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December 23, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 123 - A mutual fund and its registered portfolio manager want relief from sections 121(2)(b) and 121(3) of the Act so that the fund can invest in and hold securities of related mutual funds

Securities Act s. 130 - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - A portfolio manager, mutual fund or “responsible person” wants relief from s. 127(1)(a) of the Act so that it can invest in an issuer which has a “responsible person” as an officer or director of the issuer

The underlying fund invests in a mutual fund in a foreign jurisdiction, but cannot rely on the exemption in paragraph 2.5(3)(b) of NI 81-102; the portfolio of the underlying fund is passively managed; the funds will comply with all the conditions of NI 81-102 except the ones in paragraphs 2.5(2)(a), (b) and (c) for the underlying fund’s investment in the foreign fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 121(3), 123, 126(a) and (d), 127(1)(a) and 130

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Nova
Scotia, Newfoundland and Labrador (the “Jurisdictions”)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Excel Funds Management Inc. (the “Manager”)

and

In the Matter of Excel Canadian Balanced Fund (the “RSP fund”)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each the Jurisdictions has received an application from the Manager, as manager of the RSP Fund, for a decision (all relief sought herein collectively referred to as “Requested Relief”) under the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions of the Legislation shall not apply, as the case may be, to the Manager, the RSP Fund or to any other mutual funds subject to National Instrument 81-102 (“NI 81-102”) which may in the future invest in Excel India Fund (the “Other Top Funds”) (the “RSP Fund” and “Other Top Funds” collectively referred to hereinafter as the “Top Funds”) in respect of a Top Fund’s investment in securities of Excel India Fund (the “India Fund”):

- the restrictions contained in the Legislation that prohibit 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;
- the requirements contained in the Legislation that a management company (or, in British Columbia, a 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 arrangement 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; and
- the requirements contained in the Legislation prohibiting a portfolio manager (or, in British Columbia, the mutual fund or responsible person), from knowingly causing an investment portfolio managed by it to invest in securities of an issuer in which 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.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

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Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Manager:

Manager

1. The Manager is a corporation established under the laws of the Province of Ontario, which its head office is Mississauga, Ontario, and acts as the manager and trustee of the RSP Fund and the India Fund.

RSP Fund

2. The RSP Fund is an open-end mutual fund trust established under the laws of Ontario in 1999 and is qualified for distribution under a simplified prospectus and annual information form dated January 30, 2004.
3. The RSP Fund is a reporting issuer in each of the Jurisdictions and is not in default under the Legislation of the Jurisdictions.
4. Currently, the investment objective of the RSP Fund is to seek long-term capital appreciation and income by investing mainly in fixed income securities and preferred and common shares of Canadian issuers. The RSP Fund may also invest in foreign property securities up to the foreign property limits specified under the *Income Tax Act* (Canada) ("Tax Act").

Other Top Funds

5. An Other Top Fund may, from time to time, invest in or seek exposure to the India Fund in order to meet its investment objectives.

The India Fund

6. The India Fund is an open-end mutual fund trust established under the laws of Ontario and is qualified for distribution under a simplified prospectus and annual information form dated January 30, 2004.
7. The India Fund is a reporting issuer in each of the Jurisdictions and is not in default under the Legislation of the Jurisdictions.

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8. The investment objective of the India Fund is to seek long-term superior growth of capital by investing in equity securities of companies located in India through a “fund-on-fund” arrangement with India Excel (Mauritius) Fund (the “Mauritius Sub-fund”). The Mauritius Sub-fund is an open-end investment trust organized under the laws of Mauritius. The Mauritius Sub-fund, in turn, invests most of its assets in the India Excel (Offshore) Fund (the “India Sub-fund”), an open-end investment trust organized under the laws of India. The India Fund’s three-tiered fund-on-fund structure (the “Structure”) was approved by the Decision Makers of each Jurisdiction in 1998. As a result of the operation of subsection 19.3(1) of NI 81-102, this approval will be revoked on December 31, 2004. A new approval has been applied for by letter dated November 25, 2004 (the “2004 Approval”) with the following conditions:
- (a) the investment objectives and investment strategies of the Mauritius Sub-fund and India Sub-fund be the same as the India Fund;
 - (b) except as necessary to implement the Structure, the Mauritius Sub-fund and the India Sub-Fund adopt and comply with the investment restrictions and practices of NI 81-102;
 - (c) any changes in the provisions of the material contracts of the Mauritius Sub-fund and the India Sub-fund which would delete or amend the requirements of conditions (a) and (b) above, will require the approval of the Manager and the Decision Makers of the Jurisdictions;
 - (d) the India Fund will redeem its investment in the Mauritius Sub-fund and the Mauritius Sub-fund will redeem its position in the India Sub-fund in the event the contractual provisions in (c) are breached;
 - (e) the simplified prospectus of the India Fund will disclose conditions (a) to (d) above and the top ten holdings of the India Sub-fund;
 - (f) the calculation of the net asset value (“NAV”) of the units of the India Fund, India Sub-fund and Mauritius Sub-fund will be identical and have compatible dates for the calculation of NAV for purposes of the issue and redemption of units of these funds;
 - (g) the annual and semi-annual financial statements of the India Fund shall be consolidated with the financial statements of Mauritius

