

## **2002 BCSECCOM 573**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted from certain mutual fund self dealing restrictions and reporting requirements in order to permit top funds to invest in certain underlying funds that are under common management, subject to certain conditions.

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 123 and 130

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

**AND**

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

**AND IN THE MATTER OF  
imaxx TOP Conservative Portfolio  
imaxx TOP Balanced Portfolio  
imaxx TOP RSP Balanced Portfolio  
imaxx TOP Growth Portfolio  
imaxx TOP RSP Growth Portfolio  
imaxx TOP Aggressive Growth Portfolio**

### **MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the “Jurisdictions”) has received an application from AEGON Fund Management Inc. (“AFMI” or the “Manager”), imaxx TOP Conservative Portfolio, imaxx TOP Balanced Portfolio, imaxx TOP RSP Balanced Portfolio, imaxx TOP Growth Portfolio, imaxx TOP RSP Growth Portfolio, imaxx TOP Aggressive Growth Portfolio (the “Current Portfolios”), and any other mutual fund established and managed by the Manager after the date hereof which has as its investment objective the investment of its assets in more than one underlying fund (the “Future Portfolios”, together with the Current Portfolios, the “Portfolios”) for a decision (the “Decision”) pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements or prohibitions under the Legislation (the “Applicable Requirements”) shall not apply in connection with the investment by the

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Portfolios directly in a portfolio of securities of selected mutual funds (the “Underlying Funds” as further defined in paragraph 4 below):

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder;
2. the requirements contained in the Legislation requiring a management company, or in British Columbia, a mutual fund manager, to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies.

AND WHEREAS pursuant to the Mutual Reliance Review System (“MRRS”) for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

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

1. The Manager is a corporation incorporated under the laws of Canada. The Manager is an indirect wholly-owned subsidiary of AEGON NV.
2. The Royal Trust Company will be the trustee of the Portfolios. AEGON Capital Management Inc. (the “Investment Manager”) will be the investment manager to the Portfolios and is registered as an adviser under the category of investment counsel and portfolio manager with the Ontario Securities Commission.
3. The Manager currently proposes to establish the Current Portfolios as six new mutual funds. Each of the Portfolios will be an open-end mutual fund trust governed by the laws of Ontario. Securities of each of the Portfolios will be qualified for distribution in each of the Jurisdictions under a simplified prospectus and annual information form (together, the “Prospectus”) filed with and accepted by the Decision Makers. A Prospectus for the Portfolios will be filed shortly in final form under SEDAR project number 425164. The Portfolios will be offered for sale in each of the provinces of Canada.
4. Each Portfolio will invest its assets, other than cash or cash equivalents, in other prospectus-qualified mutual funds (the “Underlying Funds”) managed by fund managers (the “Underlying Managers”) considered to excel in particular investment niches, as well as in other investments, including short term

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investments. The Underlying Funds are currently managed by third party managers but may in the future be managed by AFMI or a related party. The Underlying Managers have been chosen on the basis of their management style, their choice of sub-advisors and other consultants, the efficiency of their administration, the caliber of their reporting procedures, the performance of their portfolios and their risk tolerance levels. The Underlying Funds are those funds whose investment objectives align with the investment objectives of the Portfolios.

5. Each of the Portfolios will not invest in any other mutual funds whose investment objectives include investing directly or indirectly in other mutual funds

6. In order to achieve its investment objective, each of the Portfolios will invest fixed percentages (the "Fixed Percentages") of its assets, excluding cash and cash equivalents held to meet redemptions and expenses, directly in securities of the Underlying Funds, subject to variation of 2.5 percent above or below the Fixed Percentages (the "Permitted Ranges") resulting from market fluctuations.

7. The Prospectus of each Portfolio will disclose the names and investment objectives of the Underlying Funds, the manager of the Underlying Funds along with the Fixed Percentages and the Permitted Ranges.

8. Where an Underlying Fund or a Fixed Percentage is changed, the Manager will provide 60 days' prior written notice to security holders of the Portfolios and will amend the Prospectus of the Portfolios to reflect any such change.

9. The investments by a Portfolio in securities of an Underlying Fund represent the business judgment of "responsible persons" (as defined in the Legislation) uninfluenced by considerations other than the best interests of the Portfolio.

