

## **2002 BCSECCOM 585**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain of the self-dealing prohibitions and reporting requirements and in respect of entering into forward contracts with a related counterparty in connection with an RSP fund in securities of other mutual funds that are under common management for specified purposes, subject to certain conditions.

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(a), 121(2)(b), 123, 126(a), 127(1)(a) and 130

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA  
AND NEWFOUNDLAND**

**AND**

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

**AND**

**IN THE MATTER OF  
MACKENZIE FINANCIAL CORPORATION AND  
KEYSTONE PREMIER RSP GLOBAL ELITE 100 FUND  
KEYSTONE PREMIER RSP EURO ELITE 100 FUND  
KEYSTONE ALTAMIRA RSP SCIENCE AND TECHNOLOGY FUND  
KEYSTONE ALTAMIRA RSP *E-BUSINESS* FUND  
KEYSTONE ALTAMIRA RSP GLOBAL EQUITY FUND  
MACKENZIE IVY RSP FOREIGN EQUITY FUND  
MACKENZIE CUNDILL RSP VALUE FUND  
MACKENZIE UNIVERSAL RSP SELECT MANAGERS FUND  
MACKENZIE UNIVERSAL RSP EUROPEAN OPPORTUNITIES FUND  
MACKENZIE UNIVERSAL RSP INTERNATIONAL STOCK FUND  
MACKENZIE UNIVERSAL RSP WORLD SCIENCE AND  
TECHNOLOGY FUND  
MACKENZIE UNIVERSAL RSP SELECT MANAGERS FAR EAST FUND  
MACKENZIE UNIVERSAL RSP SELECT MANAGERS  
INTERNATIONAL FUND  
MACKENZIE UNIVERSAL RSP SELECT MANAGERS JAPAN FUND  
MACKENZIE UNIVERSAL RSP SELECT MANAGERS U.S.A. FUND  
MACKENZIE IVY RSP GLOBAL BALANCED FUND  
MACKENZIE UNIVERSAL RSP TRENDS FUND**

### MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the “Jurisdictions”) has received an application (the “Application”) from Mackenzie Financial Corporation (“Mackenzie”) in its own capacity and on behalf of Keystone Premier RSP Global Elite 100 Fund, Keystone Premier RSP Euro Elite 100 Fund, Keystone Altamira RSP Science and Technology Fund, Keystone Altamira RSP *e-business* Fund, Keystone Altamira RSP Global Equity Fund (the “Keystone Funds”), Mackenzie Ivy RSP Foreign Equity Fund, Mackenzie Cundill RSP Value Fund, Mackenzie Universal RSP Select Managers Fund, Mackenzie Universal RSP European Opportunities Fund, Mackenzie Universal RSP International Stock Fund, Mackenzie Universal RSP World Science and Technology Fund, Mackenzie Universal RSP Select Managers Far East Fund, Mackenzie Universal RSP Select Managers International Fund, Mackenzie Universal RSP Select Managers Japan Fund, Mackenzie Universal RSP Select Managers U.S.A. Fund, Mackenzie Ivy RSP Global Balanced Fund and Mackenzie Universal RSP Growth Trends Fund (collectively with the Keystone Funds, the “Existing Funds”) and other mutual funds managed by Mackenzie after the date of this Decision (defined herein) having an investment objective that is linked to the returns or portfolio of another specified mutual fund while remaining 100% eligible for registered plans (together with the Existing Funds, the “Funds”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the following prohibitions or requirements under the Legislation (the “Applicable Requirements”) shall not apply to the Funds or Mackenzie, as the case may be, in respect of certain investments made by the Funds in forward contracts (the “Forward Contracts”) with M.R.S. Trust Company (“MRS” or the “Related Counterparty”):

1. the provision contained in the Legislation prohibiting a mutual fund from knowingly making and holding an investment in an issuer in which any officer or director of the mutual fund, its management company or distribution company or an associate of any of them has a significant interest;
2. the provision contained in the Legislation prohibiting a mutual fund from knowingly making and holding an investment in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or distribution company has a significant interest;
3. The provision contained in the Legislation prohibiting a mutual fund from knowingly making and holding an investment in any person or company in which

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the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder;

4. the requirements contained in the Legislation requiring the management company or a mutual fund manager to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company; and
5. the provision contained in the Legislation prohibiting a portfolio manager from knowingly causing any investment portfolio managed by it to invest in any issuer in which a “responsible person” (as that term is defined in the Legislation) or an associate of a responsible person is an officer or director.

