

# 2008 BCSECCOM 234

May 2, 2008

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 130 Self Dealing Restrictions in Part 15 - A portfolio manager requires relief from self-dealing requirements in connection with its acquisition by another organization – the relief is temporary following a change of control of the fund manager; the purchase or holding is consistent with, or necessary to meet, the investment objectives of the mutual fund; the mutual fund has, or will establish, an IRC that will review and approve the transaction involving the perceived or actual conflict of interest; the price of the securities will meet independent pricing requirements; there are limits on the number of securities that the mutual fund can purchase under any offering or can hold of any related issuer; the fund keeps written records about transactions with related parties and, in some cases, is required to file information about the transactions with the securities regulatory authorities

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(a), 2(c), (3), 127(1)(a) and 130

In the Matter of  
the Securities Legislation of  
British Columbia, Ontario, and Newfoundland and Labrador  
(the Jurisdictions)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Phillips, Hager & North Investment Management Ltd.  
(the Filer)

and

In the Matter of  
the mutual funds listed In Schedules A and B to which National Instrument 81-102 – *Mutual Funds* (NI 81-102) applies (each, an NI 81-102 Fund and,

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collectively, the NI 81-102 Funds) and the pooled funds listed in Schedules A and B to which NI 81-102 does not apply (each, a Private Fund and, collectively, the Private Funds) of which the Filer or an affiliate or associate of the Filer is the manager or a portfolio adviser

### Decision

#### **Background**

- ¶ 1 The securities regulatory authority or regulator in each of British Columbia and Ontario (Dual Exemption Decision Makers) and in each of British Columbia and Newfoundland and Labrador (Coordinated Exemptive Relief Decision Makers) has received an application from the Filer in respect of each NI 81-102 Fund and each Private Fund (each a Fund, and collectively the Funds) for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief (the Exemptive Relief Sought) for a limited period following the closing of the Transaction (as defined below) from:
1. the prohibition in the Legislation (the Related Issuer Prohibition) that prohibits a portfolio manager or a mutual fund (depending on the Jurisdiction) from investing the portfolio of the mutual fund in any issuer (a Related Issuer) in which a responsible person or an associate of a responsible person is an officer or director or where his or her own interest might distort his or her judgment unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase, in order to permit the NI 81-102 Funds and Private Funds to purchase non-exchange traded debt securities issued by a Related Issuer in a primary distribution or treasury offering (a Primary Offering);
  2. the prohibition in the Legislation (the Related Shareholder Prohibition) that prohibits a mutual fund from making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company (a Related Shareholder), in order to permit the NI 81-102 Funds and Private Funds to purchase and hold non-exchange traded debt securities issued by a Related Shareholder in a Primary Offering; and
  3. the prohibition in the Legislation (the Related Party Prohibition) that prohibits a mutual fund from making or holding an investment in an issuer in which a Related Shareholder has a significant interest (a Related Party), in order to permit the NI 81-102 Funds and Private Funds to purchase and hold non-exchange traded debt securities issued by a Related Party in a Primary Offering.

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Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Quebec, New Brunswick and Nova Scotia,
- (c) the decision is the decision of the principal regulator and the decision evidences the decision of the securities regulatory authority or regulator in Ontario, and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions*, in NI 81-102 and in National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this decision, unless otherwise defined.

The term Related Person will be used to refer to a Related Issuer, Related Shareholder or Related Party depending on the prohibition referred to.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer in respect of the Filer and the Funds:
- 1. the Filer is a company organized under the laws of British Columbia having its head office located in Vancouver, British Columbia;
  - 2. the Filer is registered under the Legislation of British Columbia as an adviser in the categories of investment counsel and portfolio manager (and in equivalent categories under the securities legislation in the other Jurisdictions); in addition, the Filer is registered under the Legislation of Ontario as a dealer in the category of mutual fund dealer;
  - 3. the Filer and the Managed Mutual Funds and Managed Pooled Funds (defined below) are not in default of securities legislation in any jurisdiction; to the best of the knowledge of the Filer, the Advised Mutual Funds and the Advised Pooled Funds (defined below) are not in default of securities legislation in any jurisdiction;

