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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements granted in connection with an arrangement where exemptions not available for technical reasons. First trade of securities acquired deemed a distribution unless certain conditions in Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 34(1)(a), 45(2)(9), 48, 61, 74(2)(8), 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR, THE NORTHWEST TERRITORIES, NOVA SCOTIA, NUNAVUT, ONTARIO, PRINCE EDWARD ISLAND, QUÉBEC, SASKATCHEWAN AND THE YUKON TERRITORY

AND

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

AND

IN THE MATTER OF VERSACOLD INCOME FUND, VERSACOLD HOLDINGS CORP. AND VERSACOLD GROUP PARTNERSHIP

MRRS DECISION DOCUMENT

[para 1]

WHEREAS the Canadian securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory (the “Jurisdictions”) has received an application from Versacold Income Fund (the “Fund”), Versacold Holdings Corp. (“Versacold Holdings”) and Versacold Group Partnership (the “Partnership”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements under the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”), shall not apply to certain trades of securities in connection with the Partnership and Versacold Holdings’ acquisition of the issued and outstanding common shares (“Versacold Common Shares”) of Versacold Corporation (the “Company”) pursuant to a plan of arrangement (the “Plan of Arrangement”) under section 252 of the *Company Act* (British Columbia) (the “Company Act”) involving the Company and its shareholders (the “Transaction”);

[para 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;

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[para 3]

AND WHEREAS the Fund, Versacold Holdings and the Partnership have represented to the Decision Makers that:

1. the Fund is an open-ended, limited purpose trust established, under the laws of British Columbia pursuant to a declaration of trust dated December 19, 2001, to hold the securities of Versacold Holdings;
2. on December 24, 2001 the Fund filed a preliminary prospectus in each of the Jurisdictions and on January 4, 2002 the Fund filed an amended and restated preliminary prospectus in each of the Jurisdictions; the Fund will file a final prospectus in each of the Jurisdictions prior to closing of the Transaction and, upon receipt of the MRRS decision document with respect to such final prospectus, the Fund will become a reporting issuer or the equivalent in each of the Jurisdictions;
3. the Fund was established with nominal capitalization and currently has only nominal assets and no liabilities and the only activity currently anticipated to be carried on by the Fund will be the holding of securities of Versacold Holdings;
4. the Fund is authorized to issue an unlimited number of trust units designated as units ("Fund Units") and an unlimited number of trust units designated as special voting units ("Special Voting Units"); as of January 10, 2002, one Fund Unit was issued and outstanding and owned by the Company and no Special Voting Units were outstanding;
5. the Fund has received conditional approval from the Toronto Stock Exchange (the "TSE") for the listing on the TSE of the Fund Units issuable in connection with the Transaction subject to, among other things, completion of the Transaction;
6. Versacold Holdings is a wholly-owned subsidiary of the Fund and was incorporated under the laws of British Columbia on December 14, 2001 to participate in the Transaction by acquiring Versacold Common Shares (other than those to be acquired by the Partnership);
7. the authorized capital of Versacold Holdings consists of 500,000,000 common voting shares, 500,000,000 common non-voting shares and 500,000,000 preferred shares issuable in series of which, as of January 10, 2002, there were 10 common voting shares outstanding, all of which were owned by the Fund; following the completion of the Transaction, all of the issued and outstanding securities of Versacold Holdings will be owned by the Fund;
8. Versacold Holdings is not a reporting issuer (or the equivalent) in any of the Jurisdictions;
9. the Company is incorporated under the Company Act and is the leading supplier within Canada of public refrigerated warehousing and distribution services;
10. the authorized capital of the Company consists of 50,000,000 Versacold Common Shares and 20,000,000 Preferred Shares of which, as of January 10, 2002, there were 9,670,605 Versacold Common Shares outstanding and 389,500 Versacold Common Shares were reserved, in the aggregate, for issuance upon the exercise of outstanding options; an aggregate of 1,000 Preferred Shares of the Company are outstanding and held by the Partnership; under the Plan of Arrangement, on the effective date ("Effective Date"), a new class of Non-Voting Common Shares of the Company will be created; following the completion of the Transaction, all of the outstanding shares of the Company will be owned by the Partnership or by direct or indirect subsidiaries of the Fund;

