2002 BCSECCOM 134

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain self-dealing requirements in connection with mutual fund mergers, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 126(a), 127(1)(b), 130

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF BMO HARRIS INVESTMENT MANAGEMENT INC. AND THE TRUST COMPANY OF BANK OF MONTREAL

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from BMO Harris Investment Management Inc. (the "Manager") and The Trust Company of Bank of Montreal ("Trustco"), manager and trustee, respectively, of the Monogram Canadian Growth Equity Fund II, Monogram Canadian Growth Equity Fund III, Monogram Canadian Growth Equity Fund IV, Monogram Canadian Conservative Equity Fund II, Monogram Canadian Conservative Equity Fund III and Monogram Canadian Income Equity Fund II (collectively, the "Terminating Funds") and Monogram Canadian Growth Equity Fund, Monogram Canadian Conservative Equity Fund and Monogram Canadian Income Equity Fund (collectively, the "Continuing Funds", the Terminating Funds and Continuing Funds, collectively, the "Funds") for a decision (the "Decision") pursuant to the securities legislation (the "Legislation") of the Jurisdictions that, for the purposes of the mutual fund merger transactions described below (the "Mergers"), the Manager, Trustco and the Funds be exempt from the requirements provided for by the Legislation with respect to:

(a) the requirements contained in the Legislation requiring a management company or a mutual fund manager to file reports in connection with every transaction of purchase or sale of securities between a mutual fund and any related person or company; and

(b) the restrictions contained in the Legislation prohibiting a portfolio manager or where applicable, a mutual fund, from knowingly causing a mutual fund to purchase or sell the securities of any issuer from or to the account of a responsible person or any associate of a responsible person or the portfolio manager;

AND WHEREAS the above restrictions and requirements of the Legislation shall be referred to in this Decision Document as the "Applicable Legislation";

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Ontario Securities Commission is the Principal Jurisdiction for this application;

AND WHEREAS the Manager has represented to the Decision Makers that:

1. Each Fund is an open-end mutual fund trust established under the laws of Ontario by a declaration of trust.

2. The Funds are utilized by the Manager as part of its portfolio management on behalf of discretionary account clients. To date, units of the Funds are distributed to investors in reliance on exemptions from the registration and prospectus requirements of the Legislation, including the exemption for purchasers purchasing as principal if the aggregate acquisition cost is not less than a prescribed amount. The Manager intends to qualify the securities of the Continuing Funds on or about the effective date of the Mergers. Certain other mutual funds that are used by the Manager as part of its discretionary management program are already qualified by prospectus.

3. The Manager wishes to merge the Monogram Canadian Growth Equity Fund II, Monogram Canadian Growth Equity Fund III and Monogram Canadian Growth Equity Fund IV into Monogram Canadian Growth Equity Fund; merge the Monogram Canadian Conservative Equity Fund II and Monogram Canadian Conservative Equity Fund III into the Monogram Canadian Conservative Equity Fund; and merge the Monogram Canadian Income Equity Fund II into the Monogram Canadian Income Equity Fund.

4. The Mergers would occur through the implementation of the following steps:

(a) each Terminating Fund will transfer all of its assets (which would consist of portfolio securities and cash), less an amount required to satisfy the liabilities of the Terminating Fund, to its corresponding Continuing Fund in exchange for units of that Continuing Fund having an aggregate value equivalent to the net value of the assets transferred;

(b) immediately following the above-noted transfer, each Terminating Fund will distribute to its unitholders its portfolio securities, which would consist solely of units of the applicable Continuing Fund, so that following such distribution the unitholders in each Terminating Fund become direct unitholders in the applicable Continuing Fund;

(c) thereafter, each Terminating Fund will be terminated.

5. Each Terminating Fund will merge with the appropriate Continuing Fund on February 28, 2002 (the “Merger Date”) following which the merged Funds will be distributed in each province and territory of Canada pursuant to a single combined prospectus and annual information form.

6. No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of the applicable Terminating Fund and all costs specifically relating to effecting the Mergers will be borne by the Manager and will not be charged to the Terminating Funds, the Continuing Funds or their respective unitholders.

7. The investment objectives of each of the Terminating Funds are the same as or similar to those of the Continuing Fund with which the Terminating Fund is to merge. Therefore, the investment portfolio of the Terminating Funds that are to be acquired by the Continuing Funds are appropriate investments for the Continuing Funds and, following completion of the Merger, the Continuing Funds will be invested in accordance with the investment objectives.

8. The net asset value of each Terminating Fund and Continuing Fund is calculated on a daily basis for the purposes of issuing and redeeming securities of the Funds, and there are no material differences in the valuation methods of each of the Funds.

9. Prior written notice of the Mergers has been provided to the unitholders in the Funds.

10. The unitholders in each Terminating Fund and Continuing Fund will have the right to redeem their units for cash up to the close of business on the business day before the Merger Date.

11. In the absence of this Decision, the Applicable Legislation requires the Manager to file a report in connection with the purchase by each Terminating Fund of units of its corresponding Continuing Fund as the Terminating Funds and Continuing Funds are "related persons" pursuant to the Legislation.

12. In the absence of this Decision, the Manager is prohibited from knowingly causing a Continuing Fund to buy the portfolio securities of its corresponding Terminating Fund as Trustco is a "responsible person" and the Continuing Funds are "associates" of Trustco pursuant to the Legislation.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker;

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;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Applicable Legislation does not apply to the Mergers, provided that immediately following the Mergers, all assets of the Terminating Funds, being units of the Continuing Funds, are distributed to the unitholders in such Terminating Fund, and that the Terminating Fund is thereafter wound-up without further notice to unitholders.

DATED February 7, 2002.

Robert W. Korthals H. Lorne Morphy