

2002 BCSECCOM 730

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted from certain mutual fund self-dealing restrictions and reporting requirements to permit existing and future top funds to invest in certain underlying funds under common management, subject to certain conditions.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121, 123, 126 and 130

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF PHILLIPS, HAGER & NORTH INVESTMENT MANAGEMENT LTD. and PHILLIPS, HAGER & NORTH COMMUNITY VALUES BALANCED FUND

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the Canadian securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (collectively, the “Jurisdictions”) has received an application from Phillips, Hager & North Investment Management Ltd. (the “Applicant”) for itself and on behalf of Phillips, Hager & North Community Values Balanced Fund (the “Balanced Fund”) and additional mutual funds (collectively with the Balanced Fund, the “Top Funds”) which may be established by the Applicant from time to time having as part of their investment objective investing all or substantially all of their assets in other mutual funds managed by the Applicant (such other mutual funds, the “Underlying Funds”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions of the Legislation (the “Applicable Requirements”) shall not apply to the Applicant or the Top Funds, as the case may be, in respect of certain investments to be made from time to time by the Top Funds in mutual fund units or other securities issued by the Underlying Funds:

2002 BCSECCOM 730

- (a) the restrictions contained in the Legislation prohibiting 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; and
 - (b) the requirements contained in the Legislation requiring a management company, or in British Columbia, a mutual fund manager, to file a report in the required form relating to each purchase or sale of securities between a mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS the Applicant has represented to the Decision Makers as follows:
 - 1. the Applicant is a company incorporated under the laws of British Columbia and is and will be the manager, principal portfolio advisor and promoter of the Top Funds and the Underlying Funds;
 - 2. each of the Top Funds and the Underlying Funds is or will be an open-end mutual fund trust or mutual fund corporation established under a trust agreement or other trust document; units or other securities of each of the Top Funds and Underlying Funds will be qualified for distribution in each of the Jurisdictions under a simplified prospectus and annual information form (together, the “Prospectus”) filed with and accepted by the Decision Makers;
 - 3. each of the Top Funds and the Underlying Funds is or will be a reporting issuer in each of the Jurisdictions and is not or will not be in default of any requirements of the Legislation;
 - 4. to achieve their respective investment objectives, each of the Top Funds will invest fixed percentages (the “Fixed Percentages”) of its net assets, excluding cash and cash equivalents, directly in units or other securities of the specified Underlying Funds, subject to a permitted deviation to account for market fluctuations of not more than 2.5 percent above or below the Fixed Percentages (the “Permitted Ranges”);

2002 BCSECCOM 730

5. the Prospectus for the Top Funds will disclose the names, investment objectives, investment strategies, risks and restrictions of the Top Fund and Underlying Funds, as well as the Fixed Percentages to be invested in each Underlying Fund and the Permitted Ranges;
6. where an Underlying Fund or a Fixed Percentage is changed, the Applicant will amend the Prospectus in accordance with securities legislation to reflect this change, or will file a new simplified prospectus reflecting the change within 10 days thereof, and will in any case provide 60 days' prior written notice of the change to unitholders of the relevant Top Fund;
7. none of the Top Funds will invest in a mutual fund whose investment objective includes investing in other mutual funds;
8. Phillips, Hager & North Investment Funds Ltd., a wholly-owned subsidiary of the Applicant, acts or will act as dealer for the purchase by a Top Fund of units of an Underlying Fund; the Top Fund will not be charged any initial sales charge or any deferred sales charge in connection with its purchase of units or other securities of an Underlying Fund;
9. except as evidenced by this Decision (defined herein) and specific approvals granted by the regulator or the securities regulatory authority in each of the provinces and territories of Canada under National Instrument 81-102 Mutual Funds ("NI 81-102"), the investments by each Top Fund in an Underlying Fund have been structured to comply with the investment restrictions of the Legislation and NI 81-102;
10. in the absence of this Decision, under the Legislation, the Top Funds are prohibited 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; as a result, in the absence of this Decision, the Top Funds would not be permitted to invest in securities issued by the Underlying Funds;
11. in the absence of this Decision, the Legislation requires the Applicant to file a report on every purchase and sale of securities of the Underlying Funds by the Top Funds;
12. the investments by each of the Top Funds in securities of the Underlying Funds represent the business judgment of "responsible persons" (as defined in the Legislation) uninfluenced by considerations other than the best interests of the Top Funds;

