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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Investment by RSP “clone” fund in another mutual fund for specified purpose exempted from the reporting requirements and self-dealing provisions of the legislation.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 123 126(a), 126(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.

AND

HARMONY RSP NORTH AMERICAN SMALL CAP POOL HARMONY RSP OVERSEAS EQUITY POOL HARMONY RSP U.S. EQUITY POOL

MRRS DECISION DOCUMENT

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 and Labrador (the “Jurisdictions”) has received an application (the “Application”) from AGF Funds Inc. (“AGF”) in its own capacity and on behalf of Harmony RSP North American Small Cap Pool (to be renamed Harmony RSP Americas Small Cap Equity Pool), Harmony RSP Overseas Equity Pool and Harmony RSP U.S. Equity Pool (the “Existing Top Pools”) and other mutual funds managed by AGF having an investment objective or strategy that is linked to the returns or portfolio of another specified AGF managed mutual fund while remaining 100% eligible for registered plans (together with the Existing Top Pools, the “Top Pools”) and Harmony Americas Small Cap Equity Pool, Harmony Overseas Equity Pool and Harmony U.S. Active Equity Pool (to be renamed Harmony U.S. Equity Pool) (the “Existing Underlying Pools”) or other corresponding AGF managed mutual funds from time to time (the

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funds, including the “Existing Underlying Pools”, in which such investments are to be made being collectively referred to as the “Underlying Pools”) for a decision by each decision maker (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:

A. the provision prohibiting a mutual fund from knowingly making and 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 provision 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;

C. the provision prohibiting a portfolio manager or in British Columbia, the mutual fund, from knowingly causing an investment portfolio managed by it or in British Columbia the mutual fund, to purchase or sell the securities of any issuer from or to the account of a “responsible person” (as that term is defined in the Legislation), any associate of a responsible person or the portfolio manager; and

D. the provision prohibiting the purchase or sale of any security in which an investment counsel or any partner, officer or associate of an investment counsel has a direct or indirect beneficial interest, from or to any portfolio managed or supervised by the investment counsel.

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 AGF has represented to the Decision Makers that:

1. AGF is a corporation established under the laws of the Province of Ontario with its head office in Toronto, Ontario. AGF is the manager and trustee of the Top Pools and the Underlying Pools. AGF holds various registrations including registration as an investment counsel and portfolio manager in the Northwest Territories and in every province other than Quebec.

2. Each of the Top Pools is, or will be, a trust established under the laws of the Province of Ontario.

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3. Each of the Existing Underlying Pools is a trust established under the laws of Ontario and each of the future Underlying Pools will be either a trust or a corporation.
4. The securities of the Top Pools and the Underlying Pools are or will be qualified for distribution pursuant to a simplified prospectus and annual information form (the "Prospectus").
5. The Top Pools and the Underlying Pools are or will be reporting issuers in the Jurisdictions and are not or will not be in default of any requirements of the Legislation.
6. AGF currently manages the Existing Top Pools and the Existing Underlying Pools and AGF is one of the portfolio managers of Harmony RSP North American Small Cap Pool ("NA RSP").
7. At a meeting to be held on May 16, 2002, the holders of the Existing Top Pools will be requested to approve a change in investment objective such that the investment objective will be to provide long-term growth of capital while maintaining 100% eligibility for registered plans, by entering into forward contracts and other derivatives instruments that are linked to the performance of the applicable Underlying Pool or to the performance of portfolio securities of the applicable Underlying Pool. Each Top Pool may also invest directly in the applicable Underlying Pool up to the amount prescribed from time to time as the maximum permitted amount which may be invested in foreign property under the Income Tax Act (Canada) (the "Tax Act") without the imposition of tax (the "Permitted Limit").
8. If the change in investment objective is approved, the change of the Existing Top Pools to an 'RSP clone fund' is expected to occur in June, 2002 or such other date as determined solely by AGF (the "Effective Date").
9. The Prospectus discloses or will disclose the investment objectives, investment strategies, risks and restrictions of the Top Pools and the Underlying Pools. In particular, the Prospectus of the Existing Top Pools will be amended to reflect the changes described in paragraph 7 above.
10. The investment objectives of the Underlying Pools are, or will be, achieved through investment primarily in foreign securities. As a result, securities of the Underlying Pools are only eligible as "foreign property" under the Tax Act for certain types of registered plans.

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11. NA RSP currently holds securities in small-cap Canadian companies, some of which are not traded in significant volumes. As a consequence of the linking of NA RSP to Harmony Americas Small Cap Equity Pool (“Americas”), Americas will be required to purchase additional portfolio securities. Due to the fact that the investment objective of Americas encompasses small cap stocks and due to the fact that trading in small cap securities may not be significant in volume, it could take considerable time for Americas to buy a small cap portfolio to reflect the linking of NA RSP to Americas. As a result, it is proposed that in connection with converting NA RSP to an ‘RSP clone fund’, NA RSP will sell all of its portfolio securities, excluding derivative instruments, to Americas immediately prior to the Effective Date, in return for units of Americas.

