

Headnote

MRRS – Revocation of prior decision and replacement relief granted from prospectus and registration requirements, reporting requirements and certain conflicts of interest requirements, all subject to certain conditions, in connection with trades by mutual funds of additional units to existing unitholders.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 72(3) and 144.

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., 223, 226, 227.

Rules Cited

Rule 45-501 – Exempt Distributions.

National Instruments Cited

National Instrument 33-105 - Underwriting Conflicts.

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, PRINCE EDWARD ISLAND,
SASKATCHEWAN AND ONTARIO**

AND

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

AND

**IN THE MATTER OF
SPROTT ASSET MANAGEMENT INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Saskatchewan and Ontario (the “Jurisdictions”) has received an application from Sprott Asset Management Inc. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”):

- (a) that the decision dated July 20, 2001 (the “Original Decision”) granted to Sprott Securities Inc. (the “Original Applicant”) by the Decision Makers in each of the Jurisdictions be revoked;
- (b) that a new decision be granted by the Decision Makers in each of Manitoba, New Brunswick, Newfoundland and Labrador and Prince Edward Island for an exemption from the requirement to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Registration and Prospectus Requirements”) contained in the applicable Legislation for certain additional trades in units (the “Units”) made to existing holders of Units in Sprott Hedge Fund L.P. II / Fonds de Couverture Sprott S.E.C. II (the “Partnership”) or in other limited partnerships or pooled fund trusts established by the Applicant or an affiliate of the Applicant and managed by the Applicant (the “Other Funds”);
- (c) that a new decision be granted by the Decision Makers in each Jurisdiction (other than the Decision Maker in Manitoba) for relief from certain requirements to report the trades in Units of the Partnership or Other Funds contained in the applicable Legislation (the “Reporting Requirements”), subject to certain conditions; and

- (d) that a new decision be granted by the Decision Makers in each of Ontario and Newfoundland and Labrador for relief from certain conflict of interest provisions contained in the applicable Legislation in connection with the distribution of Units of Sprott Hedge Fund L.P. (the “Original Partnership”), the Partnership or the Other Funds, subject to certain conditions;

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

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. The Applicant is a corporation incorporated under the laws of the Province of Ontario for the purpose of advising with respect to securities. The Applicant is registered under the applicable Legislation in Ontario as an investment counsel / portfolio manager and limited market dealer. The Applicant is responsible for the administrative management of the Original Partnership, the Partnership and Other Funds on a day-to-day basis.
2. The Original Partnership was formed under the laws of the Province of Ontario by filing a Declaration of Limited Partnership under the *Limited Partnerships Act* (Ontario) on October 27, 2000. An additional Declaration of Limited Partnership was filed on December 7, 2000 to add the French name of the Original Partnership, namely, “Fonds de Couverture Sprott S.E.C.”. Sprott GenPar Ltd. (“Sprott GenPar”), a corporation incorporated under the laws of the Province of Ontario is the general partner of the Original Partnership.
3. On February 8, 2002, in connection with a corporate reorganization (the “Reorganization”) of the Original Applicant, Sprott GenPar was sold by the Original Applicant to the Applicant. Subsequently, the Applicant was sold by the Original Applicant to Eric Sprott. Eric Sprott is the sole shareholder of the Applicant. In connection with the Reorganization, the Original Applicant assigned to the Applicant all of its rights and obligations under a portfolio management agreement with Sprott GenPar relating to the portfolio management of the Original Partnership. The Applicant now provides investment advisory services to the Original Partnership on the same terms and conditions as set out in such agreement.
4. On July 31, 2002, the Original Partnership was closed and Units of the Original Partnership are no longer available to be purchased by new and existing investors. On July 31, 2002, the Partnership was formed under the laws of the Province of Ontario by filing a Declaration of Limited Partnership under the *Limited Partnerships Act* (Ontario). Sprott GenPar is the general partner of the Partnership.

