

2006 BCSECCOM 380

April 26, 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 registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - Private mutual funds that it manages invest in securities of public mutual funds that it also manages; the top funds are not subject to and do not comply with section 2.5 of NI 81-102; the relief is required only for the underlying funds and is subject to conditions similar to those in section 2.5 of NI 81-102

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 126(a) and (d), 130

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan, Québec, Nova Scotia,
New Brunswick 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
the Franklin Templeton Investments Corp.
(the “Manager”)

and

Franklin Templeton Capital Preservation Pooled Portfolio and the other Pooled Funds listed on Schedule “A” (collectively, the “Existing Pooled Funds”) and Bissett Bond Fund and the other retail mutual funds listed on Schedule “B” (collectively, the “Existing Underlying Retail Mutual Funds”) (collectively with the Manager, the “Filers”)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filers for a decision:

- under the securities legislation of Ontario and Alberta for an exemption from the restriction prohibiting a mutual fund in Ontario or a mutual fund, as the case may be, from knowingly making or holding an investment in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder, or in any issuer in which any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company, has a significant interest (the “Investment Restriction”);
- under the securities legislation of the Pooled Fund Jurisdictions (defined below) for an exemption from the restriction prohibiting a portfolio manager from knowingly causing an investment portfolio managed by it to invest in the securities of any issuer in which a responsible person or an associate of a responsible person is an officer or director, unless the relationship is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase, or, in the case of Québec, from the restriction against a registered person subscribing or buying, on behalf of a client, securities issued by a company having as senior executive, a senior executive or a representative of the dealer or adviser, unless he obtains the consent of the client after having informed him of that fact (the “Consent Requirement”); and
- under the securities legislation of the Underlying Retail Mutual Fund Jurisdictions (defined below) for an exemption from the requirement of a management company or, in the case of British Columbia, a mutual fund manager, to file a report of every transaction of purchase or sale of securities between a mutual fund it manages and any related person or company and any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, a mutual fund is a joint participant with one or more of its related persons or companies, in respect of each mutual fund to which it provides services or advice, within 30 days after the end of the month in which it occurs (the “Reporting Requirement”);

(collectively, the “Requested Relief”).

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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* have the same meaning in this decision unless they are defined in this decision. The following additional terms shall have the following meanings:

“ASA” means the *Securities Act* (Alberta);

“OSA” means the *Securities Act* (Ontario);

“Pooled Funds” means, collectively, the Existing Pooled Funds listed in Schedule “A” and other similar mutual funds to be created by declaration of trust under the laws of Ontario or Alberta that will be managed in the future by the Manager or an affiliate of the Manager and that will be offered for sale only on a private placement basis pursuant to available prospectus exemptions;

“Pooled Fund Jurisdictions” means, collectively, Ontario, Alberta, Saskatchewan, Québec, Nova Scotia, New Brunswick and Newfoundland and Labrador;

“Underlying Funds” means, collectively, the Underlying Retail Mutual Funds and the Underlying Pooled Funds;

“Underlying Pooled Funds” means, collectively, the existing underlying pooled funds listed in Schedule “B” and other similar mutual funds to be created by declaration of trust under the laws of Ontario or Alberta that will be managed in the future by the Manager or an affiliate of the Manager and that will be offered for sale only on a private placement basis pursuant to available prospectus exemptions;

“Underlying Retail Mutual Funds” means, collectively, the Existing Underlying Retail Mutual Funds listed in Schedule “B” and other similar open-end mutual fund trusts to be created under the laws of Ontario or Alberta or classes of shares of mutual fund corporations to be incorporated in Canada under federal or provincial law that will be managed in the future by the Manager or an affiliate of the Manager and that will be offered for sale pursuant to simplified prospectuses and annual information forms; and

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“Underlying Retail Mutual Fund Jurisdictions” means, collectively, Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick and Newfoundland and Labrador.

