

2007 BCSECCOM 202

April 9, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A mutual fund and its registered portfolio manager want relief from section 121(2)(b) of the Act so that the fund can invest in and hold securities of an issuer in which the mutual fund, alone or together with related mutual funds, has a significant interest - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - The underlying fund will invest only in investments permitted under NI 81-102; the simplified prospectus of the top funds discloses that the top funds invest in securities of the underlying fund; a top fund cannot invest more than 10% of its net assets in the underlying fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 126(a) and (d), 130

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

and

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

and

In the Matter of
GBC Asset Management Inc.
(the Filer)

and

the GBC Canadian Growth Fund
(the Fund)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer and the Fund for a decision under the securities legislation of the Jurisdictions (the Legislation) for the following relief in respect of the Fund's investments in The Pembroke U.S. Growth Fund (the Underlying Fund):

- (a) an exemption from the requirements in the Legislation that a mutual fund not knowingly make or hold an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder (the Investment Limits); and
- (b) an exemption from the requirements in the Legislation that a management company (or in British Columbia, a mutual fund manager) file a report relating to a purchase or sale of securities between the mutual fund and any related person or company or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies (the Related Person Requirements)

in respect of the Fund's investment of up to 10% of its net assets in the Underlying Fund (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario 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 have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Filer is a corporation incorporated under the laws of Canada and has its head office in Montreal, Quebec. The Filer is the trustee and manager of the Fund.

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2. The Fund is an open-end mutual fund established under the laws of Ontario.
3. The Fund is a reporting issuer under the securities laws of each of the Jurisdictions. The Fund is currently being sold in each of the Jurisdictions by way of a simplified prospectus and annual information form dated April 12, 2006. The Fund is not in default of any requirements of applicable securities legislation.
4. Investment in the Fund is limited to:
 - (i) an investor who invested in the mutual funds managed by the Filer (the GBC Funds) prior to 1993,
 - (ii) an employee of the Filer or of Pembroke Management Ltd., the investment advisor for the Fund and the Underlying Fund,
 - (iii) an individual,
 - (iv) an individual (of the opposite or same sex) who is or has been married to an individual referred to in clause (iii) or is living or has been living with an individual referred to in clause (iii) in a conjugal relationship outside of marriage,
 - (v) a child or grandchild of one or both of the individuals referred to in clauses (iii) and (iv) or an individual (of the opposite or same sex) who is or has been married to a child or grandchild or is living or has lived with a child or grandchild in a conjugal relationship outside of marriage,
 - (vi) a personal holding company controlled by the individuals referred to in clauses (iii), (iv) or (v),
 - (vii) a trust, other than a commercial trust, of which an individual referred to in clauses (iii), (iv) or (v) is a beneficiary, or
 - (viii) a private foundation controlled by the individuals referred to in clauses (iii), (iv) or (v),provided that the investors referred to in clauses (iii), (iv), (v), (vi), (vii) and (viii) make an aggregate minimum investment of not less than \$100,000 in the GBC Funds.
5. The investment objective of the Fund is:

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to provide long-term growth through capital appreciation by investing primarily in mid-size Canadian companies, judged to have above-average growth potential or to be undervalued.

6. The investment strategies of the Fund involve identifying stocks with either unsustainable growth characteristics or unrecognized intrinsic value from among a universe of emerging, primarily Canadian stocks. However the Fund may also invest in foreign securities in a manner consistent with its investment objectives.
7. The investment objective of the Underlying Fund is:

to achieve long-term capital appreciation primarily through investment in a portfolio of common shares and other equity securities of small to medium size capitalization issuers where such securities are listed in the United States or where the issuer is a United States issuer, if the securities are listed on a recognized exchange in the United States or elsewhere, and that exhibit prospects for above average long-term earnings growth.
8. The Underlying Fund is an open-end mutual fund established under the laws of Ontario and is a mutual fund as defined under the securities legislation of the Jurisdictions. Units of the Underlying Fund are sold on an exempt basis in the Jurisdictions. The Underlying Fund is not in default of any requirements of applicable securities legislation.
9. The Filer is the manager and trustee of the Underlying Fund.
10. The Underlying Fund is an attractive investment for the Fund because it provides a more efficient and cost-effective manner of achieving diversification through investment in the U.S. than the direct purchase of securities of U.S. companies.
11. The Underlying Fund is not a reporting issuer any of in the Jurisdictions and, accordingly, is not governed by National Instrument 81-102 *Mutual Funds* (NI 81-102) or National Instrument 81-101 *Mutual Fund Distributions*. Nevertheless, the Underlying Fund complies or will comply with the provisions of NI 81-102.
12. There will be no duplication of management fees since no management fees are payable by the Fund in respect of its investment in the Underlying Fund.

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13. If the Requested Relief is granted, the valuation frequency of the Underlying Fund will be changed to weekly to match that of the Fund.
14. In the absence of this Order, the Fund could be prohibited from knowingly making or holding an investment in the Underlying Fund.
15. In the absence of this Decision, the Filer would be required to file a report of every transaction or purchase or sale by the Fund in units of the Underlying Fund.

Decision

Each of the Decision Makers is satisfied that, based on the information and representations contained in the Application and this decision, the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, subject to the following conditions:

- (a) the Underlying Fund must comply with National Instrument 81-102 *Mutual Funds* and National Instrument 81-106 *Investment Fund Continuous Disclosure* at all times;
- (b) unitholders of the Fund may obtain, upon request and free of charge, a copy of the offering memorandum of the Underlying Fund, if any, and the audited annual financial statements and semi-annual financial statements of the Underlying Fund. The Fund will disclose this information in its management reports of fund performance;
- (c) the Fund discloses in its investment strategies in its simplified prospectus that it invests in securities of other mutual funds or pooled funds;
- (d) there are compatible dates for the calculation of the net asset value of the Fund and the Underlying Fund for the purpose of the issue and redemption of securities of such mutual funds;
- (e) no sales charges are payable by the Fund in relation to its purchases of units of the Underlying Fund;
- (f) no redemption fees or other charges will be charged by the Underlying Fund in respect of the redemption by the Fund of units of the Underlying Fund owned by the Fund;

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- (g) the arrangements between or in respect of the Fund and the Underlying Fund are such as to avoid the duplication of management fees; and
- (h) the Fund does not vote any of the securities of the Underlying Fund it holds except that the Fund may, if the Filer so chose, arrange for all the securities it holds of the Underlying Fund to be voted by the beneficial holders of the securities of the Fund.

Paul K. Bates
Commissioner
Ontario Securities Commission

Wendell S. Wigle
Commissioner
Ontario Securities Commission