

## 2008 BCSECCOM 20

September 18, 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 wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The Filer manages funds that invested in ABCP that did, at the time of the investment, and does as of the date of the application, comply with the investment restrictions in NI 81-102; Market conditions for the ABCP has deteriorated rapidly and unexpectedly, which is affecting the liquidity of the ABCP; the Filer is concerned that continuing to hold the ABCP may impact the confidence of investors in the Fund and may result in unusual levels of redemption requests; the Filer wants to act in the best interests of the Funds' investors; a party affiliated with the Filer will buy the ABCP from a fund managed by the Filer, if the Filer in its discretion determines it would be in the best interests of the investors in that fund to sell some or all of the ABCP; a Filer will sell the ABCP at a price equal to the cost plus accrued interest value; this value is determined in accordance with GAAP and is the same value used for other commercial paper investments held by the funds

An independent review committee (IRC) has been appointed but the committee is not yet fully compliant with NI 81-107 – *Independent Review Committee for Investment Funds*; Prior to completing the mutual fund's sales, the Filer will consult with the IRC and will obtain the IRC's recommendation that in the IRC's opinion, the sales will achieve fair and reasonable results for the fund; although the IRC is not operational and is unable to review the transaction, the IRC members have represented in the decision document that the sales are in the best interests of the Fund

### Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 127(1)(b), and s. 130

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

and

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

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(“MRRS”)

and

In the Matter of  
the Fédération des Caisses Desjardins du Québec  
(the “Filer”)

and

In the Matter of  
Desjardins Money Market Fund, Desjardins Dividend Fund  
and Desjardins Canadian Bond Fund  
(each a “Fund” and together the “Funds”)

## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (“Decision Maker”) in each of the Jurisdictions has received an application (the “Application”) from the Filer on behalf of the Funds for relief in each Jurisdiction from the following prohibitions in the securities legislation of the Jurisdictions (the “Requested Relief”) in order to permit the sale of all of the asset-backed commercial paper (“ABCP”) issued by an issuer listed in Schedule “A” and owned by the Funds on the date of the Application to 9186-3027 Québec inc., an indirect wholly-owned subsidiary of the Filer (the “Acquirer”) :

- (i) the provision that prohibits a portfolio manager or a responsible person (depending on the jurisdiction) from causing a portfolio managed by it or a mutual fund (depending on the jurisdiction) to sell the securities of an issuer to the account of a responsible person or an associates of a responsible person or the portfolio manager.

Under the MRRS:

- (i) the principal regulator for the Application is the Autorité des marchés financiers; and
- (ii) this MRRS decision document represents the decision of each of the Decision Makers.

### **Interpretation**

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Defined terms contained in National Instrument 14-101 – *Definitions* and in National Instrument 81-102 – *Mutual Funds* have the same meaning in this MRRS decision document unless they are otherwise defined in this decision.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Fédération des caisses Desjardins du Québec is the manager of the Funds.
2. Desjardins Global Asset Management Inc. (“DGAM”) is the portfolio advisor of the Funds.
3. The Acquirer is an indirect wholly-owned subsidiary of the Filer.
4. The Funds are reporting issuers in the Jurisdictions.
5. The Funds own ABCP issued by the issuers listed in Schedule “A”.
6. The ABCP consists of (i) short-term commercial paper with fixed interest rates and having terms to maturity of less than 365 days and (ii) floating rate evidences of indebtedness which may have terms to maturity in excess of 365 days.
7. The ABCP owned by the Funds have terms to maturity ranging from August 22, 2007 to April 20, 2009. ABCP coming to maturity beyond one year are floating rate notes. For the purpose of determining the average duration of the security portfolio of a Fund, floating rate notes are considered to come to maturity at every date a change of their interest rate is scheduled.
8. The ABCP owned by the Funds had, when acquired, and continued to have, as of the date of the Application, an approved credit rating.
9. The Filer has determined that the appropriate method to value the ABCP owned by the Funds is cost plus accrued interest which is the valuation methodology used in respect of other commercial paper investments held by the Funds.
10. DGAM has determined that the appropriate method to value the ABCP owned by the Funds is cost plus accrued interest.
11. The Filer has determined that current liquidity problems affecting the ABCP market may have an impact on the confidence of investors in the Funds and may result in unusual levels of redemption requests.

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12. The Filer wants to ensure that the Funds are able to meet any redemption requests received by the Funds.
13. The Filer and DGAM have agreed that if DGAM determines that the sale of ABCP to the Acquirer is in the best interests of the Funds, the Acquirer will acquire all of the ABCP held by the Funds as of the date of the Application and issued by the issuers listed on Schedule "A", at a price per security equal to cost plus accrued interest. Such transactions may occur during the period between the date the Requested Relief is granted and October 31, 2007. The purchase price to be paid for the ABCP shall be paid exclusively in cash and no *in specie* transactions will occur.
14. The Funds will invest the proceeds of any sale of ABCP to the Acquirer in certificates of deposit issued by the Caisse centrale Desjardins du Québec (the "Certificates of Deposit"). The Certificates of Deposit shall have a term to maturity of 365 days or less and shall be redeemable on demand without penalty.
15. Following the investment in the Certificates of Deposit, DGAM will reconsider investment alternatives in light of the evolution of the Canadian money market with the objective of returning the Desjardins Money Market Fund to a more diversified portfolio of investments within a reasonable time frame.
16. The Filer has appointed the initial members of the Funds' independent review committee ("IRC") but as of the date of this application National Instrument 81-107 does not apply to the Funds as the IRC is not yet fully operational.
17. The members of the IRC, meeting as an *ad hoc* committee, have agreed with the making of this application on behalf of the Funds and the completion of the transactions contemplated therein, being the sale of the ABCP by the Funds and the purchase of the Certificates of Deposit, as being in the best interests of the Funds.

### **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 in respect of the Funds on the condition that:

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- a) DGAM determines that the sale of the ABCP and the purchase of the Certificates of Deposit are in the best interests of the Funds;
- b) the sale occurs during the period between the date hereof and October 31, 2007; and;
- c) the price per security is equal to cost plus accrued interest.

Interim, Superintendent, Distribution

Claude Prévost

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## **SCHEDULE “A”**

### **ASSET BACKED COMMERCIAL PAPER ISSUERS**

Apollo Trust  
Apsley Trust  
Aria Trust  
Aurora Trust  
Gemini Trust  
Lafayettes Structured  
Newshore Canadian Trust  
Rocket Trust  
Silverstone Trust  
Structured Investment  
Whitehall Trust