

Headnote

MRRS - registration and prospectus relief for issuance of securities by foreign issuer to Canadian employees and related trades under option and incentive plans - issuer bid relief for foreign issuer in connection with acquisition of shares under option and incentive plans.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25(1), 35(1)(12)(iii), 35(1)(17), 53(1), 72(1)(f)(iii), 72(1)(k), 74(1), 89(1), 93(3)(d) and 104(2).

Applicable Ontario Regulation

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 183(1) and 203.1(1).

Applicable Ontario Rule

OSC Rule 45-503 - Trades to Employees, Executives and Consultants - ss. 2.2, 2.4, 3.3 and 3.5.

Applicable Instrument

Multilateral Instrument 45-501 - Resale of Securities - s. 2.14(1).

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
NEW BRUNSWICK, 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
KRAFT FOODS INC. AND
PHILIP MORRIS COMPANIES INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the **ADecision Maker**) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador (the **AJurisdictions**) has received an application from Kraft Foods Inc. (**AKraft**) and Philip Morris Companies Inc. (**APhilip Morris**) for a decision pursuant to the securities legislation of the Jurisdictions (the **ALegislation**) that: (i) the requirements contained in the Legislation to be registered to trade in a security (the **ARegistration Requirements**) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the **AProspectus Requirements**) (collectively, the **ARegistration and Prospectus Requirements**) shall not apply to certain trades in securities of Kraft made in connection with the Kraft Foods Inc. 2001 Incentive Plan (the **APIP**), the Philip Morris Companies Directed Share Program (the **ADSP**) and the Kraft Foods Inc. Stock Option Grant Program (the **AKSOGP**) (the **PIP**, **DSP** and the **KSOGP** are collectively, the **APlans**); (ii) the Registration Requirements shall not apply to first trades of shares of class A common stock of Kraft (**AClass A Kraft Shares**) acquired under the Plans made through the Agent (defined below) on an exchange or market outside of Canada; and (iii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration, collateral benefits, and form filing (the **AIssuer Bid Requirements**) shall not apply to certain acquisitions by Kraft of Class A Kraft Shares pursuant to the Plans in each of the Jurisdictions;

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

AND WHEREAS Kraft and Philip Morris have represented to the Decision Makers as follows:

1. Kraft is a corporation incorporated under the laws of the State of Virginia. The executive offices of Kraft are located in Northfield, Illinois.
2. Philip Morris is a corporation incorporated under the laws of the State of Virginia. The principal executive offices of Philip Morris are located in New York, New York.
3. Neither Kraft nor Philip Morris is a reporting issuer or the equivalent in any Jurisdiction and neither has a present intention of becoming a reporting issuer or the equivalent in any Jurisdiction. The majority of the directors and senior officers of Kraft and Philip Morris reside outside of Canada.
4. The authorized share capital of Kraft consists of 3 billion Class A Kraft Shares, 2 billion shares of Class B common stock (AClass B Kraft Shares@), and 500,000 shares of preferred stock (APreferred Kraft Shares@). As of August 17, 2001, there were 555 million Class A Kraft Shares, 1.18 billion Class B Kraft Shares and 0 Preferred Kraft Shares issued and outstanding.
5. Prior to the initial public offering (AIPO@) of Class A Kraft Shares in June 2001, Kraft was a wholly-owned subsidiary of Philip Morris. Subsequent to the IPO, Philip Morris retains approximately an 84% ownership of Kraft, including 100% of the outstanding Class B Kraft Shares and Preferred Kraft Shares.
6. Kraft and Philip Morris are subject to the requirements of the *Securities Exchange Act of 1934*, as amended, of the United States, including the reporting requirements thereof.
7. The purpose of the PIP is to support Kraft's ongoing efforts to attract and retain outstanding employees and to provide Kraft with the ability to provide incentives to employees of Kraft and its affiliates (AKraft Companies@) that are directly linked to the profitability of Kraft and to increases in shareholder value.
8. Subject to adjustment as described in the PIP, the maximum number of Class A Kraft Shares that may be issued under the PIP is 75 million.

