

2008 BCSECCOM 447

June 6, 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

Applicable British Columbia Provisions

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

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

and

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

and

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 Filer for a decision under

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the securities legislation of the Jurisdictions (the Legislation) for an exemption from:

the prohibition contained in the Legislation against a portfolio manager knowingly causing an investment portfolio managed by it to buy or sell securities of any issuer from or to the account of a responsible person, any associate of the responsible person or the portfolio manager in connection with the purchase and sale of mortgages between a Related Party (as defined below) and the Funds (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Application (MRRS):

- (a) the Autorité des marchés financiers (AMF) is the principal regulator for this application: and
- (b) this MRRS decision document (Decision) represents the decision of each Decision Maker.

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

“Related Party” means Fiducie Desjardins inc., Fédération des Caisses Desjardins du Québec and its affiliates.

Representations

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

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.

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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 has appointed an independent review committee (IRC) under NI 81-107 for the Fund.
5. The Fund has appointed the Filer to provide portfolio management and investment advisory services. As portfolio manager of the Fund, the Filer is a “responsible person” as defined in the Legislation.
6. The Related Party is an associate or affiliate of the Fund’s manager, portfolio manager and trustee. The Fund may purchase the mortgages for its portfolio from such Related Party.
7. 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.
8. 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 applicable Fund by the Filer, and in circumstances where the Related Party holds mortgages beneficially on behalf of the Filer, no director, officer or employee actively involved in the formulation of investment decisions for the Fund by the Filer is involved in the mortgage business of the Related Party. In all circumstances, the decisions to purchase mortgages for a Fund’s portfolio from a Related Party are made based on the judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.
9. The Filer and its 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.
10. 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 selling mortgages to, the Related Party, as such mortgages are deemed to be beneficially owned by the Filer.
11. 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.

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12. 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.
13. 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.
14. To the extent that the Fund is purchasing mortgages from, or selling mortgages to, a Related Party, this fact is set out, and will continue to be set out, in the annual information form of the Fund.

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

- (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;
- (f) the mortgage are acquired from the Related Party or sold to the Related Party in accordance with NP 29 (or any successor policy or instrument)

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and disclosed in accordance with NP 29 (or any successor policy or instrument).

Le surintendant de la distribution
Mario Albert (*s*)