2002 BCSECCOM 730

- ¶ 4 AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 5 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;
- ¶ 6 THE DECISION of the Decision Makers under the Legislation is that the Applicable Requirements do not apply to prevent the Top Funds from making or holding an investment in securities of the Underlying Funds, or to require the Applicant to file a report relating to the purchase or sale of such securities;
- ¶ 7 PROVIDED THAT IN RESPECT OF the investments by the Top Funds in securities of the Underlying Funds:
1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with the matters in section 2.5 of NI 81-102;
 2. at the time a Top Fund makes or holds an investment in its Underlying Funds, the following conditions are satisfied:
 - (a) the units or other securities of both the Top Fund and the Underlying Funds are offered for sale in the jurisdiction of the Decision Maker under a simplified prospectus and annual information form which has been filed with and accepted by the Decision Maker;
 - (b) the investment by the Top Fund in the Underlying Funds is compatible with the fundamental investment objectives of the Top Funds;
 - (c) the Prospectus discloses the intent of the Top Fund to invest in units or other securities of the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages and the Permitted Ranges within which the Fixed Percentages may vary;
 - (d) the investment objective of the Top Fund discloses that the Top Fund invests in units or other securities of other mutual funds;
 - (e) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;

2002 BCSECCOM 730

- (f) the Top Fund invests its assets (exclusive of cash and cash equivalents) in the Underlying Funds in accordance with the Fixed Percentages disclosed in the Prospectus;
- (g) the Top Fund's holding of securities in the Underlying Funds does not deviate from the Permitted Ranges;
- (h) any deviation from the Fixed Percentages is caused by market fluctuations only;
- (i) subject to condition (j), where an investment by a Top Fund in any of the Underlying Funds has deviated from the Permitted Ranges as a result of market fluctuations, the Top Fund's investment portfolio is re-balanced to comply with the Fixed Percentages on the next day on which the net asset value is calculated following the deviation;
- (j) if, due to the foreign property investment limitations under the Income Tax Act (Canada), the Top Fund is precluded from purchasing additional securities of the Underlying Funds in order to comply with condition (i), the Top Fund complies with condition (i) as soon as it is possible to do so in compliance with those foreign property investment limitations;
- (k) if the Fixed Percentages and the Underlying Funds which are disclosed in the Prospectus are changed, either the Top Fund's Prospectus will be amended or a new simplified prospectus will be filed to reflect the change, and in any case the security holders of the Top Fund will be given at least 60 days' notice of the change;
- (l) there are compatible dates for the calculation of the net asset value of the Top Fund and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;
- (m) no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Funds;
- (n) no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by a Top Fund of securities of the Underlying Fund owned by that Top Fund;
- (o) no fees or charges of any sort are paid by the Top Fund and the Underlying Funds, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone

2002 BCSECCOM 730

in respect of the Top Fund's purchase, holding or redemption of the securities of the Underlying Funds;

- (p) the arrangements between or in respect of the Top Fund and the Underlying Funds avoid duplication of management fees;
- (q) any notice provided to security holders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund has been delivered by the Top Fund to its security holders;
- (r) all of the disclosure and notice material prepared in connection with a meeting of security holders of the Underlying Funds and received by the Top Fund has been provided to its security holders, the security holders have been permitted to direct a representative of the Top Fund to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Top Fund has not voted its holdings in the Underlying Fund except to the extent the security holders of the Top Fund have directed;
- (s) in addition to receiving the annual, and upon request, the semi-annual financial statements, of the Top Fund, security holders of the Top Fund have received appropriate summary disclosure in respect of the Top Fund's holdings of securities of the Underlying Funds in the financial statements of the Top Fund; and
- (t) to the extent that the Top Fund and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Top Fund and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds will be provided upon request to security holders of the Top Fund and the right to receive these documents is disclosed in the Prospectus of the Top Fund.

¶ 8 DATED August 22, 2002.

Derek E. Patterson
Acting Director