

# 2002 BCSECCOM 645

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – mutual fund dealer exempted from the legislative requirements that it file an application to become a member of the Mutual Fund Dealers Association (MFDA) and become a member of the MFDA – mutual fund dealer subject to certain terms and conditions of registration

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 48

*Securities Rules*, B.C. Reg. 194/97, s. 6(4)

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

**AND**

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

**AND**

## **IN THE MATTER OF DYNAMIC MUTUAL FUNDS LTD.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia and Ontario (the “Jurisdictions”) has received an application (the “Application”) from Dynamic Mutual Funds Ltd. (the “Registrant”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the Registrant not be required to file an application to become a member of the Mutual Fund Dealers Association of Canada (the “MFDA”) and to become a member of the MFDA.

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 the Registrant to the Decision Makers that:

## 2002 BCSECCOM 645

1. the Registrant is a corporation subsisting under the laws of the Province of Ontario and is registered as a dealer in the category of “mutual fund dealer” in each of the Jurisdictions;
2. the Registrant also is registered as an adviser in the categories of “investment counsel” and “portfolio manager” in Ontario;
3. the Registrant’s principal business activity is managing mutual funds (the “Mutual Funds”), the securities of which are qualified for sale to the public in some or all of the provinces and territories of Canada pursuant to prospectuses for which receipts have been issued by the relevant Canadian securities administrators;
4. the Registrant also manages investments through other collective investment vehicles (“Other Funds”) currently consisting of a closed-end investment fund that is listed on The Toronto Stock Exchange and five redeemable investment trusts (collectively, the “Pooled Funds”);
5. the Registrant also manages investments on a segregated account basis;
6. the Registrant also engages in activities incidental to its principal business activities that currently include marketing the sale of its Mutual Funds and Pooled Funds, servicing “in-house” accounts (“In-house Accounts”) for investors (“In-house Investors”), selling its Pooled Funds on a prospectus-exempt basis to accredited investors and other investors and processing redemption orders forwarded directly to the Registrant by clients holding Mutual Funds in “client name” in the Jurisdictions;
7. to the best of the Registrant’s knowledge, the In-house Investors currently are comprised exclusively of present or former directors, officers and employees of the Registrant and its affiliates, the members of the board of governors of the Dynamic Mutual Funds, directors, officers, partners and employees of certain service providers of the Registrant and relations and personal holding companies of the foregoing;
8. the Registrant’s activities as a mutual fund dealer currently represent and will continue to represent activities that are incidental to its principal business activities;
9. the Registrant has agreed to the imposition of the terms and conditions on the Registrant’s registration as a mutual fund dealer set out in the attached Schedule “A”, which outlines the activities the Registrant has agreed to adhere to in connection with its application for this Decision;

## 2002 BCSECCOM 645

10. any person or company that is not currently a client of the Registrant on the effective date of this Decision, will, before they are accepted as a client of the Registrant, receive prominent written notice from the Registrant that:

*The Registrant is not currently a member, and does not intend to become, a member of the Mutual Fund Dealers Association; consequently, clients of the Registrant will not have available to them investor protection benefits that would otherwise derive from membership of the Registrant in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA;*

11. upon the next general mailing to its account holders and in any event before November 30, 2002, the Registrant shall provide, to any client that was a client of the Registrant on the effective date of this Decision, the prominent written notice referred to in paragraph 10 above;

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

IT IS THE DECISION of the Decision Makers pursuant to the Legislation that, effective May 23, 2001, the Registrant not be required to file an application to become a member of the MFDA and to become a member of the MFDA;

PROVIDED THAT:

The Registrant complies with the terms and conditions on its registration under the Legislation as a mutual fund dealer set out in the attached Schedule "A".

July 9, 2002

David M. Gilkes

# **2002 BCSECCOM 645**

## **Schedule “A”**

### **TERMS AND CONDITIONS OF REGISTRATION OF**

#### **DYNAMIC MUTUAL FUNDS LTD.**

#### **AS A MUTUAL FUND DEALER**

#### **Definitions**

For the purposes hereof, unless the context otherwise requires:

- (a) “Act” means, in Ontario, the Securities Act, R.S.O. 1990, c.S5, as amended, and, in British Columbia, the *Securities Act*, R.S.B.C. 1996, c. 418;
- (b) “Adviser” means an adviser as defined in the applicable Act;
- (c) “Client Name Trade” means, for the Registrant, a trade to or on behalf of a person or company in securities of a mutual fund that is managed by the Registrant or an affiliate of the Registrant where, immediately before the trade, the person or company is shown on the records of the mutual fund or of an other mutual fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund, and the trade consists of:
  - (A) a purchase by the person or company through the Registrant of securities of the mutual fund; or
  - (B) a redemption by the person or company through the Registrant of securities of the mutual fund;and where the person or company
  - (C) is a client of the Registrant that was not solicited by the Registrant; or
  - (D) was an existing client of the Registrant on the Effective Date;
- (d) “Effective Date” means May 23, 2001;
- (e) “Employee”, for the Registrant, means:

## 2002 BCSECCOM 645

- (A) an employee of the Registrant;
  - (B) an employee of an affiliated entity of the Registrant;  
or
  - (C) an individual that is engaged to provide, on a *bona fide* basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;
- (f) “Employee”, for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:
  - (A) the Registrant or an affiliated entity of the Registrant; or
  - (B) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;
- (g) “Executive”, for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant or a member of a board of governors relating to mutual funds managed by the Registrant or an affiliated entity of the Registrant;
- (h) “Executive”, for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;
- (i) “Exempt Trade”, for the Registrant, means:
  - (i) a trade in securities of a mutual fund that is made between a person or company and an underwriter acting as purchaser or between or among underwriters;

