

2007 BCSECCOM 715

November 27, 2007

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 and its registered portfolio manager want relief from sections 121(2)(b) and 121(3) of the Act so that the fund can invest in and hold securities of related mutual funds - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - The underlying fund invests in a mutual fund in a foreign jurisdiction, but cannot rely on the exemption in paragraph 2.5(7) of NI 81-102; the top fund may, either alone or together with other related mutual funds, become a substantial security holder of the underlying fund; the top fund's investment objectives are the same as the underlying fund; the top fund will comply with all the conditions of NI 81-102 except the ones in paragraphs 2.5(2)(a) and (c)

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 121(3), 126(a) and (d), 130

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

and

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

and

In the Matter of
Lawrence Asset Management Inc.
(the Filer)

and

In the Matter of
Lawrence India Fund
(the Top Fund)

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 Filer, on behalf of the Top Fund, for a decision under the securities legislation of the Jurisdictions (the Legislation) granting relief from the following requirements of the Legislation (the Requested Relief) in respect of investments by the Top Fund in the Lawrence India (Mauritius) Fund (the Bottom Fund):

- (a) the restrictions contained in the Legislation that prohibit a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder (the Mutual Fund Conflict of Interest Investment Restriction); and
- (b) the requirements contained in the Legislation that a management company (or, in British Columbia, a mutual fund manager), 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 (the Mutual Fund Conflict of Interest Reporting Requirements).

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

- (i) the Ontario Securities Commission is the principal regulator for this application; and
- (ii) 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 Filer:

The Top Fund

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1. The Top Fund will be established under the laws of Ontario pursuant to a declaration of trust. The head office of the Top Fund will be located in Toronto, Ontario.
2. The Filer will be the manager and trustee of the Top Fund. The head office of the Filer is located in Toronto, Ontario.
3. The Top Fund has filed a preliminary prospectus dated August 17, 2007 in each of the provinces and territories of Canada, except for Quebec under SEDAR #1144094.
4. The Top Fund will be a reporting issuer in each of the provinces and territories of Canada, except for Quebec.
5. The investment objectives of the Top Fund are to seek long-term superior growth of capital by investing primarily in equity securities of companies located in India through a “fund-on-fund” arrangement with the Bottom Fund. The balance of the Top Fund's assets will be invested in Canadian equity securities with a focus on companies doing business in India, debt securities of Canadian issuers, derivatives (futures, options and forward contracts), cash or cash equivalents (Non-Bottom Fund Component).
6. The Top Fund will invest between 87.5% to 92.5% of its net assets in the Bottom Fund.
7. The Top Fund will invest between 7.5% to 12.5% of its net assets in the Non-Bottom Fund Component.

The Bottom Fund

8. There are significant tax and investment restrictions imposed by Indian regulatory authorities applicable to foreign investors such as Canadian mutual fund. Thus, the Bottom Fund will be created by the Filer to serve principally as an investment conduit for the Top Fund for purposes of obtaining exposure to India's capital markets in a tax-efficient manner.
9. The Bottom Fund will be an open-end investment trust organized under the laws of Mauritius pursuant to a trust deed.
10. The Filer will also be the manager and trustee of the Bottom Fund.
11. The Bottom Fund will not be a reporting issuer in any of the provinces or territories of Canada and accordingly, will not be governed by NI 81-102.

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However, the Bottom Fund shall adopt and comply with the investment restrictions and practices of NI 81-102, except to the extent that the Bottom Fund deviates from subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102 to engage in short selling in accordance with the conditions of exemptive relief granted by the Decision Makers.

12. The investment objectives and investment strategies of the Bottom Fund will be the same as the Top Fund.
13. The Bottom Fund meets the definition of mutual fund under the Legislation such that units of the Bottom Fund will be redeemable on demand.
14. Units of the Bottom Fund will only be sold to the Top Fund.

