned by the Funds is cost plus accrued interest, which is the valuation methodology used in respect of other commercial paper investments held by the Funds;
11. Industrial Alliance has determined that the ABCP owned by the Funds is appropriately valued at cost plus accrued interest.
12. The Filer has determined that current liquidity problems affecting the ABCP market may have an impact on the confidence of investors in the Funds and may result in unusual levels of redemption requests.
13. The Filer wants to ensure that the Funds are able to meet any redemption requests received by the Funds.

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14. In order to ensure an appropriate level of confidence in the Funds, Industrial Alliance proposes to acquire all of the ABCP held by the Funds as of the date of the Application and issued by the issuers listed on Schedule A, at a price per security equal to cost plus accrued interest. Such transactions may occur during the period between the date the Requested Relief is granted and October 31, 2007.
15. Industrial Alliance proposes to acquire the ABCP by payment in cash or in specie or partially in cash and partially in specie. If all or part of the payment is in specie, the securities transferred by the Industrial Alliance will have a value equal to the value (on a cost plus accrued interest basis) of the ABCP acquired by Industrial Alliance for such payment and will be treasury bills issued by the Government of Canada or another similar highly liquid “government security” as defined in NI 81-102 (Government Securities). The Government Securities will be valued by a Fund on the same basis as if the Fund had paid cash to acquire them.
16. National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107) required the Filer to appoint the initial members of the independent review committee (IRC) for IA Clarington Money Market Fund and IA Clarington Short-Term Income Class as of May 1, 2007. The remaining provisions of NI 81-107 do not come fully into force until November 1, 2007.
17. The Filer has appointed its IRC committee members for IA Clarington Money Market Fund and IA Clarington Short-Term Income Class as required under NI 81-107. The IRC, however, is not operational and is unavailable to review the transaction. The IRC members are not able to make a recommendation about this transaction.

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 in respect of each Fund on the condition that:

- a) the Filer determines that the sale is in the best interests of the Fund;
- b) the sale occurs during the period between the date hereof and October 31, 2007;

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- c) the price per security is equal to cost plus accrued interest; and
- d) if payment is made all or partially *in specie* the securities transferred by Industrial Alliance have a value equal to the value (on a cost plus accrued interest basis) of the ABCP acquired by the Industrial Alliance for such payment and are Government Securities.

Interim Superintendent, Distribution,
Claude Prévost

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Schedule A

THIRD PARTY ABCP CONDUITS

Apollo Trust
Apsley Trust
Aria Trust
Aurora Trust
Comet Trust
Encore Trust
Gemini Trust
Ironstone Trust
Newshore Canadian Trust
Opus Trust
Planet Trust
Rocket Trust
Silverstone Trust
Structured Investment Trust III
Symphony Trust
Whitehall Trust