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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted from dealer registration and prospectus requirements for trades by pooled funds of reinvested securities and additional securities to existing securityholders, subject to certain conditions – relief from requirement to report distribution of privately-placed securities or additional securities provided report filed and fees paid within 30 days after financial year end.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 45(2)(22), 45(2)(25), 48, 61, 74(2)(19), 74(2)(22) and 76.

Securities Rules, R.B.C. Reg. 194/97, s. 139

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

AND

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

AND

IN THE MATTER OF AGF FUNDS INC.

MRRS DECISION DOCUMENT

¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (the “Jurisdictions”) has received an application from AGF Funds Inc. (the “Filer”) for a decision under the securities legislation (the “Legislation”) of the Jurisdictions that:

- (a) certain trades in privately-placed shares or units (the “Privately-Placed Securities”) of mutual funds established, or to be established from time to time, by the Filer (the “Funds”) are not subject to the dealer registration

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requirement or the prospectus requirement under the Legislation of the Jurisdictions; and

(b) trades in Privately-Placed Securities and Additional Securities (as defined below) are not subject to the requirements of the Legislation of some of the Jurisdictions relating to the filing of forms and the payment of fees within certain prescribed time periods (the “Reporting Requirement”);

- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (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 or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:
1. the Filer is a corporation amalgamated under the laws of Ontario, registered as an adviser in the categories of investment counsel and portfolio manager under the Legislation of Ontario;
 2. the Filer has offered or will offer Privately-Placed Securities of the Funds;
 3. the Filer acts or will act as the trustee and manager of the Funds;
 4. trades in the Privately-Placed Securities of the Funds are effected, or will be effected, in the Jurisdictions through the Filer or a registered dealer or in reliance on an exemption from the dealer registration requirement set out in the Legislation;
 5. each of the Funds is or will be a “mutual fund” as defined in the Legislation;
 6. it is not currently intended that the Privately-Placed Securities, Additional Securities or Reinvested Securities will be listed on any stock exchange;
 7. each Fund will initially distribute Privately-Placed Securities to investors in compliance with available exemptions from the dealer registration requirement, if applicable, and the prospectus requirement (the “Private Placement Exemptions”) under the Legislation;

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8. in some Jurisdictions, the Private Placement Exemptions require that the investor purchase a minimum amount as prescribed by the Legislation of that Jurisdiction (the “Prescribed Amount”);
 9. it is proposed that an existing holder of a Fund (the “Existing Securityholder”) may wish from time to time to purchase additional Privately-Placed Securities of that Fund (“Additional Securities”) in increments of less than the Prescribed Amount provided that, at the time of such additional acquisition, the Existing Securityholder holds Privately-Placed Securities of the Fund with an aggregate acquisition cost or aggregate net asset value of at least the Prescribed Amount;
 10. the issuance of Additional Securities of a Fund to an Existing Securityholder in such circumstances is exempt from the dealer registration requirement and prospectus requirement of the Jurisdictions, except Manitoba, Québec, New Brunswick, Prince Edward Island, Newfoundland and Yukon;
 11. each Fund proposes to distribute Privately-Placed Securities (“Reinvested Securities”) by way of automatic reinvestment of distributions to Existing Securityholders of the Fund, whether of net income, net realized capital gains or returns of capital;
 12. the distribution of Reinvested Securities of a Fund upon the reinvestment of such distributions is not wholly exempt from the dealer registration requirement and the prospectus requirement of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon;
 13. the Legislation of the Jurisdictions, other than Manitoba, New Brunswick, Prince Edward Island and Yukon, has a Reporting Requirement in respect of distributions under the Private Placement Exemptions and British Columbia, Nova Scotia and Saskatchewan also have a Reporting Requirement for distributions of Additional Securities;
 14. Privately-Placed Securities in each of the Funds may or may not be transferable, but will be redeemable upon the request of the Existing Securityholder;
- ¶ 5 AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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- ¶ 6 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;
- ¶ 7 THE DECISION of the Decision Makers pursuant to the Legislation is that:
1. the dealer registration requirement and prospectus requirement contained in the Legislation of the Jurisdictions shall not apply to trades in Reinvested Securities of a Fund provided that:
 - (a) no sales commissions or other charges are payable in respect of such issuance of Reinvested Securities;
 - (b) each Existing Securityholder who receives Reinvested Securities has received, not more than 12 months before the issuance, a statement describing (i) any rights the Existing Securityholder has to make an election to receive cash instead of Reinvested Securities in the payment of the net income or net realized capital gains distributed by the Fund or distributions that are a return of capital, (ii) instructions on how the right referred to in subclause (i), if any, can be exercised, and (iii) the fact that no prospectus is available for the Fund as Reinvested Securities are only offered under exemptions from the prospectus requirement;
 - (c) the first trade in Reinvested Securities shall be deemed a distribution or primary distribution to the public, unless:
 - (i) except in Québec, the conditions in sections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") are satisfied;
 - (ii) in Québec, the alienation of the Reinvested Securities acquired pursuant to this Decision is a distribution and cannot take place without a prospectus unless
 - (A) no unusual effort is made to prepare the market or to create a demand for the Reinvested Securities that are the subject of the alienation,
 - (B) no extraordinary commission or other consideration is paid in respect of the alienation, and

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- (C) if the seller of the Reinvested Securities is an insider of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirements of securities legislation;
 - (d) in Québec, the Filer notifies and obtains the approval of the Decision Maker in Quebec of its intention to rely on this relief in respect of Funds to be established in the future;
- 2. the dealer registration requirement, if applicable, and prospectus requirement contained in the Legislation of Alberta, Manitoba, Québec, New Brunswick, Prince Edward Island, Newfoundland, and Yukon shall not apply to trades in Additional Securities to Existing Securityholders of a Fund provided that:
 - (a) at the time of the trade of Additional Securities of a Fund, the Existing Securityholder then owns Privately-Placed Securities of the Fund having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount, or in the case of Alberta, the Prescribed Amount that was in effect at the time the Existing Securityholder made the initial investment;
 - (b) this section 2 will cease to be in effect in a Jurisdiction 90 days after the coming into force of any securities legislation in such Jurisdiction that provides an exemption from the dealer registration requirement and prospectus requirement for distributions of additional securities of mutual funds; and
 - (c) the first trade in Additional Securities shall be deemed a distribution or primary distribution to the public, unless:
 - (i) except in Québec, the conditions in sections (2) or (3) of section 2.5 of MI 45-102 are satisfied;
 - (ii) in Québec, the alienation of the Additional Securities acquired pursuant to this Decision is a distribution and cannot take place without a prospectus unless
 - (A) no unusual effort is made to prepare the market or to create a demand for the Additional Securities that are the subject of the alienation,
 - (B) no extraordinary commission or other consideration is paid in respect of the alienation, and

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- (C) if the seller of the Additional Securities is an insider of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirements of securities legislation;
3. the Reporting Requirement of the Legislation of the Jurisdictions, other than Manitoba, New Brunswick, Prince Edward Island and the Yukon, does not apply to a trade in Privately-Placed Securities or Additional Securities of a Fund, provided that within 30 days of the end of each financial year of each Fund, such Fund:
- (a) files with the applicable Decision Maker a report in respect of all trades in Privately Placed Securities and Additional Securities of the Fund during such financial year, in the form prescribed by the applicable Legislation;
 - (b) remits to the applicable Decision Maker the fee prescribed by the applicable Legislation; and
 - (c) files with the Decision Maker in Québec annual audited financial statements and the prescribed fee within 140 days of each financial year.

¶ 8 October 18, 2002.

Brenda Leong
Director