

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 48
Adviser - Exemption from s. 34(1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and Rules - 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

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF LEGG MASON CANADA INC.

MRRS DECISION DOCUMENT

¶ 1 WHEREAS the securities regulatory authority or regulator (the “Decision Maker”) in the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador (collectively, the “Jurisdictions”) has received an application from Legg Mason Canada Inc. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to be registered as an adviser (the “Registration Requirement”) does not apply to certain foreign advisers (the “Advisers”) who provide sub-advisory services to discretionary managed account or pooled fund clients of the Applicant;

¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

¶ 3 AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

¶ 4 AND WHEREAS the Applicant has represented to the Decision Makers that:

1. The Applicant is a corporation incorporated under the laws of Canada;
2. The Applicant is registered as an adviser in the categories of investment counsel and portfolio manager (or equivalent) under the securities legislation in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Quebec, and has recently filed an application for equivalent registration in Newfoundland and Labrador;
3. All Advisers will have head offices located outside Canada and will be registered or otherwise qualified to provide advisory services under applicable laws in the jurisdiction where the Adviser's head office is located;
4. The Applicant provides investment counselling and portfolio management services to individual and institutional clients resident in the Jurisdictions and other jurisdictions where it is qualified to provide such services;
5. Each of the Advisers provides investment counselling and portfolio management services to clients resident in the jurisdictions where its head office is located and in other jurisdictions where it is registered or otherwise qualified to provide such services;
6. The Applicant intends to offer the investment counselling and portfolio management services of the Applicant and the Advisers to discretionary managed account clients and to pooled funds to whom the Applicant provides advisory or sub-advisory services, where such clients and pooled funds (collectively, the "Participating Clients") wish to have exposure to capital markets located in a jurisdiction in which the Applicant or an Adviser has experience and expertise;
7. The Applicant will be registered under the Legislation as an adviser in the categories of investment counsel and portfolio manager or their equivalent in the Jurisdictions in which Participating Clients are resident;
8. Each Participating Client will enter into an investment management agreement ("IMA") with the Applicant which provides the Applicant with complete discretionary authority to purchase and sell securities on behalf of the Participating Client, and authorizes the Applicant to delegate its discretionary authority over all or a portion of the Participating Client's assets to the Advisers;
9. The Applicant will enter into a written agreement with each Adviser which will set out the obligations and duties of each party in connection with the investment counselling and portfolio management services provided to Participating Clients, and pursuant to which the Advisers will agree to act as sub-advisers to the Applicant for the benefit of Participating Clients. Each Adviser will either (i) provide advice to the Applicant with respect to the investment of the assets of Participating Clients, or (ii) directly exercise discretionary authority over the assets of Participating Clients who, in either case, wish to have exposure to capital markets located in jurisdictions in which the Adviser has experience and expertise;
10. The Applicant will:

(a) make enquiries with respect to each Participating Client to learn the essential facts about each 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 Adviser who exercises discretionary authority over the assets of a Participating Client;

(b) agree under the IMA to be responsible for any loss that arises out of the failure of an Adviser:

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Applicant and the Participating Client of the Applicant for whose benefit the investment 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 acknowledge that it cannot be relieved by its client from this responsibility (collectively, the “Assumed Obligations”); and

(c) send to each Participating Client all reports and statements required under the securities legislation of the applicable Jurisdictions;

11. A Participating Client will obtain all advice and give all instructions and directions through the Applicant;

12. if there is any direct contact between a Participating Client and an Adviser, a registered representative of the Applicant will be present at all times, either in person or by telephone;

13. The Advisers will not have any other contact with Participating Clients, except that:

(a) from time to time written reports prepared by Advisers containing a commentary on markets in their respective jurisdictions may be delivered by the Applicant to Participating Clients; and

(b) from time to time investment counsel or portfolio managers who are officers or employees of the Advisers may conduct presentations or seminars in the Jurisdictions. At these presentations or seminars, these investment counsel or portfolio managers will make presentations regarding the status of the economies and capital markets in the jurisdictions where they are authorized to carry on the business of providing investment counselling and portfolio management services. In such cases, a registered representative of the Applicant will be present at all times.

14. Where the Advisers provide investment counselling and portfolio management services with respect to the assets of a Participating Client by either (i) providing advice to the Applicant with respect to the investment of the assets of Participating Clients, or (ii) directly exercising discretionary authority to purchase and sell securities on behalf of the Participating Client, they are acting as an “adviser” within the meaning of, and subject to the Registration Requirement of, the applicable Legislation; and

15. None of the Legislation contains an exemption from the Registration Requirement that would be available to the Advisers who provide investment counselling and portfolio management services to Participating Clients.

¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

¶ 6 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;

¶ 7 THE DECISION of the Decision Makers under the Legislation is that the Registration Requirement does not apply to the Advisers who provide investment counselling and portfolio management (sub-advisory) services to Participating Clients, provided that:

(a) the obligations and duties of each of the Advisers are set out in a written agreement with the Applicant;

(b) the Applicant contractually agrees with each Participating Client that the Applicant will be responsible for the Assumed Obligations;

(c) the Applicant cannot be, and at no time is, relieved of the Assumed Obligations by Participating Clients;

(d) the Applicant is registered under the Legislation as an adviser in the categories of investment counsel and portfolio manager or their equivalent in the Jurisdictions in which Participating Clients are resident;

(e) in Manitoba, the relief is available only to Advisers who are not registered in any Canadian jurisdiction; and

(f) an Adviser will not have any direct and personal contact with a Participating Client residing in New Brunswick if the Adviser is not registered as an adviser in that jurisdiction.

¶ 8 June 22, 2004

Brenda Leong
Director

