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## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from certain self-dealing prohibitions and reporting requirements in respect of investments by RSP funds in underlying funds and entering into forward contracts with related counterparties, subject to certain conditions.

## **Applicable British Columbia Provisions**

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

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, 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 ETHICAL FUNDS INC.  
ETHICAL RSP INTERNATIONAL EQUITY FUND  
ETHICAL RSP EUROPEAN EQUITY 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 Ethical Funds Inc. (“EFI”), on its own behalf and as manager and trustee of the Ethical RSP International Equity Fund and Ethical RSP European Equity Fund and any other mutual fund established and managed by EFI from time to time having an investment objective or strategy that is linked to the returns or portfolio of another mutual fund managed by EFI while remaining 100% eligible for registered plans (collectively, the “RSP Funds”) for a decision under

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the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements and restrictions contained in the Legislation (the “Requirements”):

- (A) 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 securityholder;
- (B) the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in an issuer in which any officer or director of the mutual fund, its management company or distribution company has a significant interest;
- (C) the requirements contained in the Legislation 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;
- (D) the restrictions contained in the Legislation 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 defined in the Legislation) 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;

will not apply to investments by the RSP Funds in the Underlying Funds (defined below) or in Forward Contracts (defined below) with certain provincial central credit unions as counterparties;

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;

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

AND WHEREAS EFI has represented to the Decision Makers that:

2. EFI is a corporation incorporated under the laws of Canada and will be the manager, trustee and promoter of the RSP Funds and the Underlying Funds;
3. the RSP Funds and the Ethical International Equity Fund, Ethical European Equity Fund and any other specific prospectus qualified mutual funds established and managed by EFI (collectively, the “Underlying Funds”) will be open-end mutual funds established under the laws of British Columbia. The units of the RSP Funds and the Underlying Funds will be qualified for distribution in all of the Jurisdictions under a simplified prospectus and an annual information form (collectively, a “Prospectus”);
4. each Underlying Fund and each RSP Fund will be a reporting issuer under the securities laws of each of the Jurisdictions;
5. the applicable Prospectus will contain disclosure of the investment objectives, investment practices and restrictions of the RSP Funds and the Underlying Funds. The investment objective of each RSP Fund will include the name of its corresponding Underlying Fund;
6. the RSP Funds will be invested in cash, bank deposits and money market instruments, including government bonds and bankers’ acceptances. In addition, each RSP Fund proposes to enter into forward contracts or other derivative instruments (“Forward Contracts”) with certain provincial central credit unions (the “Counterparties”) to link the return of the applicable RSP Fund to the return of the applicable Underlying Fund or to the portfolio securities of the applicable Underlying Fund;
7. each RSP Fund intends to invest directly in the applicable Underlying Fund, provided that direct investment will not expose the RSP Funds to tax under Part XI of the *Income Tax Act* (Canada) (the “Tax Act”) by exceeding at the relevant time the maximum “foreign property” limit allowed under the Tax Act (the “Permitted Limit”). The RSP Funds intend to apply for “registered investment” status under the Tax Act and as a result, the RSP Funds will be “qualified investments” and not “foreign property” for certain registered plans;
8. in consideration for the management services provided by EFI, each RSP Fund will pay a management fee to EFI equal to a percentage of its average daily net asset value. To prevent the duplication of management fees if the

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Counterparties invest in units of the applicable Underlying Fund in connection with the forward contracts or if the RSP Fund invests directly in units of the applicable Underlying Fund, EFI will reduce the management fees payable by the RSP Fund or the applicable Underlying Fund or a management fee distribution may be made or other adjustments will be made to achieve this objective;