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4. the Filer or an affiliate or associate of the Filer is the manager of the NI 81-102 Funds listed in Schedule A (the Managed Mutual Funds) and the Private Funds listed in Schedule A (the Managed Pooled Funds); the Filer or an affiliate or associate of the Filer is expected to be a portfolio adviser of the Managed Mutual Funds and Managed Pooled Funds;
5. the Filer or an affiliate or associate of the Filer is a portfolio adviser, but not the manager, of the Mutual Funds listed in Schedule B (the Advised Mutual Funds) and the Private Funds listed in Schedule B (the Advised Pooled Funds);
6. each of the NI 81-102 Funds and Private Funds is a mutual fund established under the laws of British Columbia or of another jurisdiction;
7. the securities of the NI 81-102 Funds are offered for sale pursuant to a prospectus filed in one or more of the Jurisdictions; the NI 81-102 Funds are reporting issuers in one or more of the Jurisdictions;
8. the securities of the Private Funds are offered for sale in one or more of the Jurisdictions under an exemption from the prospectus requirement;
9. pursuant to the terms of a share purchase transaction (the Transaction) with the shareholders of the Filer, Royal Bank of Canada (RBC) will become, indirectly, a substantial securityholder of the Filer on the closing of the Transaction;
10. as a result of the Transaction, the Exemptive Relief Sought will be required because effective on and after the Closing Date the Filer or an affiliate or associate may wish to acquire and/or hold non-exchange traded debt securities of a Related Person issued in a Primary Offering for a Fund;
11. following the closing of the Transaction, the Filer and its existing affiliates and associates will continue to operate their respective businesses in a manner that is substantially similar to their present manner, in particular, the Filer and its affiliates and associates intend to continue to manage the assets of all the Funds in the same manner as they are currently managed and do not intend to change the organizational structure of the Filer as it relates to investment decisions affecting the Funds; while the Filer and RBC Asset Management Inc. (RBC AM) will share a common chief investment officer, both entities will continue to operate independently from RBC and its other affiliates and associates with respect to their investment decisions;

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12. the Filer, or an affiliate or associate of the Filer, has established an independent review committee (IRC) in respect of each NI 81-102 Fund in accordance with the requirements of NI 81-107;
13. following the closing of the Transaction, the Filer intends to maintain the IRC of the NI 81-102 Funds separate and distinct from the Independent Review Committee of the funds managed by RBC AM (the RBC Funds), however, the Filer intends that the IRC of the NI 81-102 Funds will be comprised of certain members of the Independent Review Committee of the RBC Funds, all of whom are independent within the meaning of section 1.4 of NI 81-107 of both RBC and the Filer and its affiliates and associates;
14. pursuant to section 6.2 of NI 81-107 and exemptive relief granted to the Filer by order dated April 28, 2008, the NI 81-102 Funds are, or will be, permitted to purchase, among other things, exchange traded debt securities of a Related Person and non-exchange traded debt securities of a Related Person in the secondary market subject to the terms and conditions set out therein;
15. debt securities issued by a Related Person in a Primary Offering that are not listed and traded on an exchange may be appropriate securities for an NI 81-102 Fund to purchase, sell or hold;
16. pursuant to exemptive relief granted to the Filer by order dated April 28, 2008, the Private Funds are, or will be, permitted to purchase, among other things, exchange traded debt securities of a Related Person and non-exchange traded debt securities of a Related Person in the secondary market subject to the terms and conditions set out therein;
17. debt securities issued by a Related Person in a Primary Offering that are not listed and traded on an exchange may be appropriate securities for a Private Fund to purchase, sell or hold;
18. the Funds currently hold non-exchange traded debt securities issued by RBC and its affiliates and associates that were acquired in a Primary Offering; the Filer considers that the Funds should continue to have access to such securities for a temporary period following completion of the Transaction because there is currently and has been for several years a very limited supply of highly rated corporate debt and securities issued by RBC comprise a significant portion of the available supply;
19. in the absence of the Exemptive Relief Sought, the Filer and its affiliates and associates would be required, as of the Closing Date, to adjust the investment strategies and alter the holdings of the Funds to conform with the investment

