

2003 BCSECCOM 126

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain reporting requirements and the self-dealing provisions of the legislation in connection with an RSP clone fund structure where RSP funds enter into forward contracts, deposits and other derivative instruments with related counterparties

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(a), 121(2)(c)(ii), 123, 126(a), 126(d), 127(1)(a), 130

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

AND

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

AND

**IN THE MATTER OF
CIBC ASSET MANAGEMENT INC.**

AND

**TALVEST ASIAN RSP FUND
TALVEST CHINA PLUS RSP FUND
TALVEST EUROPEAN RSP FUND
TALVEST GLOBAL EQUITY RSP FUND
TALVEST GLOBAL HEALTH CARE RSP FUND
TALVEST GLOBAL SCIENCE & TECHNOLOGY RSP FUND
TALVEST GLOBAL SMALL CAP RSP FUND
TALVEST GLOBAL MULTI MANAGEMENT RSP FUND
TALVEST GLOBAL RESOURCE RSP FUND
TALVEST INTERNATIONAL EQUITY RSP FUND
TALVEST VALUE LINE U.S. EQUITY RSP FUND**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from CIBC Asset Management Inc. (formerly Talvest Fund Management Inc.) (“Talvest”), as manager of the Talvest Asian RSP Fund,

2003 BCSECCOM 126

Talvest China Plus RSP Fund, Talvest European RSP Fund, Talvest Global Equity RSP Fund, Talvest Global Health Care RSP Fund, Talvest Global Science & Technology RSP Fund, Talvest Global Small Cap RSP Fund, Talvest Global Multi Management RSP Fund, Talvest Global Resource RSP Fund, Talvest International Equity RSP Fund and Talvest Value Line U.S. Equity RSP Fund and other mutual funds managed by Talvest having an investment objective or strategy that is linked to the returns or portfolio of another specified Talvest mutual fund while remaining 100% eligible for registered plans (collectively, the “RSP Funds”), for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the following prohibitions or requirements in the Legislation (the “Applicable Requirements”) shall not apply to Talvest or the RSP Funds, as the case may be, in respect of certain investments to be made by the RSP Funds in forward contracts, Deposits (as hereinafter defined) and other derivative instruments (collectively, “Derivatives”) of Canadian Imperial Bank of Commerce (“CIBC”) and its affiliates (each, a “Related Counterparty” and collectively, the “Related Counterparties”):

1. the provision requiring the management company of a mutual fund or, in British Columbia, a mutual fund manager, to file a report relating to the 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;
2. the provision prohibiting a mutual fund from knowingly making and holding an investment in a person or company who is a substantial securityholder of the mutual fund, its management company or distribution company;
3. the provision prohibiting a mutual fund from knowingly making and holding an investment in an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company has a significant interest; and
4. the provision prohibiting a portfolio manager or, in British Columbia, the mutual fund, from knowingly causing an investment portfolio managed by it to invest in any issuer in which a “responsible person” (as that term is defined in the Legislation) or an associate of a responsible person is an officer or director, unless the specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase.

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

2003 BCSECCOM 126

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

AND WHEREAS Talvest has represented to the Decision Makers that:

1. The RSP Funds and their corresponding underlying funds (the “Underlying Funds”) (collectively, the “Funds”) are or will be open-ended mutual fund trusts established under the laws of the Province of Ontario. Talvest is a corporation established under the laws of Canada, and is a wholly owned subsidiary of CIBC. Talvest is or will be the manager of each of the Funds. The head office of Talvest is currently located in the Province of Québec.
2. The Funds are or will be reporting issuers and the existing Funds are not in default of any requirements of the Legislation.
3. The units of the Funds are or will be qualified for distribution under a simplified prospectus and annual information form in all provinces and territories of Canada (such documents when filed in final form hereinafter referred to together as “Prospectus”), which Prospectus will contain disclosure with respect to the investment objectives, investment strategies and restrictions of the Funds.
4. Each of the RSP Funds is or will be a registered investment such that its units are “qualified investments” for tax-deferred retirement savings plans (“Registered Plans”) and do not constitute foreign property for a Registered Plan. The primary investment strategy of each of the RSP Funds is or will be to obtain exposure to an Underlying Fund by entering into one or more forward contracts or other derivative instruments with one or more financial institutions (the “Counterparty” or “Counterparties”).
5. In addition to the derivative instruments, each of the RSP Funds invests or may invest a portion of its assets directly in units of the applicable Underlying Fund, which constitute foreign property under the *Income Tax Act* (Canada) (the “Tax Act”). In order to ensure that an RSP Fund does not become subject to tax under Part XI of the Tax Act, the portion invested in units of an Underlying Fund does not or will not exceed the maximum amount of foreign property permitted for Registered Plans.
6. The RSP Funds have applied for and obtained exemptive relief under National Instrument 81-102 (“NI 81-102”) and under applicable securities legislation with respect to their investments in units of Underlying Funds and in forward contracts. Talvest, in its own capacity and on behalf of the RSP Funds,

2003 BCSECCOM 126

applied for and obtained relief under NI 81-102 and under applicable securities legislation to permit the RSP Funds to enter into forward contracts (and, in the case of Talvest Global Resource RSP Fund, other specified derivatives) with Related Counterparties.

