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January 25, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 130 - Self Dealing Restrictions in Part 15 - A mutual fund and its registered portfolio manager want relief from sections 121(2)(b) and 121(3) of the Act so that the fund can invest in and hold securities of related mutual funds - A registered portfolio manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - The funds will comply with all of the conditions of NI 81-102 except the ones in section 2.5(2)(a) and (c); purchasers of the funds are either accredited investors or have entered into a fully managed account agreement with the manager of the funds

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 121(3), 126(a) and (d), 130

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Ontario and New Brunswick
(the “Jurisdictions”)

and

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

and

In the Matter of
K.J. Harrison & Partners Inc.
(the “Filer”)

and

KJH Capital Preservation Fund
(the “Existing Public Fund”)

and

KJH Strategic Investors Fund and KJH Strategic Investors Fund #2
(together, the “Existing Private Funds”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer, on its behalf and on behalf of

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- (i) the Existing Public Fund and such other mutual funds that are reporting issuers and that are established and managed by the Filer after the date of this decision (the “Future Public Funds” and together with the Existing Public Fund, the “Top Public Funds” or individually, a “Top Public Fund”), and
- (ii) the Existing Private Funds and such other pooled funds that are established and managed by the Filer after the date of this decision (the “Future Private Funds” and together with the Existing Private Funds, the “Top Private Funds” or individually, a “Top Private Fund”),

for a decision under the securities legislation of the Jurisdictions (the “Legislation”) exempting

- (a) the Top Public Funds and, in each of the Jurisdictions except British Columbia, the Top Private Funds, from the restriction in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder (the “Mutual Fund Conflict of Interest Investment Restriction”); and
- (b) the Filer from the requirement that a management company or, in British Columbia, a mutual fund manager, file a report relating to a purchase or sale of securities between the mutual fund and any related person or company or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies (the “Mutual Fund Conflict of Interest Reporting Requirement”, together with the Mutual Fund Conflict of Interest Investment Restriction, the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (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.

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Representations

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

1. The Filer is a corporation existing under the laws of the Province of Ontario with its head office in Toronto, Ontario.
2. The Filer is registered as an investment dealer with the Investment Dealers Association.
3. The Filer is the manager of the Existing Public Fund and the Existing Private Funds and will be the manager of the Future Public Funds and the Future Private Funds. The Filer will also be the manager of each of the proposed Underlying Pooled Funds (defined below).
4. The Filer offers investment management services to high net worth individuals, pension funds, endowment funds, foundations and institutions under the terms of a managed account agreement which provides the Filer with full discretionary authority over the client's accounts ("Managed Account Agreement").
5. The only investors in a Top Public Fund and a Top Private Fund are clients of the Filer who have entered into a Managed Account Agreement.
6. The Existing Public Fund is, and each of the Future Public Funds will be, a mutual fund that is a reporting issuer in one or more of the Jurisdictions and therefore subject to the provisions of National Instrument 81-102 *Mutual Funds* ("NI 81-102") and National Instrument 81-101 *Mutual Fund Prospectus Disclosure* ("NI 81-101"). Units of the Existing Public Fund are currently qualified for distribution under a simplified prospectus and annual information form dated August 14, 2006, filed in each of the Jurisdictions.
7. The Existing Private Funds are, and the Future Private Funds will be, open-end mutual fund trusts established under the laws of the Province of Ontario. The Existing Private Funds are distributed in Ontario without a prospectus pursuant to exemptions from the prospectus and dealer registration requirements under National Instrument 45-106 – *Prospectus and Registrations Exemptions* ("NI 45-106"). The Existing Private Funds are not, and the Future Private Funds will not be, reporting issuers in any jurisdiction in Canada.
8. The fundamental investment objective of the Existing Public Fund is to provide long term capital growth and steady income by investing in a well-

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diversified mix of Canadian and foreign securities, government and corporate bonds and quasi-income securities such as real estate investment trusts, royalty trusts and master limited partnerships.

9. The investment objective of the Existing Private Funds is to generate long-term capital growth, predominantly through the ownership of common shares of Canadian and U.S. corporations. In addition, the Existing Private Funds may make other investments consistent with their investment objective including investments in private companies, limited partnerships, investment trusts and other funds managed by the Filer.
10. The Filer proposes to establish the following pooled funds under the laws of Ontario:
 - (a) KJH Alchemy Fund: The investment objective of this fund will be to generate absolute annual returns, with an emphasis on capital gains, predominantly through investment in selected North American equity and/or debt securities; and
 - (b) KJH Small Companies CISSEMT Fund: The investment objective of the fund will be to generate absolute annual returns, with an emphasis on capital gains, predominantly through investment in selected North American equity securities.

In this decision, the KJH Alchemy Fund and the KJH Small Companies CISSEMY Fund, together with other pooled funds that may be established and managed by the Filer from time to time, are collectively referred to in this decision as the “Underlying Pooled Funds”.

11. Each of the Underlying Pooled Funds will be mutual funds in Ontario and will be sold in the private placement market pursuant to prospectus and dealer registration exemptions available under NI 45-106. Accordingly, each of the Underlying Pooled Funds will not be reporting issuers in the Jurisdictions and will not be governed by NI 81-102 and NI 81-101.
12. While each of the Underlying Pooled Funds will not be governed by NI 81-102, the Filer will operate the Underlying Pooled Funds in compliance with the provisions of NI 81-102, except for section 7.1 thereof in respect of incentive fees charged by the Filer directly to investors.
13. The Existing Public Fund and the Existing Private Funds desire to have the option to invest their available cash balances in the securities of the Underlying Pooled Funds in order to more efficiently manage their cash flow.

