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October 7, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Employees & Consultants - Exemption from registration and prospectus requirements for employees, consultants, past employees and similar persons - Trades by an issuer's employee 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 redeemable for cash; the fund's sole purpose is to invest in securities of the issuer for the benefit of plan participants; all of the fund's portfolio is restricted to investing its assets in debt securities guaranteed by the Government of Canada, a Canadian provincial government, or a bank governed by the *Bank Act (Canada)*, the trading of which are exempt from the registration and prospectus requirements; the employee will receive an information package which includes relevant information about the fund and a notice containing a description of Canadian income tax consequences; the employee will also receive a statement that certain protections, rights, and remedies provided by securities laws, including statutory rights of rescission and damages, will not be available in respect of units of the fund; the issuer is not a reporting issuer anywhere in Canada; the securities will not be resold without a prospectus unless the resale complies with MI 45-102 or is made in reliance on a prospectus exemption

Securities Act s. 171 Revoke or Vary Decision - An issuer wants to vary or repeal and replace a previous decision it received to revise the conditions to the relief granted - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but certain of the conditions to the relief are no longer appropriate because of a change in the issuer's circumstances; the previous relief would no longer be available to the applicant; alternative conditions can be structured that address the issuer's new circumstances

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48, 76 and 171

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Northwest Territories, Nova Scotia, Prince Edward Island,
Newfoundland and Labrador and the Yukon (the "Jurisdictions")

and

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

and

In the Matter of
Business Development Bank of Canada (“BDC”) and the BDC Investment Fund
(the “Fund”) (collectively, the “Filers”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Makers”) in each of the Jurisdictions have received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) to repeal their decision dated October 4, 2000 and replace it with this decision such that the requirements contained in the Legislation to file a prospectus and receive a receipt therefor and register as a dealer (“Prospectus and Registration Requirements”) shall, following a proposed amendment to the investment objective of the Fund, continue not to apply to the distribution of units (“Units”) of the Fund pursuant to the “Employee Savings and Investment Plan” (“ESIP”) of BDC to employees of BDC resident in the Jurisdictions who elect to participate in the ESIP (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Autorité des marchés financiers 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 Filers:

1. BDC is a financial institution, all of the shares (the “BDC Shares”) of which are owned by the Government of Canada and whose head office is located in Montreal, Québec.
2. The BDC Shares are not listed on any stock exchange in Canada.

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3. BDC has approximately 1,300 employees eligible to participate in the ESIP located in each of the provinces and territories of Canada.
4. The ESIP was established for the purpose of providing a corporate-sponsored savings plan and investment opportunity to the employees of BDC that will support the linkage between employees and overall BDC performance.
5. In connection with the ESIP, the Fund was established by trust agreement dated November 1, 2000, pursuant to the *Civil Code of Québec*.
6. All permanent employees of BDC not participating in any other long-term incentive plan of BDC ("Eligible Employees") may participate in the ESIP.
7. Units of the Fund are non-transferable.
8. Participation by Eligible Employees in the ESIP is voluntary and Eligible Employees are not induced to purchase Units of the Fund by expectation of employment or continued employment with BDC.
9. Eligible Employees participating in the ESIP ("Members") may acquire Units of the Fund by contributing up to a maximum of 6% of their annual salary through payroll deductions ("Member Contributions"), which are directed either to a tax-sheltered group registered retirement savings plan or a non tax-sheltered savings account or a combination of both.
10. BDC provided a discretionary contribution in the amount of \$2,000 on behalf of each eligible individual employed by BDC as of the last business day of September 2000 ("BDC Initial Discretionary Contribution").
11. Member Contributions are matched by BDC in an amount representing at least 25% (up to a maximum of 65%) of the total uninterrupted Member Contributions during the preceding fiscal year of BDC based on the overall financial performance of the BDC ("BDC Contributions").
12. The Fund is currently restricted to investing approximately 95% of its assets in notes issued by BDC guaranteed by the Government of Canada (the "BDC Notes"). The BDC Notes bought by the Fund have an initial term greater than one year. The remaining approximate 5% of the Fund's assets are invested in debt securities having a term to maturity of less than one year and issued or guaranteed by the Government of Canada or a Canadian provincial government and in banker's acceptances issued by Canadian banks.

