

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements in respect of certain trades made in connection with an employee share offering by a foreign issuer.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 75, 110 and 144(1).

Citation: NEXANS, 2008 ABASC 65

Date: 20080131

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUÉBEC, NOVA SCOTIA (the “Jurisdictions”)

AND

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

AND

IN THE MATTER OF
NEXANS (the “Filer”)

MRRS Decision Document

Background

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**”) for:

1. an exemption from the prospectus requirements of the Legislation (the “**Prospectus Relief**”) so that such requirements do not apply to:
 - (i) trades in the units (“**Units**”) of three collective shareholding vehicles (each, a *fonds communs de placement d’entreprise*, or “**FCPE**”), the Nexans Relais 2008 FCPE (the “**Intermediary Classic Fund**”) which will be merged with the Nexans Share Plan FCPE (the “**Principal Classic Fund**,” and together with the Intermediary Classic Fund, the “**Classic Fund**”) and the Nexans Plus FCPE (the “**Leveraged Fund**”) (the Classic Fund and Leveraged Fund are, collectively, the “**Funds**” and each, individually, a “**Fund**”) made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below)

resident in the Jurisdictions who elect to participate in the Employee Share Offering (the “**Canadian Participants**”);

- (ii) trades of ordinary shares of the Filer (the “**Shares**”) by the Funds to the Canadian Participants upon the redemption of Units by Canadian Participants, nor to the issuance of Units of the Classic Fund to holders of Leveraged Fund Units upon the transfer of the Canadian Participants’ assets in the Leveraged Fund to the Classic Fund at the end of the Lock-Up Period (as defined below);
2. an exemption from the dealer registration requirements of the Legislation (the “**Registration Relief**”) so that such requirements do not apply to:
- (i) trades in Units of the Classic Fund made pursuant to the Employee Share Offering to or with Canadian Participants;
 - (ii) trades in Units of the Leveraged Fund made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario or Manitoba;
 - (iii) trades of Shares by the Funds to Canadian Participants upon the redemption of Units by Canadian Participants, nor to the issuance of Units of the Principal Classic Fund to holders of Leveraged Fund Units upon the transfer of the Canadian Participants’ assets in the Leveraged Fund to the Principal Classic Fund at the end of the Lock-Up Period (as defined below);
3. an exemption from the adviser registration requirements and dealer registration requirements of the Legislation so that such requirements do not apply to the manager of the Funds, BNP Paribas Asset Management SAS (the “**Management Company**”), to the extent that its activities described in paragraphs 25 and 26 require compliance with the adviser registration requirements and dealer registration requirements (collectively, with the Prospectus Relief and the Registration Relief, the “**Initial Requested Relief**”); and
4. an exemption from the dealer registration requirements of the Legislation so that such requirements do not apply to the first trade in any Units or Shares acquired by Canadian Participants under the Employee Share Offering (the “**First Trade Relief**”).

Under the Mutual Reliance Review System for Exemptive Relief Applications,

- (a) the Autorité des marchés financiers is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not and has no intention of becoming a reporting issuer (or equivalent) under the Legislation. The Shares are listed on the Eurolist of Euronext Paris stock exchange.
2. The Filer carries on business in Canada through Nexans Canada Inc. (the “**Canadian Affiliate**,” and together with the Filer and other affiliates of the Filer, the “**Filer Group**”). Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no intention of becoming, a reporting issuer (or equivalent) under the Legislation.
3. The Filer has established a global share offering for employees of the Filer Group (the “**Employee Share Offering**”) which is comprised of two subscription options: (i) an offering of Shares to be subscribed through the Intermediary Classic Fund (which will be merged with the Principal Class Fund after completion of the Employee Share Offering) (the “**Classic Plan**”); and (ii) an offering of Shares to be subscribed through the Leveraged Fund (the “**Leveraged Plan**”).
4. Only persons who have been employees of a member of the Filer Group on the last day of the subscription period for the Employee Share Offering for a minimum of three months (the “**Qualifying Employees**”) will be invited to participate in the Employee Share Offering.
5. The Funds were established for the purpose of facilitating implementation of the Employee Share Offering.
6. The Funds are not and have no current intention of becoming reporting issuers under the Legislation.
7. The Funds are collective shareholding vehicles (*fonds communs de placement d’entreprise*, or “**FCPE**”) of a type commonly used in France for the conservation or custodianship of shares held by employee investors. The Funds are registered with, and approved by, the Autorité des marchés financiers in France (the “**French AMF**”). Only Qualifying Employees will be allowed to hold Units of the Funds in an amount proportionate to their respective investments in each of the Funds.
8. Under French law, all Units acquired in the Employee Share Offering will be subject to a hold period of approximately five years (the “**Lock-Up Period**”), subject to certain exceptions prescribed by French law (such as a release on death or termination of employment).

