

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- relief from the adviser registration requirement for certain affiliated companies of the Principal Adviser and other future sub-advisers and any of their directors, officers or employees, acting as sub-advisers to the Principal Adviser in connection with portfolio managed clients resident in Ontario. The Principal Adviser of the portfolio managed clients is an Ontario registrant.

Except in Manitoba, relief from the adviser registration requirements of subsection 22(1)(b) of the CFA in respect of advising certain mutual funds, non-redeemable investment funds and similar investment vehicles established outside of Canada in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges primarily outside of Canada and cleared through clearing corporations primarily outside of Canada, subject to certain terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 80.

Securities Act, R.S.O. 1990, c. S.5, as am. -- Rule 35-502 -- Non Resident Advisers, ss. 7.3, 7.10.

June 21, 2006

**IN THE MATTER OF
THE COMMODITY FUTURES LEGISLATION
OF ONTARIO AND MANITOBA
(the Jurisdictions)**

AND

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

AND

**IN THE MATTER OF
FRANK RUSSELL COMPANY AND
FRANK RUSSELL SECURITIES, INC.**

MRRS DECISION DOCUMENT

Background

On December 22, 2005, the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions made a decision (the Original Decision), under the

commodity futures legislation of the Jurisdictions (the Legislation), that Frank Russell Company (FRC) and its directors, officers and employees are not subject to,

(a) the requirement to be registered as an adviser (the Registration Requirement) in connection with FRC acting as an adviser to Frank Russell Canada Limited (FRCL) with respect to trades in commodity futures contracts and related products traded on commodity futures exchanges for the benefit of FRCL's portfolio managed clients resident in the Jurisdictions (the Clients); and

(b) except in Manitoba, the requirement to be registered as an adviser (the Fund Adviser Registration Requirement) in respect of advising certain mutual funds created outside of Canada (the Funds) regarding trades in commodity futures contracts and options traded on commodity futures exchanges primarily outside of Canada and cleared through clearing corporations primarily outside of Canada.

The Decision Maker in each of the Jurisdictions has now received an application from FRC and Frank Russell Securities, Inc. (FRS) for an order that revokes the Original Decision and provides an exemption under the Legislation from the Registration Requirement for FRC, FRS, certain affiliates of FRC and FRS, identified in Schedule "A" and future affiliates of FRC and FRS (FR Foreign Adviser Affiliates) and except in Manitoba, the Fund Adviser Registration Requirement for both FRC and FRS.

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

(a) the Ontario Securities Commission (the 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.

Representations

This decision is based on the following facts represented by each of FRC and FRS:

1. FRC is a corporation organized under the laws of the State of Washington, United States, with its principal place of business located in Tacoma, Washington, United States. FRC is registered with the United States Securities and Exchange Commission (the SEC) as an investment adviser, and with the U.S. Commodity Futures Trading Commission (the CFTC) as a commodity trading adviser. FRC was registered with the Ontario Securities Commission as a commodity trading manager (non-resident) in Ontario but did not seek to renew such registration at the end of 2005;

