

2002 BCSECCOM 582

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – exemption from the adviser registration requirement granted to certain foreign portfolio managers, subject to conditions.

Applicable British Columbia Provisions

Securities Act, R.S.B.C 1996, c. 418, s. 48

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA,
SASKATCHEWAN AND YUKON**

AND

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

AND

IN THE MATTER OF RBC PRIVATE COUNSEL INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Newfoundland and Labrador and Yukon (the “Jurisdictions”) has received an application from RBC Private Counsel Inc. (the “Applicant”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) permitting it to retain certain advisers (the “Sub-advisers”) which are not resident in the Jurisdictions to provide sub-advisory services to discretionary investment management accounts managed by the Applicant for clients resident in the Jurisdictions, without requiring that the Sub-advisers be registered as advisers (or the equivalent) in the Jurisdictions;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission has acted as the principal regulator for this application;
3. AND WHEREAS the Applicant has represented to the Decision Makers that:

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- 3.1 the Applicant is amalgamated under the laws of Canada and is registered under the Securities Act (Alberta) as an adviser in the categories of investment counsel and portfolio manager and holds equivalent registrations in each of the other Jurisdictions;
- 3.2 the current Sub-advisers are listed in Schedule A. The Sub-advisers may be changed from time to time by the Applicant in its discretion in accordance with its investment strategy. Each of the current Sub-advisers is, and all future Sub-advisers will be, licensed to provide investment advice and portfolio management services by the applicable regulator in the jurisdiction in which it carries on business. The applicable regulatory authority with which each of the current Sub-advisers is licensed is noted in Schedule A. The current Sub-advisers are not, and the future Sub-advisers will not be, resident in Canada;
- 3.3 the Applicant wishes to retain the Sub-advisers to provide advice to the Applicant in connection with accounts managed by the Applicant for clients resident in the Jurisdictions. The Applicant believes that the Sub-advisers will provide the Applicant with access to specialized expertise relating to specific market segments or relating to investment strategies for international investment management mandates, through their location in and familiarity and experience with foreign markets;
- 3.4 in retaining the Sub-advisers, the Applicant will comply with the requirements of Section 7.3 of Ontario Securities Commission Rule 35-502 and accordingly:
 - 3.4.1 the obligations and duties of each Sub-adviser will be set out in a written agreement with the Applicant;
 - 3.4.2 the Applicant will contractually agree with its clients on whose behalf investment advice is or portfolio management services are to be provided by a Sub-adviser to be responsible for any loss that arises out of the failure of the Sub-adviser:
 - 3.4.2.1 to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Applicant and each client of the Applicant for whose benefit the advice is or portfolio management services are to be provided, or
 - 3.4.2.2 to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; and

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3.4.3 the Applicant cannot be relieved by its clients from its responsibility for loss under paragraph 3.4.2 above;

3.5 the Applicant will be responsible for providing all client reports and statements required under the securities legislation of the applicable Jurisdictions. All direct contact with clients will be with the Applicant and its employees, although representatives of the Sub-advisers may participate in such communications from time to time. The Applicant will retain the Sub-advisers to provide advice to the Applicant for the benefit of the clients, not to advise the clients directly;

3.6 the discretionary accounts for which the Sub-advisers will be retained will be accounts for high net worth individuals or institutional clients;

4. AND WHEREAS under the System, this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
5. 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;
6. AND WHEREAS the Decision of the Decision Makers under the Legislation is that the requirements to register as an adviser (or equivalent) contained in the Legislation shall not apply to the Sub-advisers with respect to their activities in providing portfolio management and other services for the benefit of clients of the Applicant provided that:
 - 6.1 the obligations and duties of each Sub-adviser will be set out in a written agreement with the Applicant;
 - 6.2 the Applicant will contractually agree with its clients on whose behalf investment advice is or portfolio management services are to be provided by a Sub-adviser to be responsible for any loss that arises out of the failure of the Sub-adviser:
 - 6.2.1 to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Applicant and each client of the Applicant for whose benefit the advice is or portfolio management services are to be provided, or
 - 6.2.2 to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

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6.3 the Applicant cannot be relieved by its clients from its responsibility for loss under paragraph 6.2 above; and

6.4 each such Sub-adviser is not resident in Canada and is licensed or otherwise legally qualified to provide investment advice and portfolio management services by the applicable regulator in the jurisdiction in which it resides.

DATED this 29th day of May, 2002.

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

David W. Betts, Member