

IN THE MATTER OF
THE SECURITIES LEGISLATION
OF
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW BRUNSWICK, NOVA
SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND, YUKON, NORTHWEST
TERRITORIES AND NUNAVUT

AND

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

AND

IN THE MATTER OF
FRANK RUSSELL CANADA LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from Frank Russell Canada Limited (the "Applicant") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

(a) certain trades by investors in units ("Units") of certain classes (a "Non-Reporting Class") of open-end unit trusts (the "Funds") established and to be established by the Applicant are not subject to the registration and prospectus requirements of the Legislation of Manitoba, Ontario, New Brunswick, Newfoundland, Prince Edward Island and Yukon Territory (the "Prospectus Jurisdictions"); and

(b) trades in Units are not subject to the requirements of the Legislation of the Jurisdictions other than Manitoba relating to the filing of forms and the payment of fees within 10 days of each trade;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Applicant has represented to the Decision Maker that:

(a) the Applicant is registered as an adviser in the categories of investment counsel and portfolio manager in each of the Jurisdictions other than Prince

Edward Island, Northwest Territories and Nunavut and is registered as a mutual fund dealer with the Ontario Securities Commission;

(b) the Applicant has and intends to establish one or more Funds pursuant to declarations of trust for which the Applicant will act as the trustee and manager;

(c) each Fund will be a "mutual fund" as defined in the Legislation;

(d) none of the Non-Reporting Classes of the Funds currently intends to become a reporting issuer, as such term is defined in the Legislation, and the Units of the Non-Reporting Classes of the Funds will not be listed on any stock exchange;

(e) each Non-Reporting Class of a Fund will be divided into Units which will evidence the undivided interest of each investor in the assets of the Fund;

(f) Units of a Non-Reporting Class will be distributed on a continuous basis to persons (the "Unitholders") in the Jurisdictions in reliance on the exemption (the "Private Placement Exemption") set out in the Legislation for distributors where the purchaser purchases as principal if the aggregate acquisition cost is not less than a prescribed amount (the "Prescribed Amount");

(g) the minimum initial investment in a Non-Reporting Class of a Fund by a resident of any Jurisdiction will be not less than the Prescribed Amount in that Jurisdiction;

(h) following such initial investment, it is proposed that Unitholders be able to purchase additional Units ("Subscribed Units") of a Non-Reporting Class of a Fund in increments of less than the Prescribed Amount, provided that at the time of such subsequent acquisition the investor holds Units of the Non-Reporting Class of the Fund with an aggregate acquisition cost or aggregate net asset value of at least the Prescribed Amount;

(i) each Fund proposes to distribute additional Units ("Reinvested Units") by way of automatic reinvestment of distributions to unitholders of such Fund; and

(j) Units will be non-transferable, except with the consent of the Applicant, in the limited circumstances set out in the declaration of trust of the particular Fund, but are redeemable in accordance with the procedures set out in the declaration of trust of the particular Fund;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

(a) the registration and prospectus requirements contained in the Legislation of the Prospectus Jurisdictions shall not apply to:

(i) the issuance of Subscribed Units of a Fund to a Unitholder of that Fund provided that:

(1) the initial investment in Units of a Non-Reporting Class of that Fund was pursuant to the Private Placement Exemption;

(2) at the time of the issuance of such Subscribed Units, the Unitholder then owns Units of the Non-Reporting Class of that Fund having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount of the applicable Prospectus Jurisdiction;

(3) at the time of the issuance of such Subscribed Units, the Applicant is registered under the Legislation of Ontario as an adviser in the categories of investment counsel and portfolio manager and such registration is in good standing; and

(4) this clause (i) will cease to be in effect with respect to a Prospectus Jurisdiction 90 days after the coming into force of any legislation, regulation or rule in such Jurisdiction relating to the distribution of Subscribed Units of pooled funds;

(ii) an issuance of Reinvested Units of a Fund to a Unitholder of a Fund provided that:

(1) no sales commissions or other charge in respect of such issuance of Reinvested Units is payable; and

(2) each Unitholder who receives Reinvested Units has received, not more than 12 months before such issuance, disclosure in the annual financial statements describing (A) the details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of a Unit, (B) any right that the Unitholder has to make an election to receive cash instead of Units on the

payment of the net income or net realized capital gains distributed by the Fund; (C) instructions on how the right referred to in subclause (B), if any, can be exercised, and (D) the fact that no prospectus is available for the Non-Reporting Class of the Fund as Units are offered pursuant to prospectus exemptions only;

provided that the first trade in Subscribed Units and Reinvested Units that are issued pursuant to this Decision shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless otherwise exempt thereunder or unless such first trade is made in the following circumstances:

(i) the applicable Fund is a reporting issuer or the equivalent under the Applicable Legislation;

(ii) if the seller of the Subscribed Units or Reinvested Units is in a special relationship (as defined in the Applicable Legislation) with the Fund, the seller has reasonable grounds to believe that the Fund is not in default of any requirement of the Applicable Legislation;

(iii) no unusual effort is made to prepare the market or to create a demand for the Subscribed Units or Reinvested Units and no extraordinary commission or consideration is paid in respect of such trade; and

(iv) the Subscribed Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Subscribed Units or the Reinvested Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Reinvested Units;

(b) the requirements contained in the Legislation of the Jurisdictions other than Manitoba to file a report of a distribution of Units under the Private Placement Exemption or of Subscribed Units within 10 days of such trade shall not apply to such trade, provided that within 30 days after each financial year end of each Fund, such Fund:

(i) files with the applicable Decision Maker a report in respect of all trades in Units of the Non-Reporting Class of that Fund during such financial year, in the form prescribed by the applicable Legislation; and

(ii) remits to the applicable Decision Maker the fee prescribed by the applicable Legislation.

DATED this 26th day of April, 2001.

"Stephen N. Adams"
Stephen N. Adams

"Paul Moore"
Paul Moore

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - trades by pooled funds of additional units to existing unitholders holding units having an aggregate acquisition cost or net asset value of not less than the minimum amount prescribed by legislation under "private placement" exemption exempted from registration and prospectus requirement - trades by pooled funds of units to existing unitholders pursuant to automatic reinvestment of distributions by pooled funds exempted from registration and prospectus requirement - trades in units of pooled funds not subject to requirement to file reports of trade within 10 days of trades provided prescribed reports filed and fees paid within 30 days of financial year end of pooled funds.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 72(3), 74(1), 147

Rules Cited

Ontario Securities Commission Rule 45-501 - *Exempt Distributions* (1998) 21 OSCB 6548

Ontario Securities Commission Rule 81-501 - *Mutual Fund Reinvestment Plans* (1998) 21 OSCB 2713