

2007 BCSECCOM 545

August 30, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - Private mutual funds that it manages invest in securities of public mutual funds that it also manages; the top funds are not subject to and do not comply with section 2.5 of NI 81-102; the relief is required only for the underlying funds and is subject to conditions similar to those in section 2.5 of NI 81-102

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 126(a) and (d), 130

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Ontario, Saskatchewan, 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
Integra Capital Management Corporation, Integra Capital Limited and
Integra Capital Financial Corporation
(collectively, the Filers, individually, a Filer)

and

Integra Diversified Fund
Integra Growth Allocation Fund
Integra Strategic Allocation Fund
Integra Conservative Allocation Fund
Integra Newton Global Bond Fund
Integra Acadian Global Equity Fund
Integra Newton Global Equity Fund
Integra 130/30 U.S. Equity Fund
Integra Global Market Neutral Fund

2007 BCSECCOM 545

Integra Canadian Fixed Income Plus Fund
Diversified Private Trust
Growth & Income Diversified Private Trust

and

Lincluden Private Trust
(the Existing Pooled Funds)

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 Filers, on their behalf and on behalf of the Existing Pooled Funds and such other pooled funds that are established and managed by a Filer after the date of this decision (the Future Pooled Funds, and together with the Existing Pooled Funds, the Pooled Funds or individually, a Pooled Fund) for a decision under the securities legislation of the applicable Jurisdictions (the Legislation) exempting:

- (a) in Alberta and Ontario, the Pooled Funds, from the restriction in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder (the Mutual Fund Conflict of Interest Investment Restriction); and
- (b) the Filers from the requirement that a management company or, in British Columbia, a mutual fund manager, file a report relating to a purchase or sale of securities between the mutual fund and any related person or company or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies (the Mutual Fund Conflict of Interest Reporting Requirement, together with the Mutual Fund Conflict of Interest Investment Restriction, the Requested 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.

2007 BCSECCOM 545

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 as represented by the Filers:

1. Each of the Filers is a corporation incorporated under the laws of Ontario. Integra Capital Management Corporation (ICMC) and Integra Capital Limited (ICL) each has its head office in the City of Oakville and Integra Capital Financial Corporation (ICFC) has its head office in Toronto. ICL is a wholly owned subsidiary of ICMC. Until March 12, 2007, ICL was also an affiliate of ICFC.
2. By virtue of a transaction which was completed on March 12, 2007, an affiliate of The Bank of Nova Scotia (the Bank) acquired 60% of the voting shares of ICFC formerly held by principals and shareholders of the Integra group (the Transaction). Pursuant to the agreement under which the Transaction was undertaken, an affiliate of the Bank will acquire the remaining 40% of the shares in ICFC five years from the date of closing from persons who are employed by ICFC and from certain of the shareholders of ICMC.
3. ICMC has established, and may establish in the future, Pooled Funds and mutual funds offered by prospectus (the ICL Mutual Funds), for which either ICMC or ICL is or will be the manager.
4. ICFC has established, and may establish in the future, Pooled Funds, for which ICFC is or will be the manager.
5. The Pooled Funds are or will be mutual funds established by declaration of trust under the laws of Ontario. Units of the Pooled Funds are or will be offered for sale only on a private placement basis pursuant to available prospectus and dealer registration exemptions in each of the provinces of Canada. The Pooled Funds are or will be mutual funds in Ontario, as defined under the *Securities Act* (Ontario), or mutual funds, as defined under the *Securities Act* (Alberta), but are not or will not be reporting issuers.
6. The ICL Mutual Funds are or will be open-end mutual fund trusts governed by declaration of trust under the laws of Ontario, the units of which are or will be offered for sale to the public pursuant to simplified prospectuses and annual information forms qualified in each of the provinces of Canada.

