

May 24, 2007

**Headnote**

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*, ss. 34(1)(c) and 48

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

**and**

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

**and**

**In the Matter of UBS Investment Management Canada Inc.  
(the Filer)**

**MRRS Decision Document**

**Background**

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 non-Canadian investment managers (the Program Sub-Advisors) for an exemption from the requirements in the legislation of the Jurisdictions (the Legislation) requiring the Program Sub-Advisors to be registered as advisers (the Registration Requirement) to provide sub-advisory services under a wrap program (the Access Program) proposed to be offered by the Filer to its clients in Canada.

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 (the "Decision").

### **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

### **Representations**

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

1. the Filer is registered as an adviser in the categories of investment counsel and portfolio manager under the Act and has equivalent registrations under the Legislation of the other Jurisdictions;
2. the Filer wishes to offer certain of its clients in Canada the opportunity to participate in the Access Program, a multi-manager portfolio management, or wrap, program that is currently offered in the United States by UBS Financial Services Inc. (UBS FS), an affiliate of the Filer;
3. UBS FS is registered with the U.S. Securities and Exchange Commission as a broker-dealer and as an investment advisor, offering both investment advisory and brokerage services, and is also a member of the New York Stock Exchange;
4. the Access Program offers individual and institutional clients the portfolio management services of the Program Sub-Advisors;
5. the Program Sub-Advisors act as portfolio managers, having complete discretion to manage a client's assets allocated to them, and will make all investment decisions without discussing these transactions with the client;
6. as such, the Program Sub-Advisors are subject to the Registration Requirement in the Jurisdiction in which a client resides;
7. the Access Program will be offered to clients of UBS IM in Ontario and Quebec, in addition to the Jurisdictions, but the Program Sub-Advisors are not subject to the Registration Requirement in those provinces because of the operation of section 7.3 of Rule 35-502 Non-Resident Advisers of the Ontario Securities Commission and section 194.2 of the Regulation respecting securities (Quebec);
8. none of the Program Sub-Advisors are resident in Canada, and investment mandates are U.S. or international/global in nature, so that none of the Program Sub-Advisors would be retained to provide advice specifically regarding Canadian securities except as part of an overall global mandate;
9. while the Program Sub-Advisors are not expected to be registered in any Jurisdiction, nor in Ontario or Quebec, they all are, or will be, registered or otherwise qualified under the applicable

laws of the non-Canadian jurisdictions in which they are located to provide discretionary portfolio management services;

10. UBS FS, as the program administrator, is responsible for the selection of the Program Sub-Advisors for the Access Program; currently, there are more than 80 sub-advisors with more than 150 sub-classes and styles offered in the Access Program;

11. UBS IM will initially select approximately 15 to 20 Program Sub-Advisors and make these available to its Canadian clients (the Canadian Program Sub-Advisors); this subset of sub-advisors, sub-classes and styles under the Access Program will likely increase over time, as UBS IM in its discretion determines it appropriate to add additional Program Sub-Advisors in light of the existing array of investment options it is able to currently offer clients, with a view to adding sub-advisors whose skills, expertise and management styles are unique or complementary and various styles or subclasses in order to improve diversification, manage risk and provide the potential to pursue performance;

12. UBS IM will enter into a separate agreement with the Canadian Program Sub-Advisors pursuant to which, among other things, they will agree to act for Canadian clients through the Access Program; such agreement will permit UBS IM to exercise the degree of supervision and control it is required to exercise over what the Canadian Program Sub-Advisors do for Canadian clients;

13. UBS IM would have complete discretion to terminate any of the, or to add additional, Canadian Program Sub-Advisors from time to time;

14. if the Access Program is deemed to be suitable for a client by UBS IM, then UBS IM will work with the client to determine what percentage of the client's assets under management with UBS IM ought to be allocated to the Access Program, and to determine which Canadian Program Sub-Advisors are appropriate for that client;

15. Canadian clients would enter into an agreement with UBS IM which would give UBS IM discretionary authority over the assets in a client's account, and would further give UBS IM the right to retain (through UBS FS) the appropriate Canadian Program Sub-Advisors for the client and give such Canadian Program Sub-Advisors the right to manage the client's assets on a discretionary basis;

16. UBS IM will review the portfolio of each client on a quarterly or more frequent basis, to ensure that each Canadian Program Sub-Advisor is following its investment mandate, and to look at the contribution to that portfolio made by each Canadian Program Sub-Advisor, so as to determine that the selection of Canadian Program Sub-Advisors remains appropriate for the client;

17. UBS IM would agree to be responsible in its agreement with Canadian clients for any losses such clients might suffer or incur as a result of any failure by UBS FS or a Canadian Program Sub-Advisor to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of UBS IM and its Canadian clients or to exercise the degree of care,

diligence and skill a reasonably prudent person would exercise in the circumstances (the Assumed Obligations);

18. the agreement with Canadian clients would further provide that UBS IM could not be relieved by such clients of the Assumed Obligations; and

19. officers or employees of UBS FS or the Program Sub-Advisors will not have any direct dealings with any Canadian clients.

### **Decision**

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 the Registration Requirement in the Legislation shall not apply to the Canadian Program Sub-Advisors in connection with the services they provide under the Access Program (the Registration Relief), provided that:

1. the obligations and duties of each Canadian Program Sub-Advisor are set out in a written agreement with UBS FS, and the benefits of such agreements are extended to Filer and its clients pursuant to a service level agreement between UBS FS and the Filer and pursuant to a separate agreement between the Filer and each Canadian Program Sub-Advisor;

2. the Filer contractually agrees with each Canadian client to be responsible for any losses such clients might suffer or incur as a result of any failure by UBS FS or a Canadian Program Sub-Advisor (i) 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 Canadian client for whose benefit the investment management services are being provided, or (ii) to exercise the degree of care, diligence and skill a reasonably prudent person would exercise in the circumstances;

3. the Filer is not relieved by its Canadian clients from its responsibility under paragraph (2) above;

4. none of UBS FS or the Canadian Program Sub-Advisors is or will be a resident of Canada;

5. UBS FS and the Canadian Program Sub-Advisors are or will be, registered or otherwise qualified under the applicable laws of the non-Canadian jurisdictions in which they are located to provide discretionary portfolio management services;

6. officers or employees of UBS FS or the Canadian Program Sub-Advisors will not have any direct dealings with any Canadian clients; and

7. in Manitoba, the Registration Relief is available only to Canadian Program Sub-Advisors that are not registered in any Canadian jurisdiction.

*“Sandy Jakab”*  
Acting Director, Capital Markets Regulation  
British Columbia Securities Commission