2. FRC is the direct parent corporation of FRCL, FRS and each of the FR Foreign Adviser Affiliates.
3. FRS is a corporation organized under the laws of the State of Washington, United States, with its principal place of business located in Tacoma, Washington, United States. FRS is registered with the SEC as an investment adviser and a broker-dealer and is exempted pursuant to the provisions of the Commodity Exchange Act (United States) from registration with the CFTC. FRS is currently registered with the Ontario Securities Commission as an international dealer.
4. The FR Foreign Adviser Affiliates are, or in the future shall be, registered with the SEC as investment advisers and have either registered with or are exempted from registration with the CFTC. The FR Foreign Adviser Affiliates are not, or shall not be, resident in Canada and are not, or shall not be, registered and have no current intention of becoming registered in any capacity under the Securities Act (Ontario) (the OSA) or the Commodity Futures Act (Ontario) (the OntCFA).
5. FRCL is a corporation incorporated under the laws of Canada with its head office located in Toronto, Ontario;
6. FRCL is registered as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the categories of mutual fund dealer and limited market dealer under the OSA and as a commodity trading manager under the OntCFA. FRCL is also registered as a portfolio manager (securities) and adviser (commodities) and commodity trading manager in Manitoba;
7. FRCL acts as an adviser to the Clients and may advise Clients to invest in futures and options on futures traded on Canadian or other organized exchanges outside of Canada and in other derivative instruments traded over-the-counter (the Proposed Advisory Services);
8. FRCL wishes to retain from time to time FRC, FRS and the FR Foreign Adviser Affiliates as a sub-adviser to provide advice to FRCL in connection with accounts managed by FRCL for Clients in respect of the Proposed Advisory Services;
9. The discretionary investment accounts for which each of FRC, FRS or the FR Foreign Adviser Affiliates will be retained will be accounts for "accredited investors" as defined in National Instrument 45-106 Prospectus and Registration Exemptions;
10. In performing the Proposed Advisory Services, FRC, FRS, the FR Foreign Adviser Affiliates and FRCL will comply with the requirements of Section 7.3 of Ontario Securities Commission Rule 35-502 and accordingly,
 - (a) the obligations and duties of each of FRC, FRS and the FR Foreign Adviser Affiliates will be set out in a written agreement with FRCL;
 - (b) FRCL will contractually agree with its Clients on whose behalf investment advice is or portfolio management services are to be provided by FRC, FRS and

the FR Foreign Adviser Affiliates to be responsible for any loss that arises out of the failure of FRC, FRS or the FR Foreign Adviser Affiliates:

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of FRCL and each Client of FRCL for whose benefit the advice is 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;
and

(c) FRCL cannot be relieved by its Clients from its responsibility for loss under paragraph (b) above;

11. FRCL will be responsible for providing all Client reports and statements required under the commodity futures legislation of the applicable Jurisdictions. All direct contact with Clients will be with FRCL and its directors, officers or employees although representatives of both FRC, FRS and/or a FR Foreign Adviser Affiliate may participate in such communications from time to time;

12. FRC, FRS and the FR Foreign Adviser Affiliates, in providing the Proposed Advisory Services to FRCL and indirectly to Clients of FRCL, may be considered to be acting as an adviser under the Legislation and, in the absence of the requested relief, would be subject to the Registration Requirement;

13. FRC, FRS and the FR Foreign Adviser Affiliates cannot rely on any adviser registration exemptions in the Legislation to provide the Proposed Advisory Services to the Clients;

14. FRC may in the future act as an investment adviser in respect of certain non-Canadian investment funds (the FRC Funds);

15. FRS may in the future act as an investment adviser in respect of certain non-Canadian investment funds (the FRS Funds). The FRC Funds and FRS Funds together are defined herein as the Funds;

16. The Funds may from time to time invest in commodity futures contracts and commodity futures options traded on organized exchanges primarily outside of Canada and cleared through clearing corporations primarily outside of Canada;

17. FRC, as investment manager of the FRC Funds, will make all decisions with respect to the overall management of the FRC Funds;

18. FRS, as investment manager of the FRS Funds, will make all decisions with respect to the overall management of the FRS Funds;

19. By advising the FRC Funds directly on investing in commodity futures contracts and commodity futures options, FRC will be providing advice to the FRC Funds with respect to commodity futures contracts and commodity futures options;

20. By advising the FRS Funds directly on investing in commodity futures contracts and commodity futures options, FRS will be providing advice to the FRS Funds with respect to commodity futures contracts and commodity futures options;

21. The Funds are or will be all established outside of Canada. Securities of the Funds are or will be:

(a) primarily offered outside of Canada;

(b) only distributed in Ontario through one or more registrants (as defined under the OSA); and

(c) distributed in Ontario in reliance upon an exemption from the prospectus requirements of the OSA;

22. Prospective investors in the Funds who are Ontario residents will receive disclosure that includes:

(a) a statement that there may be difficulty in enforcing any legal rights against FRC or FRS as applicable (or its directors, officers and employees) and the Funds (or their directors, officers and employees), because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