2007 BCSECCOM 545

7. From time to time, a Pooled Fund may invest a certain portion of its assets in units of one or more of the Pooled Funds, the ICL Mutual Funds and any other pooled funds or prospectused mutual funds created and managed by a Filer from time to time (collectively, the Underlying Funds).
8. The actual weighting of the investment by each Pooled Fund in an Underlying Fund will be reviewed on a regular basis and adjusted to ensure that the investment weightings continue to be appropriate for that Pooled Fund's investment objectives.
9. Each Pooled Fund will actively manage its investments in an Underlying Fund with discretion to buy and sell units of the Underlying Fund, selected in accordance with the Pooled Fund's investment objective, as well as alter its holdings in any Underlying Fund in which it invests.
10. Pooled Fund unitholders may obtain a copy of the applicable Underlying Fund's disclosure documents (if any) or the annual or semi-annual financial statements free of charge upon request to the applicable manager.
11. Through investing in the Underlying Funds, the Pooled Funds will achieve greater diversification at a lower cost than investing directly in the securities held by the applicable Underlying Funds. This investment structure will also allow investors with smaller investments to have access to a larger variety of investments than would otherwise be available.
12. Investment by the Pooled Funds in the Underlying Funds will increase the asset base of the Underlying Funds, enabling the Underlying Funds to further diversify their portfolios to the benefit of all their investors. The larger asset base will also benefit investors in the Underlying Funds through achieving favourable pricing and transaction costs on portfolio trades, increased access to investments where there is a minimum subscription or purchase amount and economies of scale through greater administrative efficiency.
13. No sales fees or redemption fees will be payable in connection with the purchases or redemptions by the Pooled Funds of units of the Underlying Funds.
14. No management or other fee will be payable by the Pooled Funds that, to a reasonable person, would duplicate a fee payable by the applicable Underlying Funds for the same service.

2007 BCSECCOM 545

15. Where a matter relating to an Underlying Fund requires a vote of unitholders of the Underlying Fund, the applicable Filer will not cause the units of the Underlying Fund held by a Pooled Fund to be voted at such meeting.
16. In the absence of an exemption from the Mutual Fund Conflict of Interest Investment Restriction, a Pooled Fund would be prohibited from knowingly making and holding an investment in an Underlying Fund if the Pooled Fund, alone or together with one or more related mutual funds, would be a substantial security holder of the Underlying Fund.
17. In the absence of an exemption from the Mutual Fund Conflict of Interest Reporting Requirement, either ICMC or ICL as applicable would be required to file a report for transactions involving the sale of units of an ICL Mutual Fund to a Pooled Fund, to the extent that Pooled Fund would be considered a “related person or company” (as that term is defined in the Legislation) of the ICL Mutual Fund. ICMC or ICL as the case may be, would similarly be required to file a report of every transaction in which, by arrangement, a Pooled Fund is a joint participant with an ICL Mutual Fund.
18. An investment by a Pooled Fund in units of the Underlying Funds will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Pooled Fund.

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 Requested Relief is granted provided that the following conditions are satisfied:

- (a) units of a Pooled Fund are sold solely pursuant to available prospectus and dealer registration exemptions in each of the provinces of Canada;
- (b) no management or incentive fees are payable by a Pooled Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund for the same service;
- (c) no sales or redemption fees are payable by a Pooled Fund in relation to its purchases or redemptions of the units of the Underlying Funds;
- (d) the applicable Filer does not vote the units of the Underlying Funds that are held by a Pooled Fund; and

2007 BCSECCOM 545

- (e) if available, the offering memorandum (or other similar document) of a Pooled Fund will disclose:
- (i) that the Pooled Fund may purchase units of the Underlying Funds;
 - (ii) the fact that both the Pooled Fund and the Underlying Funds are managed by one or more of the Filers; and
 - (iii) the approximate or maximum percentage of net assets of the Pooled Fund that is dedicated to investment in units of the Underlying Funds.

Paul K. Bates
Commissioner
Ontario Securities Commission

David L. Knight
Commissioner
Ontario Securities Commission