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COR#05/129

Headnote

An investment fund and its manager want relief from sections 121(2)(b) and 121(3) of the Act so that the fund, alone or together with other related mutual funds, can invest in and hold more than 20% of the votes attached to securities of an issuer

Exemption Order

The McElvaine Investment Trust and The McElvaine Limited Partnership

Section 130 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 McElvaine Investment Management Ltd. (the Applicant), on behalf of The McElvaine Investment Trust (the Trust) and The McElvaine Limited Partnership (the Partnership and together with the Trust, the Funds), has applied for an order that sections 121(2)(b) and 121(3) of the Act (the substantial security holder restriction) prohibiting a mutual fund from knowingly making or holding and a mutual fund manager from knowingly holding an investment in a person in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder (as defined in the Act) do not apply to the investments by the Trust and the Partnership in common shares of Humpty Dumpty Snack Foods Inc. (the Issuer).

Representations

- ¶ 2 The Applicant represents that:
1. it is registered as an adviser in the category of portfolio manager and investment counsel under the Act;
 2. it is the manager, portfolio adviser and promoter of the Trust and the portfolio manager and promoter of the Partnership; McElvaine Services Ltd., a wholly-owned subsidiary of the Applicant, is the general partner of the Partnership; The Royal Trust Company is the trustee of the Trust, and the custodian of both the Trust and the Partnership;
 3. neither of the Funds is a reporting issuer in British Columbia or any other Canadian province or territory; the securities of the Funds are only sold to

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investors in reliance on exemptions from the registration and prospectus requirements, primarily to high net worth individual and corporate investors;

4. according to publicly available information, the Issuer is a reporting issuer in each of the provinces and territories of Canada and its common shares are listed on the Toronto Stock Exchange;
5. Tim McElvaine, a director and officer of the Applicant, is also a director of the Issuer;
6. as at November 17, 2005, the Trust holds 1,255,700 common shares of the Issuer and the Partnership holds 1,356,400 common shares of the Issuer; based on publicly available information, the common shares held by the Trust and the Partnership represent approximately 13.4% and 14.5%, respectively, of the outstanding common shares of the Issuer, and together represent approximately 27.9% of the outstanding common shares of the Issuer;
7. as at September 30, 2005, common shares of the Issuer represented approximately 4.5% of the total net asset value of the portfolio of the Trust and approximately 4.5% of the total net asset value of the portfolio of the Partnership;
8. each of the Trust and the Partnership is a “mutual fund in British Columbia” for the purposes of the Act because they are organized under the laws of British Columbia, and their securities entitle the holder to receive within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the applicable Fund;
9. because both Funds are managed by the Applicant, they are related mutual funds of each other under section 120(1) of the Act;
10. without this order, the Funds would be prohibited by the substantial security holder restriction from making or holding an investment in common shares of the Issuer for so long as they collectively hold more than 20% of the outstanding common shares of the Issuer;
11. the Applicant has concluded that the investment by the Funds in common shares of the Issuer does not adversely affect the liquidity of the Funds for redemption purposes; and
12. the details of the investment by the Funds in the common shares of the Issuer and of Tim McElvaine’s role as a director of the Issuer have been and will be

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disclosed to investors in the Funds through the Applicant's disclosure regarding conflicts of interest, the financial statements of the Funds and the offering memorandum of each Fund.

Decision

¶ 3 Because the Commission considers that to do so would not be prejudicial to the public interest, the Commission orders under section 130 of the Act that the substantial security holder restriction does not apply to the investments by the Funds in common shares of the Issuer.

¶ 4 December 12, 2005

Brent W. Aitken,
Vice Chair
British Columbia Securities Commission