2002 BCSECCOM 1058

Headnote
Mutual Reliance Review System for Exemptive Relief Application - all unitholders of funds replicating certain Government of Canada bonds and tracking certain indexes exempted from formal take-over bid requirements in connection with normal course purchases of units on the Toronto Stock Exchange, provided that such unitholders provide trustee/manager of each fund with an undertaking not to exercise any votes attached to units which represent more than 20% of the votes attached to all outstanding units of the funds

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 105-108, 110 and 114(2)(c)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON AND NUNAVUT

AND

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

AND

IN THE MATTER OF BARCLAYS GLOBAL INVESTORS CANADA LIMITED ("BARCLAYS")

AND

IN THE MATTER OF iUNITS GOVERNMENT OF CANADA 5-YEAR BOND FUND, iUNITS GOVERNMENT OF CANADA 10-YEAR BOND FUND (THE "BOND FUNDS"), iUNITS S&P 500 INDEX RSP FUND, iUNITS MSCI INTERNATIONAL EQUITY INDEX RSP FUND (THE "SYNTHETIC FUNDS" AND TOGETHER WITH THE BOND FUNDS, THE "FUNDS")

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon and Nunavut (the "Jurisdictions") has received an application from Barclays for a decision pursuant to the securities legislation of the Jurisdictions (the

"Legislation") exempting all unitholders of the Funds from the requirements of the Legislation related to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee with each applicable Jurisdiction (the "Take-over Bid Requirements") in respect of take-over bids for the Funds;

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

AND WHEREAS Barclays has represented to the Decision Makers as follows:

1. Each Fund is a trust that has been created under the laws of Ontario, the units of each Fund are listed on the Toronto Stock Exchange (the "TSX"), the head office of each Fund is located in Toronto, Ontario and each Fund is a reporting issuer or its equivalent in every province and territory of Canada.

2. The investment objective of each Bond Fund is to replicate the return of the applicable Government of Canada bond (each, a "Current Canada Bond") with the relevant time to maturity (that is, either five or ten years) as selected by Barclays from time to time. In order to achieve this objective, each of the Bond Funds holds the applicable Current Canada Bond. The Bond Funds receive coupon income on the applicable Current Canada Bond and this coupon income and any other income is held in cash or is invested by the Bond Funds in bond futures contracts and short-term securities. Any income received by the Bond Funds is distributed at least semi-annually. Because each Bond Fund simply holds the applicable Current Canada Bond in order to replicate its return and because each Current Canada Bond is published by Barclays on a daily basis, the market price of units generally tracks the net asset value per unit of the Funds.

3. The investment objective of the Synthetic Funds is to track the performance of the S&P 500 Index and the MSCI EAFE Index, respectively (each, an "Index"). In order to achieve this objective, each Synthetic Fund holds exchange traded futures contracts based on the applicable Index. The market price of the units of the Synthetic Funds tracks the total return (price return plus reinvested dividends) of the relevant Index.

4. Barclays is the trustee of the Funds and as such is responsible for the day-to-day administration of each Fund.

5. Units of a Fund may be purchased directly from the Fund by registered dealers who have entered into an underwriting agreement with the Fund. Each of BMO Nesbitt Burns Inc. ("BMO NB"), RBC Dominion Securities Inc. ("RBC

DS”), TD Securities Inc., CIBC World Markets Inc., Scotia Capital Inc. and Merrill Lynch Canada Inc. have entered into underwriting agreements with the Bond Funds and each of BMO NB and RBC DS have entered into underwriting agreements with the Synthetic Funds. The consideration payable by underwriters for units of a Bond Fund consists of an amount of the applicable Current Canada Bonds and a cash component. The consideration payable by underwriters for units of a Synthetic Fund consists of cash.

6. Each Fund has appointed BMO NB and RBC DS as the designated brokers (the “Designated Brokers”) to perform certain functions which include standing in the market with a bid and ask price for the Fund’s units for the purpose of maintaining market liquidity for the units.

7. Except as described in paragraph 5 and 6 above, units of a Fund may not be purchased directly from the Fund. As a result, investors must generally acquire units through the facilities of the TSX.

8. Individuals who wish to dispose of units must generally do so by selling them through the TSX. In the case of the Bond Funds, unitholders may exchange a number of units that is equal to or greater than a prescribed number of Current Canada Bonds and cash at the units’ net asset value. In addition, unitholders may exchange a number of units that is less than the prescribed number of units for Current Canada Bonds and cash at the units’ net asset value less a 5% redemption processing fee. In all cases, the exchange price is payable by delivery of Current Canada Bonds in minimum denominations of $1,000 and, as applicable, cash.

9. In the case of the Synthetic Funds, unitholders may redeem a number of units that is equal to or greater than a prescribed number for cash at the units’ net asset value.

10. Unitholders of each of the Funds may also redeem a number of units that is less than the applicable prescribed number for cash at a redemption price per unit equal to 95% of the closing trading price of such units on the effective day of the redemption.

11. As the units of each Fund are both voting and equity securities for purposes of the Take-over Bid Requirements, anyone acquiring beneficial ownership of, or the power to exercise control or direction over, 10% or more of the outstanding units of a Fund would be required to comply with the early warning press release and reporting requirements, as well as the further acquisition restrictions, imposed by the Legislation (the “Early Warning Requirements”) but for section 3.3 of National Instrument 62-103 which

provides that the Early Warning Requirements do not apply in respect of the ownership or control of securities issued by a mutual fund that is governed by National Instrument 81-102.

12. There is no exemption from the Take-over Bid Requirements for conventional mutual funds that is comparable to the exemption from the Early Warning Requirements in section 3.3 of National Instrument 62-103 (in Quebec, the exemption from Early Warning Requirements was granted pursuant to discretionary relief orders) because the securities of conventional mutual funds are not typically subject to the Take-over Bid Requirements because acquisitions of conventional mutual funds are made from treasury.

13. Although units of the Funds trade on the TSX and the acquisition of such units can therefore become subject to the Take-over Bid Requirements,

    (a) it is not possible for one or more Fund unitholders to exercise control or direction over a Fund as the constating document of each Fund generally ensures that there can be no changes made to the Fund which do not have the support of the trustee of the Fund;

    (b) it is difficult for purchasers of units of the Funds to monitor compliance with Take-over Bid Requirements because the number of outstanding units is always in flux as a result of the ongoing issuance and redemption of units by the Funds; and

    (c) the way in which Fund units are priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding units because unit pricing is dependent upon, in the case of the Bond Funds, the value of the applicable Current Canada Bond, and, in the case of the Synthetic Funds, the level of the relevant Index.

14. The application of the Take-over Bid Requirements to the Funds can have an adverse impact upon Fund unit liquidity because they can cause both the Designated Broker and hedgers to cease trading Fund units once prescribed take-over bid thresholds are reached and this, in turn, can serve to provide conventional mutual funds with a competitive advantage over the Funds.

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

AND WHEREAS each Decision Maker 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 pursuant to the Legislation is that the purchase of the units of a Fund by a person or company (a “Unit Purchaser”) in the normal course through the facilities of the TSX is exempt from the Take-over Bid Requirements for so long as the Fund remains an exchange traded fund provided that, prior to making any take-over bid for the units of the Fund that is not otherwise exempt from the Take-over Bid Requirements, the Unit Purchaser, and any person or company acting jointly or in concert with the Unit Purchaser (a “Concert Party”), provide Barclays, as trustee and manager of the Funds, with an undertaking not to exercise any votes attached to units of the Fund held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding units of the Fund.

Dated this 18th day of December, 2002.

Theresa McLeod Robert L. Shirriff