

# 2008 BCSECCOM 441

April 1, 2008

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, ss. 48, 76 – Employees & Consultants – exemption from registration and prospectus requirements for employees, consultants, past employees and similar persons

Trades by an issuer in units of French investment funds that were established as part of the issuer's employee investment plan - Employee voluntarily enters into the issuer's employee investment plan; the units of the fund are the economic equivalent of the issuer's shares; the units can be redeemed for a cash payment of an amount equal to the value of the securities of the issuer represented by each unit and cannot be redeemed for shares in the issuer; the fund's sole purpose is to hold securities of the issuer for the benefit of plan participants; the employee will receive an information package which includes a summary of the terms of the offering; upon request the employee can receive copies of the French reference document filed with the French AMF in respect of the issuer's shares and a copy of the relevant fund's rules; the issuer is not a reporting issuer anywhere in Canada; the issuer has a de minimis connection to Canada

Trades by an issuer's employees or officer in securities of a fund that was established as part of the issuer's employee investment plan or in-house investment plan - Employee voluntarily enters into the issuer's employee investment plan; under the plan the employee will receive units in the fund; the units are exchangeable for securities of the issuer; the fund's sole purpose is to hold securities of the issuer for the benefit of plan participants; the employee will receive an information package which includes a summary of the terms of the offering and a notice containing a description of Canadian income tax consequences; upon request the employee can receive copies of the French reference document filed with the French AMF in respect of the issuer's shares and a copy of the relevant fund's rules; the issuer is not a reporting issuer anywhere in Canada; the issuer has a de minimis connection to Canada; the securities will be resold on an exchange outside of Canada or to a person outside of Canada

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba,  
Ontario, Québec, Nova Scotia, New Brunswick

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and Newfoundland and Labrador  
(the “Jurisdictions”)

and

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

and

In the Matter of  
Schneider Electric S.A.  
(the “Filer”)

## 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 Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for:

1. an exemption from the prospectus requirements of the Legislation (the “Prospectus Relief”) so that such requirements do not apply to:
  - (a) trades in units (“Units”) of:
    - (i) a compartment named Schneider International Classic Compartment (the “Principal Classic Compartment”) of a permanent FCPE named Schneider Electric International, which is a fonds communs de placement d’entreprise or “FCPE”; a form of collective shareholding vehicle of a type commonly used in France for the conservation of shares held by employee-investors;
    - (ii) a temporary FCPE named Schneider International Relais (the “Temporary Classic FCPE”), which will merge with the Principal Classic Compartment following the Employee Share Offering (as defined below) as further described in paragraph 10 of the Representations; and
    - (iii) a compartment named Schneider International SAR 2008 (the “SAR Compartment”) of a permanent FCPE named Schneider Electric International,

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(the Principal Classic Compartment, the Temporary Classic FCPE and the SAR Compartment, collectively, the “Compartments”)

made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions who elect to participate in the Employee Share Offering (the “Canadian Participants”);

- (b) trades of ordinary shares of the Filer (the “Shares”) by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants;
  - (c) the issuance of Units of the Principal Classic Compartment to holders of SAR Compartment Units upon a transfer of the Canadian Participants’ assets in the SAR Compartment to the Principal Classic Compartment at the end of the Lock-Up Period (as defined below);
2. an exemption from the dealer registration requirements of the Legislation (the “Registration Relief”) so that such requirements do not apply to:
- (a) trades in Units of the Compartments made pursuant to the Employee Share Offering to or with Canadian Participants;
  - (b) trades of Shares by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants; and
  - (c) the issuance of Units of the Principal Classic Compartment to holders of SAR Compartment Units upon a transfer of Canadian Participants’ assets in the SAR Compartment to the Principal Classic Compartment at the end of the Lock-Up Period (as defined below);
3. an exemption from the adviser registration requirements and dealer registration requirements of the Legislation so that such requirements do not apply to the manager of the Compartments, AXA Investment Managers Paris (the “Management Company”) to the extent that its activities described in paragraphs 24 to 26 of the Representations require compliance with the adviser registration requirements and dealer registration requirements (collectively, with the Prospectus Relief and the Registration Relief, the “Initial Requested Relief”); and
4. an exemption from the dealer registration requirements of the Legislation so that such requirements do not apply to the first trade in any Units or Shares

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acquired by Canadian Participants under the Employee Share Offering (the “First Trade Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (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 or in Québec Commission Notice 14-101 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 Filer:

1. The Filer is a corporation formed under the laws of France. It is not and has no current intention of becoming a reporting issuer (or equivalent) under the Legislation. The Shares are listed on Euronext Paris.
2. The Filer carries on business in Canada through the following affiliated companies: Schneider Canada Inc., INDE Electronics Inc., Power Measurement Ltd., Juno Lighting Ltd., MGE UPS Systems, Inc., American Power Conversion Corporation and Electrical South, Inc. (collectively, the “Local Affiliates”, together with the Filer and other affiliates of the Filer, the “Schneider Group”)<sup>1</sup>. Each of the Local Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer (or equivalent) under the Legislation.
3. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Compartments 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.

