

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

AND

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

AND

IN THE MATTER OF FRANK RUSSELL CANADA LIMITED

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Saskatchewan, and Yukon Territory (the “Jurisdictions”) has received an application from Frank Russell Canada Limited (“Frank Russell”) 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”) not apply to Frank Russell Securities Inc. (“FRS”) and certain selected affiliated investment advisers (collectively the “Sub-advisers”) who provide investment counsel and portfolio management services to Frank Russell for the benefit of Frank Russell’s clients resident in the Jurisdictions;
- ¶ 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 Frank Russell has represented to the Decision Makers that:

1. it is incorporated under the laws of Canada with its head office located in Toronto, Ontario;
2. it is registered as an adviser in each of the Jurisdictions, in the categories of investment counsel and/or portfolio manager and as a dealer in the category of mutual fund dealer in Ontario;
3. it is an affiliate of FRS, which trades in securities for the United States and foreign institutional customers, and is:
 - (a) registered as a dealer in the category of international dealer in Ontario;
 - (b) registered as a broker-dealer and as an investment adviser with the U.S. Securities and Exchange Commission;
 - (c) a member in good standing of the National Association of Securities Dealers, Inc.; and
 - (d) is registered as a broker-dealer with the appropriate state securities regulatory authority in each of Washington, New York, Texas, Arizona, Vermont, Rhode Island and Ohio;
4. it wishes to retain the services of FRS and other selected Sub-advisers to provide advice in connection with accounts managed by it for the benefit of its clients;
5. it believes that the Sub-advisers will provide it and its clients with access to specialized expertise relating to specific market segments or specific investment strategies for investment management mandates through their familiarity and experience with certain markets;
6. the discretionary investment accounts for which the Sub-advisers will be retained will be accounts for high net worth individuals or institutional clients;
7. none of the Sub-advisers will be residents of Canada, and all will be registered or otherwise legally qualified, to provide investment advice and/or portfolio management services under the laws of their home jurisdiction;
8. it will comply with the requirements of Section 7.3 of Ontario Securities Commission Rule 35-502 *Non Resident Advisers*, and:

- (a) the obligations and duties of each Sub-adviser will be set out in a written agreement with Frank Russell;
 - (b) Frank Russell will contractually agree with its clients on whose behalf investment advice or portfolio management services are to be provided by a Sub-adviser to be responsible for any loss that arises out of the failure of the Sub-adviser:
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of Frank Russell and each client of Frank Russell for whose benefit the advice 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;
9. it will assume responsibility to clients for all advice received from the Sub-advisers, including responsibility for losses sustained by a client as a result of the negligence, wilful misconduct, bad faith or wilful neglect, default or failure to comply with applicable laws and regulations by Frank Russell or a Sub-adviser, and Frank Russell cannot be relieved by its clients from this responsibility;
10. it will be responsible for providing all client reports and statements required under the securities legislation of the applicable Jurisdictions;
11. all direct contact with clients will be with Frank Russell and its employees, although representatives of the Sub-advisers may participate in such communications from time to time;
12. a Sub-adviser providing investment counselling or portfolio management services to Frank Russell and indirectly to Frank Russell's clients would be required to be registered or otherwise exempt from the Registration Requirement; and
13. the Sub-advisers cannot rely on any exemptions in the Legislation from the Registration Requirement to provide investment counselling and portfolio management services to Frank Russell for the benefit of Frank Russell's clients.

¶ 4 AND WHEREAS under the System, this MRRS decision document evidences the decision of each Decision Maker (collectively, the "Decision");

- ¶ 5 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;
- ¶ 6 THE DECISION of the Decision Makers under the Legislation is that the Registration Requirement shall not apply to the Sub-advisers who provide investment counsel and portfolio management services to Frank Russell for the benefit of Frank Russell's clients.
- ¶ 7 DATED November 8, 2002

"Brenda Leong"

Brenda Leong
Director

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirement to be registered as an adviser for sub-advisers not resident in Canada, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(c), 48

Securities Rules, B.C. Reg. 194/97, s. 36