

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications -- Securities Act (Ontario), ss.25 and 53 - Application for relief from the prospectus requirement and the dealer registration requirement in respect of certain trades made in connection with an employee share offering by a French issuer - The offering involves the use of a collective employee shareholding vehicle, a fonds commun de placement d'entreprise (FCPE) - The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus and Registration Exemptions as the shares are not being offered to Canadian participants directly by the issuer, but through the FCPE - The offering contains a "leveraged fund" component -- Number of Canadian employees de minimis - Canadian participants will not be induced to participate in the offering by expectation of employment or continued employment - Canadian participants will receive certain disclosure documents - The FCPE is subject to the supervision of the French Autorité des marchés financiers -- No market for shares of the issuer in Canada - Relief granted, subject to conditions.

Securities Act (Ontario), s.25 - Application for relief from the dealer registration requirement and adviser registration requirement for the manager of the FCPE, to the extent its activities require compliance - The manager will not be involved in providing advice to Canadian participants and its activities do not affect the underlying value of the shares being offered -- Relief granted in respect of specified activities of the manager, subject to conditions.

## **Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74.

National Instrument 45-106 Prospectus and Registration Exemptions, ss. 2.24, 2.28.

National Instrument 45-102 Resale of Securities, s. 2.14.

**March 26, 2007**

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

**(the "Jurisdictions")**

**AND**

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

**AND**

**IN THE MATTER OF  
REXEL (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 compartments of a collective shareholding vehicle, the FCPE Rexel Actionnariat International (the "**Fund**"), the Rexel International Classique Capitalisation Compartment (the "**Capitalisation Compartment**"), the Rexel International Classique Distribution Compartment (the "**Distribution Compartment**"; together with the Capitalisation Compartment, the "**Classic Compartments**") and the Rexel International Levier Compartment (the "**Leveraged Compartment**" and, together with the Classic Compartments, the "**Compartments**" and each, a "**Compartment**") 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 Compartments to Canadian Participants upon the redemption of Units by Canadian Participants, nor to the issuance of Units of the Classic Compartments to holders of Leveraged Compartment Units upon the transfer of the assets of the Leveraged Compartment to the Classic Compartments 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 Compartments made pursuant to the Employee Share Offering to or with Canadian Participants, nor to trades in Units of the Leveraged Compartment made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario or Manitoba;

(ii) trades of Shares by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants, nor to the issuance of Units of the Classic Compartments to holders of Leveraged Compartment Units upon the transfer of the assets of the Leveraged Compartment to the Classic Compartments at the end of the Lock-Up Period;

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 Compartments, BNP Paribas Asset Management (the "**Manager**") to the extent that its activities described in paragraphs 27 and 28 hereof 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 Shares acquired by Canadian Participants under the Employee Share Offering (the "**First Trade Registration Relief**").

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission 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 or in Québec Commission Notice 14-101 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 will be listed on Euronext Paris on the same date as, or prior to, the Employee Share Offering.

2. The Filer carries on business in Canada through the following affiliated companies: Rexel North America Inc. and Rexel Canada Electrical Inc. (the "**Canadian Affiliates**", 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 either or both of the Classic Compartments (the "**Classic Plan**"); and (ii) an offering of Shares to be subscribed through the Leveraged Compartment (the "**Leveraged Plan**").

4. Only persons who are employees of a member of the Filer Group at the time of the end of the subscription period of the Employee Share Offering and who have a minimum seniority of three months (such three-month period to be calculated on a continued or discontinued basis since January 1, 2006) (the "**Qualifying Employees**") will be invited to participate in the Employee Share Offering.

5. The Compartments were established for the purpose of implementing the Employee Share Offering. Only Qualifying Employees will be allowed to hold Units of the Compartments in an amount proportionate to their respective investments in each of the Compartments.

6. The Fund is not and has no intention of becoming a reporting issuer under the Legislation.

7. The Fund is a collective shareholding vehicle (fonds communs de placement d'entreprise or "**FCPEs**") of a type commonly used in France for the conservation or custodianship of shares held by employee investors. The Fund has been registered with and approved by the Autorit es march s financiers in France (the "**French AMF**"). Only Qualifying Employees will be allowed to hold Units of the Fund in an amount proportionate to their respective investments in the Fund.

