

2005 BCSECCOM 445

June 22, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Business Associates Trades in securities to partners, and their trusts, corporations, and family members - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution to a business associate or partner - Trades in securities to partners, and their trusts, corporations, and family members - The trades are in securities of entities related to a business; the trades will only be to and among partners of the business, and a partner's spouse, corporation and trust; the trades are structured as such to permit partners to finance the business on a tax advantaged basis

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation

of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador
(the Jurisdictions)

and

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

and

In the Matter of KPMG Management Services LP, K Fund And K Sub-Trust
(collectively the Filers)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from KPMG Management Services LP (KPMG MSLP), K Fund and K Sub-Trust for decisions pursuant to the securities legislation of the Jurisdictions (the Legislation) that:

- (a) the distribution of units of KPMG MSLP (LP Units) and units of K Fund (K Fund Units) to Specified Investors (as defined below) will not

2005 BCSECCOM 445

be subject to the dealer registration and prospectus requirements contained in the Legislation (the Prospectus and Registration Requirements) (the Specified Investor Requested Relief); and

- (b) in Ontario, the distribution of units of K Sub-Trust (K Sub-Trust Units) and promissory notes of K Sub-Trust (Promissory Notes) to K Fund by K Sub-Trust will not be subject to the Prospectus and Registration Requirements, (the K Sub-Trust Requested Relief);

subject to certain terms and conditions.

Interpretation

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

In this decision, the term Specified Investor means

- (a) in the case of the distribution of LP Units by KPMG MSLP, a Qualified Person, as defined in paragraph 9; and
- (b) in the case of the distribution of K Fund Units by K Fund, the persons and companies described in paragraph 22.

Representations

The decision is based on the following facts represented by the Filers:

1. KPMG LLP is a limited liability partnership established under the laws of Ontario with 34 offices located in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.
2. The partners of KPMG LLP (KPMG LLP Partners) are approximately 400 chartered accountants or their Professional Corporations (as defined below).
3. A Professional Corporation is a corporation incorporated or continued under the laws of one of the provinces of Canada in which an individual practices, which holds, where required, a valid permit or license to practice its profession in such province and all of the shares of which are owned by and the only director of which is the individual.
4. KPMG Canada is a general partnership established under the laws of Ontario.

2005 BCSECCOM 445

5. The partners of KPMG Canada (KPMG Canada Partners) include (i) all of the KPMG LLP Partners and (ii) additional professionals who do not have the chartered accountant designation or their Professional Corporations. There are approximately 430 KPMG Canada Partners. In the balance of these representations, a reference to a KPMG Canada Partner in relation to a Professional Corporation of an individual shall include such individual.
6. KPMG MSLP is a limited partnership established under the laws of Ontario which carries on the business of providing management and administrative services to KPMG LLP and KPMG Canada and any other entity associated with either or both of KPMG LLP or KPMG Canada. These services are provided pursuant to services agreements entered into by KPMG MSLP, KPMG LLP and KPMG Canada. KPMG MSLP may also make interest-bearing loans to KPMG LLP.
7. KPMG MSLP is not and has no present intention of becoming a reporting issuer in any of the Jurisdictions.
8. The general partner of KPMG MSLP is KPMG Management Services Inc. (General Partner), a corporation incorporated under the *Canada Business Corporations Act*, all of the issued and outstanding shares of which are beneficially owned by KPMG LLP.
9. KPMG MSLP will issue LP Units from time to time to any of the following persons or companies (collectively, the Qualified Persons and individually, a Qualified Person):
 - (a) a KPMG Canada Partner; or
 - (b) a family trust, the beneficiary or beneficiaries of which are any one or more of:
 - (i) a KPMG Canada Partner;
 - (ii) the spouse or common-law partner of an individual named in (i);
 - (iii) the issue of an individual named in (i);
 - (iv) the issue of an individual named in (ii); and
 - (v) the parent, spouse or common-law partner of a parent, grandparent, sibling, half-sibling, issue of a sibling, uncle, aunt

