

May 23, 2008

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

**AND**

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

**AND**

**IN THE MATTER OF  
THE UNIVERSITY OF WESTERN ONTARIO  
("UWO")**

**MRRS DECISION DOCUMENT**

**Background**

The securities regulatory authority or regulator (the "**Decision Maker**") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut (collectively, the "**Jurisdictions**") has received an application from UWO for a decision pursuant to the securities legislation in each of the Jurisdictions (collectively, the "**Legislation**") that certain trades made in connection with the UWO registered retirement income fund program (the "**UWO RRIF Program**") be exempted from the prospectus and registration requirements under the applicable Legislation.

Under National Policy 12-201 -- *Mutual Reliance Review System for Exemptive Relief Applications* (the "**MRRS**"):

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision 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 otherwise defined in this decision.

## Representations

- 1) UWO is a Canadian university located in London, Ontario and established in 1878. UWO has an enrolment of approximately 30,000 students and employs approximately 4,500 full-time faculty and staff.
- 2) UWO is not a reporting issuer in any of the Jurisdictions.
- 3) UWO previously obtained relief in Ontario by way of order dated May 9, 2000 (the "**Original Ruling**") from the prospectus and registration requirements in the securities legislation of Ontario exempting certain trades in connection with the then proposed UWO RRIF Program, provided that the UWO RRIF Program operated pursuant to certain conditions set out in the Original Ruling (the "**Ruling Conditions**").
- 4) The Original Ruling provides that the ruling "...shall terminate upon any amendment or withdrawal of Rule 32-503 -- Registration and Prospectus Exemptions for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans." ("**Rule 32-503**"). On September 14, 2005, the OSC revoked Rule 32-503 and the substance of the rule was incorporated verbatim into Section 3.2 of revised OSC Rule 45-501 -- Ontario Prospectus and Registration Exemptions ("**Rule 45-501**"). Section 3.2 of Rule 45-501 remains in force, unamended, as of the date hereof. As a result of the revocation of Rule 32-503, the Original Ruling has terminated and has necessitated this Application for exemptive relief in Ontario. In addition, the Original Ruling was limited in scope to an exemption from Ontario securities legislation. Subsequent to the Original Ruling and the establishment of the UWO RRIF Program, UWO has determined that certain of the RRIF Investors now reside in Jurisdictions other than Ontario.
- 5) The Requested Relief is necessary in Ontario as the 'sunset' provision of the Original Ruling was triggered by the reformulation of Ontario prospectus and registration exemptions into single national and local instruments. In addition, UWO is seeking to (i) obtain relief similar to the Original Ruling in each of the Jurisdictions to permit the UWO RRIF Program to be made available to eligible persons in Jurisdictions other than Ontario, and (ii) to modify the relief granted in the Original Ruling to permit UWO to extend certain investor education programs to participants in the UWO RRIF Program.
- 6) The Original Application set out the facts surrounding two pension plans (the "**Pension Plans**") established and administered by UWO for Plan Members (as defined below) as well as the then-proposed UWO RRIF Program.

7) The UWO RRIF Program was established on December 1, 2000 and allows former Plan Members (the "**RRIF Investors**") an opportunity to establish a registered retirement income fund (an "**RRIF**") through which they may continue to invest their assets formerly held in the Pension Plans in certain of the investment opportunities in which they were permitted to allocate their assets when they were Plan Members.

8) The Pension Plans are each registered as a pension plan under the *Pension Benefits Act*, R.S.O. 1990, c. L.25, as amended (the "**Pension Benefits Act**") and are each also registered pension plans within the meaning of the *Income Tax Act*, R.S.C., (5th Supp.), c. 1, as amended (the "**Income Tax Act**"). The Pension Plans' management and administration are each supervised by a committee of Plan Members and UWO administration (the "**Pension Boards**").

9) The Pension Plans primarily provide benefits on a "defined contribution" basis, but there remain some Plan Members that are eligible for payments on a "defined benefit" basis. Participation in the UWO RRIF Program is limited to former Plan Members whose pension entitlement has been determined on a "defined contribution" basis.

10) Eligible employees of UWO are entitled to participate in the Pension Plans, as are, in certain circumstances, the surviving spouses of such employees and former spouses of such employees upon a marriage breakdown (such eligible employees, surviving spouses and former spouses collectively referred to herein as the "**Plan Members**").