7. Some or all of the RSP Funds may adopt an alternative method of implementing their investment strategy by entering into derivatives transactions whereby an RSP Fund enters into a deposit (the “Deposit”) with one or more Counterparties and receives a return on the Deposit which is linked to the performance of the applicable Underlying Fund.
8. The structure of the Deposit transactions is as follows:
 - (a) The Deposit will mature monthly (subject to the RSP Fund’s ability to elect early maturity) for a maturity amount equal to the principal amount of the Deposit plus or minus the investment return on an equivalent dollar amount of Class O units of the corresponding Underlying Fund
 - (b) Simultaneously with the Counterparty issuing the Deposit, the Counterparty will enter into a note (the “Note”) and a total return swap (the “Swap”) transaction with a special purpose trust (the “SPT”). The activities of the SPT will be limited solely to those necessary under the Note, the Swap and related transactions and the SPT will not be permitted to incur any other liabilities. The combination of the Note and the Swap will provide the Counterparty with a return based on the net asset value of Class O units of the corresponding Underlying Fund. The Note and the Swap will mature on the maturity of the corresponding Deposit.
 - (c) In order to hedge its obligations under the Swap, the SPT may, but is not obligated to, purchase Class O units of the corresponding Underlying Fund in an amount equal to the Deposit under a standing purchase order.
 - (d) The Counterparty will have the right to put the corresponding Note and Swap to the RSP Fund if units of the Underlying Fund cannot be redeemed for next day settlement for a continuing period of ten business days or under certain other limited circumstances.
 - (e) The SPT will unconditionally guarantee the payment by the Counterparty under the Deposit.
 - (f) No duplicate fees or expenses will be paid with respect to the Class O units bought by the RSP Funds, the Counterparties and the SPT.

2003 BCSECCOM 126

9. Talvest and the RSP Funds have applied for exemptive relief under NI 81-102 to enter into Deposits. As the return under the Deposit is linked to the appreciation or depreciation in the net asset value of the units of the corresponding Underlying Fund, the Deposit is a “specified derivative”, as such term is defined under NI 81-102. Alternatively, the RSP Funds may obtain exposure to Underlying Funds through other Derivatives.
10. There may be directors or officers of CIBC and its affiliates that are also directors or officers of Talvest.
11. An independent governance committee (the “Independent Committee”) for Talvest funds, comprised of individuals who are not directors, officers or employees of Talvest or any of its affiliates may be constituted in the future.
12. The RSP Funds intend to enter into Derivatives with Related Counterparties so long as the pricing terms of the Derivatives are at least as favourable as those offered by the Related Counterparty to other third parties of similar size to the RSP Fund.
13. The Prospectus, and any renewal thereof, will disclose the involvement of the Related Counterparty in the Derivatives, the review of the contracts by the independent auditors of the RSP Funds or the Independent Committee as well as all applicable charges in connection therewith.
14. Except to the extent evidenced by this Decision and specific approvals granted or to be granted by the Canadian Securities Administrators under NI 81-102 or the Legislation, the investments by the RSP Funds in the Derivatives will be structured to comply with the investment restrictions of the Legislation and NI 81-102.
15. The investments by the RSP Funds in Derivatives with a Related Counterparty represents the business judgment of “responsible persons” (as defined in the Legislation), uninfluenced by considerations other than the best interests of the RSP Funds.
16. In the absence of this Decision, each RSP Fund is prohibited from knowingly making or holding an investment in securities of the Related Counterparties.
17. In the absence of this Decision, Talvest is required to file a report on every purchase or sale of securities of the Related Counterparties.

2003 BCSECCOM 126

18. In the absence of this Decision, the portfolio manager, or mutual fund, is prohibited from causing each RSP Fund to invest its assets in securities of the Related Counterparties unless the specific fact is disclosed to investors and, if applicable, the written consent of investors is obtained before the purchase

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

THE DECISION of the Decision Makers under the Legislation is that the Applicable Requirements shall not apply to the RSP Funds or Talvest, as the case may be, in respect of investments by the RSP Funds in Derivatives with a Related Counterparty, PROVIDED that at the time a RSP Fund makes an investment in Derivatives of the Related Counterparty, the following conditions are satisfied:

- (a) the pricing terms and conditions offered by the Related Counterparty to the RSP Fund for a Derivative are at least as favourable as the pricing terms and conditions committed by the Related Counterparty for the Derivative to one or more non-affiliated third party fund groups of similar size;
- (b) prior to the RSP Fund entering into a Derivative with a Related Counterparty, the independent auditors of the RSP Fund or the Independent Committee will review the pricing terms and conditions offered by the Related Counterparty to the RSP Fund against the pricing terms and conditions offered by the Related Counterparty to other non-affiliated third party fund groups of similar size, to ensure that the pricing is at least as favourable;
- (c) the review by the independent auditors or the Independent Committee will be undertaken not less frequently than on an annual basis and, in addition, on every pricing amendment to the Derivative during the term of the Derivative;
- (d) the RSP Fund’s prospectus (and each renewal thereof) discloses the role of the independent auditors or the Independent Committee and their review of the Derivative, as well as the involvement of the Related Counterparty; and

2003 BCSECCOM 126

- (e) the RSP Fund will enter into a Derivative with a Related Counterparty only once the independent auditors of the RSP Fund or the Independent Committee have confirmed to the RSP Fund that the pricing terms and conditions offered by the Related Counterparty to the RSP Fund for the Derivatives are at least as favourable as those committed by the Related Counterparty for the Derivative to one or more non-affiliated third party fund groups of similar size.

DATED February 5, 2003

Robert W. Korthals
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