

# 2006 BCSECCOM 604

September 21, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, ss. 48, 76 – Employees & Consultants – exemption from registration and prospectus requirements - Trades by an issuer’s employee or officer in securities of a fund that was established as part of the issuer’s employee investment plan or in-house investment plan - Employee voluntarily enters into the issuer’s employee investment plan; under the plan the employee will receive units in the fund; the units are exchangeable for securities of the issuer; the fund’s sole purpose is to hold securities of the issuer for the benefit of plan participants; the employee will receive an information package which includes a summary of the terms of the offering and a notice containing a description of Canadian income tax consequences; upon request the employee can receive copies of the French reference document filed with the French AMF in respect of the issuer’s shares and a copy of the relevant fund’s rules; the issuer is not a reporting issuer anywhere in a Canada; the issuer has a de minimis connection to Canada; the securities will be resold on an exchange outside of Canada or to a person outside of Canada

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Manitoba, Ontario, Québec, Nova Scotia, New  
Brunswick, Newfoundland and Labrador (the “Jurisdictions”)

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

and  
In the Matter of  
AXA S.A. (the “Filer”)

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

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1. an exemption from the prospectus requirements of the Legislation (the “Prospectus Relief”) so that such requirements do not apply to:
  - (i) trades in the units (“Units”) of two compartments of a collective shareholding vehicle, the Shareplan AXA Direct Global (the “Fund”), the AXA Shareplan Direct Global (the “Classic Compartment”) and the AXA Plan 2006 Global (the “Leveraged Compartment” and, together with the Classic Compartment, the “Compartments”) made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions who elect to participate in the Employee Share Offering (the “Canadian Participants”);
  - (ii) trades of ordinary shares of the Filer (the “Shares”) by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants, nor to the issuance of Units of the Classic Compartment to holders of Leveraged Compartment Units upon the transfer of the assets of the Leveraged Compartment to the Classic Compartment at the end of the Lock-Up Period (as defined below);
2. an exemption from the dealer registration requirements of the Legislation (the “Registration Relief”) so that such requirements do not apply to:
  - (i) trades in Units of the Classic Compartment made pursuant to the Employee Share Offering to or with Canadian Participants, nor to trades in Units of the Leveraged Compartment made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario or Manitoba;
  - (ii) trades of Shares by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants, nor to the issuance of Units of the Classic Compartment to holders of Leveraged Compartment Units upon the transfer of the assets of the Leveraged Compartment to the Classic Compartment at the end of the Lock-Up Period;
3. an exemption from the adviser registration requirements and dealer registration requirements of the Legislation so that such requirements do not apply to the manager of the Compartments, AXA Investment Managers Paris (the “Manager”) to the extent that its activities described in paragraphs 25 and 26 hereof require compliance with the adviser registration requirements and dealer registration requirements (collectively, with the Prospectus Relief and the Registration Relief, the “Initial Requested Relief”); and

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4. an exemption from the dealer registration requirements of the Legislation so that such requirements do not apply to the first trade in any Shares acquired by Canadian Participants under the Employee Share Offering (the “First Trade Registration Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Autorité des marchés financiers is the principal regulator for this application, and
- (b) this MMRS 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 on the following facts represented by the Filer:

1. The Filer is a corporation formed under the laws of France. It is not and has no intention of becoming a reporting issuer (or equivalent) under the Legislation. The Shares are listed on the New York Stock Exchange (in the form of American Depositary Shares and American Depositary Receipts).
2. The Filer carries on business in Canada through the following affiliated companies: AXA Assurances Inc., AXA Canada Inc., AXA Insurance (Canada), AXA Pacific Insurance Company, Insurance Corporation of Newfoundland Limited, AXA Assistance Canada Inc., AXA RE, AXA Corporate Solutions Assurance, and Anthony Insurance Inc. (the “Canadian Affiliates”, together with the Filer and other affiliates of the Filer, the “AXA Group”). Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no intention of becoming, a reporting issuer (or equivalent) under the Legislation.
3. The Filer has established a worldwide stock purchase plan for employees of the AXA Group (the “Employee Share Offering”) which is comprised of two subscription options: (i) an offering of Shares to be subscribed through the Classic Compartment (the “Classic Plan”); and (ii) an offering of Shares to be subscribed through the Leveraged Compartment (the “Leveraged Plan”).
4. Only persons who are employees of a member of the AXA Group at the time of the Employee Share Offering with a minimum seniority of three months

