

# 2002 BCSECCOM 924

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements for trades in units of an employee savings fund of a French issuer – manager and custodian exempted from registration requirements – relief from registration requirements for first trades where the trade is made through the facilities of a stock exchange outside of Canada

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34, 48, 61 and 76

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF QUEBEC AND BRITISH COLUMBIA**

**AND**

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

**AND**

## **IN THE MATTER OF IMERYS S.A., “IMERYS SHARE FUND” FCPE, SOCIÉTÉ GÉNÉRALE ASSET MANAGEMENT AND SOCIÉTÉ GÉNÉRALE**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Quebec and British Columbia (the “Jurisdictions”) has received an application from Imerys S.A. (the “Filer”) on its own behalf and on behalf of “Imerys Share Fund” FCPE (the “Fund”), Société Générale Asset Management (the “Manager”) and Société Générale (the “Custodian”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- (a) the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”), and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) shall not apply to certain trades of securities (the “Units”) of the Fund made to or with Canadian Participants (as defined in paragraph (g)) in connection with the Employee Offering (as defined in paragraph 4);

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- (b) the Registration Requirement under the Legislation shall not apply to the Manager in connection with its activities as Manager of the Fund;
- (c) the Registration Requirement under the Legislation shall not apply to the Custodian in connection with its activities with respect to the Fund and the Employee Shareholder Plan 2002;
- (d) the Registration Requirement and Prospectus Requirement under the Legislation of Quebec shall not apply (i) to the distribution of options (the “Options”) to acquire the shares, par value €8 per share, of the Filer (the “Shares”); and (ii) to the distribution of Shares acquired upon the exercise of the Options, in both cases to the Quebec employees (and former employees or their legal representatives upon death) of the Filer or its affiliates (the “Quebec Employees”) pursuant to the Employee Shareholder Plan 2002;
- (e) the requirements contained in the Legislation of Quebec relating to the requirements contained in Policy Q-3, subsections 2.1, (2), (4), (6) and (10) thereof, relating to (i) the maximum expiry period after termination of employment (ii) the pricing of options, (iii) the pricing of Units, and (iv) prior Commission des valeurs mobilières du Québec approval of any modification to the Employee Shareholder Plan 2002 or the terms of an option thereunder;
- (f) the Registration Requirement and Prospectus Requirement under the Legislation of Quebec shall not apply to the resale of the Shares acquired by the Quebec Employees upon exercise of Options pursuant to the Employee Shareholder Plan 2002; and
- (g) the Registration Requirement under the Legislation of British Columbia shall not apply to the resale of the Shares acquired by legal representatives or beneficiaries (the “Permitted Transferees”) of British Columbia employees of the Filer or its affiliates (the “BC Employees” and with the Quebec Employees, the “Canadian Participants”) upon exercise of Options pursuant to the Employee Shareholder Plan 2002, where such trade is made through the facilities of a stock exchange outside Canada.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

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AND WHEREAS, unless otherwise defined, the terms herein have the meanings set out in National Instrument 14-101 and Commission des valeurs mobilières du Québec Notice 14-101.

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

1. The Filer, with its registered office in Paris, France, is a corporation incorporated under the laws of France and is subject to French law and to regulatory requirements set forth by the French Securities Exchange Commission ("Commission de Operations de Bourse" or "COB"), applicable to public companies.
2. The Filer, carries on business in Canada through the following subsidiaries: Imerys Canada Inc. and Timcal Canada, Inc., (the "Canadian Subsidiaries", being, together with the Filer and other worldwide subsidiaries of the Filer, the "Imerys Group"). The Filer and the Canadian Subsidiaries are not and have no intention of becoming reporting issuers under the Legislation.
3. As of December 31, 2001, the Filer had outstanding 15,906,683 Shares. The Shares are currently listed on Paris Bourse First Market.
4. The Filer has implemented a world-wide group savings plan (the "Plan") in order to enable employees of the Imerys Group, to invest part of their savings and participate in the Filer's growth and financial success through an employee offering anticipated to commence in November 2002 (the "Employee Offering").
5. Only persons who are permanent employees of the Imerys Group with three months service from the date of the Employee Offering (the "Qualifying Employees") can participate in the Employee Offering.
6. Under the Employee Offering, the Fund is to be established to enable Qualifying Employees resident in Canada, Brazil, Portugal, Sweden and South Africa (collectively, the "Fund Participants") to indirectly acquire an investment in the Shares through the issuance of Units of the Fund.
7. There are approximately 13,000 Qualifying Employees of which 90 are Quebec Employees and 4 are BC Employees, all of whom together account for less than 0.75% of the Qualifying Employees.
8. The Fund is a mutual fund established by the Manager (i.e. *a Fonds Commun de Placement d'Entreprise*) in accordance with the laws of France to facilitate the participation in the Employee Offering by the Fund Participants. The Fund

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is not and has no intention of becoming a reporting issuer under the Legislation.