9. all voting rights attaching to the units of the Underlying Funds held by the RSP Funds will be “passed through” to the unitholders of the RSP Funds;
10. no sales charge will be payable by an RSP Fund in relation to purchases of units of the applicable Underlying Fund, no redemption fees or other charges will be charged in respect of the redemption by the RSP Fund of units of the Underlying Fund and no “trailer fees” or other fees or charges will be paid in respect of the investment by the RSP Fund in units of the Underlying Fund;
11. the Prospectus will contain disclosure relating to the investment by the RSP Funds in the Underlying Funds and the investments by the RSP Funds in Forward Contracts with the Counterparties;
12. EFI is owned by seven provincial central credit unions with the following ownership percentages:

Credit Union Central of British Columbia	14.29%
Credit Union Central of Alberta Ltd.	14.29%
Credit Union Central of Saskatchewan	14.29%
Co-operative Credit Society of Manitoba Ltd.	14.29%
Credit Union Central of Ontario Ltd.	14.29%
Prince Edward Island Credit Union League	14.29%
Brunswick Credit Union Federated Limited	14.29%

The contracting parties for the Forward Contracts will be Credit Union Central of British Columbia, Credit Union Central of Alberta, Credit Union Central of Saskatchewan and Credit Union Central of Ontario (collectively the “Centrals”);

13. any potential conflict of interest arising by virtue of the fact that EFI is owned, in part, by the Centrals is eliminated given the structure of the RSP Funds and Forward Contracts with the Centrals;
14. the competitiveness of the terms and pricing of Forward Contracts entered into between the RSP Funds and the Counterparties will be monitored by having the directors of EFI who are not also officers or employees of EFI or its

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affiliates or directors or officers of the Counterparties or an affiliate of the Counterparties (“Independent Directors”) complete a review of the terms and pricing of the Forward Contracts before entering into the Forward Contract and upon each pricing amendment to the Forward Contracts during the term of the Forward Contracts but the review will be undertaken not less frequently than semi-annually to determine whether the terms and pricing are at least as favourable as the terms and pricing of forward contracts entered into by other fund groups offering RSP Funds of similar size with non-related counterparties, and if the terms and pricing are not at least as favourable, to determine the pricing and terms available to the RSP Funds from non-related counterparties;

15. after completing this review, if the findings are that the terms and pricing of the Forward Contracts are less favourable than those then available to the RSP Funds from non-related counterparties, EFI will request that the Counterparties provide the Forward Contracts to the RSP Funds on the terms and pricing available from non-related Counterparties, and if the Counterparties are not willing to do so, as soon as reasonably practicable after such determination EFI will cause the RSP Funds to terminate their forward contract arrangements with the Counterparties and enter into forward contracts or other derivative transactions with a counterparty or counterparties unrelated to EFI;
16. the Prospectus will disclose the review of the Forward Contracts, the role of the Independent Directors in the review and the relationship between EFI and the Counterparties;
17. the investment by the RSP Funds in the Underlying Funds will be within the Permitted Limit. EFI and the RSP Funds will comply with the conditions of this decision in respect of those investments;
18. except to the extent evidenced by this Decision and specific approvals granted by the Canadian securities administrators under National Instrument 81-102 (“NI 81-102”), the investments by the RSP Funds in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102;
19. in the absence of this Decision, under the Legislation, each of the RSP Funds is prohibited from (a) knowingly making 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 securityholder; and (b) knowingly holding an investment referred to in subsection (a). As a result, an RSP Fund would be

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required to divest itself of any investments referred to in subsections (a) and (b) above;

20. in the absence of this Decision, the Legislation requires EFI to file a report on every purchase or sale of securities of the Underlying Funds by the RSP Funds; and
21. the purchase and sale of units of the Underlying Funds by the RSP Funds represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the RSP Funds;

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 Requirements will not apply to the purchase and sale by the RSP Funds of units of the Underlying Funds provided that:

1. this 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 NI 81-102;
2. at the time an RSP Fund makes or holds an investment in its Underlying Fund, the following conditions are satisfied:
  - (a) the securities of the RSP Funds and the Underlying Funds are offered for sale in the jurisdiction of each Decision Maker under a Prospectus which has been filed with and accepted by the Decision Maker;
  - (b) each RSP Fund will restrict its aggregate direct investment in its applicable Underlying Fund to a percentage of its assets that is within the Permitted Limit;
  - (c) the investment by the RSP Fund in the Underlying Funds is compatible with the fundamental investment objective of the RSP Fund;
  - (d) the investment objectives in the Prospectus of the RSP Funds describe the intent of the RSP Funds to invest in the specified Underlying Funds and names the Underlying Funds;