10. Except to the extent evidenced by this Decision and specific approvals granted by the regulator or the securities regulatory authority in each of the provinces of Canada pursuant to National Instrument 81-102 Mutual Funds ("NI 81-102"), the investments by a Portfolio in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.

11. In the absence of this Decision, pursuant to the Legislation, each Portfolio is prohibited from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder. As a result, in the absence of this Decision, each Portfolio would be required to divest itself of any such investments.

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12. In the absence of this Decision, the Legislation requires the Manager to file a report on every purchase and sale of securities of the Underlying Funds by a Portfolio.

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

AND WHEREAS each of the Decision Makers being 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 the Applicable Requirements do not apply so as to prevent the Portfolios from investing in, or redeeming the securities of the Underlying Funds or require the Manager to file a report relating to the purchase and sale of such securities;

PROVIDED THAT IN RESPECT OF:

1. the 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 the matters in section 2.5 of National Instrument 81-102; and
2. the Decision shall only apply if, at the time a Portfolio makes or holds an investment in its Underlying Funds, the following conditions are satisfied:
  - (a) the securities of both the Portfolios and the Underlying Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which have been filed with and accepted by the Decision Maker;
  - (b) the investment by a Portfolio in the Underlying Funds is compatible with the fundamental investment objective of the Portfolio ;
  - (c) the Prospectus discloses the intent of the Portfolios to invest in securities of the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages and the Permitted Percentages within which such Fixed Percentages may vary;
  - (d) the investment objective of the Portfolio discloses that the Portfolio invests in securities of other mutual funds;

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- (e) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;
- (f) the Portfolio invests its assets (exclusive of cash and cash equivalents) in the Underlying Funds in accordance with the Fixed Percentages disclosed in the simplified prospectus of the Portfolio;
- (g) the Portfolio's holding of securities in the Underlying Funds does not deviate from the Permitted Ranges;
- (h) any deviation from the Fixed Percentages is caused by market fluctuations only;
- (i) if an investment by a Portfolio in any of the Underlying Funds has deviated from the Permitted Ranges as a result of market fluctuations, the Portfolio's investment portfolio is re-balanced to comply with the Fixed Percentages on the next day on which the net asset value was calculated following the deviation ;
- (j) if the Fixed Percentages and the Underlying Funds which are disclosed in the Prospectus have been changed, either the Prospectus has been amended in accordance with securities legislation to reflect this significant change, or a new simplified prospectus has been filed to reflect the change, and the securityholders of the Portfolio have been given at least 60 days' notice of the change;
- (k) there are compatible dates for the calculation of the net asset value of the Portfolios and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;
- (l) no sales charges are payable by the Portfolio in relation to its purchases of securities of the Underlying Funds;
- (m) no redemption fees or other charges will be charged by an Underlying Fund in respect of the redemption by the Portfolio of securities of the Underlying Fund owned by the Portfolio;
- (n) no fees or charges of any sort are paid by the Portfolio and the Underlying Funds by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of a Portfolio's purchase, holding or redemption of the securities of the Underlying Funds;

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- (o) the arrangements between or in respect of the Portfolio and the Underlying Funds are such as to avoid the duplication of management fees;
- (p) any notice provided to security holders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund has been delivered by the Portfolio to its security holders;
- (q) all of the disclosure and notice material prepared in connection with a meeting of security holders of the Underlying Funds and received by the Portfolio has been provided to its security holders, the security holders have been permitted to direct a representative of the Portfolio to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Portfolio has not voted its holdings in the Underlying Fund except to the extent the security holders of the Portfolio have directed;
- (r) in addition to receiving the annual and, upon request, the semi-annual financial statements of the Portfolio, security holders of a Portfolio have received appropriate summary disclosure in respect of the Portfolio's holdings of securities of the Underlying Funds in the financial statements of the Portfolio; and
- (s) to the extent that the Portfolio and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Portfolio and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds have been provided upon request and without charge to security holders of the Portfolio and the right to receive these documents is disclosed in the Prospectus of the Portfolio.

DATED May 30, 2002.

Paul M. Moore

Kerry D. Adams