5. The Applicant makes available to its clients, from time to time, Units of the Partnership and the Other Funds. The Applicant is and will be responsible for the investment management of the assets of the Partnership and of the Other Funds.
6. The Applicant co-ordinates the distribution of the Units of the Partnership and will co-ordinate the distribution of Units of the Other Funds. The Units of the Partnership and the Other Funds will be distributed on a continuous basis and will be offered to residents in the Jurisdictions.
7. The distribution of the Units of the Partnership are, and the distribution of Units of the Other Funds will be, subject to the registration and prospectus requirements contained in the Legislation (the "Registration and Prospectus Requirements").
8. None of the Original Partnership, the Partnership or the Other Funds is, or expects to become, a "reporting issuer" (or equivalent) as such term is defined in the Legislation.
9. Each of the Original Partnership and the Partnership is, and each of the Other Funds will be, a "mutual fund" within the meaning of the Legislation. In addition, each of the Original Partnership and the Partnership is, and each of the Other Funds will be, a "mutual fund in Ontario" as defined in certain of the Legislation.
10. Each of the Original Partnership and the Partnership is, and each of the Other Funds will be, required by its constating document to deliver to holders of their respective Units ("Unitholders") annual audited financial statements within 90 days of the fiscal year end of the Original Partnership, New Partnership or Other Fund, as the case may be. Each of the Original Partnership and the Partnership also provides to their respective Unitholders, within 30 days of the end of each fiscal quarter, an unaudited performance report. In addition, the Original Partnership and the Partnership are, and the Other Funds will be, subject to the requirements to file and deliver financial statements in Ontario.
11. The Units of the Partnership and of the Other Funds will not be offered by a prospectus. However, an offering memorandum (containing rights of action and rescission as required under the Legislation of the applicable Jurisdictions) will be delivered to prospective investors in respect of the Partnership and the Other Funds.
12. The Units of the Original Partnership and of the Partnership are, and the Units of the Other Funds will be, redeemable at the request of the holder at their net asset value determined in accordance with the constating document of each of the Original Partnership, the Partnership and the Other Funds. The Original Partnership and the Partnership have, and the Other Funds may have, additional restrictions on the right to redeem.

13. The minimum initial investment (the “Initial Investment”) in Units of the Partnership and of the Other Funds by an investor will not be less than \$150,000 in Ontario, Saskatchewan and Nova Scotia; \$97,000 in British Columbia, Alberta, Manitoba, New Brunswick and Prince Edward Island; and \$100,000 in Newfoundland and Labrador (in each case, the “Prescribed Amount”). The minimum Initial Investment for a purchaser in Ontario, British Columbia or Alberta who is an “accredited investor” (as such term is defined in the Legislation in such Jurisdictions) may be less than the Prescribed Amount at the discretion of the Partnership or Other Funds, as the case may be.
14. The Initial Investment will be made in reliance upon the registration and prospectus exemptions contained in the applicable Legislation.
15. Following an Initial Investment in the Partnership or the Other Funds by an investor, it is proposed that Unitholders be permitted to acquire additional Units (“Subscribed Units”) of the Partnership or Other Funds, as the case may be, with an aggregate acquisition cost that is less than the Prescribed Amount by subscribing and paying for Subscribed Units in cash or securities other than Units.
16. Following an Initial Investment in the Partnership or the Other Funds by an investor, it is proposed that Unitholders also be permitted to acquire additional Units (“Reinvested Units”, and together with the Subscribed Units, “Additional Units”) of the Partnership or the Other Funds, as the case may be, with an aggregate acquisition cost that is less than the Prescribed Amount by automatically reinvesting distributions or dividends otherwise receivable by the Unitholder which are attributable to outstanding Units of the Partnership or the Other Funds, as the case may be, unless otherwise requested by the Unitholder.
17. The Original Decision granted an exemption from the Registration and Prospectus Requirements contained in the applicable Legislation of the provinces of Manitoba, New Brunswick, Newfoundland and Labrador, Prince Edward Island and Ontario for additional investments made by existing holders of Units in the Original Partnership and Other Funds established and managed by the Original Applicant.
18. The relief from Prospectus and Registration Requirements granted in the Original Decision in respect of Ontario is no longer required as the necessary exemptions are available under Ontario Securities Commission Rule 45-501 – *Exempt Distributions*.
19. The Partnership is, and each of the Other Funds will be, subject to the reporting requirements (the “Reporting Requirements”) contained in the Legislation, pursuant to which the Partnership and each of the Other Funds must file a report of an Initial Investment or a subscription for Additional Units.
20. The Original Decision granted an order that, subject to certain conditions, the Reporting Requirements did not apply to the trades of Units in the Original Partnership and Other Funds.

