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March 28, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered mutual fund dealer wants an exemption from the requirement to be a member of the MFDA - The dealer's principal business is managing the funds; selling mutual funds is incidental to the dealer's business; the dealer will not sell the funds directly to the public; the dealer has agreed to conditions of registration that restricts its selling of funds only to a limited category of investors such as past clients, unsolicited clients, employees, directors, officers, partners, relatives, and other funds; new clients of the dealer will receive notice from the dealer that it is not a member of the MFDA.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, s. 48

**In the Matter of the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia,
Newfoundland and Labrador, Northwest Territories, Nunavut, and Yukon
(the Jurisdictions)**

and

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

and

In the Matter of Brandes Investments Partners & Co. (the Registrant)

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 Registrant under the securities legislation of the Jurisdictions (the **Legislation**) for a decision (the **Requested Relief**) exempting the Registrant from requirements (collectively, the **MFDA Membership Requirements**) in the Legislation that would require the Registrant, as an applicant for registration under the Legislation as a dealer in the category of "mutual fund dealer", to file an application for, and obtain, membership in the Mutual Fund Dealers Association of Canada (the **MFDA**).

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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, including the attached Appendix (the **Appendix**) to this decision, unless they are otherwise defined in this decision or the Appendix.

Representations

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

1. The Registrant is a corporation subsisting under the laws of the Province of Nova Scotia.
2. The Registrant has applied, or will soon apply, for registration under the Legislation of each Jurisdiction as a dealer in the category of “mutual fund dealer” (or the equivalent).
3. The Registrant is currently registered under the Legislation of Ontario as an adviser, in the categories of “investment counsel” and “portfolio manager”, and, as a dealer, in the category of “limited market dealer”.
4. The Registrant’s principal business activity is managing mutual funds, the securities of which are generally offered for sale to the public in some or all of the provinces and territories of Canada pursuant to one or more prospectuses for which a receipt will have been issued under applicable Canadian securities legislation.
5. In each Jurisdiction, after the Registrant obtains registration as a mutual fund dealer under the Legislation of the Jurisdiction, the Registrant proposes to engage in certain trading activities that are, in the case of each Jurisdiction, incidental to its principal business activity in that Jurisdiction.
6. For each Jurisdiction, the Registrant has agreed to the imposition of terms and conditions on its registration as a mutual fund dealer under the Legislation of the Jurisdiction as set out in the Appendix (which outlines the activities the Registrant has agreed to restrict itself to in connection with its application for this decision).

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7. Before the Registrant makes a trade with any client pursuant to its registration in a Jurisdiction as a mutual fund dealer, the Registrant shall provide to the client prominent written notice that:

The Registrant is not currently, and does not intend to become, a member of the Mutual Fund Dealers Association of Canada; consequently, clients of the Registrant will not have available to them investor protection benefits that would otherwise derive from membership of the Registrant in the MFDA, including coverage under MFDA Investor Protection Corporation (being the investor protection plan for clients of members of the MFDA).

Decision

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 of each Jurisdiction is that the Requested Relief is granted provided that:

For each Jurisdiction, the Registrant complies with the terms and conditions on its registration under the Legislation of the Jurisdiction as a mutual fund dealer as set out in the Appendix.

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Appendix to MRRS Decision

Terms and Conditions on the Registration of Brandes Investment Partners & Co. as a Mutual Fund Dealer under the Legislation of the Jurisdiction

Interpretation

1. In this Appendix, except as otherwise defined below or unless the context otherwise requires, defined terms contained in National Instrument 14-101 *Definitions* shall have the same meaning in this Appendix.
2. In this Appendix,
 - (a) “Adviser” means an adviser as defined in the Legislation of the Jurisdiction;
 - (b) “Client Name Trade” means, for the Registrant, a trade to, or on behalf of, a person or company, in securities of a mutual fund, that is managed by the Registrant or an affiliate of the Registrant, where, immediately before the trade, the person or company is shown on the records of the mutual fund or of an other mutual fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund, and the trade consists of:
 - (A) a purchase, by the person or company, through the Registrant, of securities of the mutual fund; or
 - (B) a redemption, by the person or company, through the Registrant, of securities of the mutual fund;and where, the person or company:
 - (C) is a client of the Registrant that was not solicited by the Registrant; or
 - (D) was an existing client of the Registrant on the Effective Date;
 - (c) “Effective Date” means **[for each Jurisdiction, insert date Registrant obtains registration as a mutual fund dealer under the Legislation of the Jurisdiction]**