11) Contributions to the Pension Plans made in respect of a Plan Member are recorded in the Plan Member's pension account and transmitted to the Northern Trust Company, Canada (the "**Plan Trustee**") which has been appointed by UWO to act as trustee and custodian of a master trust and the two participating trusts (the "**Pension Funds**") that hold the Pension Plans' assets. The Plan Trustee is a federally incorporated trust company registered under the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25, as amended.

12) The assets comprising the Pension Funds are allocated among a series of "sub-funds" (the "**Unit Funds**"). The Pension Boards have engaged a number of third party investment managers (the "**Managers**") to direct the investment of the Unit Funds' assets according to investment mandates determined by the Pension Boards. Plan Members direct the proportional investment of their accounts among such Unit Funds based on their individual preferences.

13) Each of the Managers or one of their respective affiliates is registered in Ontario under the *Securities Act* (Ontario) (the "**Act**") as an advisor in the sub-categories of investment counsel and portfolio manager. All action taken by a Manager in respect of a Unit Fund is either done directly by such Manager where

such Manager is registered under the Act as an advisor or by an affiliate of such Manager that is registered in Ontario under the Act as an advisor.

14) Each Manager directs how the assets of the relevant Unit Fund should be invested. All trades in connection with the Unit Funds are effected by the Plan Trustee through a registered dealer (or pursuant to an exemption from applicable dealer registration requirements), the relevant Managers or through such Managers' registered affiliates.

15) Under the Income Tax Act's regulations that govern pension plans, Plan Members must, by the end of the year in which they reach the age of 71, transfer their account balances out of the Pension Plans (however, the rules of the Pension Plans currently require that Plan Members transfer account balances by the end of the year in which they reach the age of 69). These account balances may only be transferred to certain types of investment vehicles prescribed by the Pension Benefits Act ("**Prescribed Accounts**").

16) The Pension Plans are managed and administered in accordance with the Guidelines for Capital Accumulation Plans (the "**CAP Guidelines**") published by the Joint Forum of Financial Market Regulators. The CAP Guidelines set out the expectations of Canadian regulators regarding the operation of a capital accumulation plan, regardless of the regulatory regime applicable to the plan and, among other things, ensure that participants in capital accumulation plans are provided the information and assistance that they need to make investment decisions in a capital accumulation plan.

17) The UWO RRIF Program operates in parallel with the Pension Plans. The investment alternatives available to RRIF Investors under the UWO RRIF Program are a subset of the Unit Funds available under the Pension Plans. Accordingly, investments in the UWO RRIF Program are managed the same way as Plan Members' pension assets are managed under the Pension Plans.

18) The UWO RRIF Program operates at all times in compliance with the Ruling Conditions set out in the Original Ruling and the facts and representations regarding the UWO RRIF Program set out in the Original Application continue to be true and correct in all material respects.

19) Plan Members may, on or after their withdrawal from the Pension Plans, elect to establish a registered retirement income fund (a "**UWO RRIF**") under the UWO RRIF Program. RRIF Investors may invest only in a subset of the Unit Funds that are offered to Plan Members under the Pension Plans (the "**RRIF Funds**").

20) Each UWO RRIF holds only securities of the RRIF Funds, however RRIF Investors are entitled to reallocate their investment from any particular RRIF Fund to another RRIF Fund available through the UWO RRIF Program. RRIF

Investors have no right to receive the underlying securities held by the RRIF Funds or transfer the securities of the RRIF Funds out of their UWO RRIF.

21) A RRIF Investor may only contribute to his or her UWO RRIF by "rolling-over" (i) assets that were previously held for such investor's benefit in the Pension Plans, or (ii) assets that were previously held for such investor's benefit in a Prescribed Account that had previously been "rolled over" from the Pension Plans (or from another such Prescribed Account) (collectively, "**Plan Assets**").

22) In directing the allocation of their contributions among the RRIF Funds, RRIF Investors deal exclusively with their own investment advisors and employees of the UWO ("**UWO Staff**"). UWO Staff act as registrars for the UWO RRIF Program, maintaining records of RRIF Investors' investment directions, net redemptions or acquisitions of interests in the Unit Funds, interfund transfers and benefit payments. UWO Staff also provide information relating to fund performance and general principles governing the selection of funds in investment booklets, monthly newsletters, individual sessions and through a pensions website. RRIF Investors do not interact either with the Plan Trustee, the Managers or affiliates of the Managers that effect trades on behalf of the RRIF Investors.

