

January 20, 2006

IN THE MATTER OF THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW  
BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND  
LABRADOR, YUKON, NORTHWEST TERRITORIES AND NUNAVUT  
(the "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF WELLINGTON WEST CAPITAL INC.  
AND WELLINGTON WEST ASSET MANAGEMENT INC.

## MRRS DECISION DOCUMENT

### **Background**

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from Wellington West Capital Inc. ("Wellington West") and, in British Columbia, Wellington West Asset Management ("WWAM") (collectively, the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") for an exemption from the requirements of the Legislation:

(a) except in Ontario, to be registered as an adviser for certain foreign portfolio and Canadian portfolio managers (the "Sub-Advisers") who provide investment counseling and/or portfolio management services to client accounts ("Managed Accounts") of Wellington West or WWAM in which the investment decisions are made on a continuing basis by Wellington West or WWAM, or by a Sub-Adviser hired by the Wellington West or WWAM, for the benefit of the Participating Clients (as defined below) who are resident in the Jurisdictions where the Sub-Advisers are not registered (the "Registration Relief");

(b) that a registered dealer send to its clients a written confirmation of any trade in securities for transactions that the Filer conducts on behalf of Participating Clients (as defined below) with respect to transactions under the managed account program of the Filer (the "Confirmation Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) The Manitoba Securities 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 has the same meaning in this decision unless they are otherwise defined in this decision.

## **Representations**

This decision is based on the following facts represented by the Filer:

1. Wellington West is registered under the Legislation as an investment dealer, or equivalent, and is a member of the Investment Dealers Association of Canada (the "IDA") and has its head office in Winnipeg, Manitoba.
2. WWAM is registered under the *Securities Act* (British Columbia) as a portfolio manager. The Filer currently owns 49% of the voting shares of WWAM and 60% of the participating shares of WWAM, with rights to acquire 100% of the voting and participating shares of WWAM upon the occurrence of certain events;
3. Wellington West is permitted to have Managed Accounts by virtue of being a member of the IDA and WWAM is permitted to have Managed Accounts by virtue of its registration as a portfolio manager.
4. The Managed Accounts will be "managed accounts" as defined under Regulation 1300 of the IDA and the Filer will comply with applicable IDA requirements with respect to managed accounts.
5. The Filer intends to offer the investment counseling and portfolio management services of Sub-Advisers to clients (the "Participating Clients") who wish to have exposure to capital markets located in a jurisdiction in which the Sub-Advisers are resident or otherwise wish to benefit from the portfolio management services of the Sub-Advisers.
6. Each Sub-Adviser is or will be registered as investment counsel or portfolio manager in a Canadian jurisdiction or otherwise licensed or qualified to provide investment counseling and portfolio management services in the foreign jurisdiction where its head office is located. Certain of the Sub-Advisers may also be subsidiaries or associates of the Filer.
7. Each Sub-Adviser provides investment counseling and portfolio management services to clients resident in the jurisdiction where its head office is located and in other jurisdictions where it is registered or otherwise qualified to provide such services.

8. Each Participating Client will enter into an investment management agreement ("IMA") with Wellington West or WWAM pursuant to which:

(a) the Participating Client grants full discretionary authority to Wellington West or WWAM 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 authorizes Wellington West or WWAM to delegate its discretionary authority over all or a portion of the Participating Client's assets to the Sub-Advisers;

(b) the Participating Client will agree to pay a flat annual fee and an annual fee calculated on the basis of the assets in the Participating Client's account, which is payable monthly or quarterly in arrears, and is not based on transactions effected in the Participating Client's account; and

(c) unless otherwise requested, the Participating Client waives receipt of trade confirmation as required under the Legislation.

9. Wellington West or WWAM will enter into an agreement with each Sub-Adviser which will set out the obligations and duties of each party in connection with the investment counseling and portfolio management services provided to each Participating Client and under which the Sub-Adviser will agree to act as sub-adviser to the Filer for the benefit of Participating Clients. Each Sub-Adviser will exercise discretionary authority over the assets of the Participating Clients who wish to have exposure to capital markets located in jurisdictions in which such Sub-Adviser has experience and expertise.

