

# 2005 BCSECCOM 720

COR#05/126

August 30, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A member of the organization of a mutual fund and a participating dealer of the mutual fund want relief from the compensation prohibitions in ss. 2.1(1)(a) and 2.2(1) in order for the member of the organization of the mutual fund to finance the participating dealer's retention program for sales representatives - The proposed compensation does not create the conflict; the member of the organization of the mutual fund and the participating dealer are already related parties. The participating dealer has established methods for mitigating the influence of the compensation on the sales representatives.

## **Applicable British Columbia Provisions**

National Instrument 81-105 *Mutual Fund Sales Practices*

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

**and**

**In the Matter of CI Fund Management Inc. (CI)**

**and**

**In the Matter of IQON Financial Inc. (IQON)**

## **MRRS Decision Document**

## **Background**

The securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from CI and IQON (the Applicants) for a decision (the Decision) under the securities legislation of the Jurisdictions (the Legislation) for an exemption pursuant to section 9.1 of National Instrument 81-105 Mutual Fund Sales Practices (NI 81-105) that the provisions in:

- (a) subsection 2.1(1)(a) of NI 81-105 restricting a member of the organization of a mutual fund from making payments of money to a participating dealer or a representative of a participating dealer in connection with the distribution of securities of the mutual fund; and

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- (b) subsection 2.2(1) of NI 81-105 restricting a participating dealer or a representative of a participating dealer from soliciting or accepting payments of money from a member of the organization of a mutual fund in connection with the distribution of securities of the mutual fund

shall not apply to the financial assistance (the Financial Assistance) to be provided by CI to IQON in connection with the Retention Plan (as described below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario 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 have 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 Applicants:

1. CI is a corporation subsisting under the laws of the Province of Ontario and has its principal office in Toronto, Ontario.
2. IQON is a corporation subsisting under the laws of the Province of Manitoba and has its principal office in Winnipeg, Manitoba. IQON is registered as a mutual fund dealer (or its equivalent) under the Legislation. IQON engages in the distribution of mutual fund securities and therefore is a “participating dealer” for purposes of NI 81-105. IQON is an indirect wholly-owned subsidiary of CI.
3. CI also wholly-owns CI Investments Inc. (CII). CII is a corporation subsisting under the laws of the Province of Ontario and has its principal office in Toronto, Ontario. The principal business activity of CII is the management of in excess of 95 mutual funds (the CI Funds) and other investment vehicles and accounts. As such, CII is, for each CI Fund, a “member of the organization of the mutual fund” for purposes of NI 81-105. By virtue of each Applicant being an affiliate of CII, each Applicant also is, for each CI Fund, a “member of the organization of the mutual fund” for purposes of NI 81-105.

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4. The prospectuses of the CI Funds provide the disclosure regarding dealer compensation, the sales practices followed for distribution of the CI Funds and the equity interest that CI has in IQON, as required by Part 8 of NI 81-105.
5. There currently is strong competition among registered dealers in Canada to recruit successful sales representatives who have developed significant client bases and assets under administration (AUA). Recruiting methods include offering financial incentives to sales representatives to leave their current registered dealers and move to competing registered dealers. Financial incentives frequently take the form of a cash payment based on one or more criteria (such as the dollar value of the AUA of the sales representative and/or recent sales commission revenues generated by the sales representative for his or her registered dealer).
6. Typically, a financial incentive is paid in instalments, with the full amount of the financial incentive not being fully paid until the sales representative has remained with the new registered dealer for one or more years. Consequently, financial incentives serve both to entice sales representatives to change registered dealers and to remain with the new registered dealers for a period of time.
7. IQON is aware that a number of its most successful sales representatives have received offers of financial incentives from competing registered dealers to leave IQON and move to the competing dealer. IQON is concerned that, in the absence of providing such sales representatives with a comparable financial incentive to remain with IQON, such sales representatives may depart IQON for competing registered dealers. This likely will result in IQON needing to recruit new sales representatives and to offer such sales representatives a financial incentive to join IQON. It is IQON's strong preference to pay a financial incentive to its existing sales representatives to encourage them to remain with IQON, rather than to pay a financial incentive to sales representatives at competing registered dealers to encourage them to relocate to IQON. Consequently, IQON proposes to implement a retention plan (the Retention Plan) in order to provide its successful sales representatives with a financial incentive to remain at IQON and not accept the offers of financial incentives from competing registered dealers.
8. Under the Retention Plan, IQON will determine an amount (a Retention Amount) to be paid to each of its eligible sales representatives. The Retention Amount will be calculated as a percentage of the AUA attributed to the sales representative as of December 31, 2004. The Retention Plan also will include a threshold level, below which sales representatives will not receive any

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Retention Amount. The proportion of AUA invested in CI Funds and the proportion of sales commission revenues generated from the sale of CI Funds will not be a factor in determining the Retention Amounts.

9. It is currently anticipated that less than half of the sales representatives at IQON will receive a Retention Amount. Though the financial incentives offered by competing dealers vary significantly, IQON believes that the size of the Retention Amounts and the length of time during which the sales representatives will be expected to remain with IQON under the Retention Plan are fair and reasonable in comparison to the incentives being offered by competing registered dealers.
10. IQON's sales representatives will be advised that the Retention Amounts will be determined based on historical information which cannot be changed by the sales representatives. IQON sales representatives also will be advised that this Retention Plan is a one-time program and that sales representatives should not expect that any similar financial incentive will be offered to them in the future.
11. The amount of funding required to implement the Retention Plan is more than the excess cash flow generated at IQON. Consequently, in order to implement the Retention Plan, IQON requires the Financial Assistance from CI in the form of funding for the Retention Amounts.
12. In the absence of the Requested Relief, CI would be prohibited by NI 81-105 from providing IQON with the Financial Assistance to fund the Retention Plan.
13. The Retention Plan is neither intended nor expected to influence the decisions made by sales representatives concerning the mutual funds which they recommend to their clients for investment.

### **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 provided that:

- (a) the compliance officer of IQON (as designated by IQON in accordance with the rules of the Mutual Fund Dealers Association of Canada) monitors adherence by the sales representatives who receive Retention Amounts (the Eligible Representatives) to the requirement in the

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Legislation to ascertain the general investment needs and objectives of each of the clients of the Eligible Representatives and the suitability of a proposed purchase or sale of a mutual fund security for the client (the Suitability Requirement);

- (b) at the time of receiving a Retention Amount, each Eligible Representative executes an acknowledgement that acknowledges that the Eligible Representative will comply with the Suitability Requirement and that receiving the Retention Amount will not influence the recommendations made by the Eligible Representative to each client concerning mutual fund investments;
- (c) the Applicants shall comply in all other respects with the Legislation in connection with the distribution of securities of CI Funds, except to the extent that exemptive relief may be granted therefrom; and
- (d) IQON's sales representatives are not, and shall not in the future be, subject to quotas (either express or implied) in respect of the distribution of CI Funds and shall continue to be entitled to offer competing products to their clients and, except as permitted by the Legislation, the Applicants and their affiliates shall not provide an incentive to any sales representative of IQON to recommend CI Funds over third party products.

Robert L. Shirriff  
Commissioner

Harold P. Hands  
Commissioner

Ontario Securities Commission