

July 17, 2006

Headnote

MRRS - 1996 Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - 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; the BC client will obtain advice from and give all instructions through the BC registrant.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(c) and 48

**In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick,
Prince Edward Island, Newfoundland and Labrador and Yukon Territory (the
Jurisdictions)**

and

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

and

**In the Matter of Franklin Templeton Investments Corp. (FTIC) and Fiduciary Trust
Company of Canada (FTCC) (collectively, the Filers)**

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 FTIC and, except in Prince Edward Island and Newfoundland and Labrador, from FTCC for an exemption from the requirement in the securities legislation of the Jurisdictions (the Legislation) to be registered as an adviser on behalf of certain investment advisers (the Sub-Advisers). The exemption will allow the Sub-Advisers to provide investment counselling and portfolio management services to the Filers for the benefit of certain clients who are resident in Jurisdictions in which the Sub-Advisers are not registered (the Registration 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 Filers:

1. FTIC is a corporation amalgamated under the laws of Ontario; FTCC is a trust company incorporated under the laws of Canada; FTCC is a wholly-owned subsidiary of FTIC; each of the Filers has its head office in Toronto, Ontario;

2. FTIC is registered in the Jurisdictions as an adviser in the categories of investment counsel and portfolio manager (or equivalent);

3. FTCC is registered in the Jurisdictions, except Prince Edward Island and Newfoundland and Labrador, as an adviser in the categories of investment counsel and portfolio manager (or equivalent);

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;

5. the Filers intend to retain the Sub-Advisers to offer investment advisory services for the benefit of clients of the Filers (Clients) who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Advisers have experience and expertise;

6. each Client will enter into an investment management agreement (Investment Management Agreement) with the relevant Filer which:

(a) provides the Filer with complete discretionary authority to purchase and sell securities on behalf of the Client, and

(b) authorizes the Filer to select and retain Sub-Advisers to provide investment advisory services for the benefit of the Client, and, in some cases, authorizes the Filer to delegate discretionary authority over the Client's account to the Sub-Adviser;

7. in some cases, the Sub-Advisers will provide model portfolios in which the Filers may invest the Clients' accounts; Filers will have the right to customize the model portfolios to meet the specific needs of their Clients and will retain discretionary authority over the Clients' accounts;

8. in other cases, the Filers will delegate discretionary authority to the Sub-Advisers to make investment decisions for the benefit of the Clients' accounts under the responsibility of, and subject to the monitoring of, the Filers;

9. each Filer will enter into an agreement with each Sub-Adviser that sets out the obligations and duties of each party in connection with the relevant investment advisory services being provided by the Sub-Advisers for the benefit of the relevant Client;

10. in retaining each Sub-Adviser, the Filers will agree under the Investment Management Agreement, or such other written instrument, to be responsible for any loss that arises out of the failure of a 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(s) and the Client(s) for whose benefit the investment advisory 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,

(collectively, the Assumed Obligations);

11. the Filers will not be relieved by Clients from the Assumed Obligations;

12. only Filers will receive instruction and provide advice directly to Clients, subject to paragraph 13 below;

13. if there is any direct contact between a Client and a Sub-Adviser, a representative of the relevant Filer, duly registered to provide portfolio management and investment counselling services in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;

14. a Sub-Adviser that provides investment advisory services to the Filers for the benefit of the 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 required to be registered as an adviser under the Legislation; and

15. 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.

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 the Registration Relief is granted to the Sub-Advisers provided that

- (i) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the relevant Filer;
- (ii) the Filers contractually agree with each Client, on whose behalf the Sub-Adviser will provide investment advisory services, 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 relevant Filer and the Clients for whose benefit the investment advisory 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 Filers are not relieved by the Clients from their responsibility for loss under paragraph (ii) above;
- (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 Client residing in Alberta if the Sub-Adviser is not registered under the securities legislation of that province; and
- (vii) in Manitoba, the Registration Relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction.

"L.E. Evans"
L.E. Evans, CA
Director, Capital Markets Regulation
British Columbia Securities Commission