

August 31, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – 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, New Brunswick, Prince Edward
Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and
Nunavut (the Jurisdictions)**

and

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

and

In the Matter of HSBC Securities (Canada) Inc. (the Filer)

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 the Filer on behalf of certain foreign portfolio managers (the Sub-Advisers) for an exemption from the requirement in the securities legislation of the Jurisdictions (the Legislation) to be registered as an adviser; the exemption will allow the Sub-Advisers to provide investment counselling and portfolio management services to clients of the Filer 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 represented by the Filer:

1. the Filer is a corporation amalgamated pursuant to the Business Corporations Act (Ontario); the head office of the Filer is located in Ontario;
2. the Filer is registered under the Legislation in each of the Jurisdictions as a "dealer" in the category of "investment dealer" or its local equivalent ; the Filer is a member of the Investment Dealers Association of Canada, the Toronto Stock Exchange Inc., the Canadian Derivatives Exchange and the Toronto Venture Exchange;
3. the Filer provides investment dealer and portfolio management services to individuals and corporate clients resident in the Jurisdictions and other jurisdictions where it is qualified to provide such services;
4. all Sub-Advisers have head offices located outside Canada;
5. each Sub-Adviser is or will be registered or otherwise qualified to provide portfolio management services under applicable laws in the jurisdiction where the Sub-Adviser's head office is located;
6. the Filer intends to offer the portfolio management services of the Sub-Advisers to clients of the Filer's (the Participating Clients) who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Adviser has experience and expertise;
7. each Participating Client will enter into an investment management agreement (IMA) with the Filer under which:
 - (a) the Participating Client grants full discretionary authority to the Filer to make investment decisions and to trade in securities on behalf of the Participating Client without obtaining the specific consent of the Participating Client to individual trades; and
 - (b) authorizes the Filer to delegate its discretionary authority over all or a portion of the Participating Client's assets to the Sub-Advisers;
8. each Sub-Adviser will exercise discretionary authority over the assets of Participating Clients who wish to have exposure to capital markets located in jurisdictions in which the Sub-Adviser has experience and expertise;

9. the Filer will enter into an agreement with each Sub-Adviser which will set out the obligations and duties of each party in connection with the portfolio management services provided to Participating Clients;

10. the Filer will make enquiries with respect to each Participating Client to learn the essential facts about that Participating Client, to determine the general investment needs and objectives of, the appropriateness of recommendations made to, and the suitability of proposed transactions for the Participating Client, and to otherwise comply with the "know your client" obligations under the Legislation, and will provide this information to each Sub-Adviser who exercises discretionary authority over the assets of a Participating Client;

11. the Filer will agree under the IMA 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 and the Participating Clients of the Filer for whose benefit the investment 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,

(collectively, the Assumed Obligations);

12. the Filer will not be relieved by Participating Clients from Assumed Obligations; and

13. the Filer will send to each Participating Client quarterly statements and performance reports prepared by the Filer;

14. a Participating Client must obtain all advice and give all instructions and directions through the Filer;

15. except in Alberta, from time to time, written reports prepared by a Sub-Adviser containing commentary on markets in which they have experience may be delivered by the Filer to Participating Clients;

16. the Sub-Advisers who provide portfolio management services with respect to the assets of a Participating Client 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

17. none of the Legislation contains an exemption from the adviser registration requirement that would be available to the Sub-Advisers who provide portfolio management services to Participating Clients.

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 provided that:

1. the obligations and duties of each of the Sub-Advisers are set out in an IMA;
2. the Filer contractually agrees with each Participating Client that the Filer will be responsible for the Assumed Obligations;
3. the Filer cannot be, and at no time is, relieved of the Assumed Obligations by Participating Clients;
4. if there is any direct contact between a Participating Client and a Sub-Adviser, a representative of the Filer duly registered to provide portfolio management and investment counselling services in the Jurisdiction where the Participating Client is resident, will be present at all times, either in person or by telephone;
5. despite 4 above, a Sub-Adviser will not have any direct and personal contact with a Participating Client resident in Alberta if the Sub-Adviser is not registered under the securities legislation of that province;
6. the Filer is or will be registered under the Legislation as a "dealer" in the category of "investment dealer" or its local equivalent in the Jurisdictions in which Participating Clients are resident;
7. each Sub-Adviser that is not resident in Canada is or will be licensed or otherwise legally permitted to provide portfolio management services or its local equivalent under the applicable laws of the jurisdiction in which it resides;
8. where a Sub-Adviser becomes resident in a jurisdiction in Canada, such Sub-Adviser will seek registration as an "adviser" or its local equivalent in such jurisdiction; and
9. in Manitoba, the 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