9. The Manager is an asset management company incorporated under the laws of France. The Manager will manage the Fund. The Manager is registered with the COB to manage investment funds and is subject to the regulatory requirements of the COB. Management decisions carried out by the Manager in respect of the Fund are supervised by a board made up of the Filer and representatives of the Fund Participants. The Manager is not and has no intention of becoming a reporting issuer under the Legislation.
10. The Custodian will act as custodian of the Fund. The Custodian is a financial institution incorporated under the laws of France and is subject to the registration requirements under the COB. The Custodian will provide custody services for the securities owned by the Fund as Custodian and will carry out orders to purchase and trade securities in the portfolio and redeem Units on behalf of the Fund Participants as account holder responsible for maintaining the holding of the units accounts. The Custodian is also responsible for providing statements to Canadian Participants with respect to their ownership of Units.
11. The Fund will be established for the sole purpose of providing Fund Participants with an opportunity to indirectly acquire an investment in the Shares, which is proportionate to the number of Units that the Fund Participants subscribe for in the Fund.
12. In accordance with the Plan, the Filer will reacquire Shares in the market. Fund Participants who wish to participate in the Employee Offering will subscribe for Units. The Fund will use employee contributions to purchase the Shares reacquired by the Filer on behalf of the Fund Participants. The Shares will be deposited with the Custodian. A Fund Participant will be entitled to subscribe for up to 15 Units under the Employee Offering provided that the Fund Participant's investment in the Units cannot exceed 25% of the Fund Participants' gross annual salary. The Units will not be listed on any stock exchange.
13. In accordance with the Plan, the Fund's portfolio shall consist solely of Shares. The Fund will not engage in any of the investment practices described in section 2.6 of National Instrument 81-102 Mutual Funds.
14. In accordance with the Plan, Fund Participants will have the right to pay for the Units:

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- (a) in full on the acquisition date of the Units; or
  - (b) in equal monthly instalments over a 12 month period following the acquisition of the Units.
15. The Fund Participants will purchase the Units for a price equal to the average opening price of the Shares for the 20 trading days on the Paris Bourse First Market (the “Reference Price”) less a 20% discount. Then, the Fund will be entitled to a discount on the purchase of the Shares of a maximum of 20% based on the tax laws of the applicable jurisdiction. As a result of this discount, the Fund Participants will be prohibited from disposing of the Units subject to certain prescribed exemptions, until the first day of the seventh month of the fifth financial year from the date of issuance (the “Unit Hold Period”).
16. The initial value of a Unit will be equal to the value of the Share it represents, which is based on the Reference Price set by the Filer’s Managing Board. The net asset value of the Units will be calculated weekly in euros and reported to the COB periodically. In accordance with the rules of the Fund, the Manager will be required to reinvest all dividends and income (inclusive of tax credits attaching to the reinvested income) paid on the Shares held by the Fund, thus increasing the value of the Units.
17. The Canadian Participants participating in the Employee Offering will not be induced to subscribe for the Units by expectation of employment or continued employment.
18. Units of the Fund will be non-transferable other than in accordance with the regulation of the Fund and of the Plan. Upon request (after the Unit Hold Period) to the Custodian, the Custodian as account holder will redeem the Units and pay to the holder thereof an amount calculated as the value of the Shares at such time and the *pro rata* portion of any reinvested income described in paragraph 16 above.
19. The Fund, due to board lot sizes, will be able to liquidate positions in the Shares more readily and at a better price than an individual investor.
20. Fund management fees and the costs of redemption of the Units, will be paid by the Filer during the course of employment of a Fund Participant. Account keeping costs shall cease to be borne by the Filer after a period of one year following the cessation of employment, except for employees in retirement or early retirement, for whom the Filer shall continue to bear account keeping

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costs. From then on, such costs shall be borne by the relevant former Fund Participant's beneficiaries.