Representations

This decision is based on the following facts represented by the Filers:

1. The Manager is a corporation amalgamated under the laws of the Province of Ontario and having its head office in Toronto.
2. The Manager or an affiliate of the Manager is or will be the manager and portfolio manager of the Pooled Funds and the Underlying Funds.
3. The Manager is registered under the OSA as a Mutual Fund Dealer and as an adviser in the categories of Portfolio Manager and Investment Counsel.
4. The Pooled Funds and Underlying Pooled Funds are or will be mutual funds established by declaration of trust under the laws of Ontario or Alberta. Securities of the Pooled Funds and Underlying Pooled Funds are or will be offered for sale only on a private placement basis pursuant to available prospectus exemptions in each of the provinces and territories of Canada. The Pooled Funds and Underlying Pooled Funds are or will be mutual funds in Ontario, as defined under the OSA, or mutual funds, as defined under the ASA, but are not or will not be reporting issuers.
5. The Underlying Retail Mutual Funds are or will be open-end mutual fund trusts governed by declaration of trust under the laws of Ontario or Alberta or classes of shares of mutual fund corporations incorporated in Canada under federal or provincial law, the securities of which are or will be offered for sale to the public pursuant to simplified prospectuses and annual information forms qualified in each of the provinces and territories of Canada.
6. Each Pooled Fund intends to invest a certain portion of its assets in securities of one or more Underlying Funds. The percentage invested in an Underlying Fund may fluctuate on a daily basis based on the investment decisions made by the portfolio advisor in order to meet the investment objectives of the Pooled Fund. If investing in an Underlying Retail Mutual Fund, the Pooled Fund will either invest in Series O securities of the Underlying Retail Mutual Fund that are sold under a prospectus or in Series P securities of the Underlying Retail Mutual Fund that are sold on a private placement basis.

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7. The actual weighting of the investment by each Pooled Fund in an Underlying Fund will be reviewed on a regular basis and adjusted to ensure that the investment weightings continue to be appropriate for that Pooled Fund's investment objectives. The portfolio manager of each Pooled Fund will actively manage the investment made by each Pooled Fund in an Underlying Fund on a regular basis.
8. The annual financial statements of the Pooled Funds, which are or will be provided to securityholders in accordance with securities legislation, together with an auditors' report, will include summary disclosure of the securities held by the applicable Underlying Funds.
9. Pooled Fund securityholders may obtain a copy of the applicable Underlying Fund's disclosure documents (if any) or the annual or semi-annual financial statements free of charge upon request to the Manager.
10. Where a Pooled Fund invests in one or more Underlying Funds, existing investors of the Pooled Fund will receive a form of written notice 30 days prior to the Pooled Fund first undertaking such investment under this Decision Document, which discloses: (i) the intent of the Pooled Fund to invest its assets in securities of the Underlying Funds; (ii) that the Underlying Funds are managed by the Manager or an affiliate of the Manager; (iii) what percentage of net assets of the Pooled Fund is dedicated to the investment in securities of the Underlying Funds; (iv) the process or criteria used to select the Underlying Funds; and (v) in instances where a Pooled Fund invests in an Underlying Fund for which a director or officer of the portfolio manager of the Pooled Fund also acts as director or officer, this fact will also be disclosed in the notice.
11. New investors in the Pooled Funds will either receive an offering memorandum or will enter into an investment management agreement with the Manager pursuant to which the Manager has discretion over the investor's account. The offering memorandum or investment management agreement will contain the disclosure outlined in items (i) – (v) in paragraph 10 above.
12. Through investing in the Underlying Funds, the Pooled Funds will be able to achieve greater diversification at a lower cost than investing directly in the securities held by the applicable Underlying Funds. This investment structure will also allow investors with smaller investments to have access to a larger variety of investments than would otherwise be available.
13. Investment by the Pooled Funds in the Underlying Funds will increase the asset base of the Underlying Funds, enabling the Underlying Funds to further

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diversify their portfolios to the benefit of all their investors. The larger asset base will also benefit investors in the Underlying Funds through achieving favourable pricing and transaction costs on portfolio trades, increased access to investments where there is a minimum subscription or purchase amount and economies of scale through greater administrative efficiency.

