

2008 BCSECCOM 445

May 14, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act

A mutual fund wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The purchase or sale is consistent with, or is necessary to meet, the investment objectives of the fund; the IRC of the fund has approved the transaction which involves a perceived or actual conflict of interest for the fund manager; the fund manager and the IRC follow any standing instructions that the IRC provides in connection with the transactions; the fund's continuous disclosure materials provide disclosure to fund investors about the transactions with related parties; and the fund keeps the written records required by NI 81-107

A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (c) of the Act - The fund is a reporting issuer and operates as a conventional mutual fund; the portfolio advisers of the mutual funds have discretion to allocate brokerage business in any manner consistent with the fund's best interests; the allocation of brokerage business represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the mutual funds; the management report of fund performance for the funds will disclose the names of and fees paid to related persons; the fund's records of portfolio transactions will include information about purchases or sales effected through a related person on a per transaction basis

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 126(a) and (c), 127(1)(b) and 130

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

and

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

and

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In the Matter of
Desjardins Global Asset Management Inc.
(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 Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from:

- (a) the prohibition contained in the Legislation of each of the Jurisdictions, except British Columbia, against an investment counsel or any partner, officer or associate of an investment counsel purchasing or selling any security in which they have a beneficial interest from or to any portfolio managed or supervised by the investment counsel (the Related Party Relief); and
- (b) the obligation to file monthly reports in respect of such related party transactions (the Reporting Relief),
- ((a) and (c) are collectively the Requested Relief).

Definitions

Defined terms contained in National Instrument 14-101 *Definitions* (NI 14-101) have the same meaning in this Decision unless they are otherwise defined in this Decision. The following additional terms shall have the following meanings:

“Manager” means Fédération des caisses Desjardins du Québec;

“NI 81-106” means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“NI 81-107” means National Instrument 81-107 *Independent Review Committee for Investment Funds*; and

“Related Party” means Desjardins Trust Inc.

Representations

This decision is based on the following facts represented by the Filers.

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1. The Filer is the portfolio manager of Desjardins Short-Term Income Fund (the Fund). Fédération des caisses Desjardins du Québec is the manager of the Fund and Desjardins Trust Inc. is the trustee of the Fund.
2. The Fund has an investment objective that permits the Fund to invest in mortgages.
3. The Fund is an open-end mutual fund, organized as a trust, and is a reporting issuer under the Legislation of each of the Jurisdictions.
4. The Filer is a “management company” or equivalent under the Legislation, and is registered under the Legislation as needed in connection with the services or advice provided to the Fund.
5. The Manager has appointed an independent review committee (IRC) under NI 81-107 for the Fund.
6. The Manager has appointed the Filer to provide portfolio management and investment advisory services to the Fund. As portfolio manager of the Fund, the Filer is a “responsible person” as defined in the Legislation.
7. The Related Party is an associate or affiliate of the Fund’s manager and portfolio manager. The Fund may purchase mortgages for its portfolio from the Related Party.
8. The Related Party and the Manager have agreed to repurchase, or cause to be repurchased, from the Fund any mortgage the Fund has purchased from them that is in default or is not a valid first mortgage.
9. Neither the Related Party, nor any of its directors, officers or employees participates in the formulation of investment decisions made on behalf of, or advice given to, the Fund by the Filer. In all circumstances, the decisions to purchase mortgages for the Fund’s portfolio from the Related Party are made based on the judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.
10. The Filer and the Related Party are “affiliates” within the meaning of the Legislation and accordingly, the Filer is deemed to own securities beneficially owned by the Related Party.
11. The Filer is prohibited under the Legislation from purchasing or selling on behalf of the Fund, the securities of any issuer from or to its own account. Accordingly, the Fund is prohibited from purchasing mortgages from, or

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selling mortgages to, the Related Party, as such mortgages are deemed to be beneficially owned by the Filer.

12. NI 81-107 provides an exemption from the inter-fund self-dealing investment prohibitions, as defined under NI 81-107, to permit trades in securities between funds. NI 81-107 does not, however, provide an exemption for principal trading of the type contemplated by the Requested Relief.
13. The provisions of National Policy Statement No. 29 – Mutual Funds Investing in Mortgages (NP 29) set out guidelines relating to the acquisition of mortgages by a mutual fund from lending institutions with whom such fund does not deal at arm's length and provide certain protections to the investing public. The Filer acquired mortgages from the Related Party on behalf of the Fund in accordance with NP 29. The Filer will only acquire mortgages from the Related Party in accordance with NP 29 under the Requested Relief.
14. The IRC of the Fund will consider the policies and procedures of the Filer and will provide its approval on whether the proposed transactions in mortgages achieve a fair and reasonable result for the Fund in accordance with section 5.2(2) of NI-81-107.
15. To the extent that a Fund is purchasing mortgages from, or selling mortgages to, the Related Party, this fact is set out, and will continue to be set out, in the annual information form of the Fund.
16. The Legislation requires the filing of a report by the Filer with respect to each transaction in mortgages between the Fund and the Related Party and with respect to each transaction in mortgages effected by the Filer in respect of which the Related Party receives a fee either from the Filer or from the other party to the transaction or from both.
17. Such report is to be filed within 30 days after the end of the month in which the transaction occurs, disclosing the issuer of the securities purchased or sold, the class or designation of the securities, the amount and number of securities and the consideration paid, together with the name of any related person receiving a fee on the transaction, the name of the person or company that paid the fee and the amount of the fee paid.
18. NI 81-106 requires the Fund to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the Fund. When discussing portfolio transactions with related parties, NI 81-106 requires the Fund to include the

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dollar amount of commission, spread, or any other fee paid to a related party in connection with a portfolio transaction.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.

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

- (1) With respect to the Related Party Relief:
 - (a) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;
 - (b) the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;
 - (c) the Manager of the Fund complies with section 5.1 of NI 81-107;
 - (d) the Manager of the Fund and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
 - (e) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107; and
 - (f) the mortgages are acquired from the Related Party or sold to the Related Party in accordance with NP 29 (or any successor policy or instrument) and disclosed in accordance with NP 29 (or any successor policy or instrument).
- (2) With respect to the Reporting Relief:
 - (a) the annual and interim management reports of fund performance for the Fund disclose
 - (i) the name of the Related Party,
 - (ii) the amount of fees paid to each Related Party, and

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- (iii) the person or company who paid the fees if they were not paid by the Fund; and
- (b) the records of portfolio transactions maintained by the Fund include, separately for every portfolio transaction effected by the Fund through a Related Party,
 - (i) the name of the Related Party,
 - (ii) the amount of fees paid to the Related Party, and
 - (iii) the person or company who paid the fees.

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