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Sub-fund and India Sub-fund, including their respective portfolio holdings, and be available upon request by a unitholder of the India Fund;

- (h) the books and records of the Mauritius Sub-fund and the India Sub-fund will be examined by the Manager and audited by local affiliates of the auditors of the India Fund at least once per year;
- (i) no sales charges will be payable by the India Fund and the Mauritius Sub-fund in relation to a purchase of units of the Mauritius Sub-fund and the India Sub-fund, respectively;
- (j) no redemption fees or other charges will be charged by the Mauritius Sub-fund or the India Sub-fund in respect of a redemption by the India Fund or the Mauritius Sub-fund, respectively, of units of such funds;
- (k) no trailer or other fees or charges will be paid by the Manager, the India Fund, India Sub-fund and the Mauritius Sub-fund or by any affiliate or associate of any of the foregoing entities to anyone in respect of the investment by the India Fund in the Mauritius Sub-fund or the investment by the Mauritius Sub-fund in the India Sub-fund; and
- (l) there are arrangements between or in respect of the India Fund, the India Sub-fund and the Mauritius Sub-fund to avoid the duplication of management fees.

Proposed New Investment Objective and Investment Strategy: RSP Fund

9. The Manager has received unitholder approval to change the fundamental investment objective of the RSP Fund to the following:

“The investment objective of the RSP Fund is to seek long-term capital appreciation by investing (either directly or through derivative instruments) primarily in mutual fund securities in order to gain exposure to the equity and debt markets of India and China, Hong Kong, Taiwan and other Far East countries. The RSP Fund may also invest in non-mutual fund securities which provide exposure to the above markets or seek exposure to other international emerging markets. The RSP Fund may invest its assets in foreign property securities up to the limit allowed under the Tax Act but will otherwise maintain complete eligibility for registered plans.”

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10. The RSP Fund will implement this investment objective primarily by: (i) investing its assets directly in units of the India Fund and the Excel China Fund up to the maximum foreign property limits specified under the Tax Act; and/or (ii) entering into one or more forward contracts or other specified derivative instruments with one or more financial institutions in order to gain exposure to the India Fund and the Excel China Fund.
11. Under this proposed new investment objective and investment strategy, units of the RSP Fund would continue to be eligible for investment for registered tax plans and would not constitute foreign property under the Tax Act.

Generally

12. In the absence of this Decision, a Top Fund would be prohibited from knowingly making or holding an investment in the India Fund if the Top Fund, alone or together with one or more related mutual funds, is a substantial securityholder of the India Fund.
13. In the absence of this Decision, the Manager would be required to file a report of every transaction of purchase or sale by a Top Fund managed by the Manager of securities of the India Fund.
14. By virtue of the Manager being the manager of the RSP Fund and the India Fund and, therefore, an “associate” of each such mutual fund, in the absence of this Decision, the Manager would be prohibited from causing the RSP Fund to invest in the India Fund unless this specific fact is disclosed to investors and, if applicable, the written consent of investors is obtained before the purchase.
15. A Top Fund’s investment in securities of the India Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Top Fund.

Decision

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 Requested Relief is granted provided that:

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1. The decision shall only apply if, at the time the Top Fund makes or holds an investment in the India Fund, the following conditions are satisfied:
 - (a) the investment by the Top Fund in the India Fund is compatible with the fundamental investment objective of the Top Fund and in compliance with each provision of subsection 2.5(2) of NI 81-102 except for section 2.5(2)(b);
 - (b) except as permitted in the 2004 Approval, the India Fund:
 - (i) is subject to NI 81-102;
 - (ii) does not hold more than 10% of the market value of its net assets in securities of other mutual funds; and
 - (iii) complies in all respects with the conditions of the 2004 Approval.
 - (c) the securities of the Top Fund and the India Fund are qualified for distribution in the local jurisdiction;
 - (d) no management fees or incentive fees are payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the India Fund for the same service;
 - (e) in the case of a Top Fund managed by the Manager, no sales fees or redemption fees are payable by the Top Fund in relation to its purchases or redemptions of securities of the India Fund; and
 - (f) in the case of a Top Fund not managed by the Manager, no sales fees or redemption fees are payable by the Top Fund in relation to its purchases or redemptions of securities of the India Funds that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund.

Paul Moore
Vice Chair

David Knight
Commissioner
Ontario Securities Commission