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11. the Versacold Common Shares are presently listed on the TSE and the Company is a reporting issuer (or the equivalent) in each of the Jurisdictions; following the Effective Date, the Versacold Common Shares will be delisted from the TSE and the Company will apply to cease to be a reporting issuer, where applicable;

12. the Partnership is currently a general partnership formed under the laws of British Columbia which is comprised of two wholly-owned subsidiaries of the Company;

13. prior to the completion of the Transaction, the partnership agreement governing the Partnership will be amended to convert the Partnership from a general partnership to a limited partnership and to create two classes of limited partnership units designated as "Class A Limited Partnership Units" (the "Class A LP Units"), and "Class B Limited Partnership Units" (the "Class B LP Units"); upon completion of the Transaction, all issued and outstanding general partnership interests and Class A LP Units will be held by the present general partners of the Partnership and all Class B LP Units will be held by former holders of Versacold Common Shares who have elected to exchange their Versacold Common Shares for Class B LP Units;

14. the Partnership is not a reporting issuer (or the equivalent) in any of the Jurisdictions;

15. the Transaction will be effected by way of the Plan of Arrangement, which will require (i) the approval of three-quarters of the votes cast by the holders of Versacold Common Shares present in person or by proxy at the extraordinary general meeting (the "Meeting") of such holders to be held to consider and approve the Transaction, and (ii) the approval of the Supreme Court of British Columbia;

16. the management information circular (the "Circular") delivered to holders of Versacold Common Shares in connection with the Meeting conforms with the Company Act and applicable securities laws and an interim order of the Supreme Court of British Columbia (the "Interim Order") and contains prospectus-level disclosure of the business and affairs of the Fund, the Company and the Partnership and a detailed description of the Transaction and the Plan of Arrangement;

17. on the Effective Date, in accordance with elections made or deemed to be made by holders of Versacold Common Shares:

(i) the outstanding Versacold Common Shares (except those held by eligible holding companies or by shareholders who exercise their rights of dissent in accordance with the Interim Order) will be exchanged for Class B LP Units or notes ("Notes") of Versacold Holdings, or a combination of the foregoing;

(ii) outstanding shares of eligible holding companies will be exchanged for Notes;

(iii) all Notes will be exchanged for Fund Units; and

(iv) all Versacold Common Shares acquired by the Partnership in exchange for Class B LP Units will be exchanged for Non-Voting Common Shares of the Company under the Plan of Arrangement;

18. upon the completion of the Transaction, all of the issued and outstanding Versacold Common Shares will be held by Versacold Holdings or by eligible holding companies wholly-owned by Versacold Holdings, and all of the Preferred Shares and Non-Voting Common Shares of the Company will be held by the Partnership;

19. the rights, privileges, restrictions and conditions attaching to the Class B LP Units under the limited partnership agreement (the "Limited Partnership Agreement") governing the Partnership, together with the Exchange Agreement and the investment agreement described below, will provide the holders of the Class B LP Units with a security having economic rights which are, as nearly as practicable, equivalent to those of a Fund Unit and will give holders of Versacold

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Common Shares who are residents of Canada the opportunity to pursue certain tax efficiencies with respect to the exchange of their Versacold Common Shares; the Class B LP Units will be exchangeable by the holders for Fund Units on a one-for-one basis at any time at the option of the holder, and must be exchanged upon the occurrence of certain events;

20. the Limited Partnership Agreement will provide that the Class B LP Units will be entitled to vote only in certain limited circumstances (except as required by applicable law) and each Class B LP Unit will entitle the holder to distributions from the Partnership payable at the same time as, and equivalent to, each distribution paid by the Fund on a Fund Unit; on the liquidation, dissolution or winding-up of the Partnership, a holder of Class B LP Units will be entitled to receive from the Partnership an amount equal to all declared and unpaid distributions on each such Class B LP Unit held by the holder on any distribution record date prior to the date of liquidation, dissolution or winding-up but will not otherwise be entitled to participate in a distribution of the assets of the Partnership; Class B LP Units may only be transferred in certain limited circumstances;