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restrictions contained in the Legislation, in connection with the new relationship between RBC and its affiliates and associates and the Filer and its affiliates and associates; the Filer submits that time is required to address the investment restrictions in the Legislation in a manner which will mitigate any negative impact the restrictions may have on the Funds;

20. the Filer is seeking the Exemptive Relief Sought from the Related Issuer Prohibition, the Related Shareholder Prohibition and the Related Party Prohibition to permit the NI 81-102 Funds and Private Funds to purchase and hold non-exchange-traded debt securities issued by a Related Person in a Primary Offering for a temporary period following the closing of the Transaction;
21. each non-exchange traded debt security purchased by a Fund pursuant to the Exemptive Relief Sought that is a security issued by a Related Person will have been given, and will continue to have, an approved credit rating (as defined in NI 81-102) by an approved credit rating organization (as defined in NI 81-102);
22. where a Related Person acts as an underwriter in a Primary Offering, the Related Person will be required to comply with the provisions of NI 33-105 *Underwriting Conflicts*;
23. the Filer acknowledges that upon expiry of this decision the Filer and its affiliates and associates must ensure that the investment strategies of the NI 81-102 Funds and Private Funds conform with investment restrictions contained in the Legislation, or seek new exemptive relief to permit the types of transactions described in this decision.

### Decision

- ¶ 4 Each of the principal regulator, the securities regulatory authority or regulator in Ontario and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Dual Exemptive Decision Makers and the Coordinated Exemptive Relief Decision Makers under the Legislation is that:

- A. the Exemptive Relief Sought from the Related Issuer Prohibition, the Related Shareholder Prohibition and the Related Party Prohibition is granted to allow each NI 81-102 Fund to purchase and hold non-exchange traded debt securities of a Related Person issued in a Primary Offering, provided that:

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1. at the time of each investment, the purchase or holding is consistent with, or is necessary to meet, the investment objective of the NI 81-102 Fund and represents the business judgment of the portfolio manager of the NI 81-102 Fund uninfluenced by considerations other than the best interests of the NI 81-102 Fund or in fact is in the best interests of the NI 81-102 Fund;
2. at the time of each investment, the IRC of the NI 81-102 Fund has approved the purchase in accordance with Section 5.2(2) of NI 81-107;
3. the manager of the NI 81-102 Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the NI 81-102 Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the purchase;
4. not less than quarterly, the IRC completes the review and assessment required by section 4.2(1) of NI 81-107 in connection with all the purchases in that quarter, the related policies and procedures established by the manager, and any related standing instructions provided or conditions imposed by the IRC;
5. with respect to each purchase in a Primary Offering of debt securities with a term to maturity of 365 days or more,
  - (i) at least two other investors at arm's length to the NI 81-102 Fund, the Filer and its affiliates and associates (as at April 30, 2008) are purchasing securities in the same Primary Offering, and
  - (ii) the NI 81-102 Fund, together with other Funds and the Filer and its affiliates and associates (as at April 30, 2008), do not purchase more than 20% of the securities issued under the Primary Offering;
6. with respect to each purchase in a Primary Offering of debt securities with a term to maturity of less than 365 days,
  - (i) the NI 81-102 Fund must not pay more than an independent, arm's length purchaser is willing to pay for a similar security,
  - (ii) the NI 81-102 Fund must obtain a certificate from the seller of the securities, in the form of quarterly certification, confirming

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that all transactions between the NI 81-102 Fund and the seller in the quarter have satisfied the requirement in subparagraph (i),

