

## 2004 BCSECCOM 639

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 123 - Relief from self dealing restrictions in s. 122 of the Act - A mutual fund wants relief from the prohibition to knowingly enter into a contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of an investment in or to a person to whom it is prohibited from making an investment - Filer is merging a number of mutual funds; filer is manager of mutual funds; merger of mutual funds is prohibited by self-dealing provisions in *Securities Act*; each merger satisfies all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of National Instrument 81-102 *Mutual Funds* (NI 81-102); mutual fund conflict of interest and mutual fund conflict of interest reporting restrictions do not apply to mergers by operation of 5.9(2) of NI 81-102; filer entered into amalgamation agreement that results in mutual funds being liable for an investment they are prohibited from making under the self-dealing prohibitions of the *Securities Act*

### Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 122 and 123

### IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NEW BRUNSWICK, 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 CI MUTUAL FUNDS INC. CI SECTOR FUND LIMITED

AND

### SYNERGY GLOBAL FUND INC.

### MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador (the “Jurisdictions”)

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has received an application (the “Application”) from CI Mutual Funds Inc. (“CI”) on its own behalf and on behalf of Synergy Global Momentum Class, Synergy Global Value Class, Synergy American Growth Class, Synergy Global Growth Class, Synergy European Momentum Class, Synergy Global Style Management Class and Synergy Global Short-Term Income Class (the “Terminating Funds”) and Synergy Global Momentum Sector Fund, CI Global Value Sector Fund, CI Value Trust Sector Fund, CI Global Sector Fund, CI European Sector Fund, CI Global Bond Sector Fund and Synergy Global Style Management Sector Fund (the “Continuing Funds” and, together with the Terminating Funds, the “Funds”) for a decision (the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions of the Legislation (the “Applicable Requirements”) shall not apply to the steps relating to an amalgamation of Synergy Global Fund Inc. (“Synergy Global” and a wholly-owned subsidiary (“Newco”) of CI Sector Fund Limited (“CI Sector”)):

- (a) the restrictions contained in the Legislation prohibiting a mutual fund from knowingly entering into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment in a person or company in which it is prohibited from making an investment; and
- (b) the restriction contained in the Legislation, as applicable, prohibiting a purchase or sale of any securities in which an investment counsel or any partner, officer or associate of an investment counsel has a direct or indirect beneficial interest from or to any portfolio managed or supervised by the investment counsel,

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for the Application;

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

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

1. CI intends to merge each Terminating Fund into the Continuing Fund identified opposite its name below:

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<b>Terminating Fund</b>	<b>Continuing Fund</b>
Synergy Global Momentum Class	Synergy Global Momentum Sector Fund
Synergy Global Value Class	CI Global Value Sector Fund
Synergy American Growth Class	CI Value Trust Sector Fund
Synergy Global Growth Class	CI Global Value Sector Fund
Synergy European Momentum Class	CI European Sector Fund
Synergy Global Short-Term Income Class	CI Global Bond Sector Fund
Synergy Global Style Management Class	Synergy Global Style Management Sector Fund

(individually a “Merger” and, collectively, the “Mergers”).

2. Each Fund is a reporting issuer as defined in the Legislation.
3. Each Terminating Fund is a class of shares of Synergy Global. Synergy Global is a mutual fund corporation subsisting under the laws of the Province of Ontario which currently offers multiple mutual funds to the public using a multiple class structure.
4. Each Continuing Fund is one or more classes of shares of CI Sector referable to the same portfolio of securities. Similar to Synergy Global, CI Sector is a mutual fund corporation subsisting under the laws of the Province of Ontario which offers multiple mutual funds to the public using a multiple class structure.
5. The common shares of CI Sector and Synergy Global have voting rights attached to them. All other shares issued by CI Sector and Synergy Global are non-voting shares. All of the voting shares of CI Sector and Synergy Global are owned, directly or indirectly, by CI.
6. As a result of the Mergers, investors in the Terminating Funds will be provided with a broader choice of mutual funds into which they may switch their assets on a tax-deferred basis.
7. The Merger of each Terminating Fund into its Continuing Fund will be effected by amalgamating (the “Amalgamation”) Synergy Global with Newco. Pursuant to the Amalgamation, investors in each series of shares of a Terminating Fund will receive equivalent shares of its Continuing Fund on a dollar-for-dollar basis. Shareholders of Synergy Global will be asked to

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approve the Amalgamation at a special meeting of shareholders to be held on or about September 2, 2004.

8. The Mergers will be effected by implementing the following steps of the Amalgamation:

Step 1: Pre-Amalgamation Reorganization: CI will incorporate Newco. The directors and officers of Newco will be comprised of persons who also are directors and/or officers of CI. The capital structure of Newco will include a class or series of shares (the “Look-Through Shares”) that corresponds with every class of shares that will be issued by the Continuing Funds as part of the Mergers.

Step 2: Amalgamation: Synergy Global, Newco and CI Sector will enter into an amalgamation agreement (the “Amalgamation Agreement”) pursuant to which the parties will agree to file articles of amalgamation and implement the steps described below. Upon the filing of articles of amalgamation, Synergy Global and Newco will amalgamate and continue as a new Ontario corporation (“Amalco”). The assets of Amalco will consist of the investment portfolios of the Terminating Funds (collectively, the “Synergy Portfolios”) and a nominal amount of cash (\$100) received by Newco when it issued common shares to CI Sector. Like Synergy Global, the articles of Amalco will provide that the Synergy Portfolio of each Terminating Fund will be allocated to its corresponding class of Look-Through Shares. Pursuant to the Amalgamation Agreement, CI Sector will issue shares of each Continuing Fund to the former shareholders of its corresponding Terminating Fund on a dollar-for-dollar basis. In consideration for issuing the shares of each Continuing Fund, CI Sector will receive one or more shares of each class or series of Look-Through Shares, which Look-Through Shares will be allocated to the appropriate investment portfolios of the Continuing Funds (collectively, the “CI Portfolios”).

Step 3: Winding-Up and Dissolution: Immediately following the completion of Step 2 above, Amalco will wind-up for tax purposes and commence proceedings to voluntarily dissolve for corporate law purposes. These proceedings involve the immediate transfer and assignment of all the assets and liabilities of Amalco to its shareholders.

Step 4: Completion of Dissolution: Following the completion of Step 3 above, Amalco will continue to proceed expeditiously with voluntarily dissolving for corporate law purposes.

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9. Each Merger satisfies all of the criteria for pre-approved reorganizations and transfers set forth in section 5.6 of National Instrument 81-102.
10. Though described as separate steps, Step 3 of the Amalgamation will be effected immediately following the completion of Step 2 of the Amalgamation so that this Decision is required only for a moment in time on the date that the Mergers are implemented.
11. During each moment of the Mergers for which this Decision is sought, the full value of each Synergy Portfolio will be reflected in the net asset value of its Continuing Fund through the use of the Look-Through Shares.
12. In the absence of this Decision, pursuant to the Legislation, CI and the Funds are prohibiting from effecting the steps associated with implementing the Amalgamation.

AND WHEREAS under the System, this MRRS Decision Document evidences the Decision of each Decision Maker;

AND WHEREAS each Decision Maker 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 under the Legislation is that the Applicable Requirements shall not apply to the steps associated with implementing the Amalgamation.

DATED September 3, 2004.

Paul K. Bates

Robert L. Shiriff