21. the Limited Partnership Agreement will further provide that upon certain actions, such as distributions of stock dividends, options, rights or warrants for the purchase of securities or other assets, subdivisions, reclassifications, reorganizations and other changes, being taken in respect of the Fund Units generally, the same or an economically equivalent action will be taken by the Partnership in respect of the Class B LP Units;

22. under the Plan of Arrangement, each of the holders of Class B LP Units will receive one Special Voting Unit for each Class B LP Unit it receives; each Special Voting Unit will entitle the holder to one vote at meetings of the Fund's unitholders but will have none of the other rights attached to Fund Units; the Special Voting Units to be issued to the holders of Class B LP Units may be transferred only under the same circumstances as the associated Class B LP Units, will be evidenced only by the certificates representing such Class B LP Units and will be automatically redeemed for nominal consideration upon the exchange of Class B LP Units for Fund Units;

23. under an exchange agreement (the "Exchange Agreement") to be entered into by Versacold Holdings, the Fund, the Partnership and each holder of Class B LP Units contemporaneously with the closing of the Transaction:

- (i) Versacold Holdings will grant to the holders of the Class B LP Units a put right (the "Exchange Right"), to require Versacold Holdings to purchase from a holder of Class B LP Units all or any part of his or her Class B LP Units for an amount per unit equal to the current market price of a Fund Unit, to be satisfied by the delivery to the holder of one Fund Unit; and
- (ii) Versacold Holdings will have the right (the "Call Right") to acquire the Class B LP Units of a holder in certain circumstances, as described in the Circular for an amount per unit equal to the current market price of a Fund Unit, to be satisfied by the delivery of one Fund Unit;

24. under the Exchange Agreement the Fund has agreed that, to the extent further Class B LP Units are issued, it will issue a corresponding number of Special Voting Units to the holders of the Class B LP Units;

25. upon the insolvency of Versacold Holdings or in any other event in which Versacold Holdings is unable to purchase Class B LP Units upon exercise of the Exchange Right, the Partnership shall redeem the Class B LP Units which are the subject of such request for nominal consideration and the former holder of such Class B LP Units will then have the right, under the

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Exchange Agreement, to acquire a corresponding number of Fund Units directly from the Fund for nominal consideration;

26. at the closing of the Transaction, the Fund and the Partnership will enter into an investment agreement which will provide that the Fund will purchase certain securities of Versacold Holdings in exchange for Fund Units in sufficient numbers to allow Versacold Holdings to meet its obligations, from time to time, under the Exchange Agreement;

27. the steps under the Transaction and the attributes of the Class B LP Units contained in the Limited Partnership Agreement and the Exchange Agreement involve or may involve a number of trades of securities (all such trades, other than any trade of securities of Versacold Holdings by the Fund to holders of Fund Units upon exercise of the right of redemption attached to such Fund Units are, collectively, the "Trades"); and

28. there may be no registration or prospectus exemptions available under the Legislation for certain of the Trades;

[para 4]

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

[para 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;

[para 6]

THE DECISION of the Decision Makers under the Legislation is that:

1. the Registration Requirement and the Prospectus Requirement shall not apply to the Trades;

2. the first trade in Class B LP Units and Special Voting Units, other than in exchange for Fund Units, and the first trade of Fund Units, acquired under the Decision shall be deemed to be a distribution or a primary distribution to the public, unless:

(a) except in Québec, the conditions in subsections (3), (4) or (5) of section 2.6 of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102") are satisfied, except that for the purposes of determining the period of time that the Fund has been a reporting issuer under section 2.6 of MI 45-102 the period of time that the Company was a reporting issuer immediately before the Transaction may be included; and

(b) in Québec,

(i) the issuer is and has been a reporting issuer in Québec for the 12 months immediately preceding the trade,

(ii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade,

(iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and

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(iv) if the selling shareholder is an insider or officer of the issuer, the selling shareholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

[para 7]

DATED January 31, 2002

Derek E. Patterson
Acting Director