(iii) in the event that such certificate cannot be obtained or contains material errors, the manager of the NI 81-102 Fund must report such fact to the IRC of the NI 81-102 Fund immediately, and

(iv) the NI 81-102 Fund must not purchase debt securities in a Primary Offering if, immediately after the transaction, the purchase would result in more than 10% of the net assets of the NI 81-102 Fund being comprised of securities of the Related Persons;

7. no later than the time the NI 81-102 Fund files its annual financial statements, the Filer, or an affiliate or associate of the Filer, or in the case of an Advised Mutual Fund, the manager of the Advised Mutual Fund, files with the securities regulatory authority or regulator the particulars of any investments made in reliance on this relief; and

8. the relief terminates on December 31, 2008.

B. the Exemptive Relief Sought from the Related Issuer Prohibition, the Related Shareholder Prohibition and the Related Party Prohibition is granted to allow each Private Fund to purchase and hold non-exchange traded debt securities of a Related Person issued in a Primary Offering, provided that:

1. at the time of each investment, the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Private Fund and represents the business judgment of the portfolio manager of the Private Fund uninfluenced by considerations other than the best interests of the Private Fund or in fact is in the best interests of the Private Fund;

2. an IRC has been established in respect of the Private Fund that is composed in accordance with the requirements of section 3.7 of NI 81-107 and is expected to comply with the standard of care set out in section 3.9 of NI 81-107, as if NI 81-107 applied to the Private Fund;

3. the mandate of the IRC established in respect of the Private Fund includes reviewing and approving purchases and sales by the Private Fund with Related Persons;



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4. at the time of each investment, the IRC of the Private Fund has approved the purchase on the same terms as are required under section 5.2 of NI 81-107 as if NI 81-107 applied to the Private Fund;
5. the manager of the Private Fund complies with section 5.1 of NI 81-107 as if NI 81-107 applies to the Private Fund;
6. the manager and the IRC of the Private Fund comply with section 5.4 of NI 81-107 as if NI 81-107 applies to the Private Fund for any standing instructions the IRC provides in connection with the purchase;
7. not less than quarterly, the IRC completes the review and assessment required by section 4.2(1) of NI 81-107 as if NI 81-107 applies to the Private Fund in connection with all the purchases in that quarter, the related policies and procedures established by the manager, and any related standing instructions provided or conditions imposed by the IRC;
8. if the IRC becomes aware of an instance where the manager of a Private Fund did not comply with the terms of this decision or with a condition imposed by the IRC in its approval, the IRC must, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under the laws of which the Private Fund is organized;
9. with respect to each purchase in a Primary Offering of debt securities with a term to maturity of 365 days or more,
  - (i) at least two other investors at arm's length to the Private Fund, the Filer and its affiliates and associates (as at April 30, 2008) are purchasing the security in the same Primary Offering, and
  - (ii) the Private Fund, together with other Funds and the Filer and its affiliates and associates (as at April 30, 2008), do not purchase more than 20% of the securities issued under the Primary Offering;
10. with respect to each purchase in a Primary Offering of debt securities with a term to maturity of less than 365 days,
  - (i) the Private Fund must not pay more than an independent, arm's length purchaser is willing to pay for a similar security,

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- (ii) the Private Fund must obtain a certificate from the seller of the securities, in the form of quarterly certification, confirming that all transactions between the Private Fund and the seller in the quarter have satisfied the requirement in subparagraph (i),
  - (iii) in the event that such certificate cannot be obtained or contains material errors, the manager of the Private Fund must report such fact to the IRC of the Private Fund immediately, and
  - (iv) the Private Fund must not purchase debt securities in a Primary Offering if, immediately after the transaction, the purchase would result in more than 10% of the net assets of the Private Fund being comprised of securities of the Related Persons;
11. on or before the 90<sup>th</sup> day after the end of each financial year of the Private Fund, the Filer, or an affiliate or associate of the Filer, or in the case of an Advised Pooled Fund, the manager of the Advised Pooled Fund files with the securities regulatory authority or regulator in the jurisdiction under the laws of which the Private Fund is organized the particulars of any investments made in reliance on this relief; and
12. the relief terminates on December 31, 2008.

