

2007 BCSECCOM 455

June 28, 2007

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 - Filer wants relief from self-dealing requirements and conflict of interest reporting requirements in connection with mutual fund mergers - One of the funds that is merging is a non-redeemable investment fund or non-reporting issuer; if both funds were conventional mutual funds to which NI 81-102 applies, they would be able to rely on the exemption provided in NI 81-102; the self-dealing provisions only apply for a moment in time; the merger is required to be approved by unitholders of the terminating fund; unitholders of the terminating fund received an information circular for the unitholders meeting to approve the merger; the simplified prospectus and annual information form of the continuing fund was incorporated by reference in the information circular

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Ontario,
New Brunswick and Nova Scotia
(the “Jurisdictions”)

and

In the Matter of
the Securities Act, R.S.O. 1990, C. S.5, as Amended
(the “Act”)

and

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

and

In the Matter of
Gluskin Sheff + Associates Inc.

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(the “Filer”)

and

The GS+A RRSP Fund
(the “Fund”)

MRRS Decision Document

Background

The Ontario Securities Commission (the “Commission”) and the local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions have received an application from the Filer for:

- (i) a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, for the purpose of the proposed merger (the “Merger”) of the Fund with The GS+A RRSP Fund (2007) (the “New Fund”), the Filer is exempt from the restriction contained in the legislation of the Jurisdictions (the “Legislation”) prohibiting a portfolio manager, or in British Columbia, a mutual fund or a responsible person, from knowingly causing an investment portfolio managed by it to purchase or sell the securities of any issuer from or to the account of a responsible person, or any associate of a responsible person or the portfolio manager (the “Self-Dealing Relief”); and
- (ii) a ruling, in Ontario only, pursuant to subsection 74(1) of the Act, that distributions of units of the New Fund pursuant to the Merger to unitholders of the Fund (“Fund Unitholders”) that are Non-Exempt Purchasers (as that term is defined below), are not subject to the dealer registration and prospectus requirements under sections 25 and 53 of the Act (the “Dealer Registration and Prospectus Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this Application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

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Representations

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

1. The Fund is an open-ended unincorporated investment trust that was created under the laws of the Province of Ontario pursuant to a declaration of trust dated June 27, 1997, as the same may be amended, supplemented or restated from time to time. The Fund is a reporting issuer in each of the Jurisdictions. Units of the Fund (the "Trust Units") are qualified for distribution in each of the Jurisdictions under a simplified prospectus and annual information form dated June 26, 2006.
2. The New Fund will be an open-ended unincorporated investment trust established under the laws of the Province of Ontario on or about July 1, 2007. The New Fund will be a pooled fund and therefore will not be a reporting issuer in the Jurisdictions. The New Fund will be identical to the Fund in terms of its investment objectives and strategies and in terms of management fees charged.
3. The Filer is the manager, portfolio manager and trustee of the Fund and will be the manager, portfolio manager and trustee of the New Fund. The Filer is registered with the Commission as an Investment Counsel, Portfolio Manager, Limited Market Dealer and Mutual Fund Dealer. The Filer has equivalent registration in British Columbia, Alberta, Manitoba, Nova Scotia and New Brunswick. The Filer's head office is located at BCE Place, 181 Bay Street, Suite 4600, Toronto, Ontario, Canada.
4. To the knowledge of the Filer, the Fund is not in default of any of its obligations under applicable securities legislation in the Jurisdictions.
5. The Fund is the only mutual fund managed by the Filer that is currently established as a reporting issuer in each of the Jurisdictions. All other funds managed by the Filer are pooled funds offered on a private placement basis.
6. The Filer offers discretionary portfolio management services to individuals, corporations and other entities seeking wealth management or related services through a managed account. Consequently, all investors currently invested in the Fund hold Trust Units through managed accounts fully managed by the Filer.
7. In light of the Fund's size, the types of investors currently invested in the Fund, and the escalating costs of operating the Fund as a reporting issuer, management of the Filer believes that the operation of the Fund as a pooled

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fund is the preferable means by which the Fund should be operated on an ongoing basis. This would provide operational consistency with all other funds managed by the Filer.

