

2004 BCSECCOM 405

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief granted to a limited purpose trust from the requirement to include certain financial statement disclosure in the trust’s information circular being sent to unitholders of the trust in connection with a reorganization

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 117 and 119

National Instrument 51-102 – *Continuous Disclosure Obligations*, ss. 8.5 and 13.1
Form 51-102F5, s. 14.2

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

AND

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

AND

IN THE MATTER OF DAVIS + HENDERSON INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, Alberta, British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Newfoundland and Labrador and Nova Scotia (the “Jurisdictions”) has received an application from Davis + Henderson Income Fund (the “Issuer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) and in Québec by a revision of the general order that will provide the same result as an exemption order, that the requirements of the Legislation to include the following information in the management information circular (“Management Information Circular”) being sent to unitholders of the Issuer in connection with the Reorganization (as defined below) shall not apply to the Issuer, subject to certain terms and conditions:

- (a) the audited annual financial statements of the Issuer or Davis + Henderson, Limited Partnership (“Davis + Henderson L.P.”) for the financial year ended December 31, 2001, in respect of the significant acquisitions by the Issuer of its indirect interest in Davis + Henderson

2004 BCSECCOM 405

L.P., in accordance with Part 4 of National Instrument 44-101 – *Short Form Prospectus Distributions* (“NI 44-101”) (the “2001 Financial Statement Requirement”),

- (b) the financial statements of Newco (as defined below), in respect of the issuance of Class A Shares (as defined below) pursuant to the Reorganization, in accordance with the Legislation (the “Newco Financial Statement Requirement”), and
- (c) the financial statements of D + H Holdings (as defined below), in respect of the significant probable acquisition of D + H Holdings by Newco pursuant to the Reorganization, in accordance with the Legislation (the “D + H Financial Statement Requirement” and together with the Newco Financial Statement Requirement and 2001 Financial Statement Requirement, the “Financial Statement Requirements”),

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

AND WHEREAS the Issuer represented to the Decision Makers that:

1. The Issuer is a limited purpose trust established under the laws of Ontario pursuant to an amended and restated declaration of trust dated November 6, 2001. The Issuer is authorized to issue an unlimited number of units (“Units”). As of June 10, 2004, 37,920,792 Units were issued and outstanding.
2. The Issuer holds common shares and notes issued by D + H Holdings Corp. (“D + H Holdings”), an Ontario corporation, which holds limited partnership units of Davis + Henderson L.P., a British Columbia limited partnership. The Issuer also holds shares in Davis + Henderson G.P. Inc. (“Davis + Henderson G.P.”), the general partner of Davis + Henderson L.P.
3. The Issuer offered 17,235,000 Units pursuant to an initial public offering by way of a prospectus dated December 11, 2001 (the “Prospectus”) and an additional 1,720,000 Units by way of over-allotment option. The closing of the initial public offering occurred on December 20, 2001 and the closing of the over-allotment option occurred on January 10, 2002.

2004 BCSECCOM 405

4. The Issuer is not in default of any of its obligations under the Legislation.
5. The Issuer used the net proceeds of its initial public offering and the over-allotment option to indirectly acquire a 49.98% interest in Davis + Henderson L.P., which in turn acquired the cheque supply outsourcing business formerly carried on as a division of MDC Corporation Inc. ("MDC"). Following the indirect acquisition by the Issuer of its interest in Davis + Henderson L.P., Davis + Henderson G.P. held a 0.001% interest and MDC held the remaining 50.019% interest in Davis + Henderson L.P.
6. The Issuer subsequently indirectly acquired MDC's 50.019% interest in Davis + Henderson L.P. using the net proceeds from its follow-on public offering of 18,965,792 Units pursuant to a prospectus dated March 18, 2002. The closing of this follow-on offering occurred on April 2, 2002.
7. The audited annual consolidated financial statements of the Issuer for each of the years ended December 31, 2003 and 2002 include the financial results for Davis + Henderson L.P. on a consolidated basis and these financial statements have been filed on SEDAR.
8. Pursuant to a Mutual Reliance Review System decision document dated July 24, 2003 (the "Previous Decision"), the Issuer was exempted from the requirements of securities legislation in the jurisdictions of Ontario, Alberta, British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island concerning the preparation, filing and delivery of audited annual consolidated financial statements for the period ended December 31, 2001, subject to certain terms and conditions.
9. The Issuer has complied with the terms and conditions of the Previous Decision.
10. The Issuer is qualified to file a prospectus in the form of a short form prospectus pursuant to section 2.2 of NI 44-101.
11. The Issuer's present organizational structure is proposed to be restructured by way of an internal reorganization (the "Reorganization") to replace D + H Holdings with a newly formed trust (the "Trust").
12. The Reorganization will occur on a tax-deferred basis for the Issuer and unitholders of the Issuer resident in Canada. After giving effect to the Reorganization, the direct and indirect interest of the Issuer in the assets of

