

2003 BCSECCOM 725

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from registration and prospectus requirements for trades in units of an employee savings fund of a French issuer – manager and custodian exempted from registration requirements – relief from registration requirements for first trades where the trade is made through the facilities of a stock exchange outside of Canada

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 QUEBEC AND BRITISH COLUMBIA

AND

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

AND

IN THE MATTER OF

**IMERYS, “IMERYS TEMPORARY SHARE FUND RELAIS”,
“IMERYS SHARE FUND”,
SG ASSET MANAGEMENT (SGAM) AND SOCIÉTÉ GÉNÉRALE**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Quebec and British Columbia (the “Jurisdictions”) has received an application from Imerys (the “Filer”) on its own behalf and on behalf of “Imerys Temporary Share Fund Relais” (“Relais”) and of “Imerys Share Fund” FCPE (the “Fund”) (collectively, the “FCPE”), SG Asset Management (SGAM) (the “Manager”) and Société Générale (the “Custodian and Account Keeper”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- (a) the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”), and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) shall not apply to certain trades of securities (the “Units”) of the FCPE made to or

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with Canadian Participants (as defined in paragraph (g)) in connection with the Employee Offering (as defined in paragraph 4);

- (b) the adviser Registration Requirement under the Legislation shall not apply to the Manager in connection with its activities as Manager of the FCPE;
- (c) the dealer Registration Requirement under the Legislation shall not apply to the Custodian and Account Keeper in connection with its activities with respect to the FCPE and the Employee Shareholder Plan 2003;
- (d) the Registration Requirement and Prospectus Requirement under the Legislation of Quebec shall not apply (i) to the distribution of options (the “Options”) to acquire the shares, par value €8 per share, of the Filer (the “Shares”); and (ii) to the distribution of Shares acquired upon the exercise of the Options, in both cases to the Quebec employees (and former employees or their legal representatives upon death) of the Filer or its affiliates (the “Quebec Employees”) pursuant to the Employee Shareholder Plan 2003;
- (e) the requirements contained in the Legislation of Quebec relating to the requirements contained in Policy Q-3, subsections 2.1, (2), (4), (6) and (10) thereof, relating to (i) the maximum expiry period after termination of employment (ii) the pricing of options, (iii) the pricing of Units, and (iv) prior Commission des valeurs mobilières du Québec approval of any modification to the Employee Shareholder Plan 2003 or the terms of an option thereunder;
- (f) the Registration Requirement and Prospectus Requirement under the Legislation of Quebec shall not apply to the resale of the Shares acquired by the Quebec Employees upon exercise of Options pursuant to the Employee Shareholder Plan 2003; and
- (g) the Registration Requirement under the Legislation of British Columbia shall not apply to the resale of the Shares acquired by legal representatives or beneficiaries (the “Permitted Transferees”) of British Columbia employees of the Filer or its affiliates (the “BC Employees” and with the Quebec Employees, the “Canadian Participants”) upon exercise of Options pursuant to the Employee Shareholder Plan 2003, where such trade is made through the facilities of a stock exchange outside Canada.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

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AND WHEREAS, unless otherwise defined, the terms herein have the meanings set out in National Instrument 14-101 and Commission des valeurs mobilières du Québec Notice 14-101.