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(such three-month period to be calculated on a continued or discontinued basis since January 1, 2005) (the “Employees”), or persons who have retired from an affiliate of the AXA Group and who continue to hold units in French investment funds in connection with previous employee share offerings by the Filer (the “Retired Employees” and, together with the Employees, the “Qualifying Employees”) will be invited to participate in the Employee Share Offering.

5. The Compartments were established for the purpose of implementing the Employee Share Offering.
6. The Fund is not and has no intention of becoming a reporting issuer under the Legislation.
7. The Fund is a collective shareholding vehicle (fonds communs de placement d’entreprise or “FCPEs”) of a type commonly used in France for the conservation or custodianship of shares held by employee investors. The Fund has been registered with and approved by the Autorité des marchés financiers in France (the “French AMF”). Only Qualifying Employees will be allowed to hold Units of the Fund in an amount proportionate to their respective investments in the Fund.
8. Under French law, all Units acquired in the Employee Share Offering will be subject to a hold period of approximately five years (the “Lock-Up Period”), subject to certain exceptions prescribed by French law (such as a release on death or termination of employment). At the end of the Lock-Up Period, a Canadian Participant may (i) redeem Units in the Classic Compartment in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (ii) continue to hold Units in the Classic Compartment and redeem those Units at a later date.
9. In the event of an early unwind resulting from the Canadian Participant satisfying one of the exceptions to the Lock-Up Period prescribed by French law, a Canadian Participant may redeem Units: (a) from the Classic Compartment in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (b) from the Leveraged Compartment using the Redemption Formula (described below), by using the market value of the Shares at the time of unwind to measure the increase, if any, from the Reference Price (described below).
10. Under the Classic Plan, Canadian Participants will be issued Units in the Classic Compartment, which will subscribe for Shares on behalf of the Canadian Participants, at a subscription price that is equal to the average of the

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opening price of the Shares on the 20 trading days ending on the date of approval of the Employee Share Offering by the board of directors of the Filer (the "Reference Price"), less a 20% discount. Dividends paid on the Shares held in the Classic Compartment will be contributed to the Classic Compartment and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued.

11. Under the Leveraged Plan, Canadian Participants will subscribe for Units in the Leveraged Compartment, and the Leveraged Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by IXIS Corporate & Investment Bank (the "Bank"), which is governed by the laws of France.
12. Canadian Participants in the Leveraged Plan receive a 15.21% discount on the Reference Price. Under the Leveraged Plan, the Canadian Participants effectively receive a share appreciation entitlement in the increase in value, if any, of the Shares financed by the Bank Contribution (as described below).
13. Participation in the Leveraged Plan represents an opportunity for Qualifying Employees potentially to obtain significantly higher gains than would be available through participation in the Classic Plan, by virtue of the Qualifying Employee's indirect participation in a financing arrangement involving a swap agreement (the "Swap Agreement") between the Leveraged Compartment and the Bank. In economic terms, the Swap Agreement effectively involves the following exchange of payments: for each Share which may be subscribed for by the Qualifying Employee's contribution (the "Employee Contribution") under the Leveraged Plan at the Reference Price less the 15.21% discount, the Bank will lend to the Leveraged Compartment (on behalf of the Canadian Participant) an amount sufficient to enable the Leveraged Compartment (on behalf of the Canadian Participant) to subscribe for an additional nine Shares (the "Bank Contribution") at the Reference Price less the 15.21% discount.
14. Under the terms of the Swap Agreement, at the end of the Lock-Up Period (the "Settlement Date"), the Leveraged Compartment will owe to the Bank an amount equal to the market value of the Shares held in that Compartment, less
  - (i) 100% of the Employee Contributions; and
  - (ii) an amount equal to approximately 75% of the increase, if any, in the market price of the Shares from the Reference Price (the "Appreciation Amount").