Brent W. Aitken  
Vice Chair  
British Columbia Securities Commission

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### Schedule A

#### Managed Mutual Funds

1. Phillips, Hager & North U.S. Equity Fund
2. Phillips, Hager & North Canadian Equity Plus Pension Trust
3. Phillips, Hager & North Bond Fund
4. Phillips, Hager & North Canadian Equity Fund
5. Phillips, Hager & North Dividend Income Fund
6. Phillips, Hager & North Vintage Fund
7. Phillips, Hager & North Canadian Money Market Fund
8. Phillips, Hager & North Canadian Growth Fund
9. Phillips, Hager & North Balanced Pension Trust
10. Phillips, Hager & North \$U.S. Money Market Fund
11. Phillips, Hager & North Balanced Fund
12. Phillips, Hager & North U.S. Growth Fund
13. Phillips, Hager & North Short Term Bond & Mortgage Fund
14. Phillips, Hager & North Small Float Fund
15. Phillips, Hager & North Canadian Equity Pension Trust
16. Phillips, Hager & North High Yield Bond Fund
17. Phillips, Hager & North Total Return Bond Fund
18. Phillips, Hager & North Global Equity Fund
19. Phillips, Hager & North Overseas Equity Fund
20. Phillips, Hager & North Overseas Equity Pension Trust
21. Phillips, Hager & North U.S. Dividend Income Fund
22. Phillips, Hager & North Community Values Bond Fund
23. Phillips, Hager & North Community Values Balanced Fund
24. Phillips, Hager & North Community Values Canadian Equity Fund
25. Phillips, Hager & North Community Values Global Equity
26. Phillips, Hager & North Canadian Income Fund
27. Phillips, Hager & North Currency-Hedged U.S. Equity Fund
28. Phillips, Hager & North Currency-Hedged Overseas Equity Fund
29. BonaVista Global Balanced Fund
30. BonaVista Canadian Equity Value Fund

#### Managed Pooled Funds

1. Phillips, Hager & North U.S. Pooled Pension Fund
2. Phillips, Hager & North Institutional S.T.I.F.
3. Phillips, Hager & North Long Bond Pension Trust
4. Phillips, Hager & North High Grade Corporate Bond Fund
5. Phillips, Hager & North Investment Grade Corporate Bond Trust
6. Phillips, Hager & North Mortgage Pension Trust
7. Phillips, Hager & North Absolute Return Fund
8. Phillips, Hager & North Income Equity Pension Trust

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9. Phillips, Hager & North Enhanced Income Equity Pension Trust
10. Phillips, Hager & North Global Equity Pension Trust
11. Phillips, Hager & North PRisM – Short
12. Phillips, Hager & North PRisM – Mid
13. Phillips, Hager & North PRisM – Long
14. Phillips, Hager & North Long Mortgage Pension Trust
15. Phillips, Hager & North Long Corporate Bond Pension Trust
16. Phillips, Hager & North Foreign Bond Fund
17. Phillips, Hager & North PRisM Balanced Fund
18. Phillips, Hager & North Enhanced Total Return Bond Fund
19. BonaVista Canadian Equity Fund
20. BonaVista U.S. Equity Fund
21. BonaVista Fixed Income Fund
22. BonaVista Money Market Fund
23. BonaVista Balanced Fund
24. BonaVista International Equity Fund
25. BonaVista Private Balanced Fund

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## **Schedule B**

### Advised Mutual Funds

1. Social Housing Canadian Money Market Fund
2. Social Housing Canadian Short-Term Bond Fund
3. Social Housing Canadian Bond Fund
4. Social Housing Canadian Equity Fund
5. Tradex Equity Fund Limited
6. Pinnacle Canadian Value Equity Fund

### Advised Pooled Funds

None currently.