

## **2003 BCSECCOM 372**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - exemption granted to allow applicant's representatives to pay fees or commissions payable by clients upon redemption of third party products in connection with the purchase of mutual funds managed by a member of the same organization as the applicant's representatives

### **Applicable British Columbia Provisions**

National Instrument 81-105 *Mutual Fund Sales Practices*, s. 9.1

### **IN THE MATTER OF NATIONAL INSTRUMENT 81-105 MUTUAL FUND SALES PRACTICES ("NI 81-105")**

**AND**

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

**AND**

### **IN THE MATTER OF IQON FINANCIAL INC.**

### **MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authorities or regulators (the "Decision Makers") in the jurisdictions of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island have received an application from IQON Financial Inc. ("IQON") on behalf of itself and its current and future representatives (the "Representatives") from time to time for a decision pursuant to section 9.1 of NI 81-105 that the prohibitions on certain rebates ("Rebates") of redemption commission or fees contained in paragraph 7.1(1)(b) of NI 81-105 shall not apply to Rebates paid by Representatives to clients who are switching from Third Party Funds (defined below) to MB Funds and CI Funds (defined below) (the "Proprietary Rebates");

AND WHEREAS pursuant to 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;

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AND WHEREAS IQON has represented to the Decision Makers as follows:

1. IQON is registered as a mutual fund dealer in each of the provinces of Canada, other than Quebec;
2. Sun Life Assurance Company of Canada ("Sun Life") owns or controls approximately 56% of McLean Budden Limited ("MB") and 34% of CI Fund Management Inc. ("CI"), the managers of the McLean Budden family of mutual funds (the "MB Funds") and the CI family of mutual funds (the "CI Funds") respectively;
3. Sun Life indirectly owns 51% of the voting shares of IQON. As a result, Sun Life is a member of the organization of the MB Funds and the CI Funds;
4. IQON is a participating dealer of the MB Funds and the CI Funds as well as a participating dealer of other mutual funds not managed by MB or CI ("Third Party Funds");
5. Paragraph 7.1(1)(b) of NI 81-105 prohibits Representatives from paying Proprietary Rebates to clients who are switching from Third Party Funds to MB Funds and CI Funds;
6. The relief is being applied for in order to facilitate the Proprietary Rebates;
7. The decision to pay such Proprietary Rebates will be made by the Representatives based on the best interests of the particular client; and
8. Representatives are not required by IQON or any of its affiliates to sell MB Funds or CI Funds to clients and accordingly have no quotas in respect of selling MB Funds or CI Funds and are not provided with incentives by IQON (other than as permitted by NI 81-105 or any of its affiliates to sell MB Funds or CI Funds).

AND WHEREAS pursuant to 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 NI 81-105 that provides the Decision Maker with the jurisdiction to make the decision has been met;

THE DECISION of the Decision Makers pursuant to section 9.1 of NI 81-105 is that IQON shall be exempt from the prohibitions on payment of Rebates contained in paragraph 7.1(1)(b) of NI 81-105 to the extent necessary to allow Representatives to pay Proprietary Rebates;

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PROVIDED that in respect of each such payment:

1. IQON, and the relevant Representative, as the case may be, complies with the informed written consent provisions of paragraph 7.1(1)(a) and the disclosure and consent provisions of Part 8 of NI 81-105;
2. The Representative advises each client in advance that any Rebate proposed to be made available by a Representative in connection with the purchase of securities of MB Funds or CI Funds (a) will be available to the client regardless of whether the redemption proceeds are invested in an MB Fund or CI Fund or a Third Party Fund (to a maximum of the commission earned by the Representative on the purchase), and (b) will not be conditional on a purchase of securities of the MB Funds or CI Funds;
3. Representatives are not and shall not in the future be subject to quotas (either express or implied) in respect of the distribution of the MB Funds or CI Funds and shall continue to be entitled to offer competing Third Party Funds to their clients;
4. Except as permitted by NI 81-105, neither IQON nor any of its affiliates shall provide an incentive (monetary or non-monetary) to any Representative to recommend the MB Funds or CI Funds over Third Party Funds;
5. The amount of the Proprietary Rebate that is borne by a Representative is determined by the Representative and the client; and
6. The Representatives that pay the Proprietary Rebates are not and will not be reimbursed directly or indirectly for such payment by IQON or any of its affiliates.

AND PROVIDED FURTHER that this 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 at Winnipeg, Manitoba on June 4, 2003.

R.B. Bouchard, Director