9. The purpose of the KSOGP is to provide an incentive to selected employees of Philip Morris or its affiliates (the "Philip Morris Companies") by providing an opportunity to benefit from the profitability of Kraft and increases in Kraft shareholder value.
10. The purpose of the DSP is to provide selected employees of Philip Morris and its affiliates with the opportunity to purchase Class A Kraft Shares at their offering price, in conjunction with the IPO of the Class A Kraft Shares that took place in June 2001.
11. Class A Kraft Shares offered under the Plans are registered with the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933.
12. The Class A Kraft Shares are listed for trading on the New York Stock Exchange (the "NYSE").
13. Awards extended to employees of the Kraft Companies under the PIP may include options (the "Options") exercisable for Class A Kraft Shares, performance-based awards (the "Performance-Based Awards"), stock appreciation rights (the "SARs"), restricted stock (the "Restricted Shares"), other stock-based awards (the "Other Stock Based Awards"), dividends or dividends equivalents (the "Dividends or Dividends Equivalents") and incentive awards (the "Incentive Awards"). Awards extended to employees of the Philip Morris Companies under the KSOGP, include Options. Awards under the DSP extended to selected employees of the Philip Morris Companies were comprised of the opportunity to purchase Class A Kraft Shares (the "DSP Rights"). (All of the foregoing are collectively, the "Awards").
14. Participation in the Plans by Canadian employees is voluntary and such persons are not induced to participate in the Plans or to exercise their Awards by expectation of employment or continued employment with the Kraft Companies.
15. As of September 19, 2001, there were: (i) 731 employees resident in Canada eligible to receive Options under the PIP, including 14 in British Columbia, 38 in Alberta, 7 in Saskatchewan, 3 in Manitoba, 527 in Ontario; 2 in New Brunswick, 13 in Nova Scotia and 2 in Newfoundland; (ii) 1 employee resident in Canada eligible to participate in the KSOGP, residing in Ontario; and (iii) 9 employees resident in Canada, all of whom reside in Ontario, who chose to participate in the DSP.
16. Kraft and Philip Morris intend to use the services of one or more agents/brokers (an "Agent") under the Plans. The current Agent for the DSP is Fidelity Brokerage Services LLC. The current Agent for the PIP and KSOGP is UBS PaineWebber Inc. The current Agents are, and if replaced, or if additional Agents are appointed, will be registered under applicable U.S. securities or banking legislation and have been or will be authorized by Kraft or Philip Morris to provide services under one or more of the Plans. The current Agents are not registered to conduct retail trades in any of the Jurisdictions and, if replaced, or if additional Agents are appointed, are not expected to be so registered in any of the Jurisdictions.

17. The Agents' role in the Plans may include: (a) assisting with the administration of the Plans, including record-keeping functions; (b) facilitating the exercise of Awards granted under the PIP and the KSOGP, including cashless and stock-swap exercises to the extent that they are exercisable for Class A Kraft Shares; (c) holding in broker accounts Class A Kraft Shares issued under the Plans on behalf of employees of Kraft or the Kraft Companies who participate in the Plans (AParticipants@), Former Participants (as defined below) and Permitted Transferees (as defined below); (d) facilitating the cancellation and surrender of Awards as permitted under the Plans; (e) facilitating the payment of withholding taxes; and (f) facilitating the resale of the Class A Kraft Shares issued in connection with the Plans.
18. Unless otherwise determined by the committee administering the relevant Plan, Awards are not transferable other than by will or pursuant to the laws of intestacy.
19. Under the PIP, Options, Performance-Based Awards, SARs, Restricted Shares, Dividends or Dividends Equivalents or Other Stock-Based Awards (collectively, APIP Awards@), may be granted to employees of the Kraft Companies.
20. The PIP is administered by the board of directors of Kraft (AKraft Board@) and/or a committee appointed by the Kraft Board (AKraft Committee@).
21. The Kraft Committee shall establish procedures governing the exercise of Options. Generally, in order to exercise an Option, a Participant, Former Participant or Permitted Transferee must submit to Kraft or the Agent a notice of exercise in the form and manner prescribed by the Kraft Committee (ANotice of Exercise@) identifying the Option and number of Class A Kraft Shares being purchased, together with full payment for the Class A Kraft Shares.
22. Under the DSP, an opportunity to acquire Class A Kraft Shares at the offering price (ADSP Purchase Entitlements@) was extended to selected employees of the Philip Morris Companies.
23. 446,700 Class A Kraft Shares were issued under the DSP.
24. Following the termination of a Participant's relationship with the Kraft Companies or with the Phillip Morris Companies for reasons of death, disability, retirement, or any other reason, a former Participant (AFormer Participant@) and on the death of a Participant, where the Award has been transferred by will or pursuant to the laws of intestacy or otherwise, as permitted by the Kraft Committee, to permitted transferees (APermitted Transferees@), the Former Participants and Permitted Transferees may continue to have rights in respect of the Plans (APost-Termination Rights@). Post-Termination Rights may include, among other things, the right to exercise an Award for a period determined in accordance with the PIP or the KSOGP following termination and the right to sell Class A Kraft Shares acquired under all of the Plans through the Agents.