2005 BCSECCOM 445

and children of an uncle or aunt of an individual named in (i) or (ii),

each, a Family Trust; or

- (c) a trust, the indirect beneficiaries of which are any one or more of a KPMG Canada Partner, the spouse or common-law partner of a KPMG Canada Partner, the RRSP or RRIF of a KPMG Canada Partner or of the spouse or common-law partner of a KPMG Canada Partner.
10. No Qualified Person that holds an LP Unit (Limited Partner) may sell, transfer, assign, gift, exchange, mortgage, pledge, charge or otherwise dispose of or encumber or deal with any LP Unit held by such Limited Partner, except upon substitution of the Trustee of a Limited Partner with a new Trustee or upon cancellation of the LP Unit.
 11. As the LP Units are not transferable, except as described above, no market has developed or will develop for the LP Units.
 12. If (i) a Limited Partner ceases to be a Qualified Person, (ii) the KPMG Canada Partner who, or whose Family Trust, is the Limited Partner ceases to be a KPMG Canada Partner for any reason, (iii) the Limited Partner purports to sell, transfer, assign, gift, exchange, mortgage, pledge, charge or otherwise dispose of or encumber or deal with his, her or its LP Units, or (iv) such Limited Partner becomes insolvent or bankrupt or makes a filing or gives a notice of intention to make a proposal or assignment, such Limited Partner will cease to be a Limited Partner and will be entitled to receive from KPMG MSLP, the amount of \$100 in respect of each LP Unit held and the amount of all allocations on such LP Unit to the end of the month in which the partnership terminates as to such Limited Partner.
 13. Profits and losses of KPMG MSLP are currently allocated as follows: 0.01% to the General Partner and 99.99% to the Limited Partners.
 14. Within 120 days of the end of every financial year, the General Partner will prepare and submit, or cause to be prepared and submitted, to the Limited Partners financial statements (unaudited) comprised of a balance sheet as at the financial year end and a statement of income and a statement of cash flow of KPMG MSLP for the year then ended.
 15. No beneficiary of a Family Trust, other than the KPMG Canada Partner, will directly or indirectly contribute money or other assets to the Family Trust in order to finance the acquisition of LP Units, or will be liable for any loan or

2005 BCSECCOM 445

other financing obtained by the Family Trust for that purpose. No beneficiary of a Family Trust, other than the KPMG Canada Partner and any other beneficiary who is also a trustee, will be involved in the making of any investment decision of the Family Trust.

16. KPMG Canada Partners have not been and will not be induced to purchase LP Units by expectation of status or continued status as a partner of KPMG Canada or KPMG LLP.
17. In addition to directly investing in LP Units as described above, a KPMG Canada Partner, the spouse or common law partner of a KPMG Canada Partner, the RRSP or RRIF of a KPMG Canada Partner and the RRSP or RRIF of his or her spouse or common-law partner will be permitted to indirectly invest in LP Units through a series of trusts and to indirectly loan money to KPMG MSLP and KPMG LLP as described below.
18. KPMG Canada Partners, the spouse or common-law partner of a KPMG Canada Partner, the RRSP or RRIF of a KPMG Canada Partner and the RRSP or RRIF of his or her spouse or common-law partner may choose to purchase K Fund Units.
19. K Fund will be a trust established by a trust indenture under the laws of the Province of Ontario.
20. K Fund will not be a reporting issuer and it will not offer securities under a simplified prospectus.
21. The trustees of K Fund will be three KPMG Canada Partners.
22. The unitholders of K Fund (K Fund Unitholders) will consist entirely of (i) KPMG Canada Partners, (ii) the spouses or common law partners of KPMG Canada Partners, (iii) RRSPs or RRIFs of KPMG Canada Partners and (iii) the RRSPs or RRIFs of spouses or common-law partners of KPMG Canada Partners.
23. K Fund Units will be purchased by K Fund Unitholders for cash, at an initial price of \$100 per K Fund Unit, payable on an instalment basis.
24. Each K Fund Unit is a voting unit which represents an undivided beneficial interest in K Fund. Pursuant to the trust indenture, K Fund Units will be redeemable at the demand of the holder and K Fund can purchase K Fund Units for cancellation. K Fund will redeem the K Fund Units of a KPMG

2005 BCSECCOM 445

Canada Partner upon the retirement or withdrawal of such KPMG Canada Partner.

