

## 2002 BCSECCOM 1039

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from client consent requirement in National Instrument 81-105 for existing clients of securities dealer - clients have received disclosure of transaction between dealer's holding company and another company which owns certain mutual fund managers and distributors

### **Applicable British Columbia Provisions**

National Instrument 81-105 *Mutual Fund Sales Practices*, ss. 8.2(4) and 9.1(1)

### **IN THE MATTER OF NATIONAL INSTRUMENT 81-105 MUTUAL FUND SALES PRACTICES**

**AND**

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

**AND**

### **IN THE MATTER OF CANACCORD CAPITAL CORPORATION**

### **MRRS DECISION DOCUMENT**

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, the Yukon Territory, the Northwest Territories, and Nunavut (the “Jurisdictions”) has received an application from Canaccord Capital Corporation (the “Filer”) for a decision under section 9.1(1) of National Instrument 81-105 *Mutual Fund Sales Practices* (“NI 81-105”) that subsection 8.2(4) of NI 81-105 shall not apply in certain circumstances;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

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- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:
1. Canaccord Holdings Ltd. (“Canaccord Holdings”) is the 100% holding company of the Filer which is a member of the Investment Dealers Association of Canada (the “IDA”) and is registered to trade in securities under the securities legislation of the Jurisdictions (the “Legislation”);
  2. Canaccord Holdings entered into an agreement dated July 10, 2002 with the Manufacturers Life Insurance Company (“Manulife”), whereby Manulife acquired shares and the rights to acquire shares in Canaccord Holdings, that if such rights were exercised, would give Manulife 20.16% of all the outstanding shares of Canaccord Holdings;
  3. Manulife owns of all the shares of Elliott & Page Limited (“Elliott & Page”) and owns approximately 35% of the shares of Seamark Asset Management (“Seamark”); therefore, Manulife is an affiliate of both Elliott & Page and Seamark;
  4. Elliott & Page and Seamark are the managers and principal distributors of certain mutual funds;
  5. as an affiliate of Elliott & Page and Seamark, Manulife is considered to be a member of the organization of the mutual funds managed by Elliott & Page and Seamark;
  6. NI 81-105 requires that the Filer provide to its clients disclosure of Manulife’s direct or indirect equity interest in the Filer, and that the Filer obtain written consent from clients wishing to trade in the mutual funds managed by Elliott & Page and Seamark or any other mutual funds managed by an affiliate of Manulife (the “Related Mutual Funds”) prior to the completion of trades in the Related Mutual Funds;
  7. the Filer currently makes extensive disclosure of its relationship with Manulife, Elliott & Page, Seamark and the existing Related Mutual Funds; this disclosure is provided through the Filer’s Statement of Policies and Conflict of Interest Rules, through trade confirmations, and through a Statement of Related Mutual Funds;

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8. when the transaction with Manulife was completed, the Filer sent a press release detailing the transaction to all the Filer's clients;
  9. the Filer has sent to all its existing clients copies of both the Statement of Policies and Conflict of Interest Rules and the Statement of Related Mutual Funds;
  10. as part of the new application process of the Filer for any person opening an account after November 4, 2002, written consent for trades in the Related Mutual Funds is obtained prior to any trade by that person;
  11. the Filer has implemented a procedure for obtaining written consents for trades prior to completion of trades in the Related Mutual Funds from each client who has opened an account with the Filer prior to November 4, 2002 and who wishes to purchase a mutual fund;
  12. the Filer, however, has found that the added procedure creates a disincentive for many of its clients and investment advisers from trading in the Related Mutual Funds;
  13. the Filer had over 200,000 client accounts prior to November 4, 2002 and a significant number of the Filer's clients trade in mutual funds;
  14. the Filer has also found that the added costs of the extra procedure on an "as needed basis", amounts to approximately \$70,000 per month;
  15. the Filer has considered alternatives to this extra procedure, including the cost of re-documenting all client accounts opened before November 4, 2002; the staff resources, time, printing and mailing costs for this alternative are estimated to be over \$300,000;
  16. the Filer's representatives, in aggregate, do not hold an equity interest (as defined in NI 81-105) in Manulife;
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- ¶ 6 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;

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¶ 7 THE DECISION of the Decision Makers under section 9.1(1) of NI 81-105 is that the Filer is not required to comply with subsection 8.2(4) of NI 81-105 for a trade in a Related Mutual Fund if the purchaser of the fund had an account with the Filer before November 4, 2002.

¶ 8 DATED December 20, 2002

Brenda Leong  
Director