

# 2007 BCSECCOM 71

January 31, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief from certain self-dealing restrictions in Part 15 of the Act – A mutual fund and its registered portfolio manager want relief from sections 121(2)(b) and (c) of the Act so that the fund can invest in and hold securities of related mutual funds and of an issuer in which a substantial security holder of the mutual fund or its manager has a significant interest – A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act – Private mutual funds that the fund manager manages invest in securities of public mutual funds that it also manages; the top funds are not subject to NI 81-102; the relief is subject to conditions similar to those in section 2.5 of NI 81-102

## **Applicable British Columbia Provisions**

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

In the Matter of  
the Securities Legislation of  
British Columbia and Alberta  
(the Jurisdictions)

and

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

and

In the Matter of  
Phillips, Hager & North Investment Management Ltd.  
(the Manager)

and

the Pooled Funds (as defined below)  
and the Underlying Retail Mutual Funds (as defined below)

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(collectively, with the Manager, the Filers)

## MRRS Decision Document

### **Background**

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the Legislation) that:
- the Pooled Funds are exempt from the restriction prohibiting a mutual fund from knowingly making or holding an investment to or in (i) a person in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or (ii) an issuer in which an officer or director of the mutual fund, its mutual fund manager or its mutual fund distributor or an associate of any of them or a person who is a substantial security holder of the mutual fund, its mutual fund manager or its mutual fund distributor has a significant interest (the Pooled Fund Investment Restriction); and
  - the Manager is exempt from the requirement to file a report of every transaction of purchase or sale of securities between a mutual fund it manages and any related person or company and any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, a mutual fund is a joint participant with one or more of its related persons or companies, for transactions between the Pooled Funds and Underlying Retail Mutual Funds (the Underlying Retail Mutual Fund Reporting Requirement).

(collectively, the Requested Relief)

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application and
- (b) this MRRS decision documents evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 – Definitions have the same meaning in this decision unless they are defined in this decision. The following additional terms have the following meanings:

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“Pooled Funds” means collectively, the mutual funds established as trusts under the laws of British Columbia that are managed now or in the future by the Manager and that are or will be offered for sale on a private placement basis pursuant to prospectus exemptions under applicable securities legislation, including those mutual funds currently managed by the Manager which are set out in Schedule “A”;

“Underlying Funds” means the Underlying Retail Mutual Funds and the Underlying Pooled Funds;

“Underlying Pooled Funds” means collectively, the mutual funds established as trusts under the laws of British Columbia that are managed now or in the future by the Manager and that are or will be offered for sale on a private placement basis pursuant to prospectus exemptions under applicable securities legislation, including the Pooled Funds which are set out in Schedule “A”; and

“Underlying Retail Mutual Funds” means, collectively, the mutual funds established or to be established as trusts under the laws of British Columbia, that are managed now or in the future by the Manager or an affiliate of the Manager and that are or will be offered for sale pursuant to simplified prospectuses and annual information forms, including those mutual funds currently managed by the Manager which are set out in Schedule “B”.

### **Representations**

¶ 3 This decision is based on the following facts represented by the Filers:

1. the Manager is a company organized under the laws of the province of British Columbia, having its head office in British Columbia;
2. the Manager is or will be the manager and portfolio advisor of the Pooled Funds;
3. the Manager is or will be the manager of the Underlying Retail Mutual Funds;
4. each of the Pooled Funds and the Underlying Pooled Funds is or will be a mutual fund established as a trust under the laws of British Columbia, the securities of which are or will be offered for sale on a private placement basis in reliance on available prospectus exemptions under applicable securities legislation in some or all of the provinces and territories of Canada; the Pooled Funds are not reporting issuers in any jurisdiction of Canada;

