

2007 BCSECCOM 86

February 6, 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 mutual fund manager wants relief from the requirement in section 126(c) of the Act to report any purchase or sale effected through a related person of the mutual fund - The portfolio advisers of the mutual funds have discretion to allocate brokerage business in any manner consistent with the fund's best interests; the allocation of brokerage business represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the mutual funds; the management report of fund performance for the funds will disclose the names of and fees paid to related persons; the fund's records of portfolio transactions will include information about purchases or sales effected through a related person on a per transaction basis

Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of
BMO Investments Inc. (BMOI)
Guardian Group of Funds Ltd. (GGOF)
BMO Harris Investment Management Inc. (BMOHIM)
BMO Nesbitt Burns Inc. (BMONB)
(the Filers)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that the provisions of the Legislation requiring a management company, or in British Columbia and New Brunswick, a mutual fund manager, to file a report, within thirty days after each month end and in respect of each mutual fund to which it provides services, relating to every purchase or sale effected by such mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the Reporting Requirement) shall not apply to purchases and sales effected by the Funds through BMONB, BMO Investorline Inc. (BMOILI) or any other Related Company (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (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.

“BMO Group of Companies” means the Filers and their affiliates.

“Funds” means the mutual funds set out in Appendix “A” hereto, together with such other funds managed by a member of the BMO Group of Companies from time to time.

“Portfolio Managers” means the portfolio managers of the Funds appointed by the Filers.

“Related Company” means BMONB, BMOILI, or other related brokers or dealers that are members of the BMO Group of Companies.

“NI 81-106” means National Instrument 81-106 – *Investment Fund Continuous Disclosure*.

Representations

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

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1. Each of the BMO Group of Companies is a corporation established under the laws of Canada with its head office currently in Toronto, Ontario.
2. Members of the BMO Group of Companies act as managers of the mutual funds that currently consist of the funds set out in Appendix "A" hereto. Specifically, BMOI is the manager of the BMO Mutual Funds, GGOF is the manager of the Guardian Group of Funds, BMOHIM is the manager of the BMO Harris Private Portfolios and BMONB is the manager of the BMO Nesbitt Burns Group of Funds.
3. BMONB is registered as a broker and investment dealer (equities, options, managed accounts and futures). BMOILI is registered as an investment dealer (equities and options).
4. The Funds are open-ended investment trusts or mutual fund corporations established under the laws of the Province of Ontario or the laws of Canada. Other than as set out in Appendix "A" hereto, each Fund is a reporting issuer in each of the provinces and territories of Canada.
5. Each of the BMO Group of Companies, including BMOILI, is a direct or indirect subsidiary of Bank of Montreal. BMONB and BMOILI are "related companies" to the Funds for purposes of the Legislation.
6. As disclosed in the annual information forms or prospectuses of the Funds, the Portfolio Managers may allocate brokerage business of the Funds to a Related Company, provided such transactions are made on terms and conditions comparable to those offered by unrelated brokers and dealers.
7. The Portfolio Managers of the Funds have discretion to allocate brokerage business in any manner that they believe to be in a Fund's best interests. The purchase or sale of securities effected through a Related Company represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds. In allocating brokerage, consideration is given to commission rates and to research, execution and other services offered.
8. The Funds will disclose in their interim and annual financial statements and in their interim and annual management reports of fund performance the amount of brokerage commissions paid by each Fund on trades with Related Companies.

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9. In the absence of this Decision, reports must be filed on behalf of each member of the BMO Group of Companies on a monthly basis in respect of every purchase or sale of securities effected through a Related Company stating the issuer of the securities purchased or sold, the class or designation of the securities, the amount or number of securities, the consideration, the name of the Related Company receiving the fee, the name of the person or company that paid the fee to the Related Company and the amount of the fee received by the Related Company.
10. It would be costly and time consuming to provide the information required by the Legislation on a monthly and segregated basis.
11. Exemptive relief from the Reporting Requirement was previously granted to the Filers pursuant to a MRRS Decision Document dated August 6, 2002. This relief was conditional on the Funds disclosing, in their statements of portfolio transactions, in respect of every class or designation of securities of an issuer bought or sold during the period to which the statement of portfolio transactions related, the name of each Related Company, the amount of fees paid to each Related Company, and the person or company that paid the fees.
12. Since the introduction of NI 81-106, mutual funds are no longer required to prepare a statement of portfolio transactions. Therefore, the Funds are no longer able to comply with the exemptive relief previously granted. However, NI 81-106 now requires the Funds to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the Funds. When discussing portfolio transactions with related parties, NI 81-106 requires the Funds to include the dollar amount of commission, spread or any other fee paid to a related party in connection with a portfolio transaction. NI 81-106 also requires the Funds, if they have an independent review committee, to disclose whether they have relied on the positive recommendation or approval of the independent review committee to proceed with a transaction.