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13. The BDC Notes are traded on the Canadian over-the-counter market and certain of them are traded on The Toronto Stock Exchange. The Fund acquires three types of BDC Notes which are currently available on the market: fixed interest rate notes, floating interest rate notes and structured notes. Fixed interest rate notes have a fixed interest rate for their entire term while the interest rate on floating interest rate notes fluctuates. The return on structured notes is based on factors other than an interest rate such as the return of a market index.
14. A Canadian trust company (the “Trustee”) acts as trustee and custodian of the Fund.
15. BDC acts as manager to the Fund and engages a portfolio manager and investment counselor registered in Québec and Ontario, as portfolio manager of the Fund (the “Portfolio Manager”).
16. Prior to acceptance of any undertaking by Eligible Employees to invest in the Fund, BDC provides the Eligible Employees with the rules of the ESIP and an information brochure, disclosing, among other things, the investment objectives of the Fund, the method of valuation of Units for purchase and redemption, the voting rights of unitholders and the Canadian income tax consequences of acquisition, holding and disposal of Units.
17. The initial value of \$10 per unit fluctuates with the market price of the BDC Notes bought by the Fund. The value of the Fund is calculated on the 15th day of each month (a “Valuation Day”) by the Trustee. Subscriptions and redemptions are processed by the Trustee if received before 4:00 p.m. (EST) on a Valuation Day.
18. Members may redeem Units purchased through Member Contributions for cash up to a maximum of two times per year on any Valuation Day. No redemption of Units purchased through BDC Initial Discretionary Contributions (except for the initial fifty percent (50%) of Units purchased) or BDC Contributions will be permitted while the Member remains an employee of BDC.
19. For its services as trustee and custodian, the Trustee is paid an annual fee of approximately \$25,000, including a basic fee and a variable fee based upon assets under administration and the number of securities transactions effected by the Fund.
20. The Portfolio Manager is paid fees calculated as a percentage of assets under management, subject to minimum annual fees of \$15,000.

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21. All of the fees to the Trustee, Portfolio Manager and other service providers to the Fund are paid by BDC in the Fund's first operating year. BDC may require the Fund to pay those fees and expenses after the Fund's first year.
22. Audited annual financial statements of BDC are provided to Members within 140 days of its fiscal year end. The audited annual financial statements of the Fund are also provided to Members within the same time period.
23. The principal reason the Fund is structured as a unit trust is for the benefit of employees of BDC, so as to allow them to place Units in a registered retirement savings plan and receive revenue and capital gains relating to their Units on a tax-deferred basis.
24. Exemptions from the Prospectus and Registration Requirements contained in the Legislation in connection with the purchase of shares of an issuer by its employees are not available to BDC because its governing law does not permit the issue of shares to its employees.
25. On October 4, 2000, the Decision Makers issued a MRRS decision document (the "Initial Decision") providing that the Prospectus and Registration Requirements contained in the Legislation shall not apply, on certain conditions, to an issuance of Units of the Fund to Members. The Initial Decision was rendered based on a representation of BDC regarding the Fund's current investment objective.
26. BDC is proposing to amend the investment objective of the Fund such that it will be restricted to investing at least 90% of its assets in debt securities issued by BDC guaranteed by the Government of Canada and debt securities issued and guaranteed by the Government of Canada or a Canadian provincial government having an initial term to maturity of greater than one year. The remaining 10% of the Fund's assets will be invested in debt securities having a term to maturity of less than one year issued by BDC and guaranteed by the Government of Canada or issued or guaranteed by the Government of Canada or a Canadian provincial government and, subject to a maximum of 5%, in banker's acceptances issued by Canadian banks.

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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (i) prior to the initial issuance of Units of the Fund to an Eligible Employee, such Eligible Employee is provided with a statement that as a consequence of this Decision certain protections, rights and remedies provided by the Legislation, including statutory rights of rescission and damages, will not be available in respect of the Units of the Fund issued pursuant to this Decision;
- (ii) prior to the initial issuance of Units of the Fund to an Eligible Employee, such Eligible Employee is provided with an Information Brochure containing relevant information concerning the Fund, including the Canadian income tax consequences of acquiring, holding and disposing of Units thereof;
- (iii) the proposed amendment to the investment objective of the Fund is approved by unitholders holding a majority of the Units of the Fund or by a majority of the votes cast at a meeting of unitholders called for the purpose of obtaining unitholder approval of the proposed amendment; and
- (iv) the first trade of Units by an Eligible Employee must be made pursuant to a prospectus as required under the Legislation unless the conditions set out in subsection 2.6(3) of National Instrument 45-102 - Resale of Securities are satisfied or the trade is made in reliance on a prospectus exemption contained in the Legislation.

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