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5. each of the Underlying Retail Mutual Funds is or will be a mutual fund established as a trust under the laws of British Columbia, the securities of which are or will be offered for sale to the public pursuant to simplified prospectuses and annual information forms qualified in each of the provinces and territories of Canada;
6. each Pooled Fund may invest a certain portion of its assets in securities of one or more of the Underlying Funds; the percentage invested in an Underlying Fund may fluctuate on a daily basis based on the investment decisions made by the portfolio advisor in order to meet the investment objectives of the Pooled Fund; if investing in an Underlying Fund, the Pooled Fund will invest in Series O securities of the Underlying Fund;
7. the actual weighting of the investment by each Pooled Fund in an Underlying Fund will be reviewed on a regular basis and adjusted to ensure that the investment weightings continue to be appropriate for that Pooled Fund's investment objectives; the portfolio advisor will actively manage the investment made by each Pooled Fund in an Underlying Fund on a regular basis;
8. Pooled Fund securityholders may obtain a copy of the applicable Underlying Fund's disclosure documents, if any, or the annual or semi-annual financial statements, if any, of the applicable Underlying Funds free of charge upon request to the Manager;
9. where a Pooled Fund invests in one or more Underlying Funds, existing investors of the Pooled Fund will receive, before the Pooled Fund first makes the investment, a document that discloses (i) the intent of the Pooled Fund to invest its assets in securities of the Underlying Funds, (ii) that the Underlying Funds are managed by the Manager or an affiliate of the Manager, (iii) what percentage of the net assets is dedicated to the investment in securities of the Underlying Funds, and (iv) the process or criteria used to select the Underlying Funds;
10. each new investor in the Pooled Funds will either enter into an investment management agreement with the Manager under which the Manager has discretion over the investor's account or enter into another agreement which governs the matters related to the investor's investment in the Pooled Funds; the agreement will contain the disclosure outlined in items (i)-(iv) in paragraph 9 above;
11. through investing in the Underlying Funds, the Pooled Funds will be able to achieve greater diversification at a lower cost than investing directly in the

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securities held by the applicable Underlying Funds; this investment structure will also allow investors with smaller investments to have access to a larger variety of investments than would otherwise be available;

12. investment by the Pooled Funds in the Underlying Funds will increase the asset base of the Underlying Funds, enabling the Underlying Funds to further diversify their portfolios to the benefit of all their investors; the larger asset base will also benefit investors in the Underlying Funds through achieving favourable pricing and transaction costs on portfolio trades, increased access to investments where there is a minimum subscription or purchase amount and economies of scale through greater administrative efficiency;
13. no charges will be payable in connection with the acquisition or disposition by the Pooled Funds of securities of the Underlying Funds;
14. no management or other fee will be payable by the Pooled Funds that, to a reasonable person, would duplicate a fee payable by the applicable Underlying Funds for the same service;
15. where a matter relating to an Underlying Fund requires a vote of securityholders of the Underlying Fund, the Manager will not cause the securities of the Underlying Fund held by a Pooled Fund to be voted at the meeting; however, the Manager may pass on the right to vote to the security holders of the Pooled Fund;
16. the investment by a Pooled Fund in the applicable Underlying Fund(s) is or will be compatible with the investment objectives of the Pooled Fund; any investment by the Pooled Funds in securities of an Underlying Fund will represent the business judgment of “responsible persons” uninfluenced by considerations other than the best interests of the Pooled Funds;
17. in the absence of the Requested Relief, a Pooled Fund is prohibited from knowingly making or holding an investment in an Underlying Fund in which it, alone or together with one or more related mutual funds, is a substantial securityholder, and from knowingly making or holding an investment in an Underlying Fund in which a person who is a substantial securityholder of the mutual fund, its mutual fund manager or its mutual fund distributor has a significant interest; and
18. in the absence of the Requested Relief, the Manager is required to file a report on every purchase or sale of securities of the Underlying Retail Mutual Funds by the Pooled Funds.