25. Each prospective K Fund Unitholder will be provided with an offering document containing prospectus-level disclosure relating to an investment in K Fund (the "Offering Document").
26. No one to whom an Offering Document is delivered will be under any obligation to make an investment in K Fund Units.
27. K Fund will use the proceeds received from the issuance of K Fund Units to purchase K Sub-Trust Units and make loans to K-Sub Trust which will be evidenced by Promissory Notes.
28. K Fund will make distributions to K Fund Unitholders in the form of cash or additional K Fund Units.
29. As the K Fund Units will not be transferable other than between a KPMG Canada Partner and the spouse or common-law partner of such KPMG Canada Partner and their respective RRSPs and RRIFs (Permitted Transferees), no market will develop for the K Fund Units.
30. K Fund will own 100% of the K Sub-Trust Units and all of the promissory notes issued by K Sub-Trust.
31. K Sub-Trust will be a trust established under the laws of Ontario.
32. K Sub-Trust will not be a reporting issuer and it will not offer securities under a simplified prospectus.
33. The trustees of K Sub-Trust will be three KPMG Canada Partners (who will not be the same persons as the trustees of K Fund).
34. K Sub-Trust will receive cash from K Fund and use the cash to purchase LP Units and indirectly make loans to KPMG LLP and KPMG MSLP through other trusts, corporations and partnerships.
35. K Sub-Trust will own approximately 50% of the LP Units. K-Sub Trust will not purchase or otherwise acquire securities other than
 - (a) The LP Units, and

2005 BCSECCOM 445

- (b) securities relating to direct or indirect loans to KPMG LLP and KPMG MSLP.
- 36. K Sub-Trust may issue additional Promissory Notes to K Fund from time to time for various purposes, including in payment of income distributions.
- 37. As the K Sub-Trust Units and Promissory Notes will not be transferable, other than for cancellation, no market will develop for the K Sub-Trust Units or Promissory Notes.
- 38. The primary purpose of the offering structure is to facilitate retirement planning for KPMG Partners.

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;

Decision

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

The decision of the Decision Makers under the Legislation is that the Specified Investor Requested Relief is granted provided that,

- (a) Prior to the issuance of LP Units and K Fund Units to Specified Investors, the Filers will obtain a written statement (a "Statement") from the Specified Investor acknowledging receipt of a copy of the Decision Document and further acknowledging the subscriber's understanding that the right to receive continuous disclosure is not available to the Specified Investor in respect of the LP Units and K Fund Units;
- (b) Prior to the issuance of K Fund Units to a prospective K Fund investor, the Filers will ensure that
 - (i) the prospective K Fund investor has received a copy of the Offering Document (and any amendment or replacement Offering Document), and

2005 BCSECCOM 445

- (ii) a copy of the Offering Document (and any amendment or replacement Offering Document) has been delivered to each of the Decision Makers;
- (c) with respect to distributions of LP Units and K Fund Units to Specified Investors, the first trade in an LP Unit or a K Fund Unit that is not
 - (i) a redemption or cancellation of the LP Unit or the K Fund Unit in each case in accordance with its terms,
 - (ii) a transfer to a new trustee where there is a substitution of a trustee of a Limited Partner with a new trustee, or
 - (iii) a transfer of K Fund Units among Permitted Transferees,shall be deemed to be a distribution or primary distribution to the public.

It is further the decision of the Decision Maker in Ontario under the Legislation that the K Sub-Trust Requested Relief is granted provided that, with respect to distributions of K Sub-Trust Units and Promissory Notes by K Sub-Trust to K Fund, the first trade in such K Sub-Trust Units or Promissory Notes other than for redemption or cancellation shall be deemed to be a distribution.

Paul M. Moore

Robert L. Shirriff