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<sup>1</sup> Schneider Canada Inc., INDE Electronics Inc., Power Measurement Ltd. and Juno Lighting Ltd. are Canadian Corporations. MGE UPS Systems, Inc., American Power Conversion Corporation and Electrical South, Inc. are United States corporations that do business in Canada and employ Qualifying Employees resident in Canada.

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4. The Filer has established a global employee share offering for employees of the Schneider Group (the “Employee Share Offering”). The Employee Share Offering is comprised of two subscription options:
  - (a) an offering of Shares to be subscribed through the Temporary Classic FCPE, which Compartment will be merged with the Principal Classic Compartment after completion of the Employee Share Offering (the “Classic Plan”); and
  - (b) an offering of Shares to be subscribed through the SAR Compartment (the “SAR Plan”).
5. Only persons who are employees of a member of the Schneider Group during the reservation period for the Employee Share Offering and who meet other employment criteria (the “Qualifying Employees”) will be allowed to participate in the Employee Share Offering. Canadian Participants may indicate the amount they wish to invest in the Employee Share Offering by completing and returning a subscription/reservation form during a “reservation period”. The subscription price will be set following the end of the reservation period, after which there will be a revocation period during which subscribers may cancel all their reservations in the SAR Plan, the Classic Plan or both, as applicable. If reservations are not revoked at the end of the revocation period, the initial reservation will become a binding subscription.
6. The Compartments have been established for the purpose of implementing the Employee Share Offering. There is no current intention for the Compartments to become reporting issuers under the Legislation.
7. As set forth above, the Temporary Classic FCPE is, and the Principal Classic Compartment and the SAR Compartment are compartments of, an FCPE (a fonds communs de placement d'entreprise) which is a shareholding vehicle of a type commonly used in France for the conservation or custodianship of shares held by employee investors. The Compartments have been registered with the French Autorité des marchés financiers (the “French AMF”). Only Qualifying Employees will be allowed to hold Units of the Compartments in an amount corresponding to their respective investments in each of the Compartments.
8. All Units acquired in the Employee Share Offering by Canadian Participants will be subject to a hold period of approximately five years (the “Lock-Up Period”), subject to certain exceptions provided for in the Schneider International Group Savings Plan (such as a release on death or termination of

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employment), or, the exception that the Canadian Participant's employer ceases to be an affiliate of the Filer.

9. Under the Classic Plan, Canadian Participants will subscribe for Units in the Temporary Classic FCPE, and the Temporary Classic FCPE will then subscribe for Shares using the Canadian Participants' contributions at a subscription price that is equal to the average of the opening price of the Shares (expressed in euros) on the 20 trading days preceding the date of fixing of the subscription price by the Management Board of the Filer (the "Reference Price"), less a 15% discount. The subscription price will be the Canadian dollar equivalent of the Reference Price less the 15% discount.
10. Initially, the Shares will be held in the Temporary Classic FCPE and the Canadian Participant will receive Units in the Temporary Classic FCPE. Immediately after completion of the Employee Share Offering, the Temporary Classic FCPE will be merged with the Principal Classic Compartment (subject to the approval of the FCPE's supervisory board and the French AMF). Units of the Temporary Classic Compartment held by Canadian Participants will be replaced with Units of the Principal Classic Compartment on a *pro rata* basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic Compartment (the "Merger").
11. The term "Classic Compartment" used herein means, prior to the Merger, the Temporary Classic FCPE, and following the Merger, the Principal Classic Compartment.
12. Under the Classic Plan, at the end of the Lock-Up Period or in the event of an early unwind resulting from the Canadian Participant satisfying one of the exceptions to the Lock-Up Period and meeting the applicable criteria, a Canadian Participant may:
  - (a) redeem Units in the Classic Compartment in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares; or
  - (b) continue to hold Units in the Classic Compartment and redeem those Units at a later date.
13. Dividends paid on the Shares held in the Classic Compartment will be contributed to the Classic Compartment and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued (however, as a result of a recent change in French law, the Classic Compartment may be obliged to offer a dividend cash payment to Canadian

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Participants as an alternative and such possibility shall be communicated to Canadian Participants).