21. The Canadian Participants will receive an information package in the English and French languages which will include an enrolment form and a brochure describing the Fund, including the Canadian income tax consequences of purchasing the Units (the "Information Documents"). Upon request, Fund Participants will also be entitled to receive the copies of the regulation of the Fund. The enrolment form will contain a statement that, as a consequence of this decision, the Units being granted to the Canadian Participants will be subject to the resale restrictions under applicable securities laws. The enrolment form will also contain an acknowledgement by the Canadian Participants that they are aware of the risk involved in purchasing the Units and that they are able to withstand any loss associated with the purchase of the Units. Canadian Participants will be entitled to receive continuous disclosure materials of the Filer, which are furnished to shareholders generally.
22. In accordance with the Employee Offering, the Filer will issue an Option to each Fund Participant for each Share indirectly held by that Fund Participant. The exercise price of the Options will be equal to the Reference Price.
23. The Custodian will set up an individual account for each Canadian Participant. A yearly report will be provided by the Custodian stating the number of Options held, the exercise price and expiry date thereof.
24. The Options will be exercisable after the expiration of a four year hold period (the "Option Hold Period"), which commences upon the date of grant, subject to early release upon death of the holder, whereby the Permitted Transferee will have a six month period from the date of death to exercise the Option. The Options may also be exercised by former Canadian Participants in accordance with the Employee Shareholder Plan 2002. The Options have a term of 10 years and are non-transferable other than in accordance with their terms.
25. In accordance with the Employee Shareholder Plan 2002, Fund Participants will have the option to participate in a simultaneous transfer exercise procedure, whereby the Custodian will arrange for the immediate sale of the underlying Shares issued upon exercise of the Options in the market to assist the funding of the exercise price of the Option.
26. The Shares issued upon exercise of the Options may be sold by Qualifying Employees through the facilities of the Paris Bourse First Market, following completion of the Option Hold Period.

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27. The issuance of the Options to Canadian Participants is voluntary and is not a condition of employment or continued employment.
28. As of the date hereof and after giving effect to the Employee Offering, Canadian residents do not and will not own (which term, for the purposes of this paragraph, is deemed to include all Shares held through the Fund on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.
29. The Fund will not be able to rely on the employee exemptions contained in the Legislation because there is no employment relationship between the Fund and the Canadian Participants.
30. The Manager will not be able to rely on the Registration Exemptions contained in the Legislation because it does not fall under any of the specified categories.
31. The Custodian will not be able to rely on the Registration exemptions contained in the Legislation because it does not fall under any of the specified categories.
32. The Filer will not be able to rely on the statutory Prospectus Exemption and the Registration Exemption because it is not a reporting issuer under the Legislation of Quebec.
33. In Quebec, there is no Prospectus Exemption and Registration Exemption for the resale of the Shares under the Employee Shareholder Plan 2002 as the Filer is not a reporting issuer under Quebec Legislation.
34. In British Columbia, Permitted Transferees may not have a Registration Exemption available to them with respect to the resale of the Shares acquired upon exercise of Options under the Employee Shareholder Plan 2002.
35. Because there is no market for the Shares in Canada and none is expected to develop, any resale of the Shares acquired under the Employee Shareholder Plan 2002 will be made through the facilities of the Paris Bourse First Market, and through persons duly registered or exempted under applicable laws.

AND WHEREAS under the System, this MRRS Decision Document evidences the Decision of each Decision Maker (collectively, the “Decision”);

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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 under the Legislation is that:

1. The trades in the Units to or with the Canadian Participants in connection with the Employee Offering are exempt from the Registration Requirement and Prospectus Requirement of the Legislation provided that the first trade in any Units issued pursuant to this Decision shall be a distribution;
2. The Registration Requirement of the Legislation shall not apply to the Manager in connection with its activities as manager of the Fund provided that the authority of the Manager and the investment activities of the Fund are limited to the activities described in paragraphs 9, 13 and 16;
3. The Registration Requirement of the Legislation shall not apply to the Custodian in connection with its activities as dealer, on behalf of the Canadian Participants, relating to the redemption of Units outside of Canada and the resale of Shares acquired by the Canadian Participants through the facilities of the Paris Bourse First Market;
4. The Prospectus Requirement and the Registration Requirement of the Quebec Legislation shall not apply to the distribution by the Filer of Options and of the Shares acquired upon an exercise of options under the Employee Shareholder Plan 2002 to Quebec Employees;
5. The requirements contained in the Legislation of Quebec relating to the requirements contained in Policy Q-3, subsections 2.1, (2), (4), (6) and (10) thereof, relating to (i) the maximum expiry period after termination of employment (ii) the pricing of options, (iii) the pricing of Units, and (iv) prior Commission des valeurs mobilières du Québec approval of any modification to the Employee Shareholder Plan 2002 or the terms of an option thereunder shall not apply to the Employee Shareholder Plan 2002; and
6. The Prospectus Requirement of the Quebec Legislation shall not apply to the first trades in the Shares acquired under the Employee Shareholder Plan 2002 provided that such trades are deemed distributions or primary distributions to the public, and the Registration Requirement of the Legislation shall not apply to the first trades in Shares acquired under the Employee Shareholder Plan 2002 provided that:

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- (i) in British Columbia, with respect to the Permitted Transferees, the conditions in subsection (1) of section 2.14 of Multilateral Instrument 45-102 are satisfied; or
- (ii) in Quebec, the alienation of the Shares is made between Quebec Employees or outside Quebec.

Dated 23 October, 2002

(S) Jean Lorrain  
Directeur de la conformité et de l'application

(S) Josée Deslauriers  
Chef du Service du financement des Sociétés