

2006 BCSECCOM 138

March 10, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from self-dealing requirements in section 127(1)(b) of the *Securities Act* for trades in portfolio securities between mutual funds managed by the same manager or between those mutual funds and discretionary accounts managed by that manager (cross transactions) – Under section 127(1)(b) of the Act, a mutual fund or responsible person must not knowingly cause the mutual fund to purchase or sell the securities of any issuer from or to the account of a responsible person – the board of directors of the mutual fund manager will approve each cross transaction; any securities that are the subject of a cross transaction must be compatible with the investment objectives and strategies of the purchasing fund; if securities are traded from a managed account, the managed account holder must have consented to trades from that account to a fund

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation
of British Columbia and Alberta (the Jurisdictions)

and

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

and

In the Matter of
Phillips, Hager & North Investment Management Ltd. (the Filer)
and the PH&N Funds (as defined below)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the restriction (the Transaction Restriction) contained in the Legislation prohibiting a mutual fund or a responsible person (as defined in the Legislation) of a mutual fund from

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knowingly causing the mutual fund to purchase or sell securities of any issuer from or to the account of a responsible person does not apply to the purchase and sale of portfolio securities between current and future mutual funds managed by the Filer, or between those mutual funds and discretionary accounts managed by the Filer (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 The Filer represents that:
- 1. the Filer is registered as an adviser in the category of portfolio manager and investment counsel (or its equivalent) under the Legislation;
 - 2. the Filer is the manager and promoter of 43 mutual funds, 28 of which are offered by way of simplified prospectus filed in the Jurisdictions and certain other provinces and territories of Canada; the remaining 15 mutual funds are offered under exemptions from the prospectus requirements of applicable securities laws; in addition, the Filer or affiliates of the Filer may also establish mutual funds in the future, which future funds will be managed by the Filer; these present and future funds managed or to be managed by the Filer are collectively called the PH&N Funds;
 - 3. State Street Trust Company Canada is the trustee of the existing PH&N Funds, and the Filer expects State Street Trust Company Canada or another trust company at arm's length to the Filer will be the trustee for future PH&N Funds (collectively, the Third Party Trustee); in addition to other services, the Third Party Trustee provides (or in the case of future PH&N Funds, will provide) valuations on a regular basis for the purpose of determining the net asset value of the PH&N Fund;
 - 4. as at November 17, 2005, \$29.6 billion had been invested in the PH&N Funds;

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5. from time to time, there will be a significant outflow of cash from one PH&N Fund as a result of redemptions by a significant unitholder of one PH&N Fund switching its investment to another PH&N Fund; in addition, from time to time the Filer may wish to transfer individual securities held on behalf of a PH&N Fund or a discretionary account managed by the Filer (a Managed Account) to a PH&N Fund in exchange for units of the other PH&N Fund;
6. where there is a significant outflow of cash from one PH&N Fund, the Filer is required to sell portfolio securities to fund the redemption request (unless the applicable PH&N Fund holds a large cash balance to fund the request); where there is a significant inflow of cash, the Filer is required to purchase portfolio securities with the subscription proceeds (unless the Filer determines it is in the best interests of the applicable PH&N Fund to hold the proceeds as cash pending investment);
7. the Filer is of the view that where the portfolio securities of the selling PH&N Fund or Managed Account are compatible with the investment objectives and strategies of the purchasing PH&N Fund, it may be in the best interests of both PH&N Funds (or the Managed Account and the PH&N Fund) for the selling PH&N Fund or Managed Account to sell portfolio securities to the purchasing PH&N Fund (a Cross Transaction); the Filer will only engage in a Cross Transaction if, in its view, engaging in a Cross Transaction as opposed to similar open-market trades is in the best interests of each of the parties to the trade;
8. Cross Transactions will be effected through a registered dealer and will take place after the closing of the markets on which the applicable portfolio securities are traded; the consideration payable for portfolio securities included in Cross Transactions will be the same as the value of those securities as determined by the Third Party Trustee of the selling PH&N Fund for purposes of calculating net asset value, in accordance with the requirements set out in the then-current valuation policies of the Fund (the Valuation Policies); the Valuation Policies will be described in the annual information form for the PH&N Funds that offer their units by way of simplified prospectus;
9. the costs incurred by the PH&N Fund (and Managed Account, if the trade is from a Managed Account) in connection with a Cross Transaction will be limited to brokerage costs, taxes and other fees and costs that would normally apply with respect to similar transactions between arm's length parties in the jurisdictions where the Cross Transactions take place;

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10. since the Filer is the manager of each of the PH&N Funds, each of the PH&N Funds is a responsible person of each of the other PH&N Funds within the meaning of the Legislation;
11. in the absence of the Requested Relief, the Filer would be prohibited by the Transaction Restriction from causing the PH&N Funds and Managed Accounts to engage in Cross Transactions.

Decision

- ¶ 4 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 the Requested Relief is granted provided that:

- (a) the Board of Directors of the Filer approves each Cross Transaction before that Cross Transaction takes place;
- (b) the portfolio securities that are the subject of a Cross Transaction are compatible with the investment objectives and strategies of the purchasing PH&N Fund;
- (c) if securities are being traded from a Managed Account, the Managed Account holder has consented to trades from that account to a PH&N Fund; and
- (d) the Filer files reports of all Cross Transactions in the forms and within the times required under the Legislation.

Brent W. Aitken
Vice Chair
British Columbia Securities Commission