

2007 BCSECCOM 703

November 23, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – A mutual fund manager wants relief from the self-dealing restrictions in section 127(1)(b) of the *Securities Act* to permit trades in portfolio securities between mutual funds managed by the filer or between those mutual funds and discretionary accounts managed by the filer - Each cross transaction of securities other than mortgages will comply with s. 6.1(2) of NI 81-107 *Independent Review Committees for Investment Funds*, except the requirement that the transaction be between investment funds to which NI 81-107 applies; each cross transaction of mortgages will comply with appropriate equivalent requirements; if securities are traded from a managed account, the managed account holder must have consented to trades from that account to a fund

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
British Columbia and Alberta
(the Jurisdictions)

and

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

and

In the Matter of
Phillips, Hager & North Investment Management Ltd.
(the Filer)

and

the PH&N Funds (as defined below)

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MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the restriction (the Securities Act Self-Dealing Restrictions) contained in the Legislation prohibiting a mutual fund or a responsible person (as defined in the Legislation) of a mutual fund from knowingly causing the mutual fund to purchase or sell securities of any issuer from or to the account of a responsible person does not apply to the purchase and sale of portfolio securities, including mortgages, between current and future mutual funds managed by the Filer or an affiliate of the Filer, or between such mutual funds and discretionary accounts managed by the Filer or an affiliate of the Filer (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

Interpretation

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

Representations

- ¶ 3 The Filer represents that:
- 1. the Filer is a company organized under the laws of British Columbia with a head office in Vancouver, British Columbia;
 - 2. the Filer is registered as an adviser in the category of portfolio manager and investment counsel (or its equivalent) under the Legislation;
 - 3. the Filer is the manager and promoter of the existing mutual funds listed in Appendix A that are either offered for sale pursuant to a simplified prospectus and annual information form filed in certain provinces and territories of Canada (Public Funds) or offered for sale on a private placement basis pursuant to prospectus exemptions under applicable securities legislation (Pooled Funds and together with the Public Funds, PH&N Funds), and the

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Filer or an affiliate of the Filer will be the manager and promoter of future PH&N Funds;

4. the Filer or an affiliate of the Filer is the principal portfolio adviser of the existing PH&N Funds, and the Filer expects that the Filer or an affiliate of the Filer will be the principal portfolio adviser of future PH&N Funds;
5. State Street Trust Company Canada is the trustee of the existing PH&N Funds, and the Filer expects that State Street Trust Company Canada or another trust company at arm's length to the Filer will be the trustee for future PH&N Funds;
6. the Filer or an affiliate of the Applicant may be the portfolio advisor for fully managed accounts held by clients of the Filer (Managed Accounts);
7. from time to time, there will be a significant outflow of cash from one PH&N Fund as a result of redemptions by one or more unit holders of one PH&N Fund switching its or their investment to another PH&N Fund or transferring its or their investment to a Managed Account;
8. in addition, from time to time the Filer may wish to transfer individual securities, including mortgages, held on behalf of a PH&N Fund or a Managed Account to a PH&N Fund in exchange for units of the other PH&N Fund (for example, a Managed Account with a large holding of bonds transferring its bonds to a fixed income-oriented PH&N Fund in exchange for units);
9. where there is a significant outflow of cash from one PH&N Fund in connection with redemptions, the Filer is required to sell portfolio securities to fund the redemptions (unless the applicable PH&N Fund holds a cash balance to fund the redemptions); where there is a significant inflow of cash into a PH&N Fund in connection with subscriptions for securities, the Filer is required to purchase portfolio securities with the subscription proceeds (unless the Filer determines it is in the best interests of the applicable PH&N Fund to hold the proceeds as cash pending investment);
10. the Filer is of the view that where the portfolio securities of the selling PH&N Fund or Managed Account are compatible with the investment objectives and strategies of the purchasing PH&N Fund or Managed Account, it may be in the best interests of the applicable PH&N Funds and/or Managed Accounts for the selling PH&N Fund or Managed Account to sell portfolio securities to the purchasing PH&N Fund or Managed Account (a Cross Transaction); the Filer will only engage in a Cross Transaction between PH&N Funds or between PH&N Funds and Managed Accounts if, in its view, engaging in a Cross

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Transaction as opposed to similar open-market trades is in the best interests of each of the parties to the trade;

11. Cross Transactions, in securities other than mortgages, will be executed through a registered dealer or otherwise be subject to market integrity requirements;
12. the Filer has established an independent review committee (IRC) for the Public Funds; although the Filer does not intend to establish a new IRC for the Pooled Funds, the Filer proposes to expand the mandate of the existing IRC to include the review and approval of the transactions covered by the Requested Relief;
13. National Policy Statement No. 29 (NP 29) sets out guidelines relating to investments in mortgages by a mutual fund that is subject to NP 29, including with respect to the determination of the net asset value of mortgages, and provides certain protections to investors in such funds; in Cross Transactions involving mortgages, the mortgages will be acquired at a price equal to the net asset value of the mortgages determined in accordance with the applicable Fund's valuation principles and NP 29 (or any successor policy or instrument);
14. each of the PH&N Funds and in the case of Alberta, each of the Managed Accounts is or will be a "responsible person" of each of the other PH&N Funds and in the case of Alberta, each PH&N Fund and other Managed Account, within the meaning of the Legislation;
15. the Filer was granted an exemption from the Securities Act Self-Dealing Restrictions by the Regulators pursuant to a decision dated March 10, 2006 (2006 BCSECCOM 138), which permits the Filer to cause the PH&N Funds and Managed Accounts to engage in Cross Transactions;
16. National Instrument 81-107 *Independent Review Committees for Investment Funds* (NI 81-107) came into force on November 1, 2006; pursuant to section 1.1 of NI 81-107, NI 81-107 only applies to an investment fund that is a reporting issuer; accordingly, NI 81-107 only applies to the Public Funds;
17. section 7.2 of NI 81-107 states that any exemption under a provision of securities legislation that was effective before NI 81-107 came into force and that deals with the matters that NI 81-107 regulates will expire one year after NI 81-107 comes into force (i.e., on November 1, 2007);
18. section 6.1(4) of NI 81-107 states that the Securities Act Self-Dealing Restrictions do not apply with respect to a purchase or sale of a security

