

2004 BCSECCOM 30

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain mutual fund reporting requirements and self-dealing prohibitions to permit Top Funds to invest in securities of Underlying Funds, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss, 121(2)(b), 123, 126(a) and (d) 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 AGF FUNDS INC. (“AGF”)

AND

**IN THE MATTER OF HARMONY CONSERVATIVE PORTFOLIO
HARMONY BALANCED PORTFOLIO
HARMONY RSP BALANCED PORTFOLIO
HARMONY GROWTH PORTFOLIO
HARMONY RSP GROWTH PORTFOLIO
HARMONY AGGRESSIVE GROWTH PORTFOLIO
HARMONY RSP AGGRESSIVE GROWTH PORTFOLIO
HARMONY MAXIMUM GROWTH PORTFOLIO
HARMONY RSP MAXIMUM GROWTH PORTFOLIO
(THE “TOP FUNDS”)**

MRRS DECISION DOCUMENT

WHEREAS the 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 AGF as Manager of the Top Funds for a decision by each Decision Maker under the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions of the Legislation (the “Applicable

2004 BCSECCOM 30

Requirements “) shall not apply to the Top Funds or AGF, in respect of the Top Funds’ investments in securities of the Harmony Investment Pools (the “Underlying Funds”):

1. 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; and
2. 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 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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

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

1. The Top Funds will be open-end mutual fund trusts established under the laws of the Province of Ontario, and will be reporting issuers in each of the Jurisdictions. Units of the Top Funds will be qualified for distribution under a simplified prospectus and annual information form (the “Prospectus”) filed in each of the Jurisdictions and will not be in default of any of the requirements of the Legislation.
2. The Underlying Funds are open-end mutual fund trusts established under the laws of the Province of Ontario, and are reporting issuers in each of the Jurisdictions. Units of the Underlying Funds are qualified for distribution under a simplified prospectus and annual information form filed in each of the Jurisdictions and are not in default of any of the requirements of the Legislation.
3. Some of the Underlying Funds (the “RSP Clone Funds”) may have as an objective to limit their holdings in foreign property such that their units are not foreign property under Part XI of the *Income Tax Act* (Canada) (the “Tax Act”). Each RSP Clone Fund invests its assets directly and obtains exposure

2004 BCSECCOM 30

(through derivatives) in a specified foreign property mutual fund to link its performance to the specified fund.

4. The Manager is a corporation amalgamated under the laws of the Province of Ontario. The Manager's head office is located in Toronto, Ontario. The Manager is the manager and trustee of the Top Funds and the Underlying Funds.
5. As part of its investment objective, each Top Fund will invest its assets (other than cash and cash equivalents) in Underlying Funds offered by AGF in the target weightings determined from time to time by a consultant retained by AGF.
6. A Top Fund's investment in Underlying Funds will be rebalanced to target weightings specified by the consultant retained by AGF.
7. The proposed fund-of-fund amendments to National Instrument 81-102 Mutual Funds ("NI 81-102") (the "Fund-of-Fund Amendments") will permit the investment objectives and strategies of the Top Funds. The Fund-of-Fund Amendments are expected to be in effect December 31, 2003.
8. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to NI 81-102, the investments by the Top Funds in the Underlying Funds will comply with the investment restrictions of the Legislation and NI 81-102.
9. In the absence of this Decision, the Top Funds would be prohibited from knowingly making or holding an investment in Underlying Funds in which the Top Funds, alone or together with one or more related mutual funds, is a substantial securityholder.
10. In the absence of this Decision, AGF would be required to file a report of every transaction of purchase or sale by the Top Funds of the securities of the Underlying Funds.
11. The Top Funds' investment in securities of the Underlying Funds will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Top Funds.

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

2004 BCSECCOM 30

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 so as to prevent the Top Funds from making and holding investments in securities of the Underlying Funds, or require AGF to file a report relating to the purchase or sale of such securities;

PROVIDED IN EACH CASE THAT:

1. The Decision, as it relates to the jurisdiction of a Decision Maker, will terminate after the publication in final form 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 the Top Fund makes or holds an investment in the Underlying Funds, the following conditions are satisfied:
 - (a) The Underlying Funds are subject to NI 81-102 and National Instrument 81-101 Mutual Fund Prospectus Disclosure (“NI 81-101”);
 - (b) The securities of the Top Fund and the securities of the Underlying Funds are qualified for distribution in the local jurisdiction;
 - (c) Except where the Underlying Fund is a RSP Clone Fund, at the time the Top Fund purchases securities of an Underlying Fund, the Underlying Fund does not hold more than 10% of the market value of its net assets in securities of other mutual funds;
 - (d) The Top Fund shall disclose in its simplified prospectus under the “Fees and Expenses” section, that there are fees and expenses payable by the Underlying Funds in addition to the fees and expenses payable by the Top Funds;
 - (e) No management fees or incentive fees are payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Funds for the same service and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;
 - (f) No sales fees or redemption fees are payable by the Top Fund in relation to their purchases or redemptions of the securities of the Underlying

2004 BCSECCOM 30

Funds and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;

- (g) No sales fees or redemption fees are payable by the Top Fund in relation to their purchases or redemptions of the securities of the Underlying Funds that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;
- (h) With respect to the securities of the Underlying Funds, the Top Funds,
 - (i) shall not vote any of those securities;
 - (ii) may, if the Manager so chooses, arrange for all of the securities it holds of the Underlying Funds to be voted by the beneficial holders of securities of the Top Funds; and
 - (iii) shall disclose the above information in the simplified prospectus of the Top Fund under the “Organization and Management Details” section;
- (i) The Top Fund and the Underlying Funds must have dates for the calculation of net asset value that are compatible;
- (j) The Top Fund shall disclose in its simplified prospectus under the “Investment Strategies” section:
 - (i) whether the Top Fund intends to purchase securities of, or enter into specified derivative transactions for which the underlying interest is based on securities of, one or more Underlying Funds;
 - (ii) that the Underlying Funds are managed by the Manager of the Top Fund;
 - (iii) what percentage of net assets of the Top Fund is dedicated to the investment in the securities of, or the entering into of specified derivative transactions for which the underlying interest is based on the securities of, Underlying Funds; and
 - (iv) the process or criteria used to select the Underlying Funds;

2004 BCSECCOM 30

- (k) The Top Fund shall disclose in its simplified prospectus under the “Top Ten Holdings” section, a statement to the effect that the simplified prospectus and other information about the Underlying Funds are available on the internet at www.sedar.com;
- (l) If more than 10% of the securities of the Underlying Funds are held by the Top Fund, the Underlying Funds must disclose under the “Risks” section of their simplified prospectus, the percentage of securities held by the Top Fund as at a date within 30 days of the date of the simplified prospectus of the Top Fund. The Underlying Funds must also disclose the risks associated with a possible redemption requested by the Top Fund.

DATED December 23, 2003

H. Lorne Morphy

Suresh Thakrar