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

1. The Filer, with its registered office in Paris, France, is a corporation incorporated under the laws of France and is subject to French law and to regulatory requirements set forth by the French Securities Exchange Commission ("Commission des Opérations de Bourse" or "COB"), applicable to public companies.
2. The Filer, carries on business in Canada through the following subsidiaries: Imerys Canada Inc. and Timcal Canada, Inc., (the "Canadian Subsidiaries", being, together with the Filer and other worldwide subsidiaries of the Filer, the "Imerys Group"). The Filer and the Canadian Subsidiaries are not and have no intention of becoming reporting issuers under the Legislation.
3. As of December 31, 2002, the Filer had outstanding 15,751,950 Shares. The Shares are currently listed on Paris Bourse First Market.
4. The Filer has implemented its employee share scheme in 15 countries including Canada in order to enable employees of the Imerys Group, to invest part of their savings and participate in the Filer's growth and financial success through an employee offering anticipated to commence in November 2003 (the "Employee Offering").
5. Only persons who are permanent employees of the Imerys Group with three months service at the date of the closing of the Employee Offering (the "Qualifying Employees") can participate in the Employee Offering.
6. Under the Employee Offering, Relais is to be established to enable Qualifying Employees resident in Canada, Brazil, Portugal, Sweden and South Africa (collectively, the "Fund Participants") to indirectly acquire an investment in the Shares through the issuance of Units which will then be converted into Units of the Fund.
7. There are approximately 13,000 Qualifying Employees of which 93 are Quebec Employees and 4 are BC Employees, all of whom together account for less than 0.75% of the Qualifying Employees.
8. Relais is a mutual fund established by the Manager (i.e. a *Fonds Commun de Placement d'Entreprise*) in accordance with the laws of France to facilitate the participation in the Employee Offering by the Fund Participants. Relais is a

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collective share holding vehicle of a type commonly used in France for the acquisition of shares held by employee investors. This form of company mutual fund structure will also be utilized by the Filer for the Employee Offering in other jurisdictions, including France. Relais is not and has no intention of becoming reporting issuers under the Legislation

9. The Fund is a mutual fund established in September 2002 by the Manager (i.e. a *Fonds Commun de Placement d'Entreprise*) in accordance with the laws of France. The Fund is a collective share holding vehicle of a type commonly used in France for the conservation of shares held by employee investors. The Fund has 1,472 Units issued and outstanding. The Fund is not and has no intention of becoming reporting issuers under the Legislation
10. The Manager is an asset management company incorporated under the laws of France. The Manager will manage the FCPE. The Manager is registered with the COB to manage investment funds and is subject to the regulatory requirements of the COB. Management decisions carried out by the Manager in respect of the FCPE are supervised by a board made up of the Filer and representatives of the Fund Participants. The Manager is not and has no intention of becoming a reporting issuer under the Legislation.
11. The Custodian and Account Keeper will act as custodian of the FCPE. The Custodian and Account Keeper is a financial institution incorporated under the laws of France and is subject to the registration requirements under the COB. The Custodian and Account Keeper will provide custody services for the securities owned by the FCPE as Custodian and Account Keeper and will carry out orders to purchase and trade securities in the portfolio and redeem Units on behalf of the Fund Participants as account holder responsible for maintaining the holding of the units accounts. The Custodian and Account Keeper is also responsible for providing statements to Canadian Participants with respect to their ownership of Units.
12. The Relais is established for the sole purpose of providing Fund Participants with an opportunity to indirectly acquire an investment in the Shares, which is proportionate to the number of Units that the Fund Participants subscribe for in Relais.
13. In accordance with the Plan, the Filer will reacquire Shares in the market. Fund Participants who wish to participate in the Employee Offering will subscribe for Units. Relais will use employee contributions to purchase the Shares reacquired by the Filer on behalf of the Fund Participants. The Shares will be deposited with the Custodian and Account Keeper. A Fund Participant will be entitled to subscribe for up to 15 Units under the Employee Offering

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provided that the Fund Participant's investment in the Units cannot exceed 25% of the Fund Participants' gross annual salary.