2004 BCSECCOM 405

Davis + Henderson L.P. and in Davis + Henderson G.P. will be the same as the interest that the Issuer had immediately prior to the Reorganization.

13. In order to effect the Reorganization, the Issuer will distribute to its unitholders Class A shares (the “Class A Shares”) of a wholly-owned subsidiary corporation (“Newco”) of the Issuer incorporated for the sole purpose of effecting the Reorganization. Additional Units will also be issued in connection with the Reorganization. Newco will be incorporated just prior to the Reorganization. The Class A Shares will distributed to the Issuer’s unitholders as return of capital in a nominal amount per unit.
14. Newco will own no material assets, other than the securities and indebtedness of D + H Holdings that it will acquire pursuant to a series of transactions in connection with the Reorganization. Following its acquisition of D + H Holdings, Newco and D + H Holdings will amalgamate to form “Amalco”.
15. Following its amalgamation, Amalco will automatically redeem all of its outstanding Class A Shares for Units on a one-for-one basis in accordance with the Reorganization.
16. The Class A Shares so redeemed will be cancelled upon receipt by Amalco. Amalco will subsequently be dissolved.
17. The Class A Shares will be outstanding for approximately one business day.
18. Neither Newco nor Amalco will carry on any active business and Amalco will be dissolved following completion of the Reorganization. Each of the directors and officers of Newco and Amalco will be persons who are directors or officers of Davis + Henderson G.P.
19. The financial results of D + H Holdings, which is proposed to be acquired by Newco, are fully reflected in the audited annual and interim consolidated financial statements of the Issuer that will be incorporated by reference in the Management Information Circular.
20. Prospectus-level disclosure regarding Newco and Amalco (other than the information required under the Newco Financial Statement Requirement) will be disclosed in the Management Information Circular.
21. The Issuer will acquire all of the outstanding trust units of the Trust and indebtedness of the Trust (which will be in the form of notes, issuable in series) and the Trust will acquire all of the outstanding limited partnership units of Davis + Henderson L.P.

2004 BCSECCOM 405

22. As the indirect acquisitions by the Issuer of its interest in Davis + Henderson L.P. constitute “significant acquisitions” (as such term is defined in NI 44-101) within the Issuer’s three most recently completed financial years, the Legislation requires that the Management Information Circular contain financial statement disclosure regarding these significant acquisitions, including financial statements reflecting the financial results of Davis + Henderson L.P., either separately or on a consolidated basis with the Issuer, for a total of three years.
23. In accordance with the Previous Decision, the Issuer did not prepare audited annual consolidated financial statements for the year ended December 31, 2001.
24. As the probable acquisition by Newco of the Issuer’s interest in D + H Holdings constitutes a “significant probable acquisition” (as such term is defined in the Legislation), the Legislation requires that the Management Information Circular contain financial statement disclosure regarding this significant probable acquisition, including financial statements reflecting the financial results of D + H Holdings, either separately or on a consolidated basis with Newco, for a total of three years.
25. The Legislation requires that the Management Information Circular contain the financial statement disclosure regarding Newco required by the Legislation as Newco is issuing Class A Shares in connection with the Reorganization.

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 Financial Statement Requirements shall not apply to the Issuer, provided the Issuer complies with all other requirements of section 14.2 of Form 51-102F5, including but not limited to the requirement that the Management Information Circular includes the audited consolidated financial statements of the Issuer for its financial years ended December 31, 2002 and 2003.

DATED this 30th day of June, 2004.

John Hughes
Manager, Corporate Finance