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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain of the self-dealing provisions in connection with a fund-of-fund structure. Top funds permitted to invest in private underlying fund under common management, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 123, 126(a), 126(d), 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 BURGUNDY ASSET MANAGEMENT LIMITED
AND**

**IN THE MATTER OF BURGUNDY BALANCED INCOME FUND,
BURGUNDY AMERICAN EQUITY FUND, BURGUNDY PARTNERS
EQUITY RSP FUND, BURGUNDY FOUNDATION TRUST FUND,
BURGUNDY PARTNERS' RSP FUND, BURGUNDY PARTNERS' FUND
AND BURGUNDY PENSION TRUST FUND**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authorities (the “Decision Maker”) in the Provinces of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) have received an application filed by Burgundy Asset Management Limited (“Burgundy”), on its own behalf and on behalf of the Burgundy Balanced Income Fund, Burgundy American Equity Fund, Burgundy Partners Equity RSP Fund, Burgundy Foundation Trust Fund, Burgundy Partners’ RSP Fund, Burgundy Partners’ Fund and Burgundy Pension Trust Fund (collectively, the “Top Funds”), for a decision (the “Decision”) pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions in the Legislation (the “Applicable Requirements”) shall not apply in connection with the investment by the Top Funds in Burgundy Small Cap Value Fund:

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- (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, and
- (b) the requirements contained in the Legislation requiring the management company of a mutual fund, or in British Columbia, the 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 under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Burgundy has represented to the Decision Makers as follows:

1. Burgundy is the manager of the Top Funds and also of the Burgundy Canadian Equity Fund, Burgundy Large Cap Canadian Equity Fund, Burgundy Bond Fund, Burgundy Money Market Fund, Burgundy U.S. Money Market Fund, Burgundy European Equity Fund and Burgundy European Foundation Fund (collectively, the “Burgundy Funds”).
2. Burgundy is also the manager of several pooled funds including the Burgundy Small Cap Value Fund, Burgundy Japan Fund and Burgundy Smaller Companies Fund (collectively, the “Private Funds”).
3. The Top Funds, the Burgundy Funds and the Private Funds (collectively, the “Funds”) are under common management.
4. The head office of Burgundy is located in Ontario.
5. Each of the Funds is an open-ended unit trust established by a Trust Agreement. The distribution of units of each of the Funds, other than the Private Funds, is effected with a simplified prospectus dated July 8, 2002 (the “2002 Prospectus”) in the Jurisdiction in order to become a reporting issuer under the Legislation and is not in default of any requirement of the Legislation or the rules and regulations made thereunder.
6. Units of the Private Fund may be sold on an exempt basis in the Jurisdiction.

7. As manager of the Top Funds, Burgundy determines the different asset classes that the Top Funds should either be invested in or have exposure to, in order to achieve the Top Fund's investment objectives. Given the relative size of the Top Funds, Burgundy believes that investing in units of Burgundy Funds and/or the Private Funds, which have acquired or will acquire such asset classes for their portfolios, would be a more efficient way of investing the assets of the Top Funds. The Burgundy Funds and/or the Private Funds become the vehicle through which the funds of investors in the Top Funds are gathered and invested in different but appropriate asset classes, which would provide the Top Funds the diversification they need at lower transaction costs. In accordance with orders obtained from each of the Jurisdictions, Burgundy has caused each of the Top Funds to invest specified percentages of its net assets in units of one or more of the Burgundy Funds and/or Private Funds, other than Burgundy Small Cap Value Fund, listed in the 2002 Prospectus.
8. Burgundy only sells units of the Funds and the Private Funds to clients, including Burgundy employees and their spouses (the "Burgundy Employees"), who have entered into investment management agreements that give Burgundy discretionary authority to invest the clients' money. Excepting Burgundy employees, Burgundy only accepts clients who place a minimum amount (individually or together with accounts of immediate family members) in a Burgundy account. The minimum account size has changed over time and is currently \$3,000,000. There is no minimum account size for clients who are Burgundy Employees. The Funds are not sold by any other dealer.
9. The Burgundy Small Cap Value Fund (the "Underlying Fund") is an open-ended mutual fund established under the laws of the Province of Ontario by a Trust Agreement. The Underlying Fund is not a reporting issuer under the Legislation. However, the Underlying Fund complies with National Instrument 81-102 Mutual Funds ("NI 81-102"), other than in respect of incentive fees charged directly to investors, which do not comply with section 7.1 thereof. The incentive fee currently charged by the Underlying Fund has previously been negotiated with the direct investors in the Underlying Fund.
10. Units of the Underlying Fund are sold on an exempt basis.
11. In order to achieve its investment objective, each Top Fund will invest fixed percentages (the "Fixed Percentages") of its assets (exclusive of cash and cash equivalents), as specified in the simplified prospectus of the Top Funds, in the securities of the Underlying Fund, subject to a variation of 2.5 percent above

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or below the Fixed Percentages (the “Permitted Ranges”) to account for market fluctuations.