(b) a statement that FRC and FRS, as applicable, is not registered with the Ontario Securities Commission under the OntCFA and, accordingly, the protections available to clients of a registered adviser under the OntCFA will not be available to purchasers of securities of the Funds;

23. None of the Funds has any intention of becoming a reporting issuer in Ontario or in any other Canadian jurisdiction;

24. FRC, in advising the FRC Funds, may be considered to be acting as an adviser under the Legislation in Ontario, and in the absence of the requested relief, would be subject to the Fund Adviser Registration Requirement;

25. FRS, in advising the FRS Funds, may be considered to be acting as an adviser under the Legislation in Ontario, and in the absence of the requested relief, would be subject to the Fund Adviser Registration Requirement;

26. FRC cannot rely on any adviser registration exemptions in the Legislation in Ontario to provide advice to the FRC Funds; and

27. FRS cannot rely on any adviser registration exemptions in the Legislation in Ontario to provide advice to the FRS Funds.

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, for a period of three years, the requested relief is granted as follows:

(a) the Registration Requirement shall not apply to each of FRC, FRS and the FR Foreign Adviser Affiliates with respect to its activities in providing the Proposed Advisory Services for the benefit of FRCL and FRCL's clients provided that,

(i) the obligations and duties of each of FRC, FRS and the FR Foreign Adviser Affiliates will be set out in a written agreement with FRCL;

(ii) FRCL will contractually agree with its Clients, on whose behalf investment advice is or portfolio management services are to be provided by FRC, FRS or any of the FR Foreign Adviser Affiliates, to be responsible for any loss that arises out of the failure of FRC, FRS or any of the FR Foreign Adviser Affiliates:

A. To exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of FRCL and each Client of FRCL for whose benefit the advice is 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) FRCL cannot be relieved by its Clients from its responsibility for loss under paragraph (ii) above;

(iv) FRC, FRS and the FR Foreign Adviser Affiliates are not resident in Canada, but are licensed or otherwise legally qualified to provide the Proposed Advisory Services by the applicable regulator in the jurisdiction in which each resides; and

(v) in respect of any FR Foreign Adviser Affiliate whose name does not specifically appear in this Order and who proposes to rely on the exemption granted under this Order, the Filer shall have

executed and filed with each of the Decision Makers a verification certificate referencing this Order, identifying such FR Foreign Adviser Affiliate and confirming the truth and accuracy of the Application with respect to that particular FR Foreign Adviser Affiliate;

and

(b) except in Manitoba, the Fund Adviser Registration Requirement shall not apply to both FRC and FRS, and their respective directors, officers and employees, with respect to its activities in providing advisory activities in connection with the Funds, provided that at the time such activities are engaged in:

(i) FRC continues to be registered as an investment adviser with the SEC and registered as a commodity trading adviser with the CFTC or otherwise exempt from such registrations;

(ii) FRS continues to be registered as an investment adviser with the SEC and exempt from registration as a commodity trading adviser with the CFTC or otherwise exempt from such registrations;

(iii) the Funds invest in commodity futures contracts and commodity futures options traded on organized exchanges primarily outside of Canada and cleared through clearing corporations primarily outside of Canada;

(iv) securities of the Funds will be offered primarily outside of Canada and will only be distributed in Ontario through a registrant (as defined under the OSA), in reliance upon an exemption from the prospectus requirements of the OSA; and

(v) prospective investors in the Funds who are Ontario residents will receive disclosure that includes:

A. a statement that there may be difficulty in enforcing any legal rights against FRC or FRS, as applicable, (or its respective directors, officers and employees) and the Funds (or its directors, officers and employees), because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

B. a statement that FRC and FRS, as applicable, are not registered with the Commission under the

OntCFA and, accordingly, the protections available to clients of a registered adviser under the OntCFA will not be available to purchasers of securities of the Funds.

"Paul M. Moore"
" Suresh Thakrar"

Schedule "A"

1. Frank Russell Capital Inc.