

2005 BCSECCOM 476

July 22, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and rules - A person who resides outside BC wants to advise BC residents. - The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant and its BC clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person.

Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - 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; trades in the account are only made on the client's adviser's instructions; the client agreed in writing that confirmation statements will not be delivered to them; confirmations are provided to the client's adviser; the client is sent monthly statements that include the confirmation information.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1)(a) and (c), 48
Securities Rules, B.C. Reg. 194/97, ss. 36(1), 80(1)

**In the Matter of the Securities Legislation
of British Columbia, Alberta, Saskatchewan and Ontario (the Jurisdictions)**

and

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

and

In the Matter of Raymond James Ltd. (the Filer)

MRRS Decision Document

Background

- ¶ 1 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 under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirements in the Legislation:

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- (a) except in Ontario, to be registered as an adviser for certain foreign investment advisers (the Sub-Advisers) to provide portfolio management services to the Filer for the benefit of certain clients who are resident in Jurisdictions in which the Sub-Advisers are not registered (the Registration Relief); and
- (b) that a registered dealer send to its clients a written confirmation of any trade in securities (Trade Confirmation) for transactions that the Filer conducts on behalf of its managed account clients (Clients) with respect to transactions under the Filer's investment management program described below (the Confirmation Relief).

Under the System

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts as represented by the Filer:
- 1. the Filer is a corporation continued under the federal laws of Canada with its head office located in Vancouver, British Columbia;
 - 2. the Filer is an investment dealer registered under the Legislation and is a member of the Investment Dealers Association of Canada (IDA);
 - 3. the Filer is authorized to act as an adviser, without registering as an adviser, under exemptions in the Legislation;
 - 4. each Sub-Adviser is or will be registered or otherwise qualified to provide investment counselling and portfolio management services under applicable laws in the jurisdiction where the Sub-Adviser's head office is located;

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5. the Filer proposes to offer portfolio management services to clients (Participating Clients) who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Advisers have experience and expertise;
6. each Participating Client will enter into an investment management agreement (Investment Management Agreement) with the Filer which:
 - (a) provides the Filer with complete discretionary authority to purchase and sell securities on behalf of the Participating Client, and
 - (b) authorizes the Filer to select and retain portfolio managers to invest all or a portion of the assets in a Participating Client's account (Portfolio);
7. the Filer will enter into an agreement (Sub-Advisory Agreement) with each Sub-Adviser that sets out the obligations and duties of each party in connection with the investment services provided to the Participating Clients and provides the Sub-Adviser with discretionary authority over the Portfolios;
8. in retaining each Sub-Adviser, the Filer will comply with the requirements of section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* and, accordingly:
 - (a) the Filer will agree under the Investment Management Agreement to be responsible for any loss that arises out of the failure of each Sub-Advisor:
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Participating Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or
 - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,
 - (b) the Filer will not be relieved by the Participating Clients from this responsibility under 8(a) above (collectively, the Assumed Obligations);
9. if there is any direct contact between a Participating Client and a Sub-Adviser, a representative of the Filer, duly registered to provide portfolio management and investment counselling services in the Jurisdiction where the Participating Client is resident, will be present at all times, either in person or by telephone;

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10. a Sub-Adviser that provides investment counselling or portfolio management services to the Filer for the benefit of the Participating Clients would be considered to be acting as an “adviser” under the Legislation and, in the absence of the Registration Relief or an existing exemption, would be subject to the adviser registration requirement;
11. Sub-Advisers who are not registered in Ontario will not be required to register as advisers under the *Securities Act* (Ontario) as they can rely on the exemption from registration in section 7.3 of Ontario Rule 35-502 *Non-Resident Advisers*;
12. the Filer offers an investment management program to its Clients under which Clients sign a managed account agreement that provides the Filer with discretionary management authority over their accounts;
13. under the managed account agreement between the Filer and each Client:
 - (a) the Client will pay the Filer a fee based upon a fixed percentage of the average market value of assets in that Client’s account;
 - (b) Clients may be responsible for other charges relating to administration fees for deferred income plans, NSF cheques or client initiated transactions or services; and
 - (c) unless otherwise requested, Clients will explicitly waive receipt of the Trade Confirmations;
14. not less than once a month, the Filer will send a statement of account to each Client who has waived receipt of the Trade Confirmations;
15. the statement of account will contain the information required to be contained in a Trade Confirmation under the Legislation, except for the following information (Omitted Information):
 - (a) the day and the stock exchange or commodity futures exchange upon which the trade took place;
 - (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;
 - (c) the name of the salesperson, if any, in the transaction;

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- (d) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and
- (e) 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;

16. the Filer will maintain the Omitted Information with respect to each Client in its books and records and will make the Omitted Information available to the Client on request.

Decision

¶ 4 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:

- (a) except in Ontario, the Registration Relief is granted provided that
 - (i) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and Filer;
 - (ii) the Filer contractually agrees with each Participating Client on whose behalf investment counselling or portfolio management services are to be provided by a Sub-Adviser to be responsible for any loss that arises out of the failure of the Sub-Adviser:
 - (A) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Participating Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or
 - (B) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
 - (iii) the Filer is not relieved by its Participating Clients from its responsibility for loss under paragraph (ii) above;

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- (iv) each Sub-Adviser that is resident in a province or territory of Canada will be registered as an adviser under the securities legislation of that province or territory;
 - (v) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;
 - (vi) a Sub-Adviser will not have any direct and personal contact with a Participating Client residing in Alberta if the Sub-Adviser is not registered under the securities legislation of that province;
- (b) 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 statement of account that includes the information for a Trade Confirmation referred to in paragraph 14.

L.E. Evans, C.A.
Director