

## **2002 BCSECCOM 843**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the prohibition against a manager of mutual funds investing in the securities of a person who is a substantial security holder of the manager – mutual funds are permitted to continue to hold securities in related companies, and to purchase and sell securities of related companies in the future, provided an independent review committee oversees the holdings, purchases or sales of such securities, subject to specific conditions

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 120(1), 120(2), 121(2)(b), 123

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

**AND**

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

**AND**

**IN THE MATTER OF MACKENZIE FINANCIAL CORPORATION  
("MACKENZIE")  
MAXXUM PENSION FUND  
MAXXUM CANADIAN VALUE FUND  
MACKENZIE BALANCED FUND  
MAXXUM DIVIDEND GROWTH FUND  
MACKENZIE INCOME FUND  
MACKENZIE IVY ENTERPRISE FUND  
MACKENZIE IVY GROWTH AND INCOME FUND  
MACKENZIE IVY CANADIAN FUND  
MACKENZIE HORIZON CAPITAL CLASS  
MACKENZIE IVY CANADIAN CAPITAL CLASS  
MACKENZIE IVY ENTERPRISE CAPITAL CLASS  
MACKENZIE PREMIER INTERNATIONAL INVESTMENT CANADIAN  
EQUITY FUND  
MACKENZIE UNIVERSAL FUTURE CAPITAL CLASS  
MACKENZIE UNIVERSAL SELECT MANAGERS CANADA CAPITAL  
CLASS  
MACKENZIE UNIVERSAL CANADIAN BALANCED FUND  
MACKENZIE UNIVERSAL FUTURE FUND**

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**MACKENZIE UNIVERSAL SELECT MANAGERS CANADA FUND  
CLARICA SUMMIT EQUITY FUND  
CLARICA SUMMIT GROWTH AND INCOME FUND  
CLARICA SUMMIT DIVIDEND GROWTH FUND  
KEYSTONE AIM/TRIMARK CANADIAN EQUITY FUND  
KEYSTONE AGF EQUITY FUND  
KEYSTONE SPECTRUM EQUITY 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 and Labrador (the "Jurisdictions") issued a decision on April 17, 2001 (the "Original Decision") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that certain provisions of the Legislation did not apply so as to prevent Maxxum Pension Fund, Maxxum Canadian Value Fund, Mackenzie Balanced Fund, Maxxum Dividend Growth Fund, Mackenzie Income Fund, Mackenzie Ivy Enterprise Fund, Mackenzie Ivy Growth and Income Fund, Mackenzie Ivy Canadian Fund, Mackenzie Horizon Capital Class, Mackenzie Ivy Canadian Capital Class, Mackenzie Ivy Enterprise Capital Class, Mackenzie Premier International Investment Canadian Equity Fund, Mackenzie Universal Future Capital Class, Mackenzie Universal Select Managers Canada Capital Class, Mackenzie Universal Canadian Balanced Fund, Mackenzie Universal Future Fund, Mackenzie Universal Select Managers Canada Fund, Clarica Summit Equity Fund, Clarica Summit Growth and Income Fund, Clarica Summit Dividend Growth Fund, Keystone Aim/Trimark Canadian Equity Fund, Keystone AGF Equity Fund, and Keystone Spectrum Equity Fund (individually a "Current Fund" and collectively the "Current Funds") from holding their investments in certain Related Companies (as hereinafter defined) following the acquisition by Investors Group Inc. ("IG") of all the outstanding common shares of Mackenzie as a result of a formal take-over bid (the "Transaction") provided that such investments were subsequently disposed of;

AND WHEREAS the Decision Maker wishes to rescind the Original Decision made April 17, 2001;

AND WHEREAS Mackenzie has made a further application for a decision (the "Decision") pursuant to the Legislation as a result of the Transaction that the following provisions do not apply so as to prevent the Current Funds together with such other funds as may be established and advised by Mackenzie from time to time (individually a "Fund" and collectively the "Funds") from investing in, or continuing to hold an investment in, securities of the Related Companies:

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- (a) the provision prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company; and
- (b) the provision prohibiting a mutual fund from knowingly making or holding an investment in an issuer in which a substantial security holder of the mutual fund, its management company or its distribution company has a significant interest (the provisions of (a) and (b) being collectively, the “Investment Restrictions”);

AND WHEREAS the CSA recently released for comment its concept proposal 81-402 titled “*Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers*” which contains, among other things, alternatives for mutual fund governance. The comment period ended June 7, 2002. The CSA has not yet developed a definitive model for mutual fund governance.

AND WHEREAS the CSA has a strategy for dealing with important matters on a timely basis even though they may be part of a larger comprehensive policy study by the CSA .

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 open-ended mutual fund trusts established, or mutual fund corporations incorporated, under the laws of the Province of Ontario.
2. Mackenzie is the trustee, manager and registrar of each of the Current Funds, except Clarica Summit Equity Fund, Clarica Summit Growth and Income Fund and Clarica Summit Dividend Fund, for which it is retained as advisor, and Mackenzie will also be the advisor to the Funds and may also be the manager or trustee of the Funds.
3. The securities of the Funds are or will be offered for sale in all of the provinces and territories of Canada. Each of the Funds is or will be a reporting issuer under the Legislation and is not on a list of defaulting issuers maintained under the Legislation.