14. The Reference Price and Classic Plan Subscription Price will not be known to Canadian Participants until after the end of the subscription period. However, this information will be provided to Canadian Participants prior to the start of the revocation period, during which Canadian Participants may choose to revoke their subscription and thereby not participate in the Employee Share Offering.
15. Under the SAR Plan, Canadian Participants will subscribe for Units in the SAR Compartment using the Canadian dollar equivalent of the Reference Price (the “Employee Contribution”), and the SAR Compartment will then subscribe for Shares using the Employee Contribution. The Local Affiliate that employs a Canadian Participant in the SAR Plan will provide a promissory note (the “SAR Note”) to such Canadian Participant which pays such Canadian Participant a stock appreciation right bonus payable at the end of the Lock-up Period (a “SAR”) equal to the “Stock Appreciation Amount” (if any) plus the “Personal Contribution Protection Amount” (if any), as described below<sup>2</sup>.
16. The price of the Shares will be taken (in euros) on each of the 120 trading days prior to the end of the Lock-up Period and an average of the Share price will be determined based on all such readings (the “Average Share Price”). If the Average Share Price (expressed in euros) is greater than the Reference Price (expressed in euros), then the “Stock Appreciation Amount” for each SAR Plan Unit at the end of the Lock-up Period (excluding additional Units issued as a result of dividend reinvestment) will be an amount equal to approximately 3.3 times the difference in euros between the Average Share Price and the Reference Price. The payment of the “Stock Appreciation Amount” will be made in Canadian dollars at an exchange rate fixed on or about the payment date. If the Average Share Price (expressed in euros) is less than the Reference Price (expressed in euros), then the “Stock Appreciation Amount” will be zero.
17. If there is a diminution in value of a Canadian Participant’s Employee Contribution in Canadian dollars as at the subscription date as compared to the market value of the Shares in Canadian dollars at the end of the Lock-up Period, then the “Personal Contribution Protection Amount” will be an amount equal to any such diminution in value (excluding the impact of applicable

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<sup>2</sup> The Filer will hedge its financial obligations resulting from the SARs by entering into a hedge agreement with a bank.

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taxes). The payment of this amount will be made in Canadian dollars. If the market value of the Shares in Canadian dollars at the end of the Lock-up Period is greater than a Canadian Participant's Employee Contribution in Canadian dollars as at the subscription date, then the "Personal Contribution Protection Amount" will be zero.

18. Dividends paid on the Shares held in the SAR Compartment will be contributed to the SAR Compartment and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued (however, as a result of a recent change in French law, the SAR Compartment may be obliged to offer a dividend cash payment to Canadian Participants as an alternative and such possibility shall be communicated to Canadian Participants).
19. At the end of the Lock-Up Period, a Canadian Participant may elect to redeem his or her SAR Compartment Units in consideration for (a) cash in Canadian dollars equivalent to the market value of the underlying Shares or (b) the underlying Shares. Payment by the Canadian Participant's employer of an amount equal to the Canadian Participant's SAR (if any) will also be made at the end of the Lock-up Period.
20. If a Canadian Participant does not redeem his or her Units in the SAR Compartment, his or her investment in the SAR Compartment will be transferred to the Principal Classic Compartment. New Units of the Principal Classic Compartment will be issued to the Canadian Participant in recognition of the assets transferred to the Principal Classic Compartment. Canadian Participants may redeem the new Units whenever they wish. However, following a transfer to the Principal Classic Compartment, the Employee Contribution will not be covered by the SAR Note.
21. Pursuant to the SAR Note, subject to local tax considerations, a Canadian Participant will be entitled to receive 100% of his or her Employee Contribution in local currency at the end of the Lock-Up Period or in the event of an early unwind. Under no circumstances will a Canadian Participant under the SAR Plan be responsible to contribute an amount greater than his or her Employee Contribution.
22. In the event of an early unwind resulting from the Canadian Participant satisfying one of the exceptions to the Lock-up Period referenced above and meeting the applicable criteria, a Canadian Participant may redeem Units from the SAR Compartment in accordance with a formula similar to redemptions after the end of the Lock-up Period. However, in the event of an early unwind, the "Average Share Price" used in the formula will be determined as follows:

