

2003 BCSECCOM 694

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements to permit the calculation of an initial investment to include purchases made through an investor’s wholly-owned company or companies

Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES AND NUNAVUT

AND

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

AND

IN THE MATTER OF FRANKLIN TEMPLETON INVESTMENTS CORP. AND THE FRANKLIN TEMPLETON PORTFOLIOS

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from Franklin Templeton Investments Corp. (the “Applicant”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that:

- (a) certain trades in units (“Units”) of open-end unit trusts to be established from time to time by the Applicant or an affiliate of the Applicant (the “Portfolios”) shall not be subject to the registration and prospectus requirements of the Legislation; and
- (b) trades in additional Units (“Additional Units”) of the Portfolios to an investor upon:

2003 BCSECCOM 694

- (i) the subsequent subscription of an investor shall not subject to the registration and prospectus requirements of the Legislation;
- (ii) the reinvestment of distributions by a Portfolio shall not be subject to the registration and prospectus requirements of the Legislation of Québec, New Brunswick and Yukon Territory;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions, or in Québec Commission Notice 14-101;

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

AND WHEREAS the Applicant has represented to the Decision Maker that:

1. The Applicant will be the manager, promoter and the trustee of the Franklin Templeton Portfolios, which will include the 11 Portfolios listed on Schedule “A” and any additional Portfolios established by the Applicant or an affiliate of the Applicant from time to time. The Portfolios will be open-end mutual Portfolio trusts created under the laws of the Province of Ontario and the Province of Alberta.
2. The Applicant is registered as an advisor in the category of investment counsel/portfolio manager (or the equivalent) in all provinces of Canada. The Applicant is also registered as a dealer in the category of mutual Portfolio dealer in Provinces of Ontario and Alberta.
3. Each Portfolio will seek to achieve its investment objectives by investing substantially all of its assets, directly or indirectly through derivatives, in one or more underlying Funds, each of which is an investment Fund managed by the Applicant, an affiliate or a third party investment manager (the “Underlying Portfolios”).
4. The office of the Portfolios will be at the same address as the Applicant.
5. The Portfolios do not currently intend to become a reporting issuer, as such term is defined in the Legislation of the Jurisdictions, and Units of the Portfolios will not be listed on any stock exchange.
6. The initial distribution of Units of a Portfolio (the “Initial Investment”) to an investor, the Registered Plans of the investor, a corporation or corporations in

2003 BCSECCOM 694

which the investor beneficially owns, directly or indirectly, all the outstanding securities (each a “wholly-owned company”), will have an aggregate acquisition cost to the investor, the investor’s Registered Plans or the investor’s wholly-owned company or companies (an investor alone, an investor’s Registered Plan alone, or an investor’s wholly-owned company or companies, or any combination of the foregoing, a “Unitholder”) of at least the amount prescribed by the Legislation (the “Prescribed Amount”) in connection with exemptions from the prospectus and registration requirements (the “Private Placement Exemptions”) which require the investor to purchase securities of an issuer having a minimum acquisition cost.

7. Units will be offered on a continuous basis to investors at a price per Unit equal to the net asset value per unit of the Portfolio calculated in accordance with the declaration of trust of the Portfolios.
8. Where the Prescribed Amount of the Initial Investment in a Portfolio is met through the aggregation of the acquisition costs of Units of a Portfolio by some or all of an investor and an investor’s Registered Plans and an investor’s wholly-owned company or companies, the Private Placement Exemptions would not be available and exemptive relief required.
9. Following an Initial Investment, it is proposed that a Unitholder be able to subscribe and pay for Additional Units of a Portfolio in increments of less than the Prescribed Amount, provided that at the time of such subsequent acquisition the Unitholder holds Units of the Portfolio with an aggregate acquisition cost or aggregate net asset value of at least the Prescribed Amount.
10. Each Portfolio proposes to distribute Additional Units by way of automatic reinvestment of distributions to Unitholders of the Portfolio.
11. Other than units distributed in connection with the reinvestment of distributions of a Portfolio, trades in units made in reliance upon this exemption in Québec will be made through a registered dealer, unless specific exemptive relief is obtained.
12. Units (including Additional Units) are not transferable except in limited circumstances as set out in the declaration of trust of the Portfolios.
13. The Legislation in each of the Jurisdictions contains prospectus and registration requirements in respect of the distribution of securities. Exemptions from these requirements may not be available for the distribution of Units (including Additional Units) based on the facts provided herein.

2003 BCSECCOM 694

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 DECISIONS of the Decision Makers pursuant to the Legislation are that:

- (A) an Initial Investment in Units of a Portfolio shall not be subject to the registration and prospectus requirements of the Legislation provided that the aggregate acquisition cost to a Unitholder of the Initial Investment is not less than the Prescribed Amount;
- (B) a trade in Additional Units pursuant to a subsequent subscription and payment by a Unitholder shall not be subject to the registration and prospectus requirements of the Legislation provided that
 - (1) at the time of the trade of Additional Units of a Portfolio, the Unitholder then owns Units of the Portfolio having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount;
 - (2) at the time of the initial distributions, a copy of the Offering memorandum of the Funds will be provided to the Unitholder.
- (C) trades in Additional Units of a Portfolio pursuant to the reinvestment of distributions of the Portfolio shall not be subject to the registration and prospectus requirements of the Legislation in Québec, Manitoba, New Brunswick and Yukon Territory provided that:
 - (1) no sales commissions or other charges will be payable in respect of the issuance of such Additional Units.
- (D) the first trade in Units of the Portfolios acquired pursuant to this Decision in a Jurisdiction shall be deemed to be a distribution (or primary distribution)* to the public under the Legislation of the Jurisdiction unless at the time of the first trade:
 - (1) except in Québec, the conditions in subsections (2) or (3) of section 2.5 of MI 45-102 Resale of Securities are satisfied.

In Québec, the alienation of the Units acquired pursuant to this Decision is a distribution and can not take place without a prospectus unless

2003 BCSECCOM 694

- (2) the condition set out in Commission des valeurs mobilières du Québec's decision N° 2003-C-0016 are satisfied, or
- (3) the conditions prescribed in section 58 of the Québec Securities Act (R.S.Q., Chap. V-1.1) are satisfied, and
 - (a) no effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation,
 - (b) no extraordinary commission or other consideration is paid in respect of the alienation, and
 - (c) if the seller of the securities is an insider of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirements of securities legislation.

* Required in New-Brunswick, Prince Edward Island and the Yukon.

Any future funds intending to rely on this decision in Quebec will first notify the Commission des valeurs mobilières du Québec of such an intention and shall first receive consent from the Commission des valeurs mobilières du Québec to so rely on this decision.

DATED at Montreal, Quebec this 5th day of September 2003.

Jean-Marie Gagnon

Guy Lemoine

2003 BCSECCOM 694

SCHEDULE “A” FRANKLIN TEMPLETON PORTFOLIOS

Franklin Templeton Capital Preservation Pooled Portfolio

Franklin Templeton Balanced Income Pooled Portfolio

Franklin Templeton Domestic Growth Pooled Portfolio

Franklin Templeton Global Growth Pooled Portfolio

Franklin Templeton International Growth Pooled Portfolio

Franklin Templeton Domestic Balanced Growth Pooled Portfolio

Franklin Templeton Global Balanced Growth Pooled Portfolio

Franklin Templeton International Balanced Growth Pooled Portfolio

Franklin Templeton Domestic Maximum Growth Pooled Portfolio

Franklin Templeton Global Maximum Growth Pooled Portfolio

Franklin Templeton International Maximum Growth Pooled Portfolio