2002 BCSECCOM 920

Headnote
Mutual Reliance Review System for Exemptive Relief Applications – Investment by mutual funds in securities of other existing and future mutual funds that are under common management is exempted from certain self-dealing requirements, subject to certain specified conditions

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 123 and 130

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF BRANDES INVESTMENT PARTNERS & CO., BRANDES CANADIAN EQUITY FUND

AND

BRANDES CANADIAN BALANCED FUND

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (collectively, the "Decision Makers") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (collectively, the "Jurisdictions") has received an application from Brandes Investment Partners & Co. ("Brandes" or the "Manager") in its own capacity and on behalf of the Brandes Canadian Equity Fund and the Brandes Canadian Balanced Fund and other mutual funds managed by Brandes after the date of this Decision (defined herein) having an investment strategy that involves investing in one or more mutual funds managed by Brandes for foreign property exposure while remaining eligible for Registered Plans (defined herein) (individually, a "Top Fund", collectively, the "Top Funds") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation (the "Applicable Requirements") shall not apply to a Top Fund or Brandes, as the case may be, in respect of certain investments to be

made from time to time by a Top Fund in units of Brandes Global Equity Fund, Brandes International Equity Fund, Brandes U.S. Equity Fund and such other mutual funds managed by Brandes after the date of this Decision (individually, an "Underlying Fund, collectively, the "Underlying Funds") from time to time:

(a) the restrictions contained 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 securityholder; and

(b) the requirements contained in the Legislation requiring a management company or, in British Columbia, a mutual fund manager, to 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.

AND WHEREAS pursuant to the Mutual Reliance Review System ("MRRS") for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application.

AND WHEREAS it has been represented by Brandes to the Decision Makers that:

1. Brandes is a corporation incorporated under the laws of the Province of Nova Scotia and is or will be the Manager and trustee of the Top Funds and the Underlying Funds (collectively, the "Brandes Funds"). Brandes' head office is located in Toronto, Ontario.

2. Each Top Fund and Underlying Fund is or will be an open-ended mutual fund trust established under the laws of the Province of Ontario. Units of each of the Brandes Funds are or will be qualified for distribution in all provinces and territories of Canada pursuant to a simplified prospectus and annual information form filed with and accepted by the Decision Makers.

3. Each of the Brandes Funds is or will be a reporting issuer in each of the provinces and territories of Canada and is not or will not be in default of any requirements of the Legislation.

4. Each of the Top Funds seeks or will seek to achieve its investment objective while ensuring that its securities do not constitute "foreign property" under the *Income Tax Act* (Canada) (the "ITA") for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and similar plans

("Registered Plans"). Each of the Top Funds is or will be a "registered investment" for Registered Plans under the ITA.

5. The investment objectives of the Underlying Funds are or will be achieved through investment primarily in foreign securities.

6. As part of achieving its investment objective, each Top Fund seeks to obtain foreign content exposure by investing fixed percentages (the "Fixed Percentages") of its assets (other than cash or cash equivalents) on a cost amount basis (as defined under the *Income Tax Act* (Canada) (the "ITA")) in units of one or more Underlying Funds, subject to a variation of 1.0 percent above or below the Fixed Percentages (the "Permitted Ranges") .

7. The aggregate of the Fixed Percentages (including the upper Permitted Range) at any time will not exceed an amount, expressed as a percentage, prescribed from time to time under the ITA as the maximum amount of foreign property that may be held by a Registered Plan determined as if such time were the end of a month (the "Permitted Aggregate Investment").

8. Each Top Fund will invest its assets in accordance with the Fixed Percentages and the Permitted Aggregate Investment.

9. The simplified prospectus for the Top Funds will disclose the name, investment objectives, investment strategies, risks and restrictions of the Top Funds and the applicable Underlying Funds , the Fixed Percentages and Permitted Ranges.

10. The investments by the Top Fund in securities of the Underlying Funds represent the business judgement of "responsible persons" (as defined in the Legislation) uninfluenced by considerations other than the best interests of the Top Fund.

11. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to National Instrument 81-102 Mutual Funds ("NI 81-102"), the investments by the Top Funds in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.

12. In the absence of this Decision, pursuant to the Legislation, each Top Fund is prohibited 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 securityholder. As a result, in the absence of this

Decision each Top Fund would be required to divest itself of any such investments.

13. In the absence of the Decision, the Legislation requires Brandes to file a report on every purchase or sale of units of the Underlying Funds by a Top Fund.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the tests 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 pursuant to the Legislation is that the Applicable Requirements shall not apply so as to prevent the Top Funds from making and holding an investment in securities of the Underlying Funds or require Brandes to file a report relating to the purchase or sale of such securities;

PROVIDED IN EACH CASE THAT:

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of NI 81-102.

2. the Decision shall only apply if, at the time a Top Fund makes or holds an investment in the Underlying Funds, the following conditions are satisfied:

(a) the securities of both the Top Fund and the Underlying Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which have been filed with and accepted by the Decision Maker;

(b) the investment by the Top Fund in the Underlying Funds is compatible with the fundamental investment objectives of the Top Fund;

(c) the simplified prospectus discloses the intent of the Top Fund to invest in securities of the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages and the Permitted Ranges within which such Fixed Percentages may vary;

(d) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;

(e) the Top Fund invests its assets (exclusive of cash and cash equivalents) in the Underlying Funds in accordance with the Fixed Percentages disclosed in the simplified prospectus and in accordance with the Permitted Aggregate Investment;

(f) if the Fixed Percentages and the Underlying Funds which are disclosed in the simplified prospectus have been changed, either the Top Fund's simplified prospectus has been amended or a new simplified prospectus has been filed to reflect the change, and the security holders of the Top Fund have been given at least 60 days' notice of the change;

(g) there are compatible dates for the calculation of the net asset value of the Top Fund and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;

(h) no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Funds;

(i) no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by the Top Fund of securities of the Underlying Fund owned by the Top Fund;

(j) no fees or charges of any sort are paid by the Top Fund and the Underlying Funds, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the Top Fund's purchase, holding or redemption of the securities of the Underlying Funds;

(k) the arrangements between or in respect of the Top Fund and the Underlying Funds are such as to avoid the duplication of management fees;

(l) any notice provided to securityholders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund is delivered by the Top Fund to its securityholders;

(m) all the disclosure and notice material prepared in connection with a meeting of securityholders of the Underlying Funds and received by the Top Fund are provided to its securityholders, the securityholders are permitted to direct a representative of the Top Fund to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Top Fund does not vote its holdings in the

Underlying Funds except to the extent the securityholders of the Top Fund have directed;

(n) in addition to receiving the annual and, upon request, the semi-annual financial statements of the Top Fund, securityholders of a Top Fund are provided appropriate summary disclosure in respect of the Top Fund's holdings of securities of the Underlying Funds in the financial statements of the Top Fund; and

(o) to the extent that the Top Fund and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Top Fund and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds are provided upon request to securityholders of the Top Fund, and the right to receive these documents is disclosed in the simplified prospectus of the Top Fund.

DATED at Toronto this 5th day of November, 2002.

Mary Theresa McLeod Kerry D. Adams