

## 2002 BCSECCOM 229

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the requirement for a dealer to prepare and send a statement of account to each client at the end of the month in which the dealer records a transaction in the client's account - dealer permitted to send statements of account to certain specified clients on a quarterly basis, where accounts involve direct payroll deductions or pre-authorized payments, and clients have access to their accounts via an interactive voice response system, or can request statements of account to be sent by fax.

### Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 48  
Securities Rules, B.C. Reg. 194/97, s. 38 (1)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND  
LABRADOR

AND

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

AND

IN THE MATTER OF BMO NESBITT BURNS INC.

### MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from BMO Nesbitt Burns Inc. ("Nesbitt") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the provision (the "Monthly Statement Requirement") contained in the Legislation that requires a dealer to send a statement of account to each client at the end of each month in which the client has effected a transaction, where there is a debit or credit balance or securities held, shall not apply to Nesbitt in respect of transactions made on behalf of a BMO Group Plan Client (as defined below) that consists of the purchase of units of mutual funds or GICs (as defined below) by periodic deductions of funds from the BMO Group Plan Client's payroll or by pre-authorized payments, subject to certain terms and conditions;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Nesbitt has represented to the Decision Makers that:

1. Nesbitt was incorporated under the laws of Canada with its head office located in Toronto, Ontario.
2. Nesbitt is an indirect, majority-owned subsidiary of the Bank of Montreal ("BMO") and is registered under the Legislation as a dealer in the categories of "broker" and "investment dealer" (or its equivalent) and is a member of the Investment Dealers Association of Canada (the "IDA") and the Toronto Stock Exchange.

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3. Nesbitt currently uses the Retail Information System and Automatic Data Processing system (collectively, the "RIS/ADP System") to record all client transactions and security positions.
4. Nesbitt proposes to use the Consolidated Funds Management system (the "CFM System") owned and maintained by its parent, BMO, for trading accounts opened by Nesbitt in connection with BMO Mutual Funds Group RRSP/RESP/Savings Plans ("BMO Group Plans") where the account holder (the "BMO Group Plan Client") authorizes periodic deductions of funds from the BMO Group Plan Client's payroll or by pre-authorized payments and directs that such funds be used to purchase units of mutual funds and/or guaranteed investment certificates that are issued by a financial institution and can be sold on an exempt basis or pursuant to a limited market dealer registration (or its equivalent under the Legislation) ("GICs").
5. The RIS/ADP and the CFM Systems are the record-keeping systems that store client information, record client transactions and security positions, and generate the necessary statements of account and trade confirmations.
6. Clients of Nesbitt that invest in mutual funds or GICs through a BMO Group Plan are able to access account overviews (including a listing of current security holdings and the value of such holdings) and details of transactions that have occurred in the last two weeks (including the date of the transaction, the type and amount of the security involved and the value of such transaction)(collectively, the "Account Details") at any time, without a fee, via telephone using an interactive voice response system (the "Interactive Voice Response System"). The Interactive Voice Response System also allows clients to request, at any time, that Account Details be sent via facsimile.
7. If Nesbitt were registered as a dealer in the categories of "mutual fund dealer" and "limited market dealer" (or its equivalent in the Jurisdictions), was a member of the Mutual Fund Dealers Association, held client accounts in nominee name and carried on the same activities as those stated in paragraph 4 above, it would only be required to send statements of account to BMO Group Plan Clients quarterly.

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 under the Legislation is that the Monthly Statement Requirement contained in the Legislation shall not apply to Nesbitt in respect of transactions made on behalf of a BMO Group Plan Client that consists of the purchase of units of mutual funds or GICs by periodic deductions of funds from the BMO Group Plan Client's payroll or by pre-authorized payments, PROVIDED THAT:

1. Nesbitt sends a quarterly statement of account to the BMO Group Plan Client for the relevant quarter, which sets out the same information that is required under the Legislation for the Monthly Statement Requirement; and
2. Account Details remain accessible to BMO Group Plan Clients, free of charge, at any time, through the Interactive Voice Response System.

February 21, 2002

David M. Gilkes