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Future Public Funds and Future Private Funds may similarly wish to invest their available cash balances in securities of the Underlying Pooled Funds.

14. The percentage of the assets of a Top Public Fund or Top Private Fund that are invested in securities of the Underlying Pooled Funds will be determined by the Filer from time to time and on a basis that the Filer considers appropriate for the Top Public Fund or Top Private Fund, as the case may be, and is consistent with the investment objectives of that fund. The Filer anticipates that generally no more than 15% of a Top Public Fund's net assets or 25% of a Top Private Fund's net assets would be invested in securities of the Underlying Pooled Funds.
15. An investment by the Top Public Funds in securities of the Underlying Pooled Funds will in each case be made in accordance with the provisions of section 2.5 of NI 81-102, except for the requirements in paragraphs 2.5(2)(a) and 2.5(2)(c) that a fund invest in another fund only if the other fund is subject to NI 81-102 and NI 81-101 and its securities are qualified for distribution in the local jurisdiction. The Top Public Funds have applied in the Jurisdictions under a separate application for relief from certain requirements of NI 81-102.
16. If the Top Public Funds' proposed investments in the Underlying Pooled Funds were made in accordance with each of the provisions of section 2.5 of NI 81-102, the Requested Relief would not be required in connection with such investments as subsection 2.5(7) of NI 81-102 provides relief from the Mutual Fund Conflict of Interest Investment Restriction and the Mutual Fund Conflict of Interest Reporting Requirement to a mutual fund which purchases or holds securities of another mutual fund if the purchase or holding is made in accordance with section 2.5 of NI 81-102.
17. In the absence of an exemption from the Mutual Fund Conflict of Interest Investment Restriction, a Top Public Fund and a Top Private Fund would be prohibited from knowingly making and holding an investment in an Underlying Pooled Fund if the Top Public Fund or Top Private Fund, alone or together with one or more related mutual funds, would be a substantial security holder of the Underlying Pooled Fund.
18. In the absence of an exemption from the Mutual Fund Conflict of Interest Reporting Requirement, the Filer would be required to file a report for every transaction by a Top Public Fund involving units of an Underlying Pooled Fund and every transaction in which, by arrangement, a Top Public Fund is a joint participant with an Underlying Pooled Fund.

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19. An investment by a Top Public Fund or Top Private Fund in securities of the Underlying Pooled Funds will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Public Fund or Top Private Fund, as the case may be.

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

1. the Requested Relief is granted to the Top Public Funds in connection with their proposed investments in securities of the Underlying Pooled Funds provided that the following conditions are satisfied:
 - (a) a Top Public Fund's investments in securities of the Underlying Pooled Funds are made in compliance with each provision of section 2.5 of NI 81-102, except to the extent the Top Public Fund has been granted specific exemptions therefrom by the Decision Makers;
 - (b) each of the Underlying Pooled Funds is, or will be, established under the laws of Canada or the laws of a Province of Canada;
 - (c) each of the Underlying Pooled Funds meets the definition of mutual fund as defined in the Legislation;
 - (d) the simplified prospectus of a Top Public Fund
 - (i) discloses under the heading "Investment Strategies", the Top Public Fund's ability to invest in securities of the Underlying Pooled Funds and the manner in which the Underlying Pooled Fund documents specified in paragraph (g) below may, if available, be requested or obtained by investors in the Top Public Fund, and
 - (ii) provides, in connection with the Top Public Fund's investments in securities of the Underlying Pooled Funds, the disclosure under NI 81-101 that applies to mutual funds holding securities of other mutual funds;
 - (e) the Underlying Pooled Funds adopt, and are operated in accordance with, the provisions of NI 81-102, except for section 7.1 thereof in respect of incentive fees, if any, which are charged directly by the Filer to investors;

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- (f) the Filer does not charge an incentive fee to a Top Public Fund that invests in securities of the Underlying Pooled Funds; and
 - (g) if available, unitholders of a Top Public Fund may obtain, upon request, a copy of the offering memorandum (or other similar document) and the audited annual financial statements and semi-annual financial statements of the Underlying Pooled Funds; and
2. relief from the Mutual Fund Conflict of Interest Investment Restriction is granted to the Top Private Funds in connection with their proposed investments in securities of the Underlying Pooled Funds provided that the following conditions are satisfied:
- (a) securities of a Top Private Fund are sold in Canada solely pursuant to exemptions from the prospectus and dealer registration requirements available under NI 45-106;
 - (b) no management or incentive fees are payable by a Top Private Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Pooled Fund for the same service;
 - (c) no sales or redemption fees are payable by a Top Private Fund in relation to its purchases or redemptions of the securities of the Underlying Pooled Funds;
 - (d) the Filer does not vote the securities of the Underlying Pooled Funds that are held by a Top Private Fund; and
 - (e) if available, the offering memorandum (or other similar document) of a Top Private Fund will disclose:
 - (i) that the Top Private Fund may purchase securities of the Underlying Pooled Funds;
 - (ii) the fact that both the Top Private Fund and the Underlying Pooled Funds are managed by the Filer; and
 - (iii) the approximate or maximum percentage of net assets of the Top Private Fund that is dedicated to investment in securities of the Underlying Pooled Funds.

Robert L. Shirriff
Commissioner

Paul K. Bates
Commissioner

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Ontario Securities Commission

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