21. The Applicant is subject to certain conflict of interest provisions contained in the applicable Legislation, specifically (a) the prohibition on registrants acting as an advisor in respect of securities of a connected issuer or a registrant (the “Advisor Restrictions”); (b) the requirement for a registrant to prepare and to file with the applicable Decision Makers a statement of conflict policies and to provide a copy of such policies to its clients; and (c) the requirement that trade confirmations containing disclosure about the dealer’s relationship with the issuer of the securities to which the confirmation relates be delivered by the dealer to the customer (collectively, the “Conflict of Interest Provisions”).
22. The Original Decision granted relief from the Conflict of Interest Provisions under the applicable Legislation in each of Ontario and Newfoundland and Labrador, which relief (other than relief from the Advisor Restrictions), terminated 90 days after the publication in final form of a rule regarding underwriting conflicts.
23. On December 21, 2001, National Instrument 33-105 – *Underwriting Conflicts* (“NI 33-105”) was published in its final form and, therefore, the relief granted by the Original Decision expired on March 21, 2002. NI 33-105, however, does not address the Conflict of Interest Provisions from which relief was granted under the Original Decision.
24. The Applicant acts in a similar capacity with respect to the Units and Additional Units of the Original Partnership, the Partnership and the Other Funds as does a mutual fund dealer or fully registered dealer with respect to associated mutual fund securities.

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 Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Original Decision is revoked;

AND THE FURTHER DECISION of the Decision Makers in each of Manitoba, New Brunswick, Newfoundland and Labrador and Prince Edward Island pursuant to the applicable Legislation is that the Registration and Prospectus Requirements do not apply to the purchase of the Additional Units provided that:

- (a) this Decision, as it relates to the jurisdiction of a Decision Maker, shall terminate 90 days after the publication in final form of any legislation or rule of that Decision Maker regarding trades in securities of pooled funds;
- (b) at the time of acquisition of Additional Units of the Partnership or such Other Fund, the Unitholder who made the Initial Investment in the Partnership or such Other Fund of at least the Prescribed Amount then

owns Units of the Partnership or such Other Fund, as the case may be, having an aggregate purchase price or net asset value of not less than the Prescribed Amount;

- (c) at the time of the acquisition of the Additional Units of the Partnership or such Other Fund, as the case may be, the Applicant or any market intermediary assisting the Applicant in selling the Units in Newfoundland and Labrador is registered under the applicable Legislation as a dealer in the appropriate category and such registration is in good standing; and
- (d) no sales charge is payable with respect to the purchase of Reinvested Units;

AND THE FURTHER DECISION of the Decision Makers (other than the Decision Maker in Manitoba) pursuant to the applicable Legislation is that the Reporting Requirements do not apply to trades in Units of the Partnership or the Other Funds, provided that:

- (a) within 30 days after each financial year end of the Partnership or the Other Funds, as the case may be, the Applicant files a report in accordance with the form requirements prescribed by the respective Decision Maker in respect of trades in Units of the Partnership or the Other Funds during such financial year; and
- (b) within 30 days after each financial year end of the Partnership and the Other Funds the Applicant remits the applicable fees on behalf of the Partnership or such Other Funds, as the case may be;

AND THE FURTHER DECISION of the Decision Makers in each of Ontario and Newfoundland and Labrador is that the Applicant is exempt from the Conflict of Interest Provisions under the applicable Legislation provided that, in respect of the distribution of the Units or Additional Units of the Original Partnership, the Partnership or such Other Funds, the Applicant, before acquiring discretionary authority, secures the specific and informed consent of the client for the exercise of discretionary authority in respect of the Units or Additional Units of the Original Partnership, the Partnership or such Other Funds, as the case may be.

DATED September 4th, 2002.

“Robert W. Korthals”

“Robert L. Shirriff”