Investment by the Top Fund in Units of the Bottom Fund

15. An investment by the Top Fund in units of the Bottom Fund will in each case be made in accordance with the provisions of section 2.5 of National Instrument 81-102 Mutual Funds (NI 81-102), except for the requirements in paragraphs 2.5(2)(a) and (c) which prohibit a mutual fund from purchasing or holding a security of another mutual fund unless:
 - (a) the other mutual fund is subject to 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure*; and
 - (b) the securities of the mutual fund and the securities of the other mutual fund are qualified for distribution in the local jurisdiction.
16. If the proposed investment by the Top Fund were made in accordance with each of the provisions of section 2.5 of NI 81-102, the Requested Relief would not be required as subsection 2.5(7) of NI 81-102 provides relief from the Mutual Fund Conflict of Interest Investment Restrictions and the Mutual Fund Conflict of Interest Reporting Requirements to a mutual fund which purchases or holds securities of another mutual fund if the purchase or holding is made in accordance with section 2.5 of NI 81-102.
17. In the absence of an exemption from the Mutual Fund Conflict of Interest Investment Restrictions, the Top Fund would be prohibited from knowingly making or holding an investment in the Bottom Fund if the Top Fund, alone or together with one or more related mutual funds, is a substantial securityholder of the Bottom Fund.

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18. In the absence of an exemption from the Mutual Fund Conflict of Interest Reporting Requirements, the Filer would be required to file a report for every transaction by the Top Fund involving units of the Bottom Fund and every transaction in which, by arrangement, the Top Fund and the Bottom Fund are acting as joint participants.
19. The Top Fund's investment in units of the Bottom Fund will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Fund.

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 Requested Relief is granted provided that, at the time the Top Fund makes or holds an investment in the Bottom Fund, the following conditions are satisfied:

- (a) units of the Top Fund may not be sold to any mutual fund which is subject to NI 81-102;
- (b) the investment objectives and investment strategies of the Bottom Fund will be the same as the Top Fund;
- (c) the Bottom Fund shall adopt and comply with the investment restrictions and practices of NI 81-102, except to the extent that the Bottom Fund deviates from subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102 to engage in short selling in accordance with the conditions of exemptive relief granted by the Decision Makers;
- (d) any changes in the provisions of the material contracts of the Bottom Fund which would delete or amend the requirements of conditions (b) and (c) above, will require the prior approval of the Manager and the Decision Makers of the Jurisdictions;
- (e) the Top Fund will redeem its investment in the Bottom Fund in the event that the contractual provisions in (d) are breached;
- (f) the simplified prospectus of the Top Fund will disclose conditions (b) to (e) above and the annual and interim management report of fund performance of the Top Fund and the quarterly portfolio disclosure of the Top Fund will disclose the top 25 holdings of the Bottom Fund;

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- (g) the calculation of the net asset value (NAV) of the units of the Top Fund and the Bottom Fund will be identical and have compatible dates for the calculation of NAV for purposes of the issue and redemption of units of these Funds;
- (h) the annual and semi-annual financial statements of the Top Fund shall be provided together with the financial statements of the Bottom Fund, including their respective portfolio holdings, and be available upon request by a unitholder of the Top Fund, and this fact will be disclosed in the simplified prospectus of the Top Fund;
- (i) the books and records of the Bottom Fund will be examined by the Manager and audited by local affiliates of the auditors of the Top Fund at least once per year;
- (j) no sales charges will be payable by the Top Fund in relation to a purchase of units of the Bottom Fund;
- (k) no redemption fees or other charges will be charged by the Bottom Fund in respect of a redemption by the Top Fund of units of the Bottom Fund;
- (l) no trailer or other fees or other charges will be paid by the Manager, the Top Fund, and the Bottom Fund or by any affiliate or associate of any of the foregoing entities to anyone in respect of the investment by the Top Fund in the Bottom Fund; and
- (m) there are arrangements between or in respect of the Top Fund and the Bottom Fund to avoid the duplication of management fees.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

James E.A. Turner
Vice-Chair
Ontario Securities Commission