

## 2003 BCSECCOM 378

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the prohibition against investing in the securities of a person who is a substantial security holder of the manager of mutual funds, subject to certain conditions – mutual fund applies an investment strategy developed by an independent advisor that specifies the criteria to select the common shares of issuers to be invested in by the fund – manager is a wholly-owned subsidiary of a bank whose securities are included in the investment strategy

### **Applicable British Columbia Provisions**

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

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA**

**AND**

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

**AND**

### **IN THE MATTER OF RBC FUNDS INC. and O'SHAUGHNESSY CANADIAN EQUITY FUND**

### **MRRS DECISION DOCUMENT**

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from RBC Funds Inc. (“RBC FI”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that (a) certain Existing Orders (as defined below) be revoked as they apply to O’Shaughnessy Canadian Equity Fund (the “O’Shaughnessy Fund”) and (b) the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company who is a substantial security holder of the mutual fund, its mutual fund manager or its mutual fund distributor shall not apply to investments made by the O’Shaughnessy Fund in securities of The Royal Bank of Canada (“Royal Bank”) (the “Investment Restriction”);

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- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (the “System”), the British Columbia Securities Commission is the principal regulator for this Application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS RBC FI has represented to the Decision Makers that:
1. the O’Shaughnessy Fund is subject to National Instrument 81-102 (“NI 81-102”) and is a reporting issuer in British Columbia and in Alberta;
  2. the O’Shaughnessy Fund, although not an “index mutual fund” within the meaning of NI 81-102, invests on the basis of Strategy Indexing™, an investment portfolio management model developed by James O’Shaughnessy, a portfolio manager with Net Folio Inc. (formerly O’Shaughnessy Capital Management Inc.) (“Net Folio”);
  3. RBC FI is the manager of the O’Shaughnessy Fund; RBC Global Investment Management Inc. (“RBC GIM”), an affiliate of RBC FI, is the portfolio advisor of the O’Shaughnessy Fund; RBC FI and RBC GIM are wholly-owned subsidiaries of Royal Bank;
  4. RBC GIM has retained Bear Stearns Asset Management Inc. (“BSAM”), as a successor to Net Folio, as the sub-advisor to the O’Shaughnessy Fund; James O’Shaughnessy is currently a portfolio manager with BSAM and has primary responsibility for the O’Shaughnessy Fund;
  5. the investment sub-advisor agreement between BSAM, RBC GIM and RBC FI provides that BSAM has full power and discretionary authority, subject to the direction of RBC FI and RBC GIM, to manage the investment portfolio of the O’Shaughnessy Fund on a day to day basis; RBC FI and RBC GIM do not engage in the stock selection for the O’Shaughnessy Fund nor do they influence the decisions of BSAM as to the purchase, sale or holding of any securities of an issuer, or as to with whom an order for the sale or purchase of a specific security may be placed;
  6. although RBC GIM is responsible for the services provided by BSAM, BSAM operates the O’Shaughnessy Fund on a day-to-day basis in accordance with its investment objectives without consultation with RBC GIM;
  7. the investment objectives and investment strategies of the O’Shaughnessy Fund are set out in the simplified prospectus of the O’Shaughnessy Fund; the

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investment strategies provide a description of the proprietary quantitative approach to stock selection which is used by BSAM in managing the O'Shaughnessy Fund;

8. the investment of the O'Shaughnessy Fund's assets in accordance with Strategy Indexing™ is a passive process that leaves no discretion to RBC FI, RBC GIM or BSAM;
  9. Strategy Indexing™ may select for acquisition by the O'Shaughnessy Fund common shares of Royal Bank;
  10. in the opinion of RBC FI, the acquisition and holding by the O'Shaughnessy Fund of common shares of Royal Bank in accordance with Strategy Indexing™ is in the best interests of the O'Shaughnessy Fund and represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the O'Shaughnessy Fund;
  11. on December 12, 1997 and October 10, 1997, RBC FI obtained orders in British Columbia and Alberta, respectively, exempting the O'Shaughnessy Fund from the Investment Restriction (the "Existing Orders"), subject to certain restrictions;
  12. the O'Shaughnessy Fund also received, in 1997, orders of the securities regulatory authorities in Ontario, Saskatchewan, Quebec, Nova Scotia and Newfoundland which granted relief from the comparable provisions of the legislation of those jurisdictions;
  13. the Existing Orders contain as a condition of the relief that the proportion of the assets of the O'Shaughnessy Fund to be invested in common shares of Royal Bank must be "as outlined" in the order and impose a number of specific requirements;
  14. the only condition in the orders of Ontario, Saskatchewan, Quebec, Nova Scotia and Newfoundland is that the O'Shaughnessy Fund invests in accordance with its stated investment policy of applying Strategy Indexing™ and not pursuant to the exercise of discretion;
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- ¶ 6 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;

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- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that the Investment Restriction does not apply to the making or holding by the O'Shaughnessy Fund of an investment in common shares of Royal Bank, provided that the proportion of the O'Shaughnessy Fund's assets to be invested in common shares of Royal Bank is determined in accordance with its stated investment policy of applying Strategy Indexing<sup>TM</sup> and not pursuant to the exercise of discretion; and
- ¶ 8 THE FURTHER DECISION of the Decision Makers is that the Existing Orders are revoked as they apply to the O'Shaughnessy Fund.
- ¶ 9 June 6, 2003

Brenda Leong  
Director