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). At the end of the Lock-Up Period, a Canadian Participant may (i) redeem Units in the applicable Classic Compartment 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 applicable Classic Compartment and redeem those Units at a later date.

9. In the event of an early unwind resulting from the Canadian Participant satisfying one of the exceptions to the Lock-Up Period prescribed by French law, a Canadian Participant may redeem Units: (a) from the Classic Compartments for

a cash payment equal to the then market value of the Shares, or (b) from the Leveraged Compartment using the Redemption Formula (described below), by using the market value of the Shares at the time of unwind to measure the increase, if any, from the Reference Price (described below).

10. Under the Classic Plan, Canadian Participants will be issued Units in either (but not both) of the Classic Compartments, which will subscribe for Shares on behalf of the Canadian Participants, at a subscription price that is equal to the initial public offering price of the Shares (the "**Reference Price**"), less a 20% discount.

11. Dividends paid on the Shares held in the Capitalisation Compartment will be contributed to the Capitalisation Compartment and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued.

12. Any dividends paid on the Shares held in the Distribution Compartment will be distributed in cash to the Canadian Participant.

13. Under the Leveraged Plan, Canadian Participants will subscribe for Units in the Leveraged Compartment, and the Leveraged Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by BNP Paribas (the "**Bank**"), which is governed by the laws of France.

14. Canadian Participants in the Leveraged Plan receive a 20% discount on the Reference Price. Under the Leveraged Plan, the Canadian Participants effectively receive a share appreciation entitlement in the increase in value, if any, of the Shares financed by the Bank Contribution (as described below).

15. 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 Compartment and the Bank. In economic terms, the Swap Agreement effectively involves the following exchange of payments: for each Share which may be subscribed for by the Qualifying Employee's contribution (the "**Employee Contribution**") under the Leveraged Plan at the Reference Price less the 20% discount, the Bank will lend to the Leveraged Compartment (on behalf of the Canadian Participant) an amount sufficient to enable the Leveraged Compartment (on behalf of the Canadian Participant) to subscribe for an additional nine Shares (the "**Bank Contribution**") at the Reference Price less the 20% discount.

16. Under the terms of the Swap Agreement, at the end of the Lock-Up Period (the "**Settlement Date**"), the Leveraged Compartment will owe to the Bank an amount equal to the market value of the Shares held in that Compartment, less

(i) 100% of the Employee Contributions; and

(ii) an amount equal to at least 5 times the increase, if any, in the average market price of the Shares (subject to certain conditions) purchased with the Employee Contribution from the Reference Price (the "**Appreciation Amount**").

17. If, at the Settlement Date, the market value of the Shares held in the Leveraged Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to a guarantee agreement, make a cash contribution to the Leveraged Compartment to make up any shortfall.

18. At the end of the Lock-Up Period, the Swap Agreement will terminate after the making of final swap payments and a Canadian Participant (i) may redeem his or her Leveraged Compartment Units in consideration for a payment of an amount equal to the value of the Canadian Participant's Employee Contribution and the Canadian Participant's portion of the Appreciation Amount, if any, to be settled by delivery of such number of Shares equal to such amount or the cash equivalent of such amount (the "**Redemption Formula**"); or (ii) may elect that his or her investment be transferred to the Classic Compartment or any other similar compartment. New Units of the Classic Compartment will be issued to the applicable Canadian Participants in recognition of the assets transferred to the Classic Compartment. The Canadian Participants may redeem the new Units whenever they wish, in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares.

19. Subject to certain exceptional circumstances, a Canadian Participant in the Leveraged Compartment will be entitled to receive not less than 100% of his or her Employee Contribution at the end of the Lock-Up Period, and will not be liable for any other amounts.

20. Under French law, the Fund, as a FCPE, is a limited liability entity. Each Compartment's portfolio will consist of Shares of the Filer and, from time to time, cash in respect of dividends paid on the Shares that will be reinvested in Shares, as well as, in exceptional cases and if required for the acquisition and redemption of Units, cash and short term money market instruments (up to a maximum of 2% of the applicable Compartment's assets). The Leveraged Compartment's portfolio will also include the Swap Agreement. From time to time, a Compartment's portfolio may include cash or cash equivalents that the Compartments may hold pending investments in Shares and for purposes of Unit redemptions. The risk statement 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 Compartment, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Leveraged Plan.

