

2007 BCSECCOM 479

Date: July 27, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Application –
Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - A person who resides outside BC wants to advise BC residents. - The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant and its BC clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person; the BC client will obtain advice from and give all instructions through the BC registrant.

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 delivering confirmation statements to clients. - The client's account is fully managed by the dealer; the client agrees that the confirmation statements will not be delivered to them; the client is sent monthly statements that include the confirmation information (except for the Omitted Information); the dealer will maintain the Omitted Information in its records and make this information available to clients upon request; the client will be entitled to terminate a waiver of the confirmation requirement by notice in writing

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, , ss. 34(1)(a) and (c), 48 and 171

In the Matter of the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,
New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and
Labrador, Yukon, Northwest Territories and Nunavut

and

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

and

In the Matter of Wellington West Holdings Inc., Wellington West Capital Inc. and
Wellington West Asset Management Inc.

MRRS Decision Document

2007 BCSECCOM 479

Background

The local securities regulatory authority or regulator (the “**Decision Maker**”) in each of the Jurisdictions has received an application filed on behalf of Wellington West Holdings Inc. (“**WWHI**”), Wellington West Capital Inc. (“**Wellington West**”) and Wellington West Asset Management Inc. (“**WWAM**”) and, in British Columbia, Barlow Capital Partners Inc. (“**Barlow**”) (collectively, the “**Filer**” and WWAM and Barlow, collectively, the “**Wellington Advising Subsidiaries**” and individually, a “**Wellington Advising Subsidiary**”) for a decision under the securities legislation of the Jurisdictions (the “**Legislation**”) to:

- (a) except in Québec, revoke the decision document dated January 20, 2006 (the “**Original Decision Document**”) issued by The Manitoba Securities Commission on behalf of the Decision Makers (other than the Autorité des Marchés Financiers) under the mutual reliance review system for exemptive relief applications;
- (b) except in Ontario and Québec, grant relief from the requirement to be registered as an adviser for certain foreign portfolio managers and Canadian portfolio managers (the “**Sub-Advisers**”) who provide investment counseling and/or portfolio management services to Wellington West or the Wellington Advising Subsidiaries with respect to client accounts (“**Managed Accounts**”) of Wellington West and/or the Wellington Advising Subsidiaries in which the investment decisions are made on a continuing basis by Wellington West and/or the Wellington Advising Subsidiary or by a Sub-Adviser retained by Wellington West and/or a Wellington Advising Subsidiary, for the benefit of the Participating Clients (as defined below) of Wellington West and/or a Wellington Advising Subsidiary who are resident in the Jurisdictions where the Sub-Advisers are not registered (the “**Registration Relief**”); and
- (c) grant relief from the requirement that a registered dealer send to its clients a written confirmation of any trade in securities for transactions that Wellington West conducts on behalf of Participating Clients (as defined below) with respect to transactions under wealth management program(s) of Wellington West (the “**Confirmation Relief**”).

The Application is being made in the Jurisdictions pursuant to National Policy 12-201 – *Mutual Reliance Review System for Exemptive Relief Applications* (the “**Policy**”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

2007 BCSECCOM 479

- (a) The Manitoba 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 has the same meaning in this decision unless they are otherwise defined in this decision.

Representations

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

1. Wellington West is a wholly-owned subsidiary of WWHI. Prior to an internal corporate reorganization in 2006, WWHI was named “Wellington West Capital Inc.” and carried on the business of Wellington West.
2. Pursuant to the internal corporate reorganization, WWHI changed its name from “Wellington West Capital Inc.” to “Wellington West Holdings Inc.” and transferred its business and assets to a newly formed corporation named “Wellington West Capital Inc”.
3. Wellington West is registered under the Legislation as an investment dealer, or equivalent, and is a member(s) of the Investment Dealers Association of Canada (the “IDA”) and has its head office in Winnipeg, Manitoba.
4. Barlow is registered under the *Securities Act* (British Columbia) as a portfolio manager. Wellington West currently owns 49% of the voting shares of Barlow and 60% of the participating shares of Barlow, with rights to acquire 100% of the voting and participating shares of Barlow upon the occurrence of certain events.
5. WWAM is a corporation intended to be formed by Wellington West for the purpose of obtaining registration as a portfolio manager in the Jurisdictions. WWAM will be a wholly-owned subsidiary of Wellington West.
6. Wellington West is permitted to have Managed Accounts by virtue of being a member of the IDA. Each of the Wellington Advising Subsidiaries is or will be permitted to have Managed Accounts by virtue of its registration as a portfolio manager.