9. Under the Classic Plan, at the end of the Lock-Up Period, or in the event of an early redemption resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period prescribed by French law, a Canadian Participant may (i) redeem Units in the Classic Fund in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (ii) continue to hold Units in the Classic Fund and will be free to redeem those Units at any time at a later date.
10. Under the Classic Plan, Canadian Participants will be issued Units in the Classic Fund, which will subscribe for Shares on behalf of the Canadian Participants at a subscription price that is equal to the average of the opening price of the Shares on the Euronext Paris stock exchange on the 20 trading days preceding the date on which the subscription price is fixed by the President of the Filer (the “**Reference Price**”), less a 20% discount (the “**Subscription Price**”).
11. Dividends paid on the Shares held in the Classic Fund will be contributed to the Classic Fund and used to purchase additional Shares (in which case, the Classic Fund will issue additional Units or fractions of Units to the Canadian Participant to reflect this dividend reinvestment).
12. Under the Leveraged Plan, Canadian Participants will subscribe for Units in the Leveraged Fund, and the Leveraged Fund will then subscribe for Shares at the Subscription Price using the Employee Contribution (as described below) and certain financing made available by Calyon (the “**Bank**”), which is governed by the laws of France.
13. Participation in the Leveraged Plan represents an opportunity for Qualifying Employees potentially to obtain significantly higher gains than would be available through participation in the Classic Plan, by virtue of the Qualifying Employee’s indirect participation in a financing arrangement involving a swap agreement (the “**Swap Agreement**”) between the Leveraged Fund and the Bank. In economic terms, the Swap Agreement effectively involves the following exchange of payments: for every 40% of the Subscription Price paid by Canadian Participants (the “**Employee Contribution**”) to the Leveraged Fund at the Subscription Price, the Bank will finance the remaining 60% of the Subscription Price (the “**Bank Contribution**”).
14. Under the terms of the Swap Agreement, at the end of the Lock-Up Period, the Leveraged Fund will owe to the Bank an amount equal to the market value of the Shares (as determined under the Swap Agreement) held by the Leveraged Fund, less
 - (a) 100% of the Employee Contributions, plus the greater of
 - (i) a guaranteed yield of 10% on the Employee Contributions; and
 - (ii) an amount equal to a multiple (which will be approximately 2, and will be confirmed prior to the beginning of the subscription period) of the increase, if any, in the then average price of the Shares above the Reference Price (determined on the basis of the monthly average of the closing prices of the Shares over the Lock-Up Period using the greater of

the actual closing price on each monthly date of calculation or the Reference Price)

(collectively, the “**Redemption Formula**”).

15. If, at the end of the Lock-Up Period, the market value of the Shares held in the Leveraged Fund is less than 100% of the Employee Contributions, the Bank will make a contribution to the Leveraged Fund to make up any shortfall.
16. At the end of the Lock-Up Period, the Swap Agreement will terminate after the making of final swap payments and a Canadian Participant may
 - (a) redeem his or her Leveraged Fund Units in consideration for cash payment of an amount calculated pursuant to the Redemption Formula;
 - (b) receive the value calculated pursuant to the Redemption Formula in Shares; or
 - (c) elect to retain his or her Units in the Leveraged Fund which will then be transferred to the Classic Fund. Canadian Participants will be free to redeem their Units in the Classic Fund at any time thereafter and the Canadian Participants’ investment will no longer be covered by the Swap Agreement.
17. Under no circumstances will a Canadian Participant in the Leveraged Fund be entitled to receive less than 100% of his or her Employee Contribution plus the guaranteed yield of 10% on his or her Employee Contribution at the end of the Lock-Up Period, or be liable for any other amounts.
18. Under French law, each Fund, as a FCPE, is a limited liability entity. Each Fund’s portfolio will consist exclusively of Shares of the Filer and, in the case of the Classic Fund, from time to time, cash in respect of dividends paid on the Shares which will be reinvested in Shares. The Leveraged Fund’s portfolio will also include the Swap Agreement. The Funds may also hold cash or cash equivalents pending investments in Shares and for the purposes of Unit redemptions. The offering documents provided to Canadian Participants will confirm that, under no circumstances, will a Canadian Participant in the Leveraged Plan be liable to any of the Leveraged Fund, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Leveraged Plan.
19. During the term of the Swap Agreement, amounts equal to any dividends paid on the Shares held in the Leveraged Fund during the Lock-Up Period will be remitted by the Leveraged Fund to the Bank under the terms of the Swap Agreement.
20. For Canadian federal income tax purposes, the Canadian Participants in the Leveraged Fund should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution, at the time such dividends are paid to the Leveraged Fund, notwithstanding the actual non-receipt of the dividends’ value by the Canadian Participants by virtue of the terms of the Swap Agreement. Consequently,

Canadian Participants will be required to fund the tax liabilities associated with the dividends without recourse to the actual dividends.

