

# 2006 BCSECCOM 71

February 1, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – 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; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; the client has informed the filer that it does not want to receive confirmation statements; confirmations are provided to the client's adviser; the client is sent monthly or quarterly statements that include the confirmation information; the filer complies with IDA regulations for portfolio management by performing daily and quarterly reviews to ensure that client investment objectives are met.

## **Applicable British Columbia Provisions**

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

*Securities Rules*, B.C. Reg. 194/97, ss. 36(1) and (2) and 80(1)

**In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Ontario,  
New Brunswick, Nova Scotia and Newfoundland and Labrador  
(the Jurisdictions)**

**and**

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

**and**

**In the Matter of First Asset Advisory Services Inc. (the Filer)**

## **MRRS Decision Document**

## **Background**

The local securities regulatory authority or regulator (the Decision Maker), in each of the Jurisdictions has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) for relief from the requirement in the Legislation that a registered dealer deliver a transaction confirmation statement (TCS) to clients of the Filer (Clients) who receive discretionary managed services pursuant to a managed account program

## 2006 BCSECCOM 71

(Program) with respect to transactions under the Program (the Confirmation 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 defined in this decision.

### **Representations**

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

1. The Filer is incorporated under the laws of Canada and has its head office in Toronto, Ontario.
2. The Filer is registered under the Legislation of each Jurisdiction in the category of “investment dealer”, or the equivalent, and is authorized to act as an adviser pursuant to an exemption from the adviser registration requirement made available under the Legislation of each Jurisdiction to dealers who are members of the Investment Dealers Association of Canada.
3. The Filer provides discretionary managed advisory services to individuals, corporations and other entities seeking wealth management or related services.
4. The Filer offers the Program, to certain Clients who desire certain discretionary managed services (Managed Services) from the Filer. The Program is subject to Investment Dealers Association Regulation 1300 “Supervision of Accounts” (IDA Regulation 1300) and in each Jurisdiction, all adviser activities in respect of the Account are provided by employees of the Filer who meet the proficiency requirements of a portfolio manager or associate portfolio manager (PM) under the Legislation of each Jurisdiction.
5. The Managed Services provided by the Filer consist of the following:
  - (a) The Filer performs trade execution services and Client communications (Client Communications) functions; such functions are described in the agreement between the Filer and each Client;

## 2006 BCSECCOM 71

- (b) prior to the opening of an account, the Filer's PM obtains from each Client an investment policy statement that defines the Client's investment objectives, time horizon and risk tolerances. The PM uses the investment policy statement to determine the appropriate investment portfolio for the Client;
  - (c) The Filer's PM performs mandate selection and management functions with respect to all investments, cash equivalents or other assets in the account; and
  - (d) The Filer retains overall responsibility for the Program and has appointed a supervising portfolio manager to oversee and supervise the Program.
- 6. All Managed Services provided in relation to the Program are covered by a fixed percentage fee (Fixed Percentage Fee) which includes the Filer fees, ordinary course brokerage fees and custodial services and Client Communications. The Fixed Percentage Fee is not intended to cover charges for minor items such as wire transfer requests, account transfers, withdrawals, de-registration and other administrative services (Administrative Charges). The Filer provides a list of Administrative Charges information to all Clients.
- 7. Clients paying a Fixed Percentage Fee for a discretionary Managed Service have advised the Filer that they prefer not to receive a TCS describing each transaction in respect of their account.
- 8. The Filer proposes that a TCS in relation to each trade executed for the Client's account will not be sent to the Client where the Client instructs the Filer not to send the customary TCS and chooses instead to receive Client Communications from the Filer. Client Communications consist of the following:
  - (a) Monthly statements which will contain all of the information required by the Legislation to be contained in a TCS except (the Omitted Information):
    - (i) the day and the stock exchange or commodity futures exchange upon which the trade took place;
    - (ii) the fee or other charge, if any levied by any securities regulatory authority in connection with the trade;
    - (iii) the name of the salesman, if any, in the transaction;

## 2006 BCSECCOM 71

- (iv) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and
  - (v) 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.
- (b) Quarterly review performance reports.
9. The Omitted Information will be maintained by the Filer and made available to the Client upon request.
10. The Filer, in accordance with IDA Regulation 1300, performs daily reviews of all account transactions in respect of suitability.
11. Also in accordance with IDA Regulation 1300, the Filer has a portfolio management committee which reviews, quarterly, each account under the Program to ensure that the investment objectives of the client are being diligently pursued and that each account is being conducted in accordance with the applicable law.

### **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 Confirmation Relief is granted provided that:

- (i) each Client has previously informed the Filer that the Client does not wish to receive trade confirmations for the Client's accounts; and
- (ii) in the case of each trade for a Client's account, the Filer sends to the Client the corresponding Client Communications.

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