2007 BCSECCOM 479

7. Wellington West and/or the Wellington Advising Subsidiaries intend to offer the investment counseling and portfolio management services of Sub-Advisers to clients (the “Participating Clients”) who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Advisers are resident or otherwise wish to benefit from the portfolio management services of the Sub-Advisers.
8. Each Sub-Adviser is or will be registered as investment counsel or portfolio manager in a Canadian jurisdiction or otherwise licensed or qualified to provide investment counseling and portfolio management services in the foreign jurisdiction where its head office is located. Certain of the Sub-Advisers may also be subsidiaries, affiliates or associates of the Wellington West and/or the Wellington Advising Subsidiaries.
9. Each Sub-Adviser provides investment counseling and portfolio management services to clients resident in the jurisdiction where its head office is located and in other jurisdictions where it is registered or otherwise qualified to provide such services.
10. Each Participating Client will enter into an investment management agreement (“IMA”) with Wellington West and/or a Wellington Advising Subsidiary pursuant to which:
 - (a) the Participating Client grants full discretionary authority to Wellington West and/or a Wellington Advising Subsidiary to make investment decisions and to trade in securities on behalf of the Participating Client without obtaining the specific consent of the Participating Client to individual trades, provided such investment decisions are made in accordance with the information maintained by Wellington West and/or a Wellington Advising Subsidiary referred to in paragraph 12 hereof, and authorizes Wellington West and/or a Wellington Advising Subsidiary to delegate its discretionary authority over all or a portion of the Participating Client’s assets to the Sub-Advisers;
 - (b) the Participating Client will agree in writing to the fees and charges applicable to the Managed Account, which, in the case of a Participating Client of Wellington West, may include a Transaction Charge (as defined below) which is based upon the amount of securities traded, or the number of transactions effected, in the Managed Account; and
 - (c) in the case of a Participating Client of Wellington West, unless otherwise requested, the Participating Client waives receipt of trade confirmation as required under the Legislation.

2007 BCSECCOM 479

Wellington West intends to implement one or more wealth management programs which may, in addition to charging a flat annual fee and/or an annual fee calculated on the basis of assets in the Participating Client's Managed Account, allocate a standard charge (the "**Transaction Charge**") to each Managed Account based upon transactions effected in the Participating Client's Managed Account. Transactions effected by Wellington West in a Participating Client's Managed Account will be executed at the instruction of the applicable Sub-Adviser(s). The general purpose of the Transaction Charge is to recoup the estimated expenses of aggregate trading and allocation costs associated with the wealth management program(s).

11. Wellington West and/or a Wellington Advising Subsidiary will enter into an agreement with each Sub-Adviser which will set out the obligations and duties of each party in connection with the investment counseling and portfolio management services provided to each Participating Client and under which the Sub-Adviser will agree to act as sub-adviser to Wellington West and/or a Wellington Advising Subsidiary, for the benefit of Participating Clients. Each Sub-Adviser will exercise discretionary authority over the assets of the Participating Clients who wish to have exposure to capital markets located in jurisdictions in which such Sub-Adviser has experience and expertise by providing Wellington West and/or a Wellington Advising Subsidiary with instructions to purchase and/or sell securities in the Managed Accounts. Wellington West and/or a Wellington Advising Subsidiary will execute, or cause to be executed, the trades in the Managed Accounts based upon the instructions received from Sub-Advisers.
12. Wellington West and/or a Wellington Advising Subsidiary will:
 - (a) make inquiries with each Participating Client to learn the essential facts about each Participating Client, to determine the general investment needs and objectives of, the appropriateness of the recommendations made to and the suitability of proposed transactions for the Participating Client, and to otherwise comply with the "know your client" obligations under the Legislation, and will provide to each Sub-Adviser who exercises discretionary authority over the assets of the Participating Clients the relevant information regarding the investment mandate applicable to the Managed Accounts of Participating Clients; and
 - (b) send to each Participating Client quarterly statements and performance reports prepared by Wellington West and/or a Wellington Advising Subsidiary.

