

## **2003 BCSECCOM 49**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Investments by mutual funds in securities of other existing and future mutual funds are exempted from certain self-dealing requirements, subject to certain specified conditions

### **Applicable British Columbia Provisions**

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
ASSANTE ASSET MANAGEMENT LTD.  
ARTISAN CANADIAN T-BILL PORTFOLIO  
ARTISAN MOST CONSERVATIVE PORTFOLIO  
ARTISAN CONSERVATIVE PORTFOLIO  
ARTISAN MODERATE PORTFOLIO  
ARTISAN RSP MODERATE PORTFOLIO  
ARTISAN GLOBAL ADVANTAGE PORTFOLIO  
ARTISAN RSP GLOBAL ADVANTAGE PORTFOLIO  
ARTISAN GROWTH PORTFOLIO  
ARTISAN RSP GROWTH PORTFOLIO  
ARTISAN HIGH GROWTH PORTFOLIO  
ARTISAN RSP HIGH GROWTH PORTFOLIO  
ARTISAN MAXIMUM GROWTH PORTFOLIO  
ARTISAN RSP MAXIMUM GROWTH PORTFOLIO  
ARTISAN NEW ECONOMY PORTFOLIO  
(the “Existing Portfolios”)**

WHEREAS the local 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 (the “Application”) from Assante Asset Management Ltd. (the “Manager”) for a decision by each Decision Maker (collectively, the “Decision”)

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under securities legislation of the Jurisdictions (the “Legislation”) revoking and replacing the MRRS decision document dated October 25, 2000 entitled *In the Matter of Assante Asset Management Ltd.* (the “Existing Decision”) which decided that the Restrictions (as defined in the Existing Decision) did not apply to the Manager or the Portfolios (as defined in the Existing Decision), as the case may be, in respect of certain investments to be made by the Portfolios in units of the Underlying Funds (as defined in the Existing Decision);

AND WHEREAS the Manager, as manager of the Existing Portfolios and any other mutual fund (the “Future Portfolios”) established and managed by the Manager after the date of this Decision which has as its investment objective the investment of its assets in more than one Underlying Fund (as defined below) (the Existing Portfolios and the Future Portfolios together, the “Portfolios”) has applied for a decision pursuant to the Legislation that the following requirements and restrictions contained in the Legislation (the “Restrictions”) shall not apply to the purchase and redemption by a Portfolio of units of an Underlying Fund (as defined below):

1. the restriction in the Legislation prohibiting a mutual fund from 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 security holder;
2. the restriction in the Legislation that no mutual fund or its management company or its distribution company shall knowingly hold 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; and
3. the requirements contained in the Legislation that a management company or mutual fund manager file a report of every transaction of purchase or sale of securities between a mutual fund it manages and any related person or company and any transaction in which, by arrangements other than an arrangement relating to insider trading in portfolio securities, a mutual fund is a joint participant with one or more of its related persons or companies, in respect of each mutual fund to which it provides services or advice, within 30 days after the end of the month in which it occurs.

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

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

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AND WHEREAS the Manager has represented to the Decision Makers that:

A. Other than cash or cash equivalents, the securities in which each Portfolio invests are mutual funds qualified for sale under a simplified prospectus and annual information form (“Underlying Funds”) managed by mutual fund managers (the “Underlying Managers”) considered by the Manager to excel in particular investment niches. The Underlying Managers have been chosen by the Manager on the basis of their management style, their choice of sub-advisers and other consultants, their efficiency of administration, the calibre of their reporting procedures, the performance of their portfolios and their risk tolerance levels.

B. Each Portfolio invests specified percentages (the “Fixed Percentages”) of its assets in specified Underlying Funds.

C. At the time the Existing Decision was granted, the following four Portfolios (collectively, the “Four Portfolios”) were invested in Underlying Funds which were themselves 100% exposed to or directly invested in other mutual funds that, for tax purposes, are considered Canadian content for registered plans (“RSP Clone Funds”) in the following Fixed Percentages:

Artisan Conservative Portfolio (formerly Artisan RSP Conservative Portfolio):

C.I. Global Bond RSP Fund	2%
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Artisan RSP Moderate Portfolio:

C.I. Global Bond RSP Fund	2%
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C.I. Global Equity RSP Fund	4%
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Artisan RSP Growth Portfolio (formerly, Artisan RSP Aggressive Portfolio):

C.I. Global Bond RSP Fund	5%
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C.I. Global Equity RSP Fund	7%
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C.I. American RSP Fund	6%
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Global Strategy RSP Europe Plus Fund (formerly, Global Strategy Diversified Europe Fund)	2%
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Artisan RSP High Growth Portfolio (formerly, Artisan RSP Most Aggressive Portfolio):

C.I. Global Bond RSP Fund	5%
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C.I. Global Equity RSP Fund	9%
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C.I. American RSP Fund	12%
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Global Strategy RSP Europe Plus Fund (formerly, Global Strategy Diversified Europe Fund)	6%
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D. Currently, no Portfolio invests in RSP Clone Funds or any other mutual funds whose investment objectives include investing directly or indirectly in other mutual funds (“Funds-of-Funds”).

