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Headnote

Labour-sponsored fund granted relief from prohibition against a mutual fund being a substantial security holder, provided that the investment is permitted by the fund's governing legislation

Exemption Order

Canadian Medical Discoveries Fund II Inc.

Section 123 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Canadian Medical Discoveries Fund II Inc. (the Fund) applied for an order that section 121(2)(b) of the Act does not apply to certain investments made by the Fund.

Representations

- ¶ 2 The Fund represents that:
1. the Fund is a corporation amalgamated under the *Canada Business Corporations Act* on August 31, 2002;
 2. the Fund is a reporting issuer in the province of Ontario;
 3. the Fund has submitted a preliminary prospectus to the Commission dated November 27, 2002;
 4. the Fund is registered as a labour-sponsored investment fund corporation (an LSIF) under the *Community Small Business Investment Funds Act* (Ontario), as amended (the Ontario Act) and is prescribed as a registered labour sponsored venture capital corporation under the *Income Tax Act* (Canada);
 5. the Fund makes investments in small-and medium-sized Canadian businesses, which are eligible investments for LSIFs under the Ontario Act (Eligible Investments), with a view to achieving long-term capital appreciation;

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6. in order for the Fund to meet its investment objective and strategy, the Fund must be able to acquire significant positions in businesses in which it invests, frequently in excess of 20% of the outstanding voting securities of the business;
7. the Preliminary Prospectus provides full, true and plain disclosure of the investment objective and strategy of the Fund, including that the Fund will make Eligible Investments in issuers representing larger percentages of voting securities than a mutual fund would normally be permitted to make;
8. the Canadian Medical Discoveries Fund Inc. (CMDf) is a “related mutual fund” of the Fund, as defined in section 120 of the Act because both the Fund and CMDf are managed by Medical Discovery Management Corporation;
9. the Fund may, on occasion, invest in accordance with its investment objective and strategy in businesses in which CMDf is also an investor;
10. under section 120(2)(c) of the Act, a person is a substantial security holder of an issuer if that person owns voting securities carrying more than 20% of the voting rights attached to all outstanding voting securities of the issuer;
11. section 121(2)(b) of the Act prohibits a mutual fund from knowingly making or 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;
12. in the absence of the exemption provided by this order, the Fund would be precluded from making an Eligible Investment in an issuer in which the Fund, alone or with CMDf, is a substantial security holder; and
13. the directors of the Fund are of the opinion that it is in the Fund’s best interest to make and hold Eligible Investments in issuers in which the Fund, alone or with CMDf, is a substantial security holder and the making and holding of these investments represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

Order

- ¶ 3 Because it is not prejudicial to the public interest and the class of investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund, the Commission orders under section 123 of the Act that section 121(2)(b) of the Act does not apply to an investment by the Fund in an issuer in which the Fund, either alone or with

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CMDF, is a substantial security holder, provided that the investment is an Eligible Investment.

¶ 4 January 3, 2003

Brenda Leong
Director