12. The portfolio securities described in paragraph 11 above will be sold without any brokerage commissions or fees of any kind and Americas will pay NA RSP as consideration units of Americas.

13. The direct investment by the Top Pools in the Underlying Pools will be within the Permitted Limit. The amount of direct investment by each Top Pool in its corresponding Underlying Pool will be adjusted from time to time so that, except for transitional cash, the aggregate of derivative exposure to, and direct investment in, the Underlying Pool will equal 100% of the net assets of the Top Pool.

14. Except to the extent evidenced by this Decision and specific approvals granted by the Canadian securities administrators pursuant to National Instrument 81-102 Mutual Fund (“NI 81-102”), the investments by the Top Pools in the Underlying Pools have been, or will be, structured to comply with the investment restrictions of the Legislation and NI 81-102.

15. In the absence of this Decision, pursuant to the Legislation, each Top Pool is prohibited from knowingly making and 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.

16. In the absence of this Decision, the Legislation requires AGF to file a report on every purchase or sale of securities of an Underlying Pool by a Top Pool and on the transfer of securities from NA RSP to Americas.

17. In the absence of this Decision, the Legislation, in respect of certain Top Pools, prohibits AGF or, in British Columbia, the Top Pool, from knowingly causing an investment portfolio managed by it to purchase or sell the securities of any issuer from or to the account of a “responsible person” (as that term is defined in the Legislation), any associate of a responsible person or AGF.

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18. The Top Pools' investment in or redemption of securities of their corresponding Underlying Pools represents the business judgment of responsible persons, uninfluenced by considerations other than the best interests of the Top Pools.

AND WHEREAS pursuant to the System this Decision Document evidences the Decision of each Decision Maker;

AND WHEREAS each Decision Maker 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 pursuant to the Legislation is that the Applicable Requirements shall not apply to the Top Pools or AGF, as the case may be, to the purchase and sale by the Top Pools in securities of the Underlying Pools;

AND THE DECISION of the Decision Makers pursuant to the Legislation is that the Applicable Requirements shall not apply to the one-time sale of securities from NA RSP to Americas;

PROVIDED IN EACH CASE THAT:

1. the 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; and
2. the Decision shall only apply if, at the time a Top Pool makes or holds an investment in an Underlying Pool, the following conditions are satisfied:
 - (a) the securities of both the Top Pool and the Underlying Pool 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;
 - (b) the Underlying Pool is not a mutual fund whose investment objective includes investing directly or indirectly in other mutual funds;
 - (c) the investment by the Top Pool in the Underlying Pool is compatible with the fundamental investment objectives of the Top Pool;

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- (d) the simplified prospectus of the Top Pool discloses the intent of the Top Pool to invest directly and indirectly (through derivative exposure) in the Underlying Pool, and the name of the Underlying Pool;
- (e) the Top Pool restricts its aggregate direct investment in the Underlying Pool to a percentage of its assets that is within the Permitted Limit;
- (f) there are compatible dates for the calculation of the net asset value of the Top Pool and the Underlying Pool for the purpose of the issue and redemption of the securities of such mutual fund;
- (g) no sales charges are payable by the Top Pool in relation to its purchases of securities of the Underlying Pool;
- (h) no redemption fees or other charges are charged by the Underlying Pool in respect of the redemption by the Top Pool of securities of the Underlying Pool owned by the Top Pool;
- (i) no fees and charges of any sort are paid by the Top Pool and the Underlying Pool, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the Top Pool's purchase, holding or redemption of the securities of the Underlying Pool;
- (j) the arrangements between or in respect of the Top Pool and the Underlying Pool are such as to avoid the duplication of management fees;
- (k) any notice provided to securityholders of the Underlying Pool, as required by applicable laws or the constating documents of the Underlying Pool, has been delivered by the Top Pool to its securityholders and all voting rights attached to the securities of the Underlying Pool that are owned by the Top Pool will be passed through to securityholders of the Top Pool;
- (l) all of the disclosure and notice material prepared in connection with a meeting of securityholders of the Underlying Pool and received by the Top Pool will be provided to its securityholders and the securityholders will be permitted to direct a representative of the Top Pool to vote its holdings in the Underlying Pool in accordance with their direction, and the representative of the Top Pool will not vote its holdings in the Underlying Pools except to the extent the securityholders of the Top Pool have directed;

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- (m) to the extent that the Top Pool and the Underlying Pool do not use a combined simplified prospectus and annual information form containing disclosure about the Top Pool and the Underlying Pool, copies of the simplified prospectus and annual information of the Underlying Pool will be provided upon request to securityholders of the Top Pool and this right will be disclosed in the simplified prospectus of the Top Pool; and
- (n) in addition to receiving the annual and, upon request, the semi-annual financial statements of the Top Pool, securityholders of the Top Pool have received the annual and, upon request, the semi-annual financial statements of the Underlying Pool in either a combined report, containing financial statements of the Top Pool and the Underlying Pool, or in a separate report containing the financial statements of the Underlying Pool.

DATED at Toronto this 14th day of May, 2002.

Theresa McLeod

Robert L. Shirriff