12. Currently, the Burgundy Partners’ Fund intends to invest 4% of its net assets in the Underlying Fund.
13. The simplified prospectus for each Top Fund (the “Prospectus”) will disclose the names and investment objectives, investment strategies, risks and restrictions of the Underlying Funds along with the Fixed Percentages and the Permitted Ranges.
14. In the absence of this Decision, pursuant to the Legislation, the Top Funds are 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 securityholder. As a result, in the absence of this Decision the Top Funds would be required to divest themselves of any such investments.
15. In the absence of this Decision, Legislation requires Burgundy to file a report on every purchase or sale of securities of the Underlying Fund by a Top Fund.
16. The investment of the Top Funds in the Burgundy Small Cap Value Fund represents the business judgment of “responsible persons” (as defined in the Legislation), uninfluenced by considerations other than the best interests of the Top Funds.
17. The Top Funds received similar prior relief dated June 28, 2000 to invest in Burgundy Japan Fund and Burgundy Smaller Companies Fund.
18. The Canadian Securities Administrators have published for comment amendments to NI 81-102 which among other things, deal with matters in section 2.5 of NI 81-102 (the “Fund-of-Fund Amendments”). Such proposals continue the prohibition in clause 2.5(1)(c) which excludes investment by a top fund in a private fund. The Fund-of-Fund Amendments also provide that all prior exemption orders shall be deemed revoked effective one year from the date the Fund-of-Fund Amendments come into force.

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

AND WHEREAS each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

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THE DECISION of the Decision Makers under the Legislation is that the Applicable Requirements do not apply so as to prevent the Top Funds from making and holding an investment in securities of the Underlying Fund or so as to require Burgundy 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 coming into force of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of NI 81-102;
2. the Decision shall only apply if, at the time a Top Fund makes or holds an investment in the Underlying Fund, the following conditions are satisfied:
 - (a) the Top Funds and the Underlying Fund are under common management;
 - (b) the securities of the Top Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which has been filed with and accepted by the Decision Maker;
 - (c) the investment by a Top Fund in the Underlying Fund is compatible with the fundamental investment objective of the Top Fund;
 - (d) the Prospectus discloses the intent of the Top Funds to invest in securities of the Underlying Fund, the name of the Underlying Fund, the investment objective and investment strategies of the Underlying Fund, the risks associated with investment in the Underlying Fund, the Fixed Percentages and the Permitted Ranges within which such Fixed Percentages may vary and discloses that it also incorporates by reference the financial statements of the Underlying Fund;
 - (e) the Underlying Fund will at all times be in compliance with NI 81-102, except section 7.1 thereof in respect of incentive fees charged directly to investors other than the Top Fund;
 - (f) the only investors in the Top Fund will be clients, including Burgundy employees and their spouses (the "Burgundy Employees") who:
 - i) have entered into investment management agreements that give Burgundy discretionary authority to invest the clients' money; and

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- ii) placed a minimum amount, currently \$3,000,000 (individually or together with accounts of immediate family members) in a Burgundy account, except for Burgundy Employees;
- (g) the Funds are not sold by any other dealer;
- (h) the Underlying Fund will not charge an incentive fee to the Top Fund;
- (i) the investment objective of the Top Fund discloses that the Top Fund invests in securities of other mutual funds;
- (j) the Underlying Fund is not a mutual fund whose investment objective includes investing directly or indirectly in other mutual funds;
- (k) the Top Fund invests its assets (exclusive of cash and cash equivalents) in the Underlying Fund in accordance with the Fixed Percentages disclosed in the simplified prospectus of the Top Fund;
- (l) the Top Fund's holding of securities in the Underlying Funds does not deviate from the Permitted Ranges;
- (m) any deviation from the Fixed Percentages is caused by market fluctuations only;
- (n) if an investment by a Top Fund in the Underlying Fund has deviated from the Permitted Ranges as a result of market fluctuations, the Top Fund'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;
- (o) if the Fixed Percentages and the Underlying Fund 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 Top Fund have been given at least 60 days' notice of the change;
- (p) there are compatible dates for the calculation of the net asset value of the Top Funds and the Underlying Fund for the purpose of the issue and redemption of the securities of such mutual funds;

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- (q) no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Fund;
- (r) no redemption fees or other charges will be charged by an Underlying Fund in respect of the redemption by the Top Fund of securities of the Underlying Fund owned by the Top Fund;
- (s) no fees or charges of any sort are paid by the Top Fund 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 Top Fund's purchase, holding or redemption of the securities of the Underlying Fund;
- (t) the arrangements between or in respect of the Top Fund and the Underlying Fund are such as to avoid the duplication of management fees;
- (u) any notice provided to security holders of the Underlying Fund as required by applicable laws or the constating documents of the Underlying Fund has been delivered by the Top Fund to its security holders;
- (v) all of the disclosure and notice material prepared in connection with a meeting of security holders of the Underlying Fund and received by a Top Fund has been provided to its security holders, the security holders have been permitted to direct a representative of the Top Fund to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Top Fund has not voted its holdings in the Underlying Fund except to the extent the security holders of the Top Fund have directed;
- (w) in addition to receiving the annual and, upon request, the semi-annual financial statements of the Top Fund, security holders of a Top Fund have received appropriate summary disclosure in respect of the Top Fund's holdings of securities of the Underlying Fund in the financial statements of the Top Fund; and
- (x) security holders of the Top Fund may obtain, upon request, a copy of the offering memorandum of the Underlying Fund and the annual and semi-annual financial statements of the Underlying Fund.

Date March 3, 2003

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Robert W. Korthals

Robert L. Shirriff