E. The Portfolios have applied for and received, from each of the Jurisdictions, an MRRS decision document, the Existing Decision, allowing each of those Portfolios to invest its assets in an Underlying Fund of which it is a substantial securityholder and exempting those Portfolios from certain reporting requirements.

F. The Manager is now applying to have condition #8 of the Existing Decision no longer apply to the purchase and redemption by a Portfolio of units of an Underlying Fund, that is:

- "8. no Portfolio will hold greater than 20% of any class or series of a class of an Underlying Fund, and if at any time a Portfolio exceeds the 20% limit (the “Investment Limit”), such Portfolio will:
  - (a) as soon as practicable, allocate the excess amount, on a pro rata basis, to other Underlying Funds within the same asset class as the Underlying Fund in which the Investment Limit is exceeded; and,
  - (b) give notice to unitholders of the re-allocation within 30 days after the reallocation;”.

AND WHEREAS this MRRS Decision Document evidences the decision of each of the Decision Makers (the “Decision”);

AND UPON each of the Decision Makers being satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Existing Decision is hereby revoked and replaced with the following Decision with effect as of, and from, the date hereof;

AND THE DECISION of the Decision Makers pursuant to the Legislation is that the Restrictions do not apply to the acquisition or redemption of units of an Underlying Fund by a Portfolio, provided that the following conditions are satisfied in respect of each transaction:

1. each of the Portfolios is a reporting issuer or the equivalent under the Legislation and is not in default of the requirements of the Legislation;

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2. the investment objectives of each Underlying Fund are compatible with the investment objectives of the applicable Portfolio;
3. none of the Portfolios will invest in an Underlying Fund whose investment objective includes investing directly or indirectly in other mutual funds (i.e. RSP Clone Funds or Fund-of-Funds);
4. despite condition 3, the Four Portfolios will have divested themselves of all investments in the RSP Clone Funds identified in recital C above on or before January 2, 2001;
5. any of the Four Portfolios that continues to be invested after January 2, 2001 in the RSP Clone Funds identified in recital C above shall immediately cease distribution in the Jurisdictions;
6. despite condition 3, if an Underlying Fund, not managed by the Manager or an affiliate of the Manager, changes its investment objective to include investing directly or indirectly in other mutual funds (i.e. converts to an RSP Clone Fund or a Fund-of-Funds), the Portfolio holding that Underlying Fund will take steps to eliminate that Underlying Fund from its holdings as quickly as commercially reasonable but in no circumstances later than 90 days from the effective date of the change in investment objective of the Underlying Fund;
7. the units of each of the Portfolios and the securities of each Underlying Fund purchased by a Portfolio are offered for sale in the Jurisdictions pursuant to a simplified prospectus which has been filed with and accepted by the Decision Makers;
8. each Portfolio invests its assets (exclusive of cash and cash equivalents) in Underlying Funds in accordance with the Fixed Percentages disclosed in the simplified prospectus of the Portfolios, subject to a permitted variation above or below such Fixed Percentages to account for market fluctuations of not more than:
  - (i) 2.5% in respect of Underlying Funds which have a Fixed Percentage of 3.0% or more;
  - (ii) 0.5% in respect of Underlying Funds which have a Fixed Percentage of less than 3.0%,

(In each case, the “Permitted Variation”);

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9. if at any time, the assets of a Portfolio that are invested in Underlying Funds deviate from the Permitted Variation, the necessary changes are made to the applicable Portfolio's assets as at the next valuation date of the Portfolio in order to adjust the Portfolio's assets back to the Fixed Percentages;

10. the Fixed Percentages and the Underlying Funds in which a Portfolio may invest cannot be changed unless and until a new simplified prospectus or an amended simplified prospectus is filed and receipted to reflect the proposed change, and the existing unitholders of the Portfolio are given at least 60 days prior written notice of the proposed change ("Notice of Change");

11. despite condition 10, the Fixed Percentages of the RSP Clone Funds held by the Four Portfolios cannot be increased from the Fixed Percentages set out in recital C above;

12. the simplified prospectus of each Portfolio discloses the name, investment objectives, and manager of the Underlying Funds, the Fixed Percentages and Permitted Variation of each Underlying Fund, and the notice and amendment requirements of condition 10;

13. despite condition 10, the Four Portfolios are not required to file a prospectus amendment or give Notice of Change for the removal of the RSP Clone Funds if;

- (a) the simplified prospectus of each of the Four Portfolios discloses the names of the Underlying Funds that will replace the RSP Clone Funds or into which money currently invested in RSP Clone Funds will be invested (the "Replacement Funds") on or before January 2, 2001, and the revised Fixed Percentages; and
- (b) the Manager of each of the Four Portfolios files on SEDAR (under project number 281125) a written certification from the Manager that all RSP Clone Funds identified in recital C above have been removed from the Four Portfolios, which certification will include the names of all Replacement Funds and the revised Fixed Percentages;