14. No sales fees or redemption fees will be payable in connection with the purchases or redemptions by the Pooled Funds of securities of the Underlying Funds.
15. No management or other fee will be payable by the Pooled Funds that, to a reasonable person, would duplicate a fee payable by the applicable Underlying Funds for the same service.
16. Where a matter relating to an Underlying Fund requires a vote of securityholders of the Underlying Fund, the Manager will not cause the securities of the Underlying Fund held by a Pooled Fund to be voted at such meeting.
17. The investment by a Pooled Fund in the applicable Underlying Fund(s) is or will be compatible with the investment objectives of the Pooled Fund. Any investment by the Pooled Funds in securities of Underlying Funds will represent the business judgement of “responsible persons” uninfluenced by considerations other than the best interests of the Pooled Funds and Underlying Funds.
18. In the absence of the Requested Relief, the Investment Restriction prohibits a Pooled Fund from knowingly making or holding an investment in an Underlying Fund in which it, alone or together with one or more related mutual funds, is a substantial securityholder, and from knowingly making or holding an investment in an issuer in which any person or company who is a substantial securityholder of the Pooled Fund has a significant interest.
19. In the absence of the Requested Relief, the Consent Requirement prohibits the portfolio manager of the Pooled Funds from knowingly causing the Pooled Funds to invest in Underlying Funds in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the securityholders of the Pooled Funds and the written consent of the securityholders of the Pooled Funds to the investment is obtained before the purchase.
20. In the absence of the Requested Relief, the Reporting Requirement requires the manager of the Underlying Retail Mutual Funds to file a report on every

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purchase or sale of securities of the Underlying Retail Mutual Funds by the Pooled Funds.

Decision

Each of the Decision Makers is satisfied that the test contained in the securities legislation of the Jurisdictions (the “Legislation”) that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers:

- (a) in Ontario and Alberta under the OSA and the ASA is that the Investment Restriction shall not apply to the Pooled Funds in respect of each Pooled Fund’s investment in securities of the Underlying Funds;
- (b) in the Pooled Fund Jurisdictions under the Legislation of the Pooled Fund Jurisdictions is that the Consent Requirement shall not apply to the Manager, the portfolio manager of the Pooled Funds or, in the case of Québec, the registered person in respect of each Pooled Fund’s investment in securities of the Underlying Funds; and
- (c) in the Underlying Retail Mutual Fund Jurisdictions under the Legislation of the Underlying Retail Mutual Fund Jurisdictions is that the Reporting Requirement shall not apply to the Manager or its applicable affiliate in respect of each Pooled Fund’s purchase or sale of securities of the Underlying Retail Mutual Funds,

provided that, in each case:

- (i) securities of each Pooled Fund are distributed only on a private placement basis pursuant to available prospectus exemptions;
- (ii) each Underlying Fund is either a “mutual fund in Ontario” as defined in the OSA or a “mutual fund” as defined in the ASA or an open-end mutual fund trust or class of shares of a mutual fund corporation;
- (iii) each Pooled Fund does not vote any of the securities it holds of an Underlying Fund except that the Pooled Fund may, if the Manager so chooses, arrange for all the securities it holds of an Underlying Fund to be voted by the beneficial holders of securities of the Pooled Fund;
- (iv) no management fees or incentive fees are payable by a Pooled Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;

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- (v) as each Underlying Fund is managed by the Manager or an affiliate of the Manager, no sales or redemption fees are payable by the Pooled Fund in relation to its purchases or redemptions of securities of an Underlying Fund;
- (vi) investors in each Pooled Fund receive or have received written disclosure which discloses:
 - (1) the intent of the Pooled Fund to invest its assets in securities of the Underlying Funds;
 - (2) that the Underlying Funds are managed by the Manager or an affiliate of the Manager;
 - (3) what percentage of net assets of the Pooled Fund is dedicated to the investment in securities of the Underlying Funds;
 - (4) the process or criteria used to select the Underlying Funds; and
- (vii) investors in each Pooled Fund are entitled to receive from the Manager or its affiliate, on request and free of charge, a copy of the offering memorandum or other disclosure documents (if any) relating to all Underlying Funds in which the Pooled Fund may invest its assets.