14. The Units of Relais will be converted into Units of the Fund within 90 days of the acquisition of the Shares. The Fund Participants will receive Units of the Fund in exchange for all or part of the Units of Relais they hold. The equity of Relais will be transferred in its entirety to the Fund, and Relais and the Fund will be merged in accordance with French law. The Fund Participants will own Units of the Fund which will have the same proportionate value of the Units of Relais. Since the value of one Unit of the Fund will exceed the value of Unit of Relais due to the dividend distribution which has benefited to the Fund in 2003, the number of Units of the Fund received in exchange for all or part of the Units of Relais will be adjusted in order to represent the same net asset value in the equity of the Fund. The Custodian and Account Keeper will inform the Fund Participants of the number of Units of the Fund that they will own. The Units will not be listed on any stock exchange.
15. In accordance with the Employee Shareholder Plan 2003, the FCPE's portfolio shall consist solely of Shares. The FCPE will not engage in any of the investment practices described in section 2.6 of National Instrument 81-102 Mutual Funds.
16. In accordance with the Employee Shareholder Plan 2003, Fund Participants will have the right to pay for the Units:
 - (a) in full on the acquisition date of the Units; or
 - (b) in equal monthly instalments over a 12 month period following the acquisition of the Units.
17. The Fund Participants will purchase the Units of Relais for a price equal to the average opening price of the Shares for the 20 trading days on the Paris Bourse First Market (the "Reference Price") less a 20% discount. Then, Relais will be entitled to a discount on the purchase of the Shares of a maximum of 20% based on the tax laws of the applicable jurisdiction. As a result of this discount, the Fund Participants will be prohibited from disposing of the Units subject to certain prescribed exemptions, until the first day of the seventh month of the fifth financial year from the date of issuance (the "Unit Hold Period").
18. The initial value of a Unit in Relais will be equal to the value of the Share it represents, which is based on the Reference Price set by the Filer's Managing Board. The net asset value of the Units will be calculated weekly in euros and

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reported to the COB periodically. In accordance with the rules of the FCPE, the Manager will be required to reinvest all dividends and income (inclusive of tax credits attaching to the reinvested income) paid on the Shares held by the FCPE, thus increasing the value of the Units.

19. The Canadian Participants participating in the Employee Offering will not be induced to subscribe for the Units by expectation of employment or continued employment.
20. Units of the Fund will be non-transferable other than in accordance with the regulation of the FCPE and of the Plan. Upon request (after the Unit Hold Period) to the Custodian and Account Keeper, the Custodian and Account Keeper, as account holder, will redeem the Units and pay to the holder thereof an amount calculated as the value of the Shares at such time and the *pro rata* portion of any reinvested income described in paragraph 18 above.
21. The FCPE, due to board lot sizes, will be able to liquidate positions in the Shares more readily and at a better price than an individual investor.
22. FCPE management fees and the costs of redemption of the Units, will be paid by the Filer during the course of employment of a Fund Participant. Account keeping costs shall cease to be borne by the Filer after a period of one year following the cessation of employment, except for employees in retirement or early retirement, for whom the Filer shall continue to bear account keeping costs. From then on, such costs shall be borne by the relevant former Fund Participant's beneficiaries.
23. The Canadian Participants will receive an information package in the English and French languages which will include an enrolment form and a brochure describing the FCPE, including the Canadian income tax consequences of purchasing the Units (the "Information Documents"). Upon request, Fund Participants will also be entitled to receive the copies of the regulation of the FCPE. The enrolment form will contain a statement that, as a consequence of this decision, the Units being granted to the Canadian Participants will be subject to the resale restrictions under applicable securities laws. The enrolment form will also contain an acknowledgement by the Canadian Participants that they are aware of the risk involved in purchasing the Units and that they are able to withstand any loss associated with the purchase of the Units. Canadian Participants will be entitled to receive continuous disclosure materials of the Filer, which are furnished to shareholders generally.

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24. In accordance with the Employee Offering, the Filer will issue an Option to each Fund Participant for each Share indirectly held by that Fund Participant. The exercise price of the Options will be equal to the Reference Price.
25. The Custodian and Account Keeper will set up an individual account for each Canadian Participant. A yearly report will be provided by the Custodian and Account Keeper stating the number of Options held, the exercise price and expiry date thereof.
26. The Options will be exercisable after the expiration of a four year hold period (the "Option Hold Period"), which commences upon the date of grant, subject to early release upon death of the holder, whereby the Permitted Transferee will have a six month period from the date of death to exercise the Option. The Options may also be exercised by former Canadian Participants in accordance with the Employee Shareholder Plan 2003. The Options have a term of 10 years and are non-transferable other than in accordance with their terms.
27. In accordance with the Employee Shareholder Plan 2003, Fund Participants will have the option to participate in a simultaneous transfer exercise procedure, whereby the Custodian and Account Keeper will arrange for the immediate sale of the underlying Shares issued upon exercise of the Options in the market to assist the funding of the exercise price of the Option.
28. The Shares issued upon exercise of the Options may be sold by Qualifying Employees through the facilities of the Paris Bourse First Market, following completion of the Option Hold Period.
29. The issuance of the Options to Canadian Participants is voluntary and is not a condition of employment or continued employment.
30. As of the date hereof and after giving effect to the Employee Offering, Canadian residents do not and will not own (which term, for the purposes of this paragraph, is deemed to include all Shares held through the FCPE on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.
31. The FCPE will not be able to rely on the employee exemptions contained in the Legislation because there is no employment relationship between the FCPE and the Canadian Participants.