8. The Filer, in its capacity as trustee and manager of the Fund, has considered alternatives for the Fund, and intends to seek the approval of Fund Unitholders to reorganize the Fund by way of Merger with the New Fund.
9. Pursuant to the Merger and subject to certain limitations, all of the assets of the Fund will be transferred to the New Fund in exchange for units of the New Fund (and an assumption of the Fund's liabilities) and the Trust Units will be redeemed by the Fund. In connection with such redemption, Fund Unitholders will receive units of the New Fund on a tax-deferred "rollover" basis based on the tax cost of the Trust Units on the date the Merger is to be effective.
10. If Fund Unitholders approve the Merger at the special meeting of Fund Unitholders (the "Special Meeting") to be held for that purpose on June 29, 2007, and provided all regulatory approvals are received, the effective date of the Merger will be on or about July 1, 2007 (the "Effective Date").
11. The Fund's Information Circular in connection with the Special Meeting was filed and mailed to Fund Unitholders on June 7, 2007.
12. The Merger will result in Fund Unitholders becoming holders of units in a non-reporting issuer (the New Fund). Accordingly, all Fund Unitholders who:
 - (i) do not qualify as accredited investors and are unable to rely on any other available exemption from compliance with the prospectus and registration requirements under National Instrument 45-106 *Prospectus and Registration Exemptions*, or
 - (ii) do not fit within the list of managed account clients listed in the Ruling and Order of the Commission dated August 5, 2005, pursuant to which the Filer, the Fund and future pooled funds managed by the Filer, were granted relief from the dealer registration and prospectus requirements of the Act to permit the distribution of pooled fund units to such clients on an exempt basis,

will not be permitted to continue to hold units in the New Fund following the Merger. The Fund Unitholders described in paragraphs (i) and (ii) above are collectively referred to in this decision as "Non-Exempt Purchasers".

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13. As at May 25, 2007, 152,720,190.069 Trust Units were issued and outstanding with a value of approximately \$419 million to 1606 Fund Unitholders in total. Only 58 Fund Unitholders holding units with a value of approximately \$2.04 million are Non-Exempt Purchasers. In the absence of the requested Dealer Registration and Prospectus Relief, all 58 Non-Exempt Purchasers would have to be redeemed from the Fund before the Effective Date of the Merger.
14. Non-Exempt Purchasers whose Trust Units are redeemed by the Filer will need to seek alternative investments for the proceeds of such redemption. Additional time will be required following the Merger to provide Non-Exempt Purchasers with adequate time to seek out and consider alternative investments for the proceeds of the redemption.
15. In the absence of the requested Self-Dealing Relief, the Filer would not be able to effect the Merger. This is because the transfer of assets of the Fund to the New Fund in exchange for units of the New Fund would be considered to be a sale to the account of an “associate” of a responsible person (the Filer). The New Fund would be considered an “associate” by virtue of the Filer being the portfolio manager and trustee of both the Fund and the New Fund.

Decision

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

The Commission is satisfied that the relevant test contained in subsection 74(1) of the Act has been met.

The decision of the Decision Makers under the Legislation is that the requested Self-Dealing Relief is granted in connection with the Merger.

The decision of the Commission is that the requested Dealer Registration and Prospectus Relief is granted in connection with distributions of units of the New Fund to Non-Exempt Purchasers pursuant to the Merger provided that:

- (a) units of the New Fund are held by Non-Exempt Purchasers for a period of no longer than three months after the Effective Date, being October 1, 2007, by which date all units of the New Fund held by Non-Exempt Purchasers shall be redeemed;
- (b) condition (a) above does not apply in respect of Non-Exempt Purchasers who, by no later than October 1, 2007, top up their holdings in the New Fund to a total of \$150,000, in which case they may continue to hold units

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of the New Fund beyond October 1, 2007, as well as make subsequent purchases of units of the New Fund on a basis that is exempt from the dealer registration and prospectus requirements in sections 25 and 53 of the Act.

Wendell S. Wigle
Commissioner
Ontario Securities Commission

David L. Knight
Commissioner
Ontario Securities Commission