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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – variation of previous order – mutual fund sales representatives exempted from the rebating prohibitions in mutual fund sales practice rule for rebates paid by representatives to clients switching from third party products to mutual funds managed by applicant or its affiliate

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 171

National Instrument 81-105 *Mutual Fund Sales Practice*

IN THE MATTER OF NATIONAL INSTRUMENT 81-105 MUTUAL FUND SALES PRACTICES

AND

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

AND

IN THE MATTER OF ASSANTE CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Nunavut, the Yukon, and Northwest Territories (the “Original Jurisdictions”) and Saskatchewan and Quebec (collectively with the Original Jurisdictions, the “Jurisdictions”) have received an application from Assante Corporation (the “Filer”) on behalf of itself and its current and future affiliated distributors and their respective representatives from time to time for a decision under section 9.1 of National Instrument 81-105 Mutual Fund Sales Practices (“NI 81-105”) that the prohibitions on certain rebates contained in section 7.1 of NI 81-105 shall not apply to rebates paid by representatives to clients who are switching from third party products to mutual funds managed by, or by an affiliate of, the Filer;

AND WHEREAS, on April 15, 1999, the Original Jurisdictions granted an exemption to the Filer from section 7.1 under section 9.1 of NI 81-105 (the “Prior Exemption”);

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AND WHEREAS this MRRS Decision Document replaces and revokes the Prior Exemption in the Original Jurisdictions;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), The Manitoba Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. Assante Corporation is a holding corporation whose affiliates carry on business as dealers and/or advisors in Canada;
2. All of the issued and outstanding shares of Assante Corporation are held by CI Fund Management Inc.;
3. As of the date hereof, Assante Corporation’s affiliated distributors include Assante Financial Management Ltd., Assante Capital Management Ltd., CI Fund Services Inc. and VentureLink Advisors Inc.;
4. As of the date hereof, Assante Corporation’s affiliated advisors include Assante Asset Management Ltd. (“AAM”), CI Mutual Funds Inc. and Skylon Advisors Inc.;
5. AAM or its affiliates manage various mutual funds (the “Proprietary Products”), which as of the date hereof include the Optima Strategy, Artisan Portfolio families of mutual funds managed by Assante and well over 100 mutual funds managed by CI Mutual Funds Inc. and sold to the public under the family names CI Funds, BPI Funds, Landmark Funds, Signature Funds, Harbour Funds, CI Portfolio Series, CI Hedge Funds, DDJ Funds, Clarica Funds, Synergy Funds, VentureLink Funds and Skylon Funds;
6. Assante Corporation’s affiliated distributors are principal distributors or participating dealers of the Proprietary Products, as well as participating dealers of other products;
7. This relief is being applied for in order to facilitate rebates paid by representatives to clients who are switching from third party products to Proprietary Products;

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AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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;

THE DECISION OF THE DECISION MAKERS IN THE ORIGINAL JURISDICTIONS is that the Prior Exemption be revoked;

AND IT IS THE FURTHER DECISION OF THE DECISION MAKERS IN THE JURISDICTIONS under section 9.1 of NI 81-105 that the representatives of the current and future affiliated distributors of the Filer shall be exempt from the prohibitions on payment of certain rebates contained in section 7.1 of NI 81-105 to the extent necessary to facilitate rebates paid by such representatives to clients who are switching from third party products to Proprietary Products provided that in respect of each such payment:

1. There will be compliance with the informed written consent provisions of section 7.1(1)(a) and the disclosure and consent provisions of Part 8 of NI 81-105;
2. Clients will be advised, in advance, that any rebate proposed to be made available in connection with the purchase of a Proprietary Product (i) will be available to the client regardless of which mutual fund the redemption proceeds are to be invested in (to a maximum of the commission earned by the representative on the purchase), and (ii) will not be conditional on a purchase of Proprietary Products;
3. Assante Corporation’s affiliated distributors’ representatives are not and shall not in the future be subject to quotas (either express or implied) in respect of the distribution of Proprietary Products and shall continue to be entitled to offer competing products to their clients and, except as permitted by NI 81-105, Assante Corporation and its affiliates shall not provide an incentive (monetary or non-monetary) to any representative or any affiliated distributor to recommend Proprietary Products over third party products;
4. The amount of the rebate that is borne by a representative is determined by the representative and the client; and
5. Representatives that provide rebates will not be reimbursed directly or indirectly in respect of rebates on Proprietary Products by Assante Corporation or any affiliate;

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AND IT IS THE FURTHER DECISION OF THE DECISION MAKERS IN THE JURISDICTIONS that this MRRS Decision Document shall cease to be operative with respect to a Decision Maker following the entry into force of a rule of that Decision Maker that replaces or amends section 7.1 of NI 81-105.

DATED February 10, 2004.

R. B. Bouchard
Director, Manitoba Securities Commission