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December 29, 2005

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 - An issuer wants relief from self-dealing requirements and conflict of interest reporting requirements for inter-fund trading in connection with a mutual fund reorganization - The conflict provisions apply only when investments in an existing mutual fund are redeemed *in specie* and reinvested in a new mutual fund; the same result could be achieved by a different procedure but that would impose additional costs on holders of the mutual funds

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 130 and Part 15

In the Matter of
the Securities Legislation
of Ontario and British Columbia

and

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

and

In the Matter of Resolute Growth Fund

MRRS Decision Document

Background

The local securities regulatory authority (the “Decision Maker”) in each of the provinces of Ontario and British Columbia (the “Jurisdictions”) has received an application (the “Application”) from Resolute Funds Limited (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the mutual fund conflict of interest provisions of the Legislation not apply to the Resolute Growth Fund (the “Growth Fund”), such that the Growth Fund be permitted to sell portfolio securities directly to the Resolute Performance Fund (the “Performance Fund”).

Under the Mutual Reliance Review System for Exemptive Relief Applications,

- (a) the Ontario Securities Commission is the principal regulator for the Application, and

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- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based upon the following facts represented to the Decision Makers by the Filer:

1. The Filer is the manager and portfolio adviser of the Growth Fund within the meaning of such terms in National Instrument 81-102 Mutual Funds ("NI 81-102").
2. The Growth Fund is a mutual fund as defined in the Legislation and is a reporting issuer in the provinces of Ontario, British Columbia and Alberta.
3. The Filer is registered as an adviser in the categories of investment counsel and portfolio manager under the *Securities Act* (Ontario).
4. The Filer is also the manager and portfolio adviser of the Performance Fund, a mutual fund as defined in the Legislation the units of which are offered by way of private placement pursuant to the provisions of section 2.10 of National Instrument 45-106 Prospectus and Registration Exemptions in Ontario and certain other provinces of Canada.
5. The Filer expects to provide unitholders of the Growth Fund with 60 days notice of its intention to terminate the Growth Fund, and has so advised unitholders of the Growth Fund. Upon notice of termination being sent to unitholders, all deferred sales charge fees will be waived by the Filer for all unitholders of the Growth Fund, both those who chose to redeem prior to the termination date and those whose units are redeemed on the termination date.
6. Many unitholders of the Growth Fund whose investment in the Growth Fund is valued at an amount greater than \$150,000 have told the Filer that they will seek to become unitholders in the Performance Fund if the Growth Fund is to be wound up.
7. It is anticipated by the Filer that many of such unitholders of the Growth Fund will not wait for the formal termination of the Growth Fund, but will redeem their units in the Growth Fund and subscribe for units of the Performance Fund.

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8. The Growth Fund is already experiencing a very high level of redemptions, most of the proceeds of which are being used to purchase units of the Performance Fund.
9. Because most of the stocks held by the Performance Fund, and most of the stocks which the Filer currently wishes the Performance Fund to acquire with any new cash subscriptions, are the stocks now in the Growth Fund, this would require the Filer to sell stocks in the Growth Fund, for the cash proceeds from such sales to be contributed to the Performance Fund by the investor, and for the Filer to then buy the same stocks back for the Performance Fund with such cash.
10. In particular, the Growth Fund currently has only 10 stocks, several of which are small capitalization companies that are thinly traded, while the Performance Fund currently has a portfolio of these 10 stocks and three other small stocks, and as money moves out of the Growth Fund and into the Performance Fund, it is the Filer's current intention to acquire for the Performance Fund most or all of the same stocks that it would be liquidating in the Growth Fund.
11. If the Filer were to sell certain of these thinly traded stocks within the three day time period required under NI 81-102 into the market, the effect on the price of the stocks could be highly detrimental to investors in the Growth Fund, and to other holders of those securities.

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 under the Legislation is that the Decision Makers hereby exempt the Growth Fund from the mutual fund conflict of interest provisions in the Legislation such that the Growth Fund shall be permitted to sell its portfolio securities directly to the Performance Fund, provided that:

- (a) only securities of the Growth Fund for which a bid and ask price are readily available will be the subject of a cross-trade;
- (b) the only cost for the trade will be the normal brokerage costs incurred by the Growth Fund and the Performance Fund (the "Funds") to execute a cross trade through a registered broker;
- (c) all securities of the Growth Fund which are the subject of a cross trade that are listed on the Toronto Stock Exchange ("TSX") will be executed

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at the current market price of the security, which will be the closing sale price on the day of the transaction as reported on the TSX;

- (d) trades will not be made on the TSX on any day if there are no reported transactions on that day, or if the closing sale price on the day is outside of the closing bid and closing ask price on the TSX;
- (e) the securities of the one issuer held by the Growth Fund that are listed on the TSX Venture Exchange ("TSX-V") will be executed during a trading day at a price equal to the most recent sale price of such security on the TSX-V on that day or, if such most recent sale price is then outside of the closing bid and closing ask price of such security on the TSX-V, the price will be the average of the highest current bid and lowest current ask price for the securities as displayed on the TSX-V;
- (f) the transaction will be subject to and conducted in accordance with any applicable requirements of the TSX and the Investment Dealers Association of Canada; and
- (g) the Funds will each keep written records of each transaction, including a record of each purchase (in the case of the Performance Fund) and sale (in the case of the Growth Fund) of securities made with the other Fund and the terms of the purchase or sale for a period of five years after the end of the fiscal year in which the trade occurs at the offices of the Filer.

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