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### Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the securities legislation of the Jurisdictions (the Legislation) that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers is that the Requested Relief is granted, provided that:

- (i) securities of each Pooled Fund are distributed only on a private placement basis in reliance on available prospectus exemptions;
- (ii) each Underlying Fund is an open-end mutual fund trust;
- (iii) each Pooled Fund does not vote any securities it holds of an Underlying Fund except that the Pooled Fund may, if the Manager so chooses, arrange for all the securities it holds of an Underlying Fund to be voted by the beneficial holders of securities of the Pooled Fund;
- (iv) no management fees or incentive fees are payable by a Pooled Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;
- (v) no sales or redemption fees are payable by the Pooled Fund in relation to its purchases or redemptions of securities of an Underlying Fund;
- (vi) investors in each Pooled Fund have received written disclosure which discloses:
  - (1) the intent of the Pooled Fund to invest its assets in securities of the Underlying Funds;
  - (2) that the Underlying Funds are managed by the Manager or an affiliate of the Manager;
  - (3) what percentage of net assets of the Pooled Fund is dedicated to the investment in securities of the Underlying Funds;
  - (4) the process or criteria used to select the Underlying Funds; and
- (vii) investors in each Pooled Fund are entitled to receive from the Manager or its affiliate, on request and free of charge, a copy of the disclosure documents (if any), or a copy of the annual or semi-annual

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financial statements, relating to all Underlying Funds in which the Pooled Fund may invest its assets.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission

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### **Schedule "A"** **Existing Pooled Funds**

Phillips, Hager & North U.S. Pooled Pension Fund  
Phillips, Hager & North Institutional S.T.I.F.  
Phillips, Hager & North Long Bond Pension Trust  
Phillips, Hager & North High Grade Corporate Bond Fund  
Phillips, Hager & North Investment Grade Corporate Bond Trust  
Phillips, Hager & North Mortgage Pension Trust  
Phillips, Hager & North Absolute Return Fund  
Phillips, Hager & North Income Equity Pension Trust  
Phillips, Hager & North Enhanced Income Equity Pension Trust  
Phillips, Hager & North PRisM – Short  
Phillips, Hager & North PRisM – Mid  
Phillips, Hager & North PRisM – Long  
Phillips, Hager & North Long Mortgage Pension Trust  
Phillips, Hager & North Long Corporate Bond Pension Trust  
Phillips, Hager & North Long Duration Swap Fund



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### Schedule "B" Existing Underlying Retail Mutual Funds

Phillips, Hager & North U.S. Equity Fund  
Phillips, Hager & North Canadian Equity Plus Pension Trust  
Phillips, Hager & North Bond Fund  
Phillips, Hager & North Canadian Equity Fund  
Phillips, Hager & North Dividend Income Fund  
Phillips, Hager & North Vintage Fund  
Phillips, Hager & North Canadian Money Market Fund  
Phillips, Hager & North Canadian Growth Fund  
Phillips, Hager & North Balanced Pension Trust  
Phillips, Hager & North \$U.S. Money Market Fund  
Phillips, Hager & North Balanced Fund  
Phillips, Hager & North U.S. Growth Fund  
Phillips, Hager & North Short Term Bond & Mortgage Fund  
Phillips, Hager & North Small Float Fund  
Phillips, Hager & North Global Equity Pension Trust  
Phillips, Hager & North Canadian Equity Pension Trust  
Phillips, Hager & North High Yield Bond Fund  
Phillips, Hager & North Total Return Bond Fund  
Phillips, Hager & North Global Equity Fund  
Phillips, Hager & North Overseas Equity Fund  
Phillips, Hager & North Overseas Equity Pension Trust  
Phillips, Hager & North U.S. Dividend Income Fund  
Phillips, Hager & North Community Values Bond Fund  
Phillips, Hager & North Community Values Balanced Fund  
Phillips, Hager & North Community Values Canadian Equity Fund  
Phillips, Hager & North Community Values Global Equity Fund  
Phillips, Hager & North Canadian Income Fund  
Phillips, Hager & North Currency-Hedged U.S. Equity Fund  
Phillips, Hager & North Currency-Hedged Overseas Equity Fund  
BonaVista Global Balanced Fund  
BonaVista Canadian Equity Value Fund