Paul M. Moore
Vice-Chair
Ontario Securities Commission

Susan Wolburgh Jenah
Vice-Chair
Ontario Securities Commission

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Schedule "A" **Existing Pooled Funds**

Franklin Templeton Balanced Income Pooled Portfolio
Franklin Templeton Capital Preservation 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 Growth Pooled Portfolio
Franklin Templeton Global Growth Pooled Portfolio
Franklin Templeton International Growth Pooled Portfolio
Franklin Templeton Domestic Maximum Growth Pooled Portfolio
Franklin Templeton Global Maximum Growth Pooled Portfolio
Franklin Templeton International Maximum Growth Pooled Portfolio

Bissett Pooled Equity Trust
Bissett Core Equity Trust
Bissett Canadian Growth Trust
Bissett Balanced Tax Effective Trust
Bissett Institutional Balanced Trust
Bissett Long Term Bond Trust

Templeton International Equity Trust
Templeton Canadian Equity Trust
Templeton Global Equity Trust
Templeton International Stock Trust
Templeton Global Stock Trust
Templeton Master Trust

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Schedule "B" Existing Underlying Funds

Existing Underlying Retail Mutual Funds

Templeton Growth Fund, Ltd.
Templeton Growth Corporate Class
Templeton International Stock Fund
Templeton International Stock Corporate Class
Templeton Emerging Markets Fund
Templeton Emerging Markets Corporate Class
Templeton Global Smaller Companies Fund
Templeton Global Smaller Companies Corporate Class
Templeton Global Balanced Fund
Templeton Global Bond Fund
Templeton Canadian Stock Fund
Templeton Canadian Stock Corporate Class
Templeton Canadian Asset Allocation Fund
Templeton Balanced Fund
Templeton European Corporate Class
Templeton BRIC Corporate Class
Templeton Global Income Fund

Franklin Flex Cap Growth Corporate Class
Franklin U.S. Small-Mid Cap Growth Fund
Franklin U.S. Small-Mid Cap Growth Corporate Class
Franklin World Health Sciences and Biotech Fund
Franklin World Health Sciences and Biotech Corporate Class
Franklin Technology Corporate Class
Franklin World Growth Corporate Class
Franklin Japan Corporate Class
Franklin High Income Fund
Franklin Strategic Income Fund

Bissett Canadian Equity Fund
Bissett Canadian Equity Corporate Class
Bissett Small Cap Fund
Bissett Small Cap Corporate Class
Bissett Large Cap Fund
Bissett Microcap Fund
Bissett Multinational Growth Fund
Bissett Multinational Growth Corporate Class

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Bissett International Equity Fund
Bissett Canadian Balanced Fund
Bissett Dividend Income Fund
Bissett Bond Fund
Bissett Bond Corporate Class
Bissett Income Fund
Bissett Income Trust and Dividend Fund
Bissett Canadian Short Term Bond Fund
Bissett All Canadian Focus Fund
Bissett All Canadian Focus Corporate Class
Bissett Income Trust Fund

Mutual Beacon Fund
Mutual Beacon Corporate Class
Mutual Discovery Fund
Mutual Discovery Corporate Class

Franklin Templeton Diversified Income Portfolio
Franklin Templeton Balanced Income Portfolio
Franklin Templeton Balanced Growth Portfolio
Franklin Templeton Growth Portfolio
Franklin Templeton Global Growth Portfolio
Franklin Templeton Canadian Growth Portfolio
Franklin Templeton Maximum Growth Portfolio
Franklin Templeton Diversified Income Corporate Class Portfolio
Franklin Templeton Balanced Income Corporate Class Portfolio
Franklin Templeton Balanced Growth Corporate Class Portfolio
Franklin Templeton Growth Corporate Class Portfolio
Franklin Templeton Global Growth Corporate Class Portfolio
Franklin Templeton Maximum Growth Corporate Class Portfolio
Franklin Templeton Canadian Growth Corporate Class Portfolio

Franklin Templeton Treasury Bill Fund
Franklin Templeton U.S. Money Market Fund
Franklin Templeton U.S. Money Market Corporate Class
Franklin Templeton Money Market Fund
Franklin Templeton Money Market Corporate Class

Franklin Templeton Canadian Small Cap Fund
Franklin Templeton U.S. Rising Dividends Fund
Franklin Templeton U.S. Rising Dividends Corporate Class

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Existing Underlying Pooled Funds

Bissett Pooled Equity Trust
Bissett Core Equity Trust
Bissett Canadian Growth Trust
Bissett Balanced Tax Effective Trust
Bissett Institutional Balanced Trust
Bissett Long Term Bond Trust

Templeton International Equity Trust
Templeton Canadian Equity Trust
Templeton Global Equity Trust
Templeton International Stock Trust
Templeton Global Stock Trust
Templeton Master Trust