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4. On April 17, 2001, IG purchased all of the outstanding common shares of Mackenzie.
5. Power Corporation of Canada ("PPC") owns more than 67% of the outstanding common shares of Power Financial Corporation ("PFC"). PFC owns more than 67% of the outstanding common shares in the capital of IG. PFC also owns 65% of the outstanding voting securities of Great-West Lifeco Inc. ("Lifeco"), and has an 80.2% economic interest therein. IG owns 100% of the outstanding common shares of Mackenzie.
6. As of April 17, 2001, each of the Current Funds owned voting securities of one or more of PCC, PFC or Lifeco (collectively, the "Related Companies").
7. The Funds have not made any investment in securities of the Related Companies since the Transaction.
8. At the time the securities of the Related Companies were purchased, the Related Companies were not affiliated with the Current Funds or Mackenzie, and each investment by the Current Funds in the securities of the Related Companies represented the business judgment of professional portfolio advisers uninfluenced by considerations other than the best interests of the investors of the Current Funds.
9. As a result of the Original Decision by the Decision Makers dated April 17, 2001, the Current Funds are required to divest all securities of the Related Companies and are not permitted to purchase additional securities of the Related Companies.
10. The Current Funds have been divesting their securities of the Related Companies and, in the opinion, of Mackenzie the divestiture is not in the best interests of the investors in the Current Funds. Rather, it is in the best interests of investors in the Current Funds to retain the investments in the securities of Related Companies and to be able to continue to invest in securities of the Related Companies up to the limits allowed by applicable Legislation.
11. Mackenzie believes that it would be in the best interests of investors of the Funds to be permitted to invest in securities of the Related Companies, in keeping with the investment objectives of the Funds, though only up to the limit allowed by applicable Legislation.
12. Mackenzie will create an Independent Review Committee (the "Independent Committee"), comprised entirely of individuals who are wholly independent of

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Mackenzie, to oversee the holdings, purchases or sales of securities of Related Companies for the Funds.

13. The Independent Committee shall review the holdings, purchases or sales of securities of the Related Companies to ensure that they have been made free from any influence by a Related Company and without taking into account any consideration relevant to a Related Company.

14. The Independent Committee will take into consideration the best interests of unitholders of the Funds and no other factors.

15. Compensation to be paid to members of the Independent Committee will be paid by the Funds based on the relative size of holdings of the Related Companies in a Fund.

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 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 pursuant to the Legislation is that:

1. the Original Decision is hereby rescinded;
2. the Funds are exempt from the Investment Restrictions so as to enable the Funds to invest, or continue to hold an investment in, securities of a Related Company; and
3. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with mutual fund governance in a manner that conflicts with or makes inapplicable any provision of this Decision;

provided that:

- (a) Mackenzie has appointed the Independent Committee to review the Funds' purchases, sales and continued holdings of securities of a Related Company;
- (b) the Independent Committee has at least three members, none of whom is an associate of (i) Mackenzie, (ii) any portfolio manager of the Funds; or

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- (iii) any associate or affiliate of Mackenzie or the portfolio managers of the Funds;
- (c) the Independent Committee has a written mandate describing its duties and standard of care which, as a minimum, sets out the conditions of this Decision;
- (d) the members of the Independent Committee exercise their powers and discharge their duties honestly, in good faith and in the best interests of investors in the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (e) none of the Funds relieves the members of the Independent Committee from liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);
- (f) none of the Funds indemnifies the members of the Independent Committee against legal fees, judgments and amounts paid in settlement as a result of a breach of the standard of care set out in paragraph (d);
- (g) none of the Funds incurs the cost of any portion of liability insurance that insures a member of the Independent Committee for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);
- (h) the cost of any indemnification or insurance coverage paid for by Mackenzie, any portfolio manager of the Funds, or any associate or affiliate of Mackenzie or the portfolio managers of the Funds to indemnify or insure the members of the Independent Committee in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph (d) is not paid either directly or indirectly by the Funds;
- (i) the Independent Committee reviews the Funds' purchases, sales and continued holdings of securities of a Related Company on a regular basis, but not less frequently than every three months;
- (j) the Independent Committee forms the opinion, after reasonable inquiry, that the decisions made on behalf of each Fund by Mackenzie or the Fund's portfolio manager to purchase, sell or continue to hold securities of a Related Company were and continue to be in the best interests of the Fund, and to:

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- (i) represent the business judgement of Mackenzie or the Fund's portfolio manager, uninfluenced by considerations other than the best interests of the Fund;
  - (ii) have been made free from any influence by a Related Company and without taking into account any consideration relevant to a Related Company; and
  - (iii) not exceed the limitations of the applicable legislation.
- (k) the determination made by the Independent Committee pursuant to paragraph (j) is included in detailed written minutes provided to Mackenzie not less frequently than every three months;
- (l) the reports required to be filed pursuant to the Legislation with respect to every purchase and sale of securities of a Related Company are filed on SEDAR in respect of the relevant mutual fund;
- (m) the Independent Committee advises the Decision Makers in writing of:
  - (i) any determination by it that the condition set out in paragraph (j) has not been satisfied with respect to any purchase, sale or holding of securities of a Related Company;
  - (ii) any determination by it that any other condition of this Decision has not been satisfied;
  - (iii) any action it has taken or proposes to take following the determinations referred to above; and
  - (iv) any action taken, or proposed to be taken, by Mackenzie or a portfolio manager of the Funds in response to the determinations referred to above; and
- (n) the existence, purpose, duties and obligations of the Independent Committee, the names of its members, whether and how they are compensated by the Funds, and the fact that they meet the requirements of the condition set out in paragraph (b) are disclosed:
  - (i) in a press release issued, and a material change report filed, prior to reliance on the Decision;

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- (ii) in item 12 of Part A of the simplified prospectus of the Funds; and
- (iii) on Mackenzie's internet website.

DATED this 26<sup>th</sup> day of July, 2002.

Paul M. Moore

David A. Brown