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

AND WHEREAS it has been represented by Mackenzie to the Decision Makers that:

1. The Funds are or will be open-end mutual funds established under the laws of the Province of Ontario. Mackenzie is a corporation amalgamated under the laws of the Province of Ontario. Mackenzie is or will be the manager of the Funds. The head office of Mackenzie is in the Province of Ontario.
2. MRS is a trust company governed by the *Loan and Trust Corporations Act* (Ontario). MRS is the trustee of the Keystone Funds.
3. The Funds are or will be reporting issuers. The units of the Funds are or will be qualified under a simplified prospectus and annual information form (collectively, the “Prospectus”) or the equivalent under the Legislation, which Prospectus will contain disclosure with respect to the investment objective, investment practices and restrictions of the Funds. The Funds are not in default of the requirements of the Legislation.
4. Each Fund seeks to achieve its investment objective while ensuring that its units do not constitute “foreign property” under the *Income Tax Act* (Canada) (the “Tax Act”) for registered retirement savings plans, registered retirement income plans, and deferred profit sharing plans (“Registered Plans”).
5. To achieve its investment objective, each Fund will invest in derivative instruments and may invest in securities of a specified underlying fund (the “Underlying Funds”) such that its units will, in the opinion of tax counsel to the Fund, be “qualified investments” for Registered Plans and will not constitute

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foreign property in a Registered Plan. This will primarily be achieved by the Funds entering into derivative contracts with one or more financial institutions, including the Related Counterparty, that link the returns to those of the Underlying Funds. However, each Fund also intends to invest a portion of its assets in securities of an Underlying Fund. This investment by a Fund will at all times be below the maximum foreign property limit prescribed under the Tax Act for Registered Plans.

6. Each of the Existing Funds has previously obtained exemptive relief from the Jurisdictions in connection with its activities as an “RSP Clone Fund”.

7. The Funds originally entered into forward contracts with certain financial institutions. However, MRS, which is a subsidiary of Mackenzie, may in the future be prepared to enter into Forward Contracts with some or all of the Funds.

8. Except for the transaction costs payable to MRS in relation to any Forward Contracts, none of the Funds, the Underlying Funds, Mackenzie or any affiliate or associate of any of the foregoing will pay any fees or charges of any kind to MRS in respect of the Forward Contracts.

9. The independent board of Mackenzie, through Mackenzie's Regulatory Compliance and Ethics Committee of the Board of Directors (the “Independent Board”), the majority of whom are themselves not directors, officers or employees of Mackenzie, or any affiliate of Mackenzie or MRS, will review all proposed Forward Contracts between the Funds and the Related Counterparty to ensure that the Funds will receive terms and pricing that are at least as favourable as those agreed to by the Funds with arm’s length counterparties from time to time or as those available to the Funds from arm’s length counterparties from time to time.

10. The Prospectus will disclose the involvement of the Related Counterparty in the Forward Contracts, the review of the contracts by the Independent Board as well as all applicable charges in connection therewith.

11. So long as the debt of the Related Counterparty does not have the approved credit rating prescribed in National Instrument 81-102 (“NI 81-102”), the obligations of the Related Counterparty will be unconditionally guaranteed by an affiliate which does have an approved credit rating.

12. In order to hedge its obligations under the Forward Contracts, the Related Counterparty will likely, but is not required to, purchase securities of the applicable Underlying Funds.

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13. Except to the extent evidenced by this Decision and specific approvals granted or to be granted by the Canadian securities administrators under NI 81-102, the investments by each Fund in a Forward Contract have been structured to comply with the investment restrictions of the Legislation and NI 81-102.

14. The investments by the Funds in the Forward Contracts represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds.

15. In the absence of this Decision, pursuant to the Legislation, the Funds are prohibited from making and holding an investment in the Forward Contracts issued by the Related Counterparty.

16. In the absence of this Decision, pursuant to the Legislation, Mackenzie is: (a) prohibited from knowingly causing any investment portfolio managed by it to invest in Forward Contracts issued by the Related Counterparty in which a “responsible person” is an officer or director; and (b) required to file a report upon every investment by the Funds in a Forward Contract with the Related Counterparty.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers are 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 Applicable Requirements do not apply so as to prevent a Fund from entering into Forward Contracts with the Related Counterparty,

PROVIDED IN EACH CASE THAT:

- (a) the pricing terms offered by the Related Counterparty to the Funds under the Forward Contracts are at least as favourable as the terms agreed to by the Funds with arm’s length counterparties from time to time or as the terms otherwise available to the Funds from arm’s length counterparties from time to time;
- (b) prior to the Funds entering into a Forward Contract with the Related Counterparty, the Independent Board will review the pricing terms offered by the Related Counterparty to the Funds against the pricing terms agreed to by the Funds with arm’s length counterparties or the

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pricing terms otherwise available to the Funds from arm's length counterparties to ensure that the pricing is at least as favourable;

- (c) the review by the Independent Board will be undertaken not less frequently than on an annual basis, and in addition on any renewal or pricing amendment to each Forward Contract with the Related Counterparty during the term of such contract;
- (d) the Funds' Prospectus, and any renewal thereof, discloses the review of the Forward Contracts by the Independent Board, as well as the involvement of the Related Counterparty; and
- (e) the Funds will enter into Forward Contracts with the Related Counterparty only once confirmation of favourable pricing is received from the Independent Board.

DATED April 29, 2002.

Paul M. Moore

Howard I. Wetston