14. despite condition 10, where a Portfolio is required to remove an Underlying Fund in order to comply with condition 6, the Underlying Fund cannot be changed unless and until a new simplified prospectus or an amended simplified prospectus is filed and receipted to reflect the proposed change, and existing unitholders of the Portfolio are given at least 30 days prior written notice of the proposed change;

15. the simplified prospectus of each Portfolio shall disclose:

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- (a) that any management fee rebate payable by an Underlying Manager or its affiliates or associates to the Manager in respect of any Portfolio's investment in such Underlying Fund will be retained by the Manager and not passed on to the Portfolio; and
  - (b) the percentage of the aggregate management fee charged by the Manager that is paid or otherwise accrues to the benefit of the Underlying Managers and the percentage that is paid or otherwise accrues to the benefit of the Manager and/or any of its affiliates or associates;
- 16. any management fee rebate paid to the Manager or its affiliates or associates will be reflected in the notes to the financial statements of the Portfolios;
- 17. a Notice of Change shall:
  - (a) include the same disclosure that is in the simplified prospectus concerning the payment of management fee rebates from the Underlying Managers to the Manager; and
  - (b) disclose any change in trailing fee or management fee rebate, if the trailing fee or management fee rebate to be paid by the Underlying Fund will be higher;
- 18. the trailing fees in respect of the Portfolios' investments in Underlying Funds that are paid to the Manager or its affiliates or associates will be no more than that which could be paid by the Underlying Managers to any dealer selling the Underlying Funds in accordance with the disclosure in the simplified prospectus of the Underlying Funds and in the simplified prospectus of the Portfolios;
- 19. the simplified prospectus shall disclose the trailing fees paid by the Manager or its affiliates or associates in respect of units of the Portfolios as a percentage of the aggregate amount of trailing fees received by the Manager or its affiliates or associates from the Underlying Managers in respect of securities of the Underlying Funds purchased by the Portfolios;
- 20. the frequency of calculation of the net asset value of a Portfolio and of the Underlying Funds of the Portfolio are compatible for the purpose of the issue and redemption of units of the Portfolio and Underlying Funds;
- 21. no sales charges are payable by a Portfolio in relation to its purchases of the units of its Underlying Funds;

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22. no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by a Portfolio of the units of the Underlying Funds owned by the Portfolio;

23. the arrangements between or in respect of a Portfolio and the Underlying Funds are such as to avoid duplication of management fees;

24. other than the management fee rebates and trailing fees received in compliance with this Decision, and management fees as disclosed in the simplified prospectus, no fees and charges of any sort are paid by a Portfolio, an Underlying Fund, the manager or principal distributor of the Portfolio or Underlying Fund, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the Portfolio's purchase, holding or redemption of the securities of the Underlying Fund;

25. in the event of the provision of any notice to the unitholders of an Underlying Fund, as required by the constating documents of the Underlying Fund or by the laws applicable to the Underlying Fund, such notice will also be delivered to the unitholders of each Portfolio that then holds units of the Underlying Fund; all voting rights attached to the units of the Underlying Funds will be passed through to the unitholders of the applicable Portfolio; in the event that a meeting of the unitholders of the Underlying Fund is convened, all of the disclosure and notice material prepared in connection with such meeting will be provided to unitholders of the relevant Portfolio and such unitholders will be able to direct the Manager to vote the Portfolio's holdings in the Underlying Fund in accordance with their direction; where a matter relating to an Underlying Fund requires a vote of security holders of an Underlying Fund (other than regular business conducted at an annual meeting of an Underlying Fund which is a corporation - i.e. the election of directors and the appointment of auditors), the Manager will either hold a meeting of unitholders of each Portfolio which holds securities of the Underlying Fund or will give unitholders of each such Portfolio the opportunity to vote by proxy without holding a meeting, the Manager will cause the securities of the Underlying Fund held by such Portfolio to be voted in the same proportions as unitholders of the Portfolio have voted;

26. the simplified prospectus of the Portfolios discloses that the simplified prospectus and annual information forms of the Underlying Funds are available upon request and unitholders will receive the annual and, upon request, the semi-annual financial statements of the Portfolios, together with (i) appropriate summary disclosure in the financial statements of each Portfolio concerning each Underlying Fund in which it invests; or (ii) upon request, the annual and semi-annual financial statements of each applicable Underlying Fund in either a combined report containing both the Portfolio and Underlying Fund financial



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statements, or in a separate report containing Underlying Fund financial statements;

27. each investment by a Portfolio in an Underlying Fund represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Portfolios;

28. the relief set out in this Decision shall terminate one year after publication in final form of any legislation or rule of the Decision Makers which deals with the matters addressed by section 2.5 of NI 81-102.

DATED December 20, 2002

Robert W. Korthals

Harold P. Hands