25. The Kraft Committee may elect to cash out all or a portion of the Class A Kraft Shares to be purchased by an Option holder by paying the Option holder an amount in cash, Class A Kraft Shares or both equal to the fair market value of the Class A Kraft Shares to be purchased, less the exercise costs for such Class A Kraft Shares. In the event of a merger, share exchange, reorganization, consolidation, stock dividend, recapitalization, distribution or stock split, reverse stock split, stock split up, spin-off, issuance of rights or warrants registrations or event affecting the Class A Kraft Shares, the Kraft Board is authorized to make an Award in substitution for an outstanding Award or to make cash payments to the holder of the PIP Awards. On a Change of Control (as defined in the Plan) the value of all outstanding Options, Stock Appreciation Rights, Restricted Shares and other Stock Based Awards shall, at the discretion of the Kraft Committee be cashed out on the basis of the Change of Control price. Subject to the discretion of the Kraft Committee the Participant may on a Change in Control give notice to Kraft within the Exercise Period to elect to surrender all or part of the Options, SARs, Restricted Stock or Other Stock-Based Awards to Kraft and to receive in cash a prescribed amount. Any Incentive Award relating to the Performance Cycle (as defined in the Plans) prior to the Performance Cycle in which the Change in Control occurs that has been earned but not paid shall be immediately payable in cash (collectively along with any forfeiture of Restricted Shares (Repurchase and Surrender Rights)).
26. Withholding obligations for tax purposes arising from Awards may be settled with Class A Kraft Shares (Tax Withholding Exercises).
27. A prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plans will be delivered to each Participant who is eligible to participate in the Plans or who receives an Award under any of the Plans. The annual reports, proxy materials and other materials Kraft is required to file with the SEC will be provided or made available to Canadian Participants at the same time and in the same manner as the documents are provided or made available to U.S. Participants.
28. As at October 29, 2001, Canadian shareholders did not own, directly or indirectly, more than 10% of the issued and outstanding Class A Kraft Shares and did not represent more than 10% of the shareholders of Kraft.
29. As there is no market for the Class A Kraft Shares in Canada and none is expected to develop, it is expected that the resale by Participants, Former Participants and Permitted Transferees of the Class A Kraft Shares acquired under the Plans will be effected through the NYSE.
30. Participants, Former Participants or Permitted Transferees may sell Class A Kraft Shares acquired under the Plans through the Agent.

31. The Legislation of certain of the Jurisdictions does not contain exemptions from the Registration and Prospectus Requirements for Award exercises by Participants, Former Participants or Permitted Transferees through the Agent where the Agent is not a registrant.
32. Where the Agent sells Class A Kraft Shares on behalf of Canadian Participants, Former Participants or Permitted Transferees, none of them is able to rely on the exemption from the Registration Requirements contained in the Legislation of certain Jurisdictions to effect such sales.
33. The exemptions in the Legislation from the Issuer Bid Requirements are not available for certain acquisitions by Kraft of its Class A Kraft Shares from Participants, Former Participants or Permitted Transferees in accordance with the terms of the Plans, since acquisitions relating to stock-swap exercises (AStock-Swap Exercises[®]) may occur at a price that is not calculated in accordance with the Amarket price[®], as that term is defined in the Legislation; as under the Plans, Kraft will acquire such tendered Class A Kraft Shares at their fair market value, as determined in accordance with such Plans.

AND WHEREAS pursuant to the System, this Decision Document evidences the decision of each Decision Maker (collectively, the ADecision[®]);

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;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

- (a) the Registration and Prospectus Requirements shall not apply to any trade or distribution of Awards or Class A Kraft Shares made in connection with the Plans, including trades or distributions involving Kraft, Philip Morris or their affiliates, the Agent, Canadian Participants, Former Participants or Permitted Transferees, provided that:
 - (i) the first trade in Class A Kraft Shares acquired under the Plans pursuant to this Decision in a Jurisdiction shall be deemed a distribution under the Legislation of such Jurisdiction unless the conditions in section 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied; and
 - (ii) Kraft will be subject to the relevant filing and fee requirements contained in the Legislation of certain Jurisdictions which, but for this Decision, would apply to initial distributions of Awards and Kraft Class A Shares made pursuant to the Plans;

- (b) the first trade by Canadian Participants, Former Participants or Permitted Transferees in Kraft Class A Shares acquired pursuant to this Decision, including first trades effected through the Agent, shall not be subject to the Registration Requirements, provided such first trade is executed through a stock exchange or market outside of Canada; and
- (c) the Issuer Bid Requirements of the Legislation shall not apply to the acquisition by Kraft of Kraft Class A Shares from Canadian Participants, Former Participants and Permitted Transferees in connection with Stock-Swap Exercises, Repurchase and Surrender Rights, or Tax Withholding Exercises made in connection with the provisions of the Plans.

DATED February 5th, 2002.

"R. Stephen Paddon"

"H. Lorne Morphy"