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- (d) “Employee”, for the Registrant, means:
 - (A) an employee of the Registrant;
 - (B) an employee of an affiliated entity of the Registrant; or
 - (C) an individual that is engaged to provide, on a *bona fide* basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;
- (e) “Employee”, for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:
 - (A) the Registrant or an affiliated entity of the Registrant; or
 - (B) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;
- (f) “Executive”, for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;
- (g) “Executive”, for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;
- (h) “Exempt Trade”, for the Registrant, means:
 - (i) for each Jurisdiction, a trade in securities of a mutual fund that is made between a person or company and an underwriter acting as purchaser or between or among underwriters;
 - (ii) for Ontario, a trade in securities of a mutual fund for which the Registrant would have available to it an exemption from the dealer registration requirement under the Legislation if the Registrant were

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not a “market intermediary” as such term is defined in section 204 of the Ontario Regulation;

- (iii) for each Jurisdiction other than Ontario, a trade in securities of a mutual fund for which the Registrant would have available to it an exemption from the dealer registration requirement under the Legislation; or
 - (iv) for each Jurisdiction, a trade in securities of a mutual fund for which the Registrant has received a discretionary exemption from the dealer registration requirement under the Legislation;
- (i) “Fund-on-Fund Trade” means a trade that consists of:
- (i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;
 - (ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a person or company where the person or company, an affiliated entity of the person or company, or an other person or company is, or will become, the counterparty in a specified derivative or swap with another mutual fund; or
 - (iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:
 - (A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or
 - (B) a person or company that acquired the securities where the person or company, an affiliated entity of the person or company, or an other person or company is, or was, the counterparty in a specified derivative or swap with another mutual fund; and
- where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;
- (j) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly

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or indirectly in furtherance of an other trade in securities of a mutual fund, where the other trade consists of:

- (i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
- (ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund;

and where, in each case, the purchase or sale is made by or through an other registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

- (k) “Managed Account” means, for the Registrant, an investment portfolio account of a client under which the Registrant, pursuant to a written agreement made between the Registrant and the client, makes investment decisions for the account and has full discretionary authority to trade in securities for the account without obtaining the client’s specific consent to the trade;
- (l) “Managed Account Trade” means, for the Registrant, a trade to, or on behalf of, a Managed Account of the Registrant, where the trade consists of a purchase or redemption, through the Registrant of securities of a mutual fund, that is made on behalf of the Managed Account, where, in each case:
 - (i) the Registrant is the portfolio adviser to the mutual fund;
 - (ii) the mutual fund is managed by the Registrant or an affiliate of the Registrant; and
 - (iii) either of:
 - (A) the mutual fund is prospectus-qualified in the Jurisdiction; or
 - (B) the trade is not subject to either the prospectus requirement or the dealer registration requirement under the Legislation of the Jurisdiction;
- (m) “Mutual Fund Instrument” means National Instrument 81-102 *Mutual Funds*, as amended;

