

2002 BCSECCOM 1040

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted from the registration and prospectus requirements in respect of trades in shares of a federal co-operative where the shares evidence an interest in an automobile parts buying co-operative and are not purchased as an investment

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,
ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA,
PRINCE EDWARD ISLAND AND SASKATCHEWAN**

AND

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

AND

IN THE MATTER OF MODERN SALES CO-OP

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and Saskatchewan (the “Jurisdictions”) has received an application from Modern Sales Co-op (“the Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security and to file a preliminary prospectus and prospectus and to receive receipts therefor (collectively, the “Registration and Prospectus Requirements”) shall not apply to the issuance by the Filer of membership shares to its members.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;

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AND WHEREAS the Filer has represented to the Decision Makers that:

1. The Filer is a cooperative continued under the Canada Cooperatives Act (the “Canada Coop Act”) on July 10, 2001. Prior to being continued under that Act, the Filer was a private company incorporated under the federal laws of Canada on April 11, 1936, which conducted business under the name Modern Sales Limited.
2. The Filer is an automotive parts buying group. It is in the business of pooling its members’ orders for automotive parts and purchasing and obtaining lines of supply from (predominately American) suppliers, as well as negotiating discounts and credit terms based on large purchase volumes.
3. The Filer is not a reporting issuer or a reporting issuer equivalent under the Legislation and no securities of the Filer are listed or quoted on any stock exchange or market.
4. The authorized capital of the Filer consists of an unlimited number of membership shares without par value (the “Membership Shares”) and an unlimited number of investment shares (the “Investment Shares”) without par value. As of September 15, 2002, there were 680 Membership Shares and no Investment Shares issued and outstanding.
5. As a condition of membership in the Filer, each member must purchase five Membership Shares. Membership Shares may only be purchased, redeemed or otherwise acquired at a fixed price of \$100.00 per Membership Share. Upon termination of the membership of a member, the Filer shall redeem and the member shall sell the member’s Membership Shares to the Filer at the fixed price of \$100.00 per share.
6. Pursuant to the Canada Coop Act: (i) only members can hold Membership Shares; (ii) membership is limited to persons who can use the services of the Filer and accept the responsibilities of membership; and (iii) the Filer must send to each member and place before each annual meeting of members its financial statements for its most recently completed financial year and each part year ended not more than six months before such annual meeting. As such, all members are familiar with the business and operations of the Filer.
7. The by-laws of the Filer require that members: (i) have the requisite skill and knowledge of, and be engaged in, the distribution and sale of products; (ii) have a history of successful relevant business operations; (iii) have sufficient sales volumes to benefit from membership; (iv) not cause the Filer any

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prejudice by its proposed membership; (v) be appropriately financed and capitalized to be financially sound and creditworthy; (vi) have suitable facilities to represent the Filer; (vii) be prepared and able, or be able to become prepared and able, to support the Filer's major suppliers to the benefit of the proposed member and the Filer; (viii) demonstrate by its history of business that it will likely abide by the Filer's Code of Ethics; and (ix) fulfill such other requirements or obligations, whether financial or otherwise, as the directors of the Filer determine.

8. The Filer may pay or credit members with a patronage dividend from all or part of the surplus arising from its operations in a financial year in proportion to the business done by each member with or through the Filer in such year at a rate set by the directors. The Filer has not paid and does not intend to pay any dividends other than patronage dividends on its Membership Shares since it is the Filer's policy to distribute all of its profits by way of patronage dividends.
9. Members may not transfer their Membership Shares without the previous consent of either: (i) the directors of the Filer expressed by a resolution passed at a meeting of the directors or by an instrument or instruments in writing signed by a majority of the directors; or (ii) at least fifty-one percent of the members entitled to vote expressed by resolution passed at a meeting of the membership or by an instrument or instruments in writing signed by such membership.
10. Prior to becoming a member, each prospective member is required to execute and deliver a subscription agreement (the "Subscription Agreement") pursuant to which the proposed member agrees to comply with the share transfer restrictions described above.
11. As of September 15, 2002, the Filer had 136 members, all of which were resident in Canada and all of which were corporations.

AND WHEREAS under 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 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 Registration and Prospectus Requirements shall not apply to trades by the Filer of Membership Shares to its members if

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- (a) at the time of the trade, the Filer is a cooperative continued under the Canada Coop Act;
- (b) a Subscription Agreement which describes the rights and responsibilities of a member is executed by each prospective member prior to such member becoming a holder of Membership Shares and a copy thereof, as accepted by the Filer, is delivered to such member;
- (c) prior to, or concurrently with the execution of a Subscription Agreement by a prospective member, the Filer delivers to such prospective member a copy of the articles of continuance and by-laws of the Filer, the financial statements of the Filer for its most recently completed fiscal year, a copy of this MRRS Decision Document and a statement to the effect that as a result of this Decision certain protections, rights and remedies provided by the Legislation, including statutory rights of rescission or damages, will not be available to recipients of Membership Shares and setting out the limitations on the disposition of Membership Shares;

provided that the first trade of any Membership Shares acquired in reliance on this Decision, other than a redemption by the Filer of Membership Shares in accordance with their terms, shall be deemed to be a distribution or primary distribution to the public unless the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

DATED December 4, 2002.

H. Lorne Murphy

Robert W. Korthals