

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - issuer deemed to be no longer a reporting issuer under securities legislation.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, section 153

Citation: LODH Opus Mutual Funds, Re, 2009 ABASC 589

Date: 20091127

IN THE MATTER OF
THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC
NEW BRUNSWICK, NOVA SCOTIA, AND NEWFOUNDLAND AND LABRADOR
(the **Jurisdictions**)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE
JURISDICTIONS

AND

IN THE MATTER OF
LOMBARD ODIER DARIER HENTSCH (CANADA),
LIMITED PARTNERSHIP
(the **Manager**)

AND

IN THE MATTER OF
LODH OPUS – DIVERSIFIED CANADIAN EQUITY FUND
LODH OPUS – AMERICAN EQUITY FUND
LODH OPUS – CANADIAN SMALL CAPITALIZATION EQUITY FUND
LODH OPUS – EAFE EQUITY FUND
LODH OPUS – MONEY MARKET FUND
LODH OPUS – FIXED INCOME FUND
(collectively, the **Funds** and together with the Manager, the **Filers**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for, as applicable, the revocation of the reporting issuer status of

the Funds or for a declaration that each of the Funds be deemed to have ceased to be a reporting issuer (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Funds were created on May 27, 2003 pursuant to a declaration of trust governed by the laws of the Province of Québec and the federal laws of Canada applicable therein. The Funds were created as non-redeemable investment funds. The units of the Funds now known as series L units were issued pursuant to this declaration of trust and were distributed pursuant to the prospectus exemption under the applicable securities legislation.
2. Lombard Odier Darier Hentsch (Canada), Limited Partnership, acting by its general partner Lombard Odier Darier Hentsch Management (Canada) Inc., is the manager of the Funds. The Manager is duly registered with the Principal Regulator, the Ontario Securities Commission, the Alberta Securities Commission and the British Columbia Securities Commission as a securities adviser with an unrestricted practice or an equivalent category. RBC Dexia Investor Services Trust is the trustee of the Funds.
3. On June 28, 2007, the declaration of trust was amended and restated, converting each of the Funds into mutual funds. The amended and restated declaration of trust permitted, among other things, the issuance of new series of units of the Funds.
4. The Funds became reporting issuers in each of the Jurisdictions on September 27, 2007, the date on which the Principal Regulator granted a receipt (the **Initial Receipt**) for the simplified prospectus of the Funds dated September 24, 2007 (the **Simplified Prospectus**) with respect to the distribution of series L, P and S units of the Funds (the **Reporting Issuer Event**).

5. At the time of the renewal of the Simplified Prospectus on October 7, 2008, the simplified prospectus of the Funds dated October 6, 2008 with respect to the distribution of Series L, P, S and G units of each Fund, except for the LODH Opus – Money Market Fund for which only series L, P and S units were subject to the distribution, was granted a receipt by the Principal Regulator.
6. As at the date hereof, the Manager holds, as registered and beneficial holder, all of the outstanding series P, S and G units of the Funds, while the outstanding series L units of the Funds are held, as beneficial holders, by clients of the Manager who have signed a discretionary management agreement with the Manager.
7. The efforts deployed following the Reporting Issuer Event did not lead to the expected results and the distribution of units of the Funds to new investors was insufficient. As at April 1, 2009 and since the issuance of the Initial Receipt, there has been no more than 15 new unitholders for each Fund in Québec and Ontario (except for the LODH Opus – Money Market Fund for which there has been 21 new unitholders in Québec).
8. All unitholders of the Funds are in Québec and Ontario. In Ontario, the unitholders held their units prior to the Reporting Issuer Event, which means there has been no new unitholder in Ontario since the Initial Receipt was granted.
9. Notwithstanding the Reporting Issuer Event, the units of the Funds are distributed exclusively by Lombard Odier Darier Hentsch Securities (Canada) Inc., as principal distributor, and are exclusively made available for purchase to clients of the Manager who have signed discretionary management agreements with the Manager.
10. As at the date hereof, all unitholders of the Funds in Québec are “accredited investors” as defined under subsections 1.1 (j), (k), (l), (m) or (q) (as applicable) of National Instrument 45-106 – *Prospectus and Registration Exemptions (NI 45-106)*. Furthermore, some unitholders in Québec acquired their units in accordance with the provisions of the exemption set forth under Section 2.10 of NI 45-106 (minimum amount investment). Unitholders of the Funds in Ontario are “accredited investors” as defined under subsections 1.1(j), (k), (l), (m) or (t) of NI-45-106.
11. No unitholder of the Funds has an investment policy containing restrictions to invest in mutual funds which are reporting issuers in any Canadian jurisdiction.
12. Since the date of the Initial Receipt, no unitholder of the Funds has made an investment decision with respect to the Funds, as series L units of the Funds are exclusively purchased by the Manager on behalf of its clients who have executed discretionary management agreements with the Manager.

13. The decision of the Funds to become reporting issuers was not made further to any request, demand or condition by existing unitholders prior to the Reporting Issuer Event.
14. The Funds are not in default of any of their obligations as reporting issuers under the Legislation;
15. No management fees are charged to the Funds in respect of series L units of each Fund, but a negotiated management fee is charged directly by the Manager to unitholders of the Funds, as described in the Simplified Prospectus and in accordance with the discretionary management agreements. As current unitholders of the Funds, except for the Manager, only hold series L units of the Funds, the Exemption Sought would not be prejudicial to unitholders of the Funds with respect to management fees since the revocation of the reporting issuer status of the Funds would not result in a change to the previously negotiated management fee; the Manager assumes directly the legal fees, books and record fees, independent review committee fees and audit fees of the Funds.
16. On September 22, 2009, the Manager issued a press release, and concurrently notified the unitholders of the Funds, stating that an application for the Exemption Sought had been made and that, should the Exemption Sought be granted, the Funds would cease to be reporting issuers everywhere in Canada.
17. Should the Exemption Sought be granted, the Funds will continue to comply with the applicable provisions of National Instrument 81-106 *Investment Fund Continuous Disclosure*.
18. Granting the Exemption Sought would not be prejudicial to holders of units of the Funds.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

Louis Morisset
Autorité des marchés financiers