

# 2005 BCSECCOM 128

February 2, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - Issuer seeks registration relief for marketing and wholesale activities for mutual funds it manages but does not distribute to the public - Issuer is a mutual fund manager; issuer is registered as adviser and dealer in another jurisdiction; issuer carries on business primarily as investment counsel and portfolio manager; issuer conducts marketing and wholesale activities that are incidental to issuer's principal business of portfolio management; marketing and wholesale activities include any direct or indirect act, advertisement, or solicitation where issuer distributes mutual funds to dealer registrants, who then sell units in the mutual funds to investors; issuer is required to be registered as mutual fund dealer to conduct marketing and wholesale activities; marketing and wholesale activities may be considered "acts in furtherance of" trades in units of mutual funds managed by issuer made through registered dealers in BC

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a) and 48

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick,  
Nova Scotia, Prince Edward Island, Newfoundland And Labrador, Yukon  
Territory, Northwest Territories And Nunavut

and

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

and

In the Matter of  
Mavrix Fund Management Inc.

## MRRS Decision Document

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Northwest Territories and

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Nunavut (the “Jurisdictions”) has received an application from Mavrix Management Inc. (“Mavrix”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement (the “Dealer Registration Requirement”) in the Legislation that prohibits a person or company from trading in a security unless registered as a dealer in the appropriate category shall not apply to Mavrix or to any officers or employees (each a “Mavrix Representative”) of Mavrix acting on its behalf, in respect of certain activities of Mavrix relating to mutual funds (the “Mutual Funds”) of which Mavrix is or becomes the manager;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions (“NI 14-101”);

AND WHEREAS Mavrix has represented to the Decision Makers that:

1. Mavrix was incorporated under the *Business Corporations Act* (Ontario) on May 16, 2001. The head office of Mavrix is located at 36 Lombard Street, Suite 600, Toronto, Ontario.
2. Mavrix is a reporting issuer in each of the Jurisdictions and is not in default of its reporting obligations in any Jurisdiction. The common shares in the capital of Mavrix are listed and posted for trading on The Toronto Stock Exchange.
3. Mavrix is registered under the *Securities Act* (Ontario) as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer. Mavrix is not registered as an adviser or dealer under the securities legislation of any of the Jurisdictions except Ontario.
4. Mavrix carries on business primarily as an investment counsel and portfolio manager. It is the trustee and manager of Mavrix American Growth Fund, Mavrix Canadian Income Trust Fund, Mavrix Canadian Strategic Equity Fund, Mavrix Diversified Fund, Mavrix Dividend & Income Fund, Mavrix Enterprise Fund, Mavrix Explorer Fund, Mavrix Global Fund, Mavrix Growth Fund, Mavrix Money Market Fund, Mavrix Sierra Equity Fund and Mavrix Strategic Bond Fund (the “Mavrix Trust Funds”) and is the manager of Mavrix Multi Series Fund Ltd. - Explorer Series, Mavrix Multi Series Fund Ltd. - Canadian Equity Series, Mavrix Multi Series Fund Ltd. - Income Series and Mavrix Multi Series Fund Ltd. - Short Term Income Series (the “Mavrix Corporate Funds”). The Mavrix Trust Funds and the Mavrix Corporate Funds

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are in continuous distribution pursuant to a combined simplified prospectus and annual information form each dated June 24, 2004.

5. Mavrix is the trustee and manager of Mavrix Small Companies Fund, an investment trust established under the laws of the Province of Ontario. A preliminary simplified prospectus and annual information form each dated September 7, 2004 in respect of Mavrix Small Companies Fund were filed in all Provinces and Territories of Canada and a preliminary MRRS decision document dated September 9, 2004 has been issued in respect thereof. It is intended that Mavrix Small Companies Fund become part of the Mavrix Trust Funds upon the next renewal filing of a combined simplified prospectus and annual information form of the Mavrix Trust Funds, which is expected to occur in or around May 2005.
6. Mavrix is the trustee and manager of Mavrix Balanced Income and Growth Trust, an investment trust established under the laws of the Province of Ontario. A preliminary prospectus dated September 20, 2004 in respect of Mavrix Balanced Income and Growth Trust was filed in all Provinces and Territories of Canada and a preliminary MRRS decision document dated September 22, 2004 has been issued in respect thereof.
7. Mavrix is the trustee and manager of Mavrix Strategic Small Cap Fund, the securities of which are offered for sale on a private placement basis pursuant to exemptions from the prospectus and registration requirements of the Legislation.
8. Mavrix may in the future be the manager of additional Mutual Funds.
9. Mavrix manages the investment portfolios of the Mutual Funds with full discretionary authority pursuant to management agreements entered into by Mavrix with each of the Mutual Funds.
10. Incidental to its principal business of portfolio management, Mavrix wishes to conduct marketing and wholesaling activities in respect of the Mutual Funds. "Marketing and Wholesaling Activities" means, for Mavrix, a trade by Mavrix that consists of any act, advertisement, or solicitation, directly or indirectly, in furtherance of another trade in shares or units of a Mutual Fund, where the other trade consists of:
  - a. a purchase or sale of securities of a Mutual Fund; or

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- b. a purchase or sale of securities of a Mutual Fund of which Mavrix acts as the “principal distributor” for the purposes of National Instrument 81-102 Mutual Funds,

and where the purchase or sale is, in each case, made by or through another dealer that is registered under the Legislation of the Jurisdiction where the trade is made in a category that permits it to act as a dealer for such trade.

- 11. Without the relief requested, Mavrix would have to be registered under the Legislation as a dealer in the category of mutual fund dealer (or equivalent category) in order to conduct Marketing and Wholesaling Activities in respect of the Mutual Funds.
- 12. In order to obtain registration under the Legislation as a mutual fund dealer, Mavrix would be required to be a member of the Mutual Fund Dealers Association of Canada (the “MFDA”).
- 13. The MFDA has rules that govern its membership which would have the effect of precluding Mavrix from being a member of the MFDA if Mavrix continued to conduct its principal business of acting as an investment counsel and as a portfolio manager with discretionary authority to manage the investment portfolios of the Mutual Funds.

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

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 the Dealer Registration Requirement in the Legislation shall not apply to trades that consist of Marketing or Wholesaling Activities in respect of shares or units of Mutual Funds made by Mavrix through Mavrix Representatives.

February 2, 2005

Paul M. Moore

David L. Knight