2007 BCSECCOM 479

13. Wellington West and/or a Wellington Advising Subsidiary will agree under any IMA it enters into to be responsible for any loss that arises out of the failure of a Sub-Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Wellington West and/or a Wellington Advising Subsidiary and the Participating Client for whose benefit the investment advice is, or portfolio management services are, to be provided, or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,and acknowledges that they cannot be relieved by Participating Clients from this responsibility (collectively, the “Assumed Obligations”).
14. A Participating Client will obtain all advice and give all instructions through Wellington West and/or a Wellington Advising Subsidiary, other than advice provided by the Sub-Adviser pursuant to the sub-advisory agreements entered into between the Sub-Adviser and Wellington West and/or a Wellington Advising Subsidiary.
15. If there is any direct contact between a Participating Client and a Sub-Adviser, a registered representative with advising qualifications or advising officer or advising employee of Wellington West and/or a Wellington Advising Subsidiary registered in the Jurisdiction where the Participating Client is resident will be present at all times, either in person or by telephone and, the Participating Client and a Sub-Adviser will not meet in person without such registered representative or advising officer or advising employee, as applicable.
16. The Sub-Advisers will not have any contact with Participating Clients, except that:
 - (a) from time to time, written reports prepared by the Sub-Adviser containing commentary on markets in which they have experience may be delivered by Wellington West and/or a Wellington Advising Subsidiary to their Participating Clients; and
 - (b) from time to time individuals who are investment counsel or portfolio managers, or equivalent, who are officers or employees of the Sub-Advisers may conduct presentations or seminars in the Jurisdictions regarding the status of the economies and capital markets in the

2007 BCSECCOM 479

jurisdictions where they are authorized to carry on business; in such cases, a registered representative or advising officer or advising employee of Wellington West and/or a Wellington Advising Subsidiary will be present at all times and such presentations will be limited to Participating Clients.

17. Each Sub-Adviser would be considered to be an “adviser” under the Legislation and, in the absence of the Registration Relief, would be subject to the registration requirement under the Legislation.
18. Sub-Advisers who are not registered in Ontario are not required to register as advisers under the *Securities Act* (Ontario) as they rely on the exemption from registration in section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers*.
19. Sub-Advisers who are not registered in Québec are not required to register under the *Securities Act* (Québec) as they rely on the exemption from registration in Section 194.2 of the regulation under the *Securities Act* (Québec).
20. Each of the Wellington Advising Subsidiaries will comply with the requirements of the applicable Legislation with respect to Managed Accounts of its Participating Clients.
21. Wellington West has disclosed to the IDA its arrangements with respect to the Managed Accounts and the IDA is satisfied with such arrangements on the basis that:
 - (a) Wellington West obtains the written consent of the Participating Clients with respect to fees and charges to Managed Accounts;
 - (b) Wellington West obtains the written consent of its Participating Clients with respect to the waiver of the receipt of trade confirmations.
 - (c) Participating Clients of Wellington West will be entitled to terminate a waiver of the trade confirmation requirement by notice in writing;
 - (d) Wellington West will send, or cause to be sent, trade confirmations to the Sub-Advisers who have provided instructions for such trades;
 - (e) the Transaction Charge, if any, is a charge which will be received by Wellington West and Sub-Advisers will not be compensated on the basis of transactions effected in the Managed Accounts, and provided that

2007 BCSECCOM 479

Wellington West is not permitted to receive the Transaction Charge with respect to any assets managed, or trades made on the instruction of, Wellington West or a Sub-Adviser in which Wellington West has a material interest;