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- (n) “Ontario Regulation” means R.R.O. 1990, Reg. 1015, as amended, made under the Securities Act, R.S.O. 1990, c. S.5, as amended;
- (o) “Permitted Client” means a person or company that is a client of the Registrant, and that is, or was at the time the person or company became a client of the Registrant:
 - (i) an Executive or Employee of the Registrant;
 - (ii) a Related Party of an Executive or Employee of the Registrant;
 - (iii) a Service Provider or an affiliated entity of a Service Provider;
 - (iv) an Executive or Employee of a Service Provider; or
 - (v) a Related Party of an Executive or Employee of a Service Provider;
- (p) “Permitted Client Trade” means, for the Registrant, a trade to a person, who is a Permitted Client or who represents to the Registrant that he or she is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliate of the Registrant, and the trade consists of a purchase or redemption, by the person, through the Registrant, of securities of the mutual fund;
- (q) “Pooled Fund Rule” means, for the Registrant, and for a Jurisdiction, a rule or other regulation under the Legislation of the Jurisdiction that relates, in whole or in part, to the distribution of securities of a mutual fund and/or non-redeemable investment fund, other than pursuant to a prospectus for which a receipt has been under the Legislation, made by the Registrant to or on behalf of a Managed Account, but does not include National Instrument 45-106 *Prospectus and Registration Exemption* or BC Instrument 45-505 Alternative Reporting Requirements for Exempt Distributions of Securities of Eligible Pooled Funds;
- (r) “Registered Plan” means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the *Income Tax Act* (Canada);
- (s) “Registrant” means Brandes Investment Partners & Co.;
- (t) “Related Party”, for a person, means an other person who is:

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- (i) the spouse of the person;
- (ii) the issue of:
 - (A) the person,
 - (B) the spouse of the person, or
 - (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
- (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
- (iv) the issue of any person referred to in paragraph (iii) above;
- (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
- (vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing; or
- (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
- (u) “securities”, for a mutual fund, means shares or units of the mutual fund;
- (v) “Seed Capital Trade” means a trade in securities of a mutual fund made to a persons or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument; and
- (w) “Service Provider” means:
 - (i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;
 - (ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
 - (iii) a person or company that provides or has provided professional, consulting, technical, management or other services to a mutual fund

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that is managed by the Registrant or an affiliated entity of the Registrant.

- 3.(1) In this Appendix, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.
- (2) In this Appendix, a person or company is considered to be controlled by a person or company if
 - (a) in the case of a person or company
 - (i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and
 - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
 - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or
 - (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (3) In this Appendix, a person or company is considered to be a subsidiary entity of another person or company if
 - (a) it is controlled by
 - (i) that other, or
 - (ii) that other and one or more persons or companies, each of which is controlled by that other, or
 - (iii) two or more persons or companies, each of which is controlled by that other; or
 - (b) it is a subsidiary entity of a person or company that is that other's subsidiary entity.

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4. In this Appendix:
 - (a) “issue” and “sibling” includes any person having such relationship through adoption, whether legally or in fact;
 - (b) “parent” and “grandparent” includes a parent or grandparent through adoption, whether legally or in fact;
 - (c) “registered dealer” means a person or company that is registered under the Legislation of the Jurisdiction as a dealer in a category that permits the person or company to act as dealer for the subject trade; and
 - (d) “spouse”, for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.
5. In this Appendix, any terms that are not otherwise defined in National Instrument 14-101 *Definitions* or specifically defined above shall, unless the context otherwise requires, have the meaning:
 - (a) specifically ascribed to such term in the Mutual Fund Instrument; or
 - (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Legislation of the Jurisdiction.

Restricted Registration: Permitted Activities

6. The registration of the Registrant as a mutual fund dealer under the Legislation of the Jurisdiction shall be for the purposes only of trading by the Registrant in securities of a mutual fund where the trade consists of:
 - (a) a Client Name Trade;
 - (b) an Exempt Trade;
 - (c) a Fund-on-Fund Trade;
 - (d) an In Furtherance Trade;
 - (e) a Managed Account Trade, provided, at the time of the trade, the Registrant is registered under the Legislation of the Jurisdiction as an

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adviser in the categories of “investment counsel” and “portfolio manager” or their equivalent;

(f) a Permitted Client Trade; or

(g) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (f), the trades are limited and incidental to the principal business of the Registrant, and provided also that paragraph (e) will cease to be in effect one year after the coming into force, subsequent to March 28, 2006, of any Pooled Fund Rule.