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referred to in subsection 6.1(2) of NI 81-107 if the purchase or sale is made in accordance with that subsection; under subsection 6.1(2) of NI 81-107, the Securities Act Self-Dealing Restrictions do not apply if, at the time of the transaction, among other things, the investment fund is purchasing from, or selling to, another investment fund to which NI 81-107 applies;

19. the Securities Act Self-Dealing Restrictions will not apply to Cross Transactions involving the Public Funds if such Cross Transactions satisfy the requirements in subsection 6.1(2) of NI 81-107; accordingly, the Existing Relief deals with a matter that NI 81-107 regulates and will expire on November 1, 2007; and
20. in the absence of the requested relief, although the Filer may be permitted to cause the Public Funds to engage in Cross Transactions if such Cross Transactions satisfy the requirements in subsection 6.1(2) of NI 81-107, the Filer would be prohibited by the Securities Act Self-Dealing Restrictions (i) from causing the Public Funds to engage in Cross Transactions with Pooled Funds or Managed Accounts and (ii) from causing the Pooled Funds to engage in Cross Transactions with other Pooled Funds or Managed Accounts.

Decision

- ¶ 4 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 the Requested Relief is granted provided that:

- (a) each Cross Transaction of securities other than mortgages is made in accordance with section 6.1(2) of NI 81-107, other than the requirement that the transaction be between investment funds to which NI 81-107 applies;
- (b) with respect to each Cross Transaction of mortgages:
 - (i) the Cross Transaction has been approved by the IRC in accordance with section 5.2(2) of NI 81-107;
 - (ii) the mortgages are acquired at a price equal to the net asset value of the mortgages determined in accordance with the applicable Fund's valuation principles and NP 29 (or any successor policy or instrument);

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- (iii) the applicable Fund(s) keeps the written records required by section 6.1(2)(g) of NI 81-107; and
- (iv) the applicable Fund(s) receives no consideration and the only cost for the trade is the nominal cost incurred by the Fund(s) to print or otherwise display the trade;
- (c) if securities are being traded from a Managed Account, the Managed Account holder has consented to trades from that account to a PH&N Fund; and
- (d) where required, the Filer files reports of Cross Transactions in the forms and within the times required under the Legislation.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission

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Appendix A List of PH&N Funds

Public Funds

Phillips, Hager & North U.S. Equity Fund
Phillips, Hager & North Canadian Equity Plus Pension Trust
Phillips, Hager & North Bond Fund
Phillips, Hager & North Canadian Equity Fund
Phillips, Hager & North Dividend Income Fund
Phillips, Hager & North Vintage Fund
Phillips, Hager & North Canadian Money Market Fund
Phillips, Hager & North Canadian Growth Fund
Phillips, Hager & North Balanced Pension Trust
Phillips, Hager & North \$U.S. Money Market Fund
Phillips, Hager & North Balanced Fund
Phillips, Hager & North U.S. Growth Fund
Phillips, Hager & North Short Term Bond & Mortgage Fund
Phillips, Hager & North Small Float Fund
Phillips, Hager & North Canadian Equity Pension Trust
Phillips, Hager & North High Yield Bond Fund
Phillips, Hager & North Total Return Bond Fund
Phillips, Hager & North Global Equity Fund
Phillips, Hager & North Overseas Equity Fund
Phillips, Hager & North Overseas Equity Pension Trust
Phillips, Hager & North U.S. Dividend Income Fund
Phillips, Hager & North Community Values Bond Fund
Phillips, Hager & North Community Values Balanced Fund
Phillips, Hager & North Community Values Canadian Equity Fund
Phillips, Hager & North Community Values Global Equity Fund
Phillips, Hager & North Canadian Income Fund
Phillips, Hager & North Currency-Hedged U.S. Equity Fund
Phillips, Hager & North Currency-Hedged Overseas Equity Fund
BonaVista Global Balanced Fund
BonaVista Canadian Equity Value Fund

Pooled Funds

Phillips, Hager & North U.S. Pooled Pension Fund
Phillips, Hager & North Global Equity Pension Trust
Phillips, Hager & North Institutional S.T.I.F.
Phillips, Hager & North Long Bond Pension Trust
Phillips, Hager & North High Grade Corporate Bond Fund
Phillips, Hager & North Investment Grade CorporateBond Trust
Phillips, Hager & North Mortgage Pension Trust

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Phillips, Hager & North Absolute Return Fund
Phillips, Hager & North Income Equity Pension Trust
Phillips, Hager & North Enhanced Income Equity Pension Trust
Phillips, Hager & North PRisM – Short
Phillips, Hager & North PRisM – Mid
Phillips, Hager & North PRisM – Long
Phillips, Hager & North Long Mortgage Pension Trust
Phillips, Hager & North Long Corporate Bond Pension Trust
Phillips, Hager & North Long Duration Swap Fund
Phillips, Hager & North Foreign Bond Fund
Phillips, Hager & North PRisM Balanced Fund