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- (e) there are compatible dates for the calculation of the net asset value of the RSP Funds and the Underlying Funds for the purpose of the issue and redemption of the securities of those mutual funds;
- (f) if an Underlying Fund provides notice to its securityholders as required by its constating documents or by the laws applicable to that Underlying Fund, the notice will also be delivered to the securityholders of the applicable RSP Fund; all voting rights attached to the securities of the Underlying Fund which are owned by an applicable RSP Fund will be passed through to the securityholders of that RSP Fund;
- (g) if an Underlying Fund calls a securityholders' meeting in respect of a matter requiring securityholder approval under NI 81-102, all of the disclosure and notice material prepared in connection with the meeting will be provided to the securityholders of the RSP Fund and those securityholders will be entitled to direct a representative of the RSP Fund to vote the RSP Fund's holdings in the Underlying Fund in accordance with their direction; and the representative of an RSP Fund will not be permitted to vote the RSP Fund's holdings in the Underlying Fund except to the extent the securityholders of the RSP Fund so direct;
- (h) the arrangements between or in respect of an RSP Fund and its Underlying Fund are such as to avoid the duplication of management fees;
- (i) no sales charges are payable by the RSP Funds in relation to their purchases of units of the Underlying Funds;
- (j) no redemption fees or other charges are charged by the Underlying Funds in respect of the redemption by the RSP Funds of units of the Underlying Funds owned by the RSP Funds;
- (k) no "trailer fees" or other fees will be paid in respect of the investment by the RSP Funds in units of the Underlying Funds;
- (l) copies of the simplified prospectus, annual information form and the annual and semi-annual financial statements relating to the applicable Underlying Funds may be obtained by a unitholder of the RSP Funds without charge upon request and this fact is disclosed in the Prospectus;
- (m) as part of receiving the annual and, upon request, the semi-annual financial statements, of an RSP Fund, securityholders of that RSP Fund

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will receive appropriate summary disclosure in respect of the RSP Fund's holdings of securities of the corresponding Underlying Fund; and

- (n) the RSP Funds will not invest in an Underlying Fund whose investment objective includes investing directly or indirectly in other mutual funds; and
3. investments by an RSP Fund in Forward Contracts are made in compliance with the following conditions:
- (a) the competitiveness of the terms and pricing of Forward Contracts entered into between the RSP Funds and the Counterparties will be monitored by having the Independent Directors complete a review of the terms and pricing of the Forward Contracts before entering into the Forward Contracts and upon each pricing amendment to the Forward Contracts during the term of the Forward Contracts but the review will be undertaken not less frequently than semi-annually to determine whether the terms and pricing are at least as favourable as the terms and pricing of forward contracts entered into by other fund groups offering RSP Funds of similar size with non-related counterparties, and if the terms and pricing are not at least as favourable, to determine the pricing and terms available to the RSP Funds from non-related counterparties;
  - (b) after completing this review, if the findings are that the terms and pricing of the Forward Contracts less favourable than those then available to the RSP Funds from non-related counterparties, EFI will request that the Counterparties provide the Forward Contracts to the RSP Funds on the terms and pricing available from non-related Counterparties, and if the Counterparties are not willing to do so, as soon as reasonably practicable after such determination EFI will cause the RSP Funds to terminate their forward contract arrangements with the Counterparties and enter into forward contracts or other derivative transactions with a counterparty or counterparties unrelated to EFI;



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- (c) the Prospectus will disclose the review of the Forward Contracts, the role of the board of directors of EFI in the review and the relationship between EFI and the Counterparties.

DATED September 20, 2002

Brenda Leong  
Director