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32. The Manager will not be able to rely on the adviser Registration Exemptions contained in the Legislation because it does not fall under any of the specified categories.
33. The Custodian and Account Keeper will not be able to rely on the dealer Registration exemptions contained in the Legislation because it does not fall under any of the specified categories.
34. The Filer will not be able to rely on the statutory Prospectus Exemption and the Registration Exemption because it is not a reporting issuer under the Legislation of Quebec.
35. In Quebec, there is no Prospectus Exemption and Registration Exemption for the resale of the Shares under the Employee Shareholder Plan 2003 as the Filer is not a reporting issuer under Quebec Legislation.
36. In British Columbia, Permitted Transferees may not have a Registration Exemption available to them with respect to the resale of the Shares acquired upon exercise of Options under the Employee Shareholder Plan 2003.
37. Because there is no market for the Shares in Canada and none is expected to develop, any resale of the Shares acquired under the Employee Shareholder Plan 2003 will be made through the facilities of the Paris Bourse First Market, and through persons duly registered or exempted under applicable laws.

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:

1. The trades in the Units to or with the Canadian Participants in connection with the Employee Offering are exempt from the Registration Requirement and Prospectus Requirement of the Legislation provided that the first trade in any Units issued pursuant to this Decision shall be a distribution;
2. The adviser Registration Requirement of the Legislation shall not apply to the Manager in connection with its activities as manager of the Fund provided that the authority of the Manager and the investment activities of the Fund are limited to the activities described in paragraphs 10, 15 and 18;

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3. The dealer Registration Requirement of the Legislation shall not apply to the Custodian and Account Keeper in connection with its activities as dealer, on behalf of the Canadian Participants, relating to the redemption of Units outside of Canada and the resale of Shares acquired by the Canadian Participants through the facilities of the Paris Bourse First Market;
4. The Prospectus Requirement and the Registration Requirement of the Quebec Legislation shall not apply to the distribution by the Filer of Options and of the Shares acquired upon an exercise of options under the Employee Shareholder Plan 2003 to Quebec Employees;
5. The requirements contained in the Legislation of Quebec relating to the requirements contained in Policy Q-3, subsections 2.1, (2), (4), (6) and (10) thereof, relating to (i) the maximum expiry period after termination of employment (ii) the pricing of options, (iii) the pricing of Units, and (iv) prior Commission des valeurs mobilières du Québec approval of any modification to the Employee Shareholder Plan 2003 or the terms of an option thereunder shall not apply to the Employee Shareholder Plan 2003; and
6. The Prospectus Requirement of the Quebec Legislation shall not apply to the first trades in the Shares acquired under the Employee Shareholder Plan 2003 provided that such trades are deemed distributions or primary distributions to the public, and the Registration Requirement of the Legislation shall not apply to the first trades in Shares acquired under the Employee Shareholder Plan 2003 provided that:
 - (i) in British Columbia, with respect to the Permitted Transferees, the conditions in subsection (1) of section 2.14 of Multilateral Instrument 45-102 are satisfied; or
 - (ii) in Quebec, the alienation of the Shares is made between Quebec Employees or outside Quebec.

DATED October 27, 2003.

Jean Lorrain
Directeur de la conformité et de l'application

Eve Poirier
La chef du Service du financement des sociétés