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15. If, at the Settlement Date, the market value of the Shares held in the Leveraged Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to a guarantee agreement, make a cash contribution to the Leveraged Compartment to make up any shortfall.
16. At the end of the Lock-Up Period, the Swap Agreement will terminate after the making of final swap payments and a Canadian Participant (i) may redeem his or her Leveraged Compartment Units in consideration for a payment of an amount equal to the value of the Canadian Participant's Employee Contribution and the Canadian Participant's portion of the Appreciation Amount, if any, to be settled by delivery of such number of Shares equal to such amount or the cash equivalent of such amount (the "Redemption Formula"); or (ii) may elect that his or her investment be transferred to the Classic Compartment or any other similar Compartment. New Units of the Classic Compartment will be issued to the applicable Canadian Participants in recognition of the assets transferred to the Classic Compartment. The Canadian Participants may redeem the new Units whenever they wish, in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares.
17. Under no circumstances will a Canadian Participant in the Leveraged Compartment be entitled to receive less than 100% of his or her Employee Contribution at the end of the Lock-Up Period, nor be liable for any other amounts.
18. Under French law, the Fund, as a FCPE, is a limited liability entity. Each Compartment's portfolio will consist exclusively of Shares of the Filer and, from time to time, cash in respect of dividends paid on the Shares which will be reinvested in Shares. The Leveraged Compartment's portfolio will also include the Swap Agreement. From time to time, either portfolio may include cash or cash equivalents that the Compartments may hold pending investments in Shares and for purposes of Unit redemptions. The risk statement provided to Canadian Participants will confirm that, under no circumstances, will a Canadian Participant in the Leveraged Plan be liable to any of the Leveraged Compartment, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Leveraged Plan.
19. During the term of the Swap Agreement, dividends paid on the Shares held in the Leveraged Compartment will be remitted to the Leveraged Compartment, and the Leveraged Compartment will remit an equivalent amount to the Bank as partial consideration for the obligations assumed by the Bank under the Swap Agreement.

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20. For Canadian federal income tax purposes, the Canadian Participants in the Leveraged Compartment should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution, at the time such dividends are paid to the Leveraged Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants by virtue of the terms of the Swap Agreement. Consequently, Canadian Participants will be required to fund the tax liabilities associated with the dividends from their own resources.
21. The declaration of dividends on the Shares remains at the sole discretion of the board of directors of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment in respect of dividends.
22. To respond to the fact that, at the time of the initial investment decision relating to participation in the Leveraged Plan, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer will indemnify each Canadian Participant in the Leveraged Plan for all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of euros per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to quantify, with certainty, his or her maximum tax liability in connection with dividends received by the Leveraged Compartment on his or her behalf under the Leveraged Plan.
23. At the time the Canadian Participant's obligations under the Swap Agreement are settled, the Canadian Participant should realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Leveraged Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Leveraged Compartment, on behalf of the Canadian Participant to the Bank. To the extent that dividends on Shares that are deemed to have been received by a Canadian Participant are paid by the Compartment on behalf of the Canadian Participant to the Bank, such payments will reduce the amount of any capital gain (or increase the amount of any capital loss) to the Canadian Participant under the Swap Agreement. Capital losses (gains) realized by a Canadian Participant under the Swap Agreement may be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).

