

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted to allow mutual funds to short sell up to 20% of net assets, subject to certain conditions – Prior short selling exemption granting relief to short sell up to 10% of net assets revoked and replaced – National Instrument 81-102 *Mutual Funds*.

Applicable Legislative Provisions

National Instrument 81-102 *Mutual Funds*, paragraphs 2.6(a) and 2.6(c) and subsection 6.1(1).

Citation: Desjardins Alternative Investments Fund and Desjardins Enhanced Alternative Investments Fund, 2008 ABASC 58

Date: 20080125

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, YUKON
AND NUNAVUT
(the “Jurisdictions”)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS
 (“MRRS”)

AND

IN THE MATTER OF
THE FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC
(the “Filer”)

AND

IN THE MATTER OF DESJARDINS ALTERNATIVE INVESTMENTS FUND, AND
DESJARDINS ENHANCED ALTERNATIVE INVESTMENTS FUND
(each a “Fund” and together the “Funds”)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (“**Decision Maker**”) in each of the Jurisdictions has received an application (the “**Application**”) from the Filer on behalf of the Funds under section 19.1 of National Instrument 81-102 – *Mutual Funds* (“**NI 81-102**”) for relief in each Jurisdiction (the “**Requested Relief**”) from the prohibition in subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102 in order to permit the Funds to sell securities short, provide security interests over the Funds’ assets in connection with the short sales and deposit Funds’ assets with dealers as security in connection with such transactions, subject to certain terms and conditions.

In respect of Desjardins Alternative Investments Fund, the Application requests that relief previously granted September 7, 2004 under SEDAR Project No. 674345 (the “**Prior Decision**”) be revoked and replaced by the Requested Relief.

Under the MRRS :

- (i) the principal regulator for the Application is the Autorité des marchés financiers; and
- (ii) this MRRS decision document represents the decision of each of the Decision Makers.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* and in NI 81-102 have the same meaning in this MRRS decision document unless they are otherwise defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. Each of the Funds is or will be an open-end mutual fund trust established either under the laws of Québec.
2. The Filer is the manager of the Funds.
3. Each Fund is currently or will be a reporting issuer in all of the provinces and territories of Canada. The Funds have filed with the Decision Makers a preliminary and *pro forma* simplified prospectus and annual information form dated November 20, 2007.
4. The investment practices of each Fund comply or will comply in all respects with the requirements of Part 2 of NI 81-102, except to the extent that the Funds have received permission from the Decision Makers to deviate therefrom.
5. Any short sales made by a Fund will be subject to compliance with the investment objectives of such Fund.

6. In order to effect a short sale, a Fund will borrow securities from either its custodian or a dealer (a "**Borrowing Agent**"), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.
7. Each Fund will implement the following controls when conducting a short sale:
 - (a) securities will be sold short for cash, with the Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;
 - (b) the short sale will be effected through market facilities through which the securities sold short are normally bought and sold;
 - (c) the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;
 - (d) the securities sold short will be liquid securities that:
 - (i) are listed and posted for trading on a stock exchange, and
 - (1) the issuer of the security has a market capitalization of not less than CDN\$300 million, or the equivalent thereof, at the time the short sale is effected; or
 - (2) the investment advisor has pre-arranged to borrow for the purposes of such sale; or
 - (ii) are bonds, debentures or other evidences of indebtedness of or guaranteed by the Government of Canada or any province or territory of Canada or the Government of the United States of America;
 - (e) at the time securities of a particular issue are sold short:
 - (i) the aggregate market value of all securities of that issuer sold short by the Fund will not exceed 5% of the total net assets of the Fund; and
 - (ii) the Fund will place a "stop-loss" order with a dealer to immediately purchase for the Fund an equal number of the same securities if the trading price of the securities exceeds 120% (or such lesser percentage as the Filer or a portfolio adviser acting on behalf of the Fund may determine) of the price at which the securities were sold short;
 - (f) the Fund will deposit Fund assets with the Borrowing Agent as security in connection with the short sale transaction;
 - (g) the Fund will keep proper books and records of all short sales and Fund assets deposited with Borrowing Agents as security;
 - (h) the Fund will develop written policies and procedures for the conduct of short sales prior to conducting any short sales; and

- (i) the Fund will provide disclosure in its simplified prospectus and annual information form of the short selling strategies and the details of this exemptive relief prior to implementing the short selling strategy.

Decision

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 Prior Decision is revoked and replaced and the Requested Relief and is granted on the conditions that :

1. the aggregate market value of all securities sold short by a Fund does not exceed 20% of the total net assets of the Fund on a daily marked-to-market basis;
2. the Fund holds "cash cover" (as defined in NI 81-102) in an amount, including the Fund assets deposited with the Borrowing Agents as security in connection with short sale transactions, that is at least 150% of the aggregate market value of all securities sold short by the Fund on a daily marked-to-market basis;
3. no proceeds from short sales by the Fund are used by the Fund to purchase long positions in securities other than cash cover;
4. the Fund maintains appropriate internal controls regarding its short sales including written policies and procedures, risk management controls and proper books and records;
5. any short sales made by a Fund will be subject to compliance with the investment objectives of the Fund;
6. for short sale transactions in Canada, every dealer that holds Fund assets as a security in connection with short sale transactions by the Fund shall be a registered dealer in Canada and a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund;
7. for short sale transactions outside Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall:
 - (a) be a member of a stock exchange and, as a result, be subject to a regulatory audit; and
 - (b) have a net worth in excess of the equivalent of \$50 million determined from its most recent audited financial statements that have been made public;
8. except where the Borrowing Agent is the Fund's custodian, when the Fund deposits Fund assets with a Borrowing Agent as security in connection with a short sale transaction, the amount of Fund assets deposited with the Borrowing Agent does not, when aggregated with the amount of Fund assets already held by the Borrowing Agent as security for outstanding short sale transactions of the Fund, exceed 10% of the total net assets of the Fund, taken at market value as at the time of the deposit;

9. the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect short sale transactions is made in accordance with industry practice for that type of transaction and related only to obligations arising under such short sale transactions;
10. prior to conducting any short sales, the Fund discloses in its simplified prospectus or an amendment thereto a description of: (a) short selling, (b) how the Fund intends to engage in short selling, (c) the risks associated with short selling, and (d) in the Investment Strategy section of the simplified prospectus, the Fund's strategy and this exemptive relief;
11. prior to conducting any short sales, the Fund discloses in its annual information form or an amendment thereto the following information:
 - (a) that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;
 - (b) who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the board of directors or trustee in the risk management process;
 - (c) the trading limits or other controls on short selling in place and who is responsible for authorizing the trading and placing limits or other controls on the trading;
 - (d) whether there are individuals or groups that monitor the risks independent of those who trade; and
 - (e) whether risk measurement procedures or simulations are used to test the portfolio under stress conditions;
12. prior to conducting any short sales, each Fund has provided to its existing securityholders not less than 60 days' written notice that discloses the Fund's intent to begin short selling transactions and the disclosure required in the Fund's simplified prospectus and annual information form as outlined in paragraphs 10 and 11 above or the Fund's initial simplified prospectus and each renewal thereof has included such disclosure;
13. this relief shall terminate upon the coming into force of any legislation or rule of the Decision Makers dealing with matters referred to in subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102.

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