- (f) Wellington West sends, or causes to be sent, to Participating Clients the statement of account that includes the information referred to in paragraph 23 below;
 - (g) Wellington West will not have any direct or indirect influence over trading in the Managed Accounts to which a Transaction Charge applies;
 - (h) Wellington West will not retain or fire sub-advisers for the purpose of exercising direct or indirect control over the trading activity or trading levels in the Managed Accounts;
 - (i) Wellington West provides clients with 60 days prior notice before implementation of a Transaction Charge; and
 - (j) the statement of account for the Managed Accounts of Participating Clients of Wellington West will contain the disclosure of the Transaction Charge, if any.
22. Wellington West will send, or cause to be sent, to each of its Participating Clients who has waived receipt of trade confirmations, a statement of account not less than monthly.
23. The monthly statement of account sent by Wellington West to its Participating Clients who have waived receipt of trade confirmations will identify the assets being managed on behalf of the Participating Client, including for each trade made during that month the information that would otherwise have been required to be provided to that Participating Client in a trade confirmation in accordance with the Legislation, except for the following information (collectively, the "Omitted Information"):
- (a) the date and the stock exchange or commodity futures exchange upon which the trade took place;
 - (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
 - (c) the name of the salesman, if any, in the transaction;

2007 BCSECCOM 479

- (d) the name of the dealer, if any, used by the member(s) of the Wellington West Group or the Sub-Adviser as its agent to affect the trade; and
- (e) if acting as agent in a trade upon a stock exchange, the name of the person or company from or to or through whom the security was bought or sold.

24. Wellington West will maintain the Omitted Information with respect to a Participating Client in its books and records and will make the Omitted Information available to the Participating Client upon request.

Decision

Each of the Decision Makers is satisfied that the test under 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:

- (a) except in Québec, the Original Decision Document is revoked;
- (b) except in Ontario and Québec, the Registration Relief be granted, provided that:
 - (i) the obligations and duties of the Sub-Adviser are set out in a written agreement between the Sub-Adviser and Wellington West and/or a Wellington Advising Subsidiary;
 - (ii) Wellington West and/or a Wellington Advising Subsidiary contractually agrees with their Participating Clients to be responsible for any loss that arises out of the Sub-Adviser's failure:
 - (A) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Wellington West and/or a Wellington Advising Subsidiary and the Participating Client for whose benefit the investment advice is, or portfolio management services are, to be provided, or
 - (B) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;

2007 BCSECCOM 479

- (iii) neither Wellington West nor the Wellington Advising Subsidiary are relieved by the Participating Client from its responsibility for loss under paragraph (ii) above;
 - (iv) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;
 - (v) each Sub-Adviser, if resident in a jurisdiction of Canada, is registered as an adviser in such jurisdiction; and
 - (vi) in Manitoba, the Registration Relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction; and
- (c) The Confirmation Relief be granted to Wellington West provided that:
- (i) Wellington West obtains the written consent of the Participating Clients with respect to fees and charges to Managed Accounts in compliance with IDA Regulation 1300 and IDA Regulation 200.1(h);
 - (ii) Wellington West will obtain the consent in writing of its Participating Clients with respect to the waiver of the receipt of trade confirmations.
 - (iii) Participating Clients of Wellington West will be entitled to terminate a waiver of the trade confirmation requirement by notice in writing;
 - (iv) Wellington West will send, or cause to be sent, trade confirmations to the Sub-Advisers who have provided instructions for such trades;
 - (v) the Transaction Charge, if any, is a charge which will be received by Wellington West and Sub-Advisers will not be compensated on the basis of transactions effected in the Managed Accounts, and provided that Wellington West is not permitted to receive the Transaction Charge with respect to any assets managed, or trades made on the instruction of, Wellington West or a Sub-Adviser in which Wellington West has a material interest; and

2007 BCSECCOM 479

- (vi) Wellington West sends, or causes to be sent, to Participating Clients the statement of account that includes the information referred to in paragraph 23 above.

Chris Besko
Deputy Director