21. During the term of the Swap Agreement, dividends paid on the Shares held in the Leveraged Compartment will be remitted to the Leveraged Compartment, and the Leveraged Compartment will remit an equivalent amount to the Bank as partial consideration for the obligations assumed by the Bank under the Swap Agreement.

22. For Canadian federal income tax purposes, the Canadian Participants in the Leveraged Compartment 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 Compartment, notwithstanding the actual non-receipt of the dividends 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 from their own resources.

23. The declaration of dividends on the Shares remains at the sole discretion of the board of directors of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment in respect of dividends.

24. 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 quantify, with certainty, his or her maximum tax liability in connection with dividends received by the Leveraged Compartment on his or her behalf under the Leveraged Plan.

25. At the time the Canadian Participant's obligations under the Swap Agreement are settled, the Canadian Participant should 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 Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Leveraged Compartment, on behalf of the Canadian Participant to the Bank. To the extent that dividends on Shares that are deemed to have been received by a Canadian Participant are paid by the Compartment 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).

26. The Manager is an asset management company governed by the laws of France. The Manager is registered with the French AMF to manage French investment funds. The Manager is not and has no intention of becoming a reporting issuer under the Legislation.

27. The Manager's portfolio management activities in connection with the Employee Share Offering, the Fund and the Compartments are limited to subscribing for 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.

28. The Manager is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of each Compartment. The Manager's activities in no way affect the value of the underlying Shares and the Manager is not to be involved in providing advice to any Canadian Participants.

29. Shares issued in the Employee Share Offering will be deposited in the relevant Compartment through BNP Paribas Securities Services (the "Depository"), a large French commercial bank subject to French banking legislation.

30. Under French law, the Depository must be selected by the Manager 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 Compartment to exercise the rights relating to the securities held in its portfolio.

31. The Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.

32. The total amount invested by a Qualifying Employee in the Employee Share Offering, including any Bank Contribution, cannot exceed 25% of his or her estimated gross annual compensation for 2007, or for his or her last year of employment, as the case may be, although a lower limit may be established for Canadian Participants by the Canadian Affiliates. In addition, the total amount invested by a Canadian Participant in the Leveraged Plan cannot exceed 2.5% of his or her estimated gross annual compensation for 2007.

33. None of the Filer, the Manager, 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.



34. The Filer will retain a securities dealer registered as a broker/investment dealer under the Legislation of Ontario and Manitoba (the "**Registrant**") to provide advisory services to 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 will establish accounts for such Canadian Participants. The Units of the Leveraged Compartment will be issued by the Leveraged Compartment to Canadian Participants resident in Ontario or Manitoba solely through the Registrant.

35. Units of the Leveraged Compartment will be evidenced by account statements issued by the Leveraged Compartment.

36. 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, a tax notice relating to the relevant Compartment containing a description of Canadian income tax consequences of subscribing to and holding the Units in the Compartments and redeeming Units for cash or Shares at the end of the Lock-Up Period, a copy of the information notices approved by the French AMF which sets out the main characteristics of the Compartments, a reservation form and a revocation form. 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.

37. Upon request, Canadian Participants may receive copies of the Filer's French Prospectus approved by the French AMF in respect of the Shares and a copy of the relevant Compartment's rules (which are analogous to company by-laws). The Canadian Participants will also receive copies of the continuous disclosure materials relating to the Filer's furnished to Filer shareholders generally.

38. Canadian Participants will receive an initial statement of their holdings under the Classic Plan and/or Leveraged Plan, together with updated account statements once a year.

39. There are approximately 2,462 Qualifying Employees resident in Canada, in the provinces of Ontario (1,073), Québec (458), Alberta (258), British Columbia (411), Manitoba (110), Saskatchewan (31), New Brunswick (31), Nova Scotia (66), Newfoundland and Labrador (12), Prince Edward Island (9) and the Northwest Territories (3), who represent in the aggregate less than 10% of the number of Qualifying Employees in the Filer Group worldwide.

40. 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 Compartments 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 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 Québec, the required fees are paid in accordance with Section 271.6(1.1) of the Securities Regulation (Québec).

It is the further decision of the Decision Makers under the Legislation that the First Trade Registration 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.

"Margot C. Howard"  
Commissioner  
Ontario Securities Commission

"Paul K. Bates"  
Commissioner  
Ontario Securities Commission