10. Wellington West or WWAM will:

(a) make inquiries with each Participating Client to learn the essential facts about each Participating Client, to determine the general investment needs and objectives of, the appropriateness of the 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 the information to each Sub-Adviser who exercises discretionary authority over the assets of a Participating Client.

(b) send to each Participating Client quarterly statements and performance reports prepared by the Filer.

11. Wellington West or WWAM will agree under any IMA it enters into 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 Client 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,

and acknowledges that it cannot be relieved by Participating Clients from this responsibility (collectively, the "Assumed Obligations").

12. A Participating Client will obtain all advice and give all instructions through the Filer with which they have entered into an IMA.

13. If there is any direct contact between a Participating Client and a Sub-Adviser, a registered representative of the Filer registered in the Jurisdiction where the Participating Client is resident will be present at all times, either in person or by telephone and, the Participating Client and a Sub-Adviser will not meet in person without such registered representative of the Filer.

14. The Sub-Advisers will not have any contact with Participating Clients, except that:

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

(b) from time to time individuals who are investment counsel or portfolio managers, or equivalent, who are officers or employees of the Sub-Advisers may conduct presentations or seminars in the Jurisdictions regarding the status of the economies and capital markets in the jurisdictions where they are authorized to carry on business; in such cases, a registered representative of the Filer will be present at all times and such presentations will be limited to Participating Clients.

15. Each Sub-Adviser would be considered to be an "adviser" under the Legislation and, in the absence of the Registration Relief, would be subject to the registration requirement under the Legislation.

16. Sub-Advisers who are not registered in Ontario are not required to register as advisers under the Securities Act (Ontario) as they rely on the exemption from registration in section 7.3 of Ontario Securities Commission Rule 35-502 Non-Resident Advisers.

17. The Filer will send each Participating Client in its managed account program who has waived receipt of trade confirmations, a statement of account not less than monthly.

18. The monthly statement of account will identify the asset being managed on behalf of the Participating Client, including for each trade made during that month the information that the Filer would otherwise have been required to provide to that Participating Client in a trade confirmation in accordance with the Legislation, except for the following information (collectively, the "Omitted Information"):

(a) the date and the stock exchange or commodity futures exchange upon which the trade took place;

(b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;

(c) the name of the salesman, if any, in the transaction;

(d) the name of the dealer, if any, used by the Filer or the Sub-Adviser as its agent to effect the trade; and

(e) if acting as agent in a trade upon a stock exchange, the name of the person or company from or to or through whom the security was bought or sold.

19. The Filer will maintain the Omitted Information with respect to a Participating Client in its books and records and will make the Omitted Information available to the Participating Client upon request.

### **Decision**

Each of the Decision Makers is satisfied that the test under 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:

(a) except in Ontario, the Registration Relief be granted, provided that:

(i) the obligations and duties of the Sub-Adviser are set out in a written agreement between the Sub-Adviser and Wellington West or WWAM;

(ii) Wellington West or WWAM contractually agrees with Participating Clients to be responsible for any loss that arises out of the Sub-Adviser's failure:

(A) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Wellington West or WWAM and the Participating Client 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;

(iii) neither Wellington West nor WWAM is relieved by the Participating Client from its responsibility for loss under paragraph (ii) above;

(iv) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;

(v) each Sub-Adviser, if resident in a jurisdiction of Canada, is registered as an adviser in such jurisdiction; and

(vi) in Manitoba, the Registration Relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction; and

(b) The Confirmation Relief is granted provided that:

(i) the Participating Client has previously informed the Filer that the Participating Client does not wish to receive trade confirmations for the Participating Client's Managed Account;

(ii) in the case of each trade for a Managed Account, the Filer sends to the Participating Client the corresponding statement of account that includes the information referred to in paragraph 18 above.

"Chris Besko"

Chris Besko

Deputy Director – Legal and Enforcement  
Manitoba Securities Commission