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- (a) if the unwind occurs prior to January 1, 2013, the “Average Share Price” shall be the closing Share price on the last trading date of the month in which the early unwind event occurred; or (b) if the unwind occurs on or after January 1, 2013, the “Average Share Price” will be the average of the 120 closing prices of the Shares between January 2, 2013 and the date of the early unwind event. If this period has available less than 120 closing prices to calculate the average, the last actual closing price of the Shares shall be used for all remaining closing prices required to reach 120 closing prices so as to be able to calculate the average of 120 closing prices.
23. Under French law, the Temporary Classic FCPE is, and the Principal classic Compartment and the SAR Compartment are compartments of, an FCPE which is a limited liability entity. Each Compartment’s portfolio will consist almost entirely of Shares of the Filer. The Classic Compartment’s portfolio, may, from time to time, include cash in respect of dividends paid on the Shares which will be reinvested in Shares. The SAR Compartment’s portfolio will also include the Swap Agreement. From time to time, either portfolio may include cash or cash equivalents that the Compartments may hold pending investments in Shares and for the purposes of Unit redemptions.
24. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF to manage French investment funds and complies with the rules of the French AMF. The Management Company is not and has no current intention of becoming a reporting issuer under the Legislation.
25. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Compartments are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests.
26. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of each Compartment. The Management Company's activities in no way affect the underlying value of the Shares and the Management Company will not be involved in providing advice to any Canadian Participants with respect to an investment in the Units.
27. Shares issued in the Employee Share Offering will be deposited in the relevant Compartment through BNP Paribas Securities Services (the “Depository”), a large French commercial bank subject to French banking legislation.

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28. Under French law, the Depositary must be selected by the Management Company from among a limited number of companies identified on a list by the French Minister of the Economy, Finance and Industry and its appointment must be approved by the French AMF. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow each Compartment to exercise the rights relating to the securities held in its respective portfolio.
29. The Unit value of each Compartment will be calculated and reported to the French AMF on a regular basis, based on the net assets of the relevant Compartment divided by the number of Units outstanding. The number of Units in the Classic Plan and in the SAR Plan will be adjusted on the basis of the market price of the Shares and other assets (cash, in exceptional circumstances) held by the relevant Compartment, effective from the first date on which the net asset value is calculated and whenever Shares or other assets are contributed to the Compartment, as applicable. Upon such adjustments being made under the Classic Plan or SAR Plan, the amounts so re-employed shall increase the total value of the Units.
30. All management charges relating to a Compartment will be paid from the Compartment's assets or by the Filer, as provided by the FCPE's regulations.
31. Participation in the Employee Share Offering is voluntary, and the Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.
32. The total amount invested by a Canadian Participant in the Employee Share Offering cannot exceed 25% of his or her gross annual compensation for 2007. For the purpose of calculating this limit, a Canadian Participant's investment into the SAR Plan will be multiplied by five (5). In addition, the total amount invested by a Canadian Participant in the SAR Plan cannot exceed the lesser of 5% of his or her gross annual compensation for 2007 and \$4,500.
33. None of the Filer, the Management Company, the Local Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to an investment in the Shares or the Units.
34. The Canadian Participants will receive an information package in the French or English language, as applicable, which will include a summary of the terms of the Employee Share Offering, a tax notice relating to the relevant Compartment containing a description of Canadian income tax consequences

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of subscribing to and holding the Units in the Compartments and redeeming Units for cash or Shares at the end of the Lock-Up Period, an information notice approved by the French AMF for the Compartments describing their main characteristics, a reservation form and a revocation form. These documents will be available in both English and French.

35. Upon request, Canadian Participants may receive copies of the Filer's French *Document de Référence* filed with the French AMF in respect of the Filer and a copy of the relevant Compartment's rules (which are analogous to company by-laws). The Canadian Participants will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares.
36. Canadian Participants will receive an initial statement of their holdings under the Classic Plan and/or SAR Plan, together with an updated statement twice a year.
37. There are approximately 1,357 Qualifying Employees resident in Canada, in the provinces of Ontario (571), British Columbia (471), Québec (163), Alberta (113), Manitoba (13), Saskatchewan (9), Nova Scotia (10), New Brunswick (6), and Newfoundland and Labrador (1), who represent in the aggregate less than 2% of the number of employees in the Filer Group worldwide.
38. The Units will not be listed on any exchange.

### **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 under the Legislation is that the Initial Requested Relief is granted provided that:

1. the first trade in any Units or Shares acquired by Canadian Participants pursuant to this Decision in a Jurisdiction is deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction unless the following conditions are met:
  - (a) the issuer of the security
    - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

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- (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
  - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
    - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
    - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and
  - (c) the first trade is made
    - (i) through the facilities of an exchange, or a market, outside of Canada, or
    - (ii) to a person or company outside of Canada;
2. in Québec, the required fees are paid in accordance with Section 271.6(1.1) of the *Securities Regulation* (Québec); and

It is further the decision of the Decision Makers under the Legislation that the First Trade Relief is granted provided that the conditions set out in paragraphs 1(a), (b) and (c) under this decision granting the Initial Requested Relief are satisfied.

Paul K. Bates  
Commissioner  
Ontario Securities Commission

Margot C. Howard  
Commissioner  
Ontario Securities Commission