

# 2003 BCSECCOM 542

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain conflict provisions in connection with the distribution by a mutual fund dealer and portfolio manager of units of mutual funds which it manages – relief subject to certain conditions

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 48

*Securities Rules*, B.C. Reg. 194/97, ss. 77, 79, 81, 82

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, NOVA SCOTIA, 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.**

## **MRRS DECISION DOCUMENT**

¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in British Columbia, Alberta, Nova Scotia, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Phillips, Hager & North Management Ltd. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the following conflict provisions contained in the Legislation shall not apply to the Applicant in connection with distributing units of mutual funds managed by the Applicant (“Funds”):

- (a) the requirements that a registrant prepare a conflict of interest rules statement (or the equivalent) in the required form, revise the conflict statement in the event of any significant change in the information, file the statements with the applicable Decision Makers, and provide its customers and clients with copies of the statements (the “Conflicts Statement Requirement”);

## 2003 BCSECCOM 542

- (b) the requirement that a registrant send or deliver to its clients a written confirmation of a securities transaction that contains certain disclosure if the security was a security of a related issuer, or in the course of a distribution, a security of a connected issuer, of the registrant (the “Trade Confirmation Requirement”);
  - (c) the requirement that a registrant make certain disclosure to its client if the registrant acts as an adviser in respect of securities of a related issuer, or in the course of a distribution, securities of a connected issuer (the “Adviser Disclosure Requirement”); and
  - (d) the requirement that a registrant make certain disclosure to its client and obtain the requisite specific and informed written consent of its client if a registrant acts as an adviser, exercising discretionary authority with respect to the investment portfolio or account of its client, to purchase or sell securities of a related issuer, or in the course of a distribution, securities of a connected issuer, of the registrant (the “Discretionary Management Disclosure Requirement”).
- ¶ 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 unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS the Applicant has represented to the Decision Makers that:
1. it is a company organized under the laws of British Columbia;
  2. it is registered as an adviser in the categories of investment counsel and portfolio manager in British Columbia (and in equivalent categories in the other Jurisdictions), and is also registered as a dealer in the category of mutual fund dealer in Ontario;
  3. it is the manager, principal portfolio adviser and promoter of the Funds and will be the manager, principal portfolio adviser and promoter of additional Funds which may be established from time to time;
  4. each of the Funds is or will be an open-end mutual fund trust established under the laws of British Columbia and the words “Phillips, Hager & North” are or will be part of the name of each Fund;

## 2003 BCSECCOM 542

5. it manages the majority of its clients' assets on a discretionary basis via investments in the Funds, but may also utilize segregated, separate portfolios of securities for clients;
  6. under a discretionary management agreement, its discretionary account clients specifically authorise the Applicant to invest in the Funds;
  7. it may also act as an adviser and where required as a dealer, to clients who have not entered into discretionary management agreements with the Applicant for their investments in one or more Funds;
  8. all clients receive written specific disclosure of the relationship between the Applicant and the Funds;
  9. it does not and will not act as an adviser, dealer or underwriter in respect of securities of the Applicant or of a related issuer of the Applicant, or in the course of a distribution, in respect of securities of connected issuers of the Applicant other than in connection with the distribution of units of the Funds and the Funds do not hold and will not hold securities of any related issuer of the Applicant, or in the course of a distribution, securities of a connected issuer of the Applicant, other than the securities of another Fund; and
  10. each of the Funds may be offered on a continuous basis and will be acquired by residents of the Jurisdictions either under a prospectus filed by the Fund or on a private placement basis.
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- ¶ 6 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that:
- (a) the Applicant is exempt from the Conflicts Statement Requirement;
  - (b) the Trade Confirmation Requirement and the Adviser Requirement does not apply to the distribution of the units of the Funds by the Applicant; and

## **2003 BCSECCOM 542**

- (c) the Applicant is exempt from the Discretionary Management Disclosure Requirement in respect of the units of the Funds provided the Applicant obtains the client's specific and informed consent to purchase or sell the units of the Funds.

¶ 8 August 5, 2003

Brenda Leong  
Director