

2002 BCSECCOM 868

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the prohibition against investing in the securities of a person who is a substantial securityholder of the manager of mutual funds, subject to certain conditions – applicant manages mutual fund which tracks the performance of a specified target index – manager is a wholly-owned subsidiary of a company whose shares form part of the target index

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 120(1), 120(2), 121(2)(a), and 123

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

AND

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

AND

IN THE MATTER OF CLARICA CANADIAN EQUITY INDEX FUND

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Makers”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Clarica Diversico Ltd. (“Diversico”), in its capacity as manager of Clarica Canadian Equity Index Fund (the “Fund”), for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the following restrictions (together, the “Investment Restrictions”) contained in the Legislation shall not apply in respect of investments made by the Fund in securities of C.I. Fund Management Inc. (“CIX”):

1. the restriction prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;
2. the restrictions prohibiting a mutual fund from knowingly making or holding an investment in an issuer in which any person or company who is a substantial

2002 BCSECCOM 868

security holder of the mutual fund, its management company or its distribution company has a significant interest; and

3. the restriction prohibiting a portfolio manager from knowingly causing an investment portfolio managed by it to invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and written consent of the client to the investment is obtained before the purchase.

AND WHEREAS pursuant to the Mutual Reliance Review System (“MRRS”) for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Diversico has represented to the Decision Makers as follows:

1. The Fund is an open-end mutual fund trust established under the laws of Ontario. Units of the Fund are qualified for distribution in each of the Jurisdictions pursuant to a simplified prospectus and annual information form dated December 18, 2001, as amended. The Fund is a reporting issuer under the securities legislation of each of the Jurisdictions.
2. The Fund is an “index mutual fund” as defined in National Instrument 81-102 Mutual Funds. The investment objective of the Fund is to provide long-term growth of capital by tracking the performance of a specified Canadian equity index, currently being the S&P/TSX Composite Index (the “Target Index”), by investing mainly in securities that are included in the Target Index in substantially the same proportion to the securities in the Target Index.
3. Pursuant to a purchase agreement dated May 22, 2002 between CIX, Sun Life Financial Services of Canada Inc. (“SLFS”) and others, CIX acquired all of the issued and outstanding shares of Diversico. In return, SLFS acquired approximately a 30% indirect interest in CIX. The foregoing transactions are referred to collectively as the “Transaction”.
4. Further to completion of the Transaction on July 25, 2002:
 - (a) Diversico became a wholly-owned subsidiary of CIX;
 - (b) CI Mutual Funds Inc. (“CIMF”), a wholly-owned subsidiary of CIX, has replaced its sister company, Diversico, as manager of the Fund. CIX is a “substantial security holder”(as such term is defined under the Legislation) of CIMF;

2002 BCSECCOM 868

- (c) SLFS, through its ownership of 30% of the outstanding shares of CIX, is a “substantial security holder” (as such term is defined under the Legislation) of CIX and, indirectly, of CIMF;
 - (d) SLFS has a direct or indirect “significant interest” (as such term is defined under the Legislation) in CIX.
5. TD Asset Management Inc. (“TDAM”) is the portfolio adviser to the Fund. It is anticipated that CIMF may replace TDAM as the portfolio adviser to the Fund. TDAM and CIMF are each hereinafter referenced to mean the “Portfolio Adviser”.
6. CIX and CIMF share common directors and officers. As such, CIMF and the directors and officers which it shares with CIX would be “responsible persons” (as such term is defined under the Legislation).
7. CIX is a reporting issuer under the securities legislation of each of the provinces of Canada. The common shares of CIX are listed and posted for trading on The Toronto Stock Exchange.
8. Among the securities comprising the Target Index of the Fund are common shares of CIX.
9. The portfolio of the Fund is not actively managed. All purchases and sales of portfolio securities of the Fund are determined by the composition of the Target Index and the weightings therein of the constituent securities. The number of securities in which the Fund actually invests from time to time depends upon the size and value of the assets of the Fund and the composition of the Target Index. The portfolio of the Fund is periodically rebalanced to track its Target Index as closely as possible while minimizing trading costs.
10. In order to track its Target Index following completion of the Transaction, the Fund must hold securities in CIX and may need to acquire additional securities of CIX in the future, contrary to the Investment Restrictions.
11. The deviation from the Investment Restrictions will not be the result of any active decision of CIMF or the Portfolio Adviser to increase the investment of the Fund in any particular issuer, but rather an indirect consequence of carrying out the investment objective of the Fund to match the performance of the Target Index.

2002 BCSECCOM 868

12. The investments by the Fund in common shares of CIX represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS the Decision Makers are satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision have been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Investment Restrictions do not apply to the investment, or the holding of an investment, by the Fund in securities of CIX;

PROVIDED THAT the portion of the Fund’s assets invested in securities of CIX is determined according to the Fund’s investment objective of tracking the performance of its Target Index by investing mainly in securities that are included in the Target Index in substantially the same proportion to the securities in the Target Index, and not pursuant to the discretion of CIMF or the Portfolio Adviser of the Fund.

DATED August 8, 2002.

Howard I. Wetston

Robert W. Korthals