## 2002 BCSECCOM 645

- (ii) in Ontario, a trade in securities of a mutual fund for which the Registrant would have available to it an exemption from the registration requirements of the Act if the Registrant were not a “market intermediary” as such term is defined in section 204 of the Ontario Regulation;
  - (iii) in British Columbia, a trade in securities of a mutual fund for which the Registrant would have available to it an exemption from the registration requirements of the Act; or
  - (iv) a trade in securities of a mutual fund for which the Registrant has received a discretionary exemption from the registration requirements of the Act;
- (j) “Fund-on-Fund Trade” means a trade that consists of:
  - (i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;
  - (ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a person or company where the person or company, an affiliated entity of the person or company, or an other person or company is, or will become, the counterparty in a specified derivative or swap with another mutual fund; or
  - (iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:
    - (A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or
    - (B) a person or company that acquired the securities where the person or company, an affiliated entity of the person or company, or an other person or company is, or was, the counterparty in a specified derivative or swap with another mutual fund;

and where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;

## 2002 BCSECCOM 645

- (k) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of another trade in securities of a mutual fund, where the other trade consists of:
- (i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
  - (ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund;

and where, in each case, the purchase or sale is made by or through an other registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

- (l) “Managed Account” means, for the Registrant, an investment portfolio account of a client under which the Registrant, pursuant to a written agreement made between the Registrant and the client, makes investment decisions for the account and has full discretionary authority to trade in securities for the account without obtaining the client’s specific consent to the trade;
- (m) “Managed Account Trade” means, for the Registrant, a trade to, or on behalf of a Managed Account of the Registrant, where the trade consists of a purchase or redemption, through the Registrant of securities of a mutual fund, that is made on behalf of the Managed Account;

where, in each case,

- (i) the Registrant is the portfolio adviser to the mutual fund;
- (ii) the mutual fund is managed by the Registrant or an affiliate of the Registrant; and
- (iii) either of:
  - (A) the mutual fund is prospectus-qualified in the jurisdiction where the trade occurs; or

## 2002 BCSECCOM 645

- (B) the trade is not subject to the registration and prospectus requirements of the Act;
- (n) “Mutual Fund Instrument” means National Instrument 81-102 Mutual Funds, as amended;
- (o) “Ontario Regulation” means R.R.O. 1990, Reg. 1015, as amended, made under the Ontario Act;
- (p) “Permitted Client” means a person or company that is a client of the Registrant, and that is, or was at the time the person or company became a client of the Registrant:
  - (i) an Executive or Employee of the Registrant;
  - (ii) a Related Party of an Executive or Employee of the Registrant;
  - (iii) a Service Provider or an affiliated entity of a Service Provider;
  - (iv) an Executive or Employee of a Service Provider; or
  - (v) a Related Party of an Executive or Employee of a Service Provider;
- (q) “Permitted Client Trade” means, for the Registrant, a trade to a person who is a Permitted Client or who represents to the Registrant that he or she is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliate of the Registrant, and the trade consists of a purchase or redemption by the person through the Registrant of securities of the mutual fund;
- (r) “Registered Plan” means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the *Income Tax Act* (Canada);
- (s) “Registrant” means Dynamic Mutual Funds Ltd.;
- (t) “Related Party”, for a person, means another person who is:



## 2002 BCSECCOM 645

- (i) the spouse of the person;
- (ii) the issue of:
  - (A) the person,
  - (B) the spouse of the person, or
  - (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
- (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
- (iv) the issue of any person referred to in paragraph (iii) above; or
- (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
- (vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing;
- (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
- (u) “securities”, for a mutual fund, means shares or units of the mutual fund;
- (v) “Seed Capital Trade” means a trade in securities of a mutual fund made to a persons or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument;
- (w) “Service Provider” means:
  - (i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;
  - (ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or

## 2002 BCSECCOM 645

- (x) a person or company that provides or has provided professional, consulting, technical, management or other services to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant.

For the purposes hereof, a person or company is considered to be an “affiliated entity” of an other person or company if the person or company would be an affiliated entity of that other person or company for the purposes of the Ontario Securities Commission Rule 45-503 Trades To Employees, Executives and Consultants and British Columbia Instrument 45-507 Trades to Employees, Executives and Consultants.

For the purposes hereof:

- (y) “issue” and “sibling” includes any person having such relationship through adoption, whether legally or in fact;
  - (z) “parent” and “grandparent” includes a parent or grandparent through adoption, whether legally or in fact;
  - (aa) “registered dealer” means a person or company that is registered under the Act as a dealer in a category that permits the person or company to act as dealer for the subject trade; and
  - (bb) “spouse”, for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.
4. Any terms that are not specifically defined above shall, unless the context otherwise requires, have the meaning:
- (a) specifically ascribed to such term in the Mutual Fund Instrument; or
  - (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Act.

## **2002 BCSECCOM 645**

### **Restricted Registration**

#### **Permitted Activities**

5. The registration of the Registrant as a mutual fund dealer under the Act shall be for the purposes only of trading by the Registrant in securities of a mutual fund where the trade consists of:
- (a) a Client Name Trade;
  - (b) an Exempt Trade;
  - (c) a Fund-on-Fund Trade;
  - (d) an In Furtherance Trade;
  - (cc) a Permitted Client Trade; or
  - (dd) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (e), the trades are limited and incidental to the principal business of the Registrant.