

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration requirement granted to advisors who reside outside of Alberta and wants to advise Alberta residents. The advisor is hired under a written agreement with an Alberta registered dealer or adviser to provide advice to the Alberta registrant and its Alberta clients; the advisor is registered or qualified to provide the advice in the jurisdiction in which it resides; under a written agreement with its Alberta clients, the Alberta registrant accepts responsibility for all losses resulting from inappropriate advice provided by the advisor.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, subsections 75(1)(b) and 144(1).

Citation:J.P. Morgan Fleming Asset Management (Canada)Inc., 2005 ABASC 6

Date:20050218

In the Matter of
the Securities Legislation
of Alberta, Saskatchewan, Manitoba, Nova Scotia,
Newfoundland and Labrador and New Brunswick (the Jurisdictions)

and

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

and

In the Matter of J.P. Morgan Fleming Asset Management (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 for a decision under the securities legislation of the Jurisdictions (the Legislation) that certain sub-advisors (the Advisors) who provide investment counselling or portfolio management services to the Filer and to clients of the Filer (Clients) be exempted from the requirements under the Legislation to be registered as an advisor (the Requested Relief).

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

2.1 the Alberta Securities Commission is the principal regulator for this application, and

2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. 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

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

4.1 The Filer is a corporation incorporated under the laws of Canada with its head office located in British Columbia.

4.2 The Filer is not a reporting issuer under the Legislation.

4.3 The Filer is registered under the Legislation as an advisor in the categories of investment counsel and portfolio manager (or an equivalent capacity).

4.4 The Filer provides investment counselling and portfolio management services to institutional and individual Clients that are resident in the Jurisdictions or in other jurisdictions where the Filer is qualified to provide such services. The Clients include certain pooled funds organized by the Filer, pension funds, endowments, foundations, large corporations and high net worth individuals and families.

4.5 Each of the Advisors provides investment counselling and portfolio management services in the jurisdiction in which it carries on business and is registered or otherwise qualified to provide such services.

4.6 The Filer and the Advisors intend to offer investment counselling and portfolio management services to Clients resident in the Jurisdictions so as to provide Clients with exposure to markets in other jurisdictions where the Filer or the Advisor has experience or expertise.

4.7 Each Client will enter into a written investment management agreement (IMA) with the Filer which provides that the Filer will provide investment counselling services to the Client or gives the Filer discretionary authority to purchase and sell securities on behalf of the Client and which authorizes or requires the Filer to obtain advice from or to delegate its discretionary authority over all or a portion of the Client's assets to one or more of the Advisors.

4.8 The Filer will enter into an agreement with each Advisor which will set out the obligations and duties of each party in connection with the investment counselling and portfolio management services to be provided to Clients and

pursuant to which the Advisors will agree to act as sub-advisors to the Filer for the benefit of the Clients. Each Advisor will exercise discretionary authority over or provide advice with respect to the assets of Clients who wish to have exposure to capital markets in which the Advisor has experience and expertise.

4.9 The Filer will agree with the Clients under the IMA to be responsible for any loss that arises out of the failure of an Advisor to:

4.9.1 exercise their powers and discharge their duties honestly, in good faith and in the best interests of the Filer and the Client, or

4.9.2 exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, and acknowledge that the Filer cannot be relieved by the Client of these responsibilities (the Assumed Liabilities).

4.10 The Filer will be responsible for providing to Clients all applicable reports and statements required under the Legislation.

4.11 All direct contact with Clients will be with the Filer and its directors, officers and employees, although representatives of the Advisors may participate in such communications either in person or by telephone from time to time.

4.12 Each Advisor which provides portfolio management or investment counselling services to the Filer or with respect to the assets of a Client would be considered to be acting as an "advisor" within the meaning of the Legislation, and in the absence of the requested relief, would be subject to the requirements under the Legislation to be registered as an advisor unless otherwise exempt.

4.13 The Advisors cannot rely on any advisor registration exemptions under the Legislation to allow them to provide investment counselling and portfolio management services to Filer and the Clients.

Decision

5. 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.

6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

6.1 the obligations and duties of the Advisor is set out in a written agreement between the Advisor and the Filer,

6.2 the IMA between the Filer and each Client provides that the Filer will be responsible for the Assumed Liabilities,

6.3 the Filer cannot be relieved by a Client from the Assumed Liabilities,

6.4 the Advisor is registered, licensed or otherwise qualified to provide portfolio management or investment counselling services in the jurisdiction which the Advisor resides or carries on business,

6.5 the Filer is registered under the Legislation as an advisor in the category of portfolio manager or investment counsel or its equivalent in the Jurisdiction in which the Client resides,

6.6 in Manitoba, the Requested Relief is only available to Advisors who are not registered in any Canadian jurisdiction, and

6.7 an Advisor will not have any direct and personal contact with a Client residing in New Brunswick if the Advisor is not registered as an advisor in that jurisdiction.

"original signed by"

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

"original signed by"

Stephen R. Murison, Vice-Chair
Alberta Securities Commission