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24. The Manager, AXA Investment Managers Paris, is an asset management company governed by the laws of France. The Manager is registered with the French AMF to manage French investment funds and complies with the rules of the French AMF. The Manager is not and has no intention of becoming a reporting issuer under the Legislation.
25. The Manager's portfolio management activities in connection with the Employee Share Offering and the Fund are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, and such activities as may be necessary to give effect to the Swap Agreement.
26. The Manager is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of each Compartment. The Manager's activities in no way affect the underlying value of the Shares and the Manager will not be involved in providing advice to any Canadian Participants.
27. Shares issued in the Employee Share Offering will be deposited in the relevant Compartment through BNP Paribas Securities Services (the "Depository"), a large French commercial bank subject to French banking legislation.
28. Under French law, the Depository must be selected by the Manager from among a limited number of companies identified on a list by the French Minister of the Economy, Finance and Industry and its appointment must be approved by the French AMF. The Depository carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow each Compartment to exercise the rights relating to the securities held in its portfolio.
29. The Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.
30. The total amount invested by a Qualifying Employee in the Employee Share Offering, including any Bank Contribution, cannot exceed 25% of his or her estimated gross annual compensation for 2006, or for his or her last year of employment, as the case may be, although a lower limit may be established for Canadian Participants by the Canadian Affiliates.
31. None of the Filer, the Manager, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to an investment in the Shares or the Units.

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32. The Filer will retain a securities dealer registered as a broker/investment dealer under the Legislation of Ontario and Manitoba (the “Registrant”) to provide advisory services to Canadian Participants resident in Ontario or Manitoba who express interest in the Leveraged Plan and to make a determination, in accordance with industry practices, as to whether an investment in the Leveraged Plan is suitable for each such Canadian Participant based on his or her particular financial circumstances. The Registrant will establish accounts for, and will receive the initial account statements from the Leveraged Compartment on behalf of, such Canadian Participants. The Units of the Leveraged Compartment will be issued by the Leveraged Compartment to Canadian Participants resident in Ontario or Manitoba solely through the Registrant.
33. Units of the Leveraged Compartment will be evidenced by account statements issued by the Leveraged Compartment.
34. The Canadian Participants will receive an information package in the French or English language, as applicable, which will include a summary of the terms of the Employee Share Offering, a tax notice relating to the relevant Compartment containing a description of Canadian income tax consequences of subscribing to and holding the Units in the Compartments and redeeming Units for cash or Shares at the end of the Lock-Up Period. The information package for Canadian Participants in the Leveraged Plan will also include a risk statement which will describe certain risks associated with an investment in Units pursuant to the Leveraged Plan, and a tax calculation document which will illustrate the general Canadian federal income tax consequences of participating in the Leveraged Plan.
35. Upon request, Canadian Participants may receive copies of the Filer’s annual report on Form 20-F filed with the United States Securities and Exchange Commission and/or the French *Document de Référence* filed with the French AMF in respect of the Shares and a copy of the relevant Compartment’s rules (which are analogous to company by-laws). The Canadian Participants will also receive copies of the continuous disclosure materials relating to the Filer furnished to AXA shareholders generally.
36. There are approximately 2,159 Employees resident in Canada, in the provinces of Québec (1,259), Ontario (488), British Columbia (168), Alberta (136), Newfoundland and Labrador (60), New Brunswick (34), Nova Scotia (9) and Manitoba (5), who represent in the aggregate approximately 2% of the number of Employees worldwide.

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37. There are approximately 27 eligible Retired Employees resident in Canada, in the provinces of Québec (12), Ontario (12), and British Columbia (3), for a total of 2,186 Qualifying Employees resident in Canada.
38. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Compartments on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.

### **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 Initial Requested Relief is granted provided that:

1. the first trade in any Units or Shares acquired by Canadian Participants pursuant to this Decision in a Jurisdiction is deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction unless the following conditions are met:
  - (a) the issuer of the security
    - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or
    - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
  - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
    - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
    - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and

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(c) the trade is made

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.

2. in Quebec, the required fees are paid in accordance with Section 271.6(1.1) of the Securities Regulation (Quebec), V-1.1, r.1.

It is the further decision of the Decision Makers under the Legislation that the First Trade Registration Relief is granted provided that the conditions set out in paragraphs (1)(a), (b) and (c) under this decision granting the Initial Requested Relief are satisfied.

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