

2007 BCSECCOM 53

December 22, 2006

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 wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person or company which is a substantial security holder of the mutual fund, its mutual fund manager or its mutual fund distributor - The mutual fund is a special purpose vehicle that only invests in shares of a company which is a substantial security holder of the mutual fund's distribution company; a condition that the mutual fund not become an insider of its substantial security holder is unnecessary as the mutual fund will comply with the ownership restrictions in s.2.2 of National Instrument 81-102 – *Mutual Funds*

Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of
BAM Split Corp. (formerly BNN Split Corp.)
(the "Company")

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Company for a decision under the securities legislation of the Jurisdictions (the "Legislation") exempting it from:

2007 BCSECCOM 53

- the restrictions that prohibit the Company from making investments in Brookfield Asset Management Inc. (“Brookfield”), which is a substantial security holder of Trilon Securities Corporation (“Trilon”), a distribution company of the Company (the “Investment Prohibition”)

(the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”):

- (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 Company:

1. The Company was incorporated under the laws of the Province of Ontario on July 13, 2001. The primary undertaking of the Company is to invest in a portfolio of Class A Limited Voting Shares (the “BAM Shares”) of Brookfield. The BAM Shares and any cash held by the Company from time to time are the only material assets of the Company.
2. Trilon, a wholly-owned subsidiary of Brookfield, is a distribution company of the Company.
3. The purpose of the Company is to provide a vehicle through which different investment objectives with respect to participation in the BAM Shares may be satisfied. This is accomplished through the issuance of capital shares (the “Capital Shares”) and preferred shares (the “Preferred Shares”) of the Company. The Class A Preferred Shares and the Class AA Preferred Shares, series 1 of the Company (the “Series 1 Preferred Shares”) are listed on the TSX.

2007 BCSECCOM 53

4. The Company holds the BAM Shares in order to generate fixed cumulative preferential dividends for the holders of the Preferred Shares and to enable the holders of the Capital Shares to participate in any capital appreciation in the BAM Shares. BAM Investments Corp. (“BAM Investments”) owns all of the outstanding Class A Voting Shares, class AA preferred shares, series 2 (the “Series 2 Preferred Shares”) and all of the Capital Shares of the Company. BAM Investments also owns approximately 3% of the BAM Shares directly.
5. The Company is a mutual fund because the Company is an issuer of securities which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the Company, within a specified period after demand.
6. The Company has previously offered to the public by prospectus and has issued and outstanding 5,000,000 Class A Preferred Shares and 3,200,000 Series 1 Preferred Shares.
7. The Company received an exemption from the Investment Prohibition in the Jurisdictions previously under a Decision dated August 27, 2001 (the “2001 Decision”). The 2001 Decision included a condition that the Company would not become an insider of Brookfield (the “Insider Condition”). The purpose of the Insider Condition was to make it clear that the Company remained subject to the control restrictions contained in section 2.2 of National Instrument 81-102 – *Mutual Funds* (“NI 81-102”). Other than the provisions under NI 81-102 from which the Decision Makers have exempted the Company, the Company complies with and will continue to comply with NI 81-102 including section 2.2.
8. The Company intends to commence an offering (the “Offering”) of Class AA Preferred Shares, Series 3 (“Series 3 Preferred Shares”) shortly. The Series 3 Preferred Shares will be listed on the TSX. Trilon will act as one of the underwriters in connection with the Offering.
9. The proceeds of the Offering will be used to acquire additional BAM Shares. The Company will not own in excess of 10% of the BAM Shares. Following the Offering, however, the BAM Shares owned by BAM Investments and the Company, taken together, will be in excess of 10% of the BAM Shares. The Company will therefore be considered an insider of Brookfield by virtue of the definition of insider and the deemed beneficial ownership provisions of the Legislation. The Company will no longer be able to comply with the Insider Condition.

2007 BCSECCOM 53

Decision

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 Requested Relief is granted.

Carol S. Perry
Ontario Securities Commission

Paul M. Moore
Ontario Securities Commission