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:

- (a) the annual and interim management reports of fund performance for each Fund disclose

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- (i) the name of the Related Company,
 - (ii) the amount of fees paid to each Related Company, and
 - (iii) the person or company who paid the fees, if they were not paid by the Fund; and
- (b) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Company,
- (i) the name of the Related Company,
 - (ii) the amount of fees paid to the Related Company, and
 - (iii) the person or company who paid the fees.

Paul M. Moore
Vice-Chair
Ontario Securities Commission

Carol Perry
Commissioner
Ontario Securities Commission

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Appendix "A"

Funds

BMO Investments Inc. (BMO Mutual Funds)

BMO T-Bill Fund
BMO Money Market Fund
BMO AIR MILES® Money Market Fund
BMO Premium Money Market Fund
BMO Mortgage and Short-Term Income Fund
BMO Bond Fund
BMO World Bond Fund
BMO Monthly Income Fund
BMO Diversified Income Fund
BMO Global Monthly Income Fund
BMO Global High Yield Bond Fund
BMO Income Trust Fund
BMO Asset Allocation Fund
BMO Dividend Fund
BMO Equity Index Fund
BMO Equity Fund
BMO U.S. Equity Index Fund
BMO U.S. Growth Fund
BMO U.S. Equity Fund
BMO International Index Fund
BMO International Equity Fund
BMO North American Dividend Fund
BMO European Fund
BMO Japanese Fund
BMO Special Equity Fund
BMO U.S. Special Equity Fund
BMO Resource Fund
BMO Precious Metals Fund
BMO Global Science & Technology Fund
BMO Emerging Markets Fund
BMO U.S. Dollar Money Market Fund
BMO U.S. Dollar Monthly Income Fund
BMO U.S. Dollar Equity Index Fund
BMO Short-Term Income Class
BMO Dividend Class
BMO Canadian Equity Class
BMO Global Balanced Class

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BMO U.S. Equity Class
BMO Global Equity Class
BMO Greater China Class

Guardian Group of Funds Ltd. (Guardian Group of Funds)

GGOF Canadian Bond Fund
GGOF Canadian Money Market Fund
GGOF Floating Rate Income Fund
GGOF Global Bond Fund
GGOF High Yield Bond Fund
GGOF Monthly Dividend Fund Ltd.
GGOF Monthly High Income Fund
GGOF Monthly High Income Fund II
GGOF U.S. Money Market Fund
GGOF American Equity Fund Ltd.
GGOF Canadian Growth Fund Ltd.
GGOF Canadian Large Cap Equity Fund
GGOF Dividend Growth Fund
GGOF Emerging Markets Fund
GGOF Enterprise Fund
GGOF European Equity Fund
GGOF Global Equity Fund
GGOF Global Small Cap Fund
GGOF Global Technology Fund
GGOF Japanese Equity Fund
GGOF Resource Fund
GGOF Asian Growth and Income Fund
GGOF Canadian Balanced Fund
GGOF Canadian Diversified Monthly Income Fund
GGOF Global Diversified Fund
GGOF Small Cap Growth and Income Fund
GGOF U.S. Diversified Monthly Income Fund
GGOF Income Solution
GGOF Conservative Solution
GGOF Balanced Solution
GGOF Growth Solution
GGOF Aggressive Growth Solution
GGOF Global Absolute Return Fund

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BMO Nesbitt Burns Inc. (BMO Nesbitt Burns Group of Funds)

BMO Nesbitt Burns Canadian Stock Selection Fund
BMO Nesbitt Burns U.S. Stock Selection Fund
BMO Nesbitt Burns Bond Fund
BMO Nesbitt Burns Balanced Fund
BMO Nesbitt Burns Balanced Portfolio Fund
BMO Nesbitt Burns Growth Portfolio Fund
BMO Nesbitt Burns All Equity Portfolio Fund

BMO Harris Investment Management Inc. (BMO Harris Private Portfolios)

BMO Harris Canadian Money Market Portfolio(*)
BMO Harris Canadian Bond Income Portfolio(*)
BMO Harris Canadian Total Return Bond Portfolio(*)
BMO Harris Canadian Corporate Bond Portfolio(*)
BMO Harris Income Opportunity Bond Portfolio(*)
BMO Harris Diversified Trust Portfolio(*)
BMO Harris Canadian Dividend Income Portfolio(*)
BMO Harris Canadian Income Equity Portfolio(*)
BMO Harris Canadian Conservative Equity Portfolio(*)
BMO Harris Canadian Growth Equity Portfolio(*)
BMO Harris Growth Opportunities Portfolio(*)
BMO Harris Canadian Special Growth Portfolio(*)
BMO Harris U.S. Equity Portfolio(*)
BMO Harris U.S. Growth Portfolio(*)
BMO Harris International Equity Portfolio(*)
BMO Harris International Special Equity Portfolio(*)
BMO Harris Emerging Markets Equity Portfolio(*)

(*) reporting issuers in each of the provinces and not the territories.