21. The payment of dividends on the Shares is determined by the shareholders of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment in respect of dividends.
22. To respond to the fact that, at the time of the initial investment decision relating to participation in the Leveraged Plan, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer will indemnify each Canadian Participant in the Leveraged Plan for all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of euros per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the Leveraged Fund on his or her behalf under the Leveraged Plan.
23. At the time the Canadian Participant's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Leveraged Fund, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Leveraged Fund, on behalf of the Canadian Participant to the Bank. To the extent that an amount equal to the value of the dividends on Shares that are deemed to have been received by a Canadian Participant are paid by the Leveraged Fund on behalf of the Canadian Participant to the Bank, such payments will reduce the amount of any capital gain (or increase the amount of any capital loss) to the Canadian Participant under the Swap Agreement. Capital losses (gains) realized by a Canadian Participant under the Swap Agreement may be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).
24. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF to manage French investment funds and complies with the rules of the French AMF. The Management Company is not and has no intention of becoming a reporting issuer under the Legislation.
25. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Funds are limited to purchasing Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, and such activities as may be necessary to give effect to the Swap Agreement.
26. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of each Fund. The Management Company's activities in no way affect the underlying value of the Shares.

The Management Company will not be involved in providing advice to any Canadian Participant.

27. Shares issued in the Employee Share Offering will be deposited in the relevant Fund through BNP Paribas Securities Services (the “**Depository**”), a large French commercial bank subject to French banking legislation.
28. Under French law, the Depository must be selected by the Management Company from among a limited number of companies identified on a list by the French Minister of the Economy, Finance and Industry, and its appointment must be approved by the French AMF. The Depository carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow each Fund to exercise the rights relating to the securities held in its respective portfolio.
29. The Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.
30. The total amount invested by a Canadian Participant in the Employee Share Offering, including any Bank Contribution under the Leveraged Plan, cannot exceed 25% of his or her estimated gross annual compensation for 2008. Accordingly, a Canadian Participant who participates in the Employee Share Offering wholly through the Leveraged Plan would reach the maximum limit with a contribution of 10% of his or her estimated gross annual compensation for 2008.
31. None of the Filer, the Management Company, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to an investment in the Shares or the Units.
32. The Filer will retain a registrant registered as a broker/investment dealer (a “**Registrant**”) under the Legislation of Ontario and Manitoba to provide advisory services to those Canadian Participants resident in Ontario or Manitoba who express interest in the Leveraged Plan and to make a determination, in accordance with industry practices, as to whether an investment in the Leveraged Plan is suitable for each such Canadian Participant based on his or her particular financial circumstances. The Registrant would establish accounts for, and receive the initial account statements from the Leveraged Fund on behalf of, such Canadian Participants.
33. Canadian Participants who participate in the Employee Share Offering will receive a statement indicating the number of Units they hold and the value of each Unit at least once per year.
34. The Canadian Participants will receive an information package in the French or English language, as applicable, which will include a summary of the terms of the Employee Share Offering and a tax notice relating to the relevant Fund containing a description of Canadian income tax consequences of subscribing to and holding the Units in the Funds and redeeming Units for cash or Shares at the end of the Lock-Up Period. The information package for Canadian Participants in the Leveraged Plan will also include a risk statement which will describe certain risks associated with an investment in Units

pursuant to the Leveraged Plan, and a tax calculation document which will illustrate the general Canadian federal income tax consequences of participating in the Leveraged Plan.

35. Upon request, Canadian Participants may receive copies of the French *Document de Référence* filed with the French AMF in respect of the Shares. A copy of the Funds' rules (which are analogous to company by-laws) will be made available to Canadian Participants. The Canadian Participants will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to its shareholders generally.
36. There are approximately 716 Qualifying Employees resident in Canada, in the provinces of British Columbia (1), Alberta (1), Saskatchewan (152), Manitoba (3), Ontario (349), Quebec (213) and Nova Scotia (2), who represent in the aggregate less than 3.4% of the number of employees in the Filer Group worldwide.
37. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Funds on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.

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 Initial Requested Relief is granted provided that:

1. the first trade in any Units or Shares acquired by Canadian Participants pursuant to this Decision in a Jurisdiction is deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction unless the following conditions are met:
 - (a) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
 - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
 - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and

- (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and
 - (c) the first trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada; and
2. in Quebec, the required fees are paid in accordance with Section 271.6(1.1) of the *Securities Regulation* (Quebec).

It is the further decision of the Decision Makers under the Legislation that the First Trade Relief is granted provided that the conditions set out in paragraphs (1)(a), (b) and (c) under this decision granting the Initial Requested Relief are satisfied.

“Josée Deslauriers”

Josée Deslauriers
Director, Capital Market

“Claude Lessard”

Claude Lessard
Manager, Supervision of Intermediaries