23) Each UWO RRIF is qualified as an RRIF under the Income Tax Act and is a Prescribed Account under the Pension Benefits Act.

24) The Plan Trustee acts as custodian (the "**Custodian**") and trustee (the "**Trustee**") of each UWO RRIF as it does for the Pension Plans and the RRIF Funds.

25) The UWO RRIF Program is managed and administered in accordance with the CAP Guidelines.

26) Proposed amendments to National Instrument 45-106 -- *Prospectus and Registration Exemptions* (NI 45-106) related to Capital Accumulation Plans were published by the Canadian Securities Administrators on October 21, 2005 and adopted in the form of a blanket exemption in each of the provinces and territories other than the Jurisdictions. Such proposal (the "**CAP Exemption**") contemplates both a dealer registration exemption and a prospectus exemption.

27) The UWO RRIF Program cannot rely on the CAP Exemption as, among other things, it does not comply with section 2.2(b) of the CAP Exemption in that the RRIF Funds are not subject to, and do not comply with, Part 2 of National Instrument 81-102 *Mutual Funds*.

28) In connection with the Pension Plans only, UWO makes available to Plan Members certain general information about the Pension Plans and Unit Funds and broad financial planning issues (the "**Education Program**") provided by The

Financial Education Institute of Canada (the "**Education Provider**"). The Education Program has two components:

(a) Plan Members may participate in a series of workshops presented by the Education Provider that cover a broad range of topics, including specific matters relating to the Pension Plans (such as making pension contributions, options on termination of employment or retirement, overview of available asset classes under the Pension Plans, the benefits of an RRIF) but also regarding more general investment matters (such as investment basics, evaluating investment fund performance and sources of assistance with investment decisions); and

(b) Plan Members may access "The Financial Educator", a password-protected interactive website operated by the Education Provider, which provides financial planning information and resources including financial calculators, resources on choosing a financial advisor and a glossary of financial terms.

29) The Education Provider is a private, independent provider of educational services, that does not sell financial investments or provide advice regarding specific investment products. The Education Provider is compensated on a flat fee basis based on the number of participants that have access to the Education Program, not based on any trading activity or investment choices made by Plan Members.

30) UWO has not previously made the Education Program available to RRIF Investors as paragraph (a) of the Ruling Conditions specifies that RRIF Investors "deal only with UWO in respect of their participation in the UWO RRIF and the allocation of investment of the Pension Assets" in the RRIF Funds.

31) Eligible employees of UWO participating in the Pension Plans prior to their retirement are necessarily resident in Ontario. However, subsequent to the Original Ruling and the establishment of the UWO RRIF Program, UWO has determined that some RRIF Investors now reside in Jurisdictions other than Ontario.

32) As of December 3, 2007, 16 of 324 RRIF Investors were located in Jurisdictions other than Ontario; 11 in British Columbia, two in Nova Scotia and one each in Alberta, Manitoba and New Brunswick.

33) Other than participation by RRIF Investors that were formerly resident in Ontario and have taken up residence in another Jurisdiction, the UWO RRIF Program does not operate in Jurisdictions outside Ontario.

## **Decisions**

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 exemptive relief is granted to UWO, the Trustee, the Custodian and RRIF Investors from the prospectus and registration requirements under applicable Legislation for trading in connection with the UWO RRIF Program, provided that:

- (a) RRIF Investors deal only with UWO or, in respect of the Education Program, the Education Provider, in respect of their participation in the UWO RRIF Program and the allocation of the investment of the assets in the RRIF Funds;
- (b) each of the Trustee and the Custodian is a trust corporation registered as required, under the applicable legislation of each of the Jurisdictions;
- (c) RRIF Investors do not invest any money in the UWO RRIF Program other than assets from the Pension Plans;
- (d) the RRIF Funds are managed and administered in substantially the same way as the Unit Funds; and
- (e) each Manager is registered as an advisor under the Act or is exempt from registration under Ontario securities legislation,

provided that this Decision shall terminate on the later of December 31, 2011 and the date that is six months after the coming into force of a national or multilateral instrument of the Decision Makers that concerns prospectus and registration exemptions relating to pension plans, deferred profit sharing plans, retirement savings plans or other similar capital accumulation plans maintained by the sponsor of the plan for its employees.

"Kevin J. Kelly"  
Commissioner  
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