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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain mutual fund self-dealing restrictions and reporting requirements to permit Top Funds to invest in securities of Underlying Funds 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) 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 DYNAMIC MUTUAL FUNDS LTD.

AND

**MARQUIS CONSERVATIVE PORTFOLIO
MARQUIS BALANCED PORTFOLIO
MARQUIS GROWTH PORTFOLIO
MARQUIS ALL EQUITY PORTFOLIO
MARQUIS RSP ALL EQUITY PORTFOLIO**

MRRS DECISION DOCUMENT

WHEREAS the local 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 (the “Application”) from Dynamic Mutual Funds Ltd. (the “Manager”) on its own behalf and on behalf of Marquis Conservative Portfolio, Marquis Balanced Portfolio, Marquis Growth Portfolio, Marquis All Equity Portfolio and Marquis RSP All Equity Portfolio (collectively, the “Initial Top Funds”) and other mutual funds established and/or managed by the Manager after the date of this Decision that have as their investment objective the investment of substantially all of their assets in securities of one or more mutual funds (the “Future Top Funds”, which together with the Initial Top Funds are collectively referred to as the “Top

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Funds”) for a decision (the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions of the Legislation (the “Applicable Requirements”) shall not apply to a Top Fund or the Manager, as the case may be, in respect of certain investments to be made from time to time by a Top Fund in securities of selected prospectus-qualified mutual funds (the “Underlying Funds”, as described in paragraph 4 below):

- (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 a management company or, in British Columbia, a 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 unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS it has been represented by the Manager to the Decision Makers that:

1. The Manager is a corporation subsisting under the laws of the Province of Ontario and is registered as an adviser in the categories of investment counsel and portfolio manager with the Ontario Securities Commission. The Manager is or will be the manager of the Top Funds and the Underlying Funds (as defined in paragraph 4 below).
2. The Top Funds are or will be open-ended mutual fund trusts established under the laws of the Province of Ontario.
3. The securities of each of the Top Funds and Underlying Funds are or will be qualified for distribution in all the Jurisdictions pursuant to simplified prospectuses and annual information forms filed with and accepted by the

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Decision Makers, and accordingly are or will be reporting issuers in the Jurisdictions. The Top Funds will not be in default of any of the requirements of the Legislation.

4. Each Top Fund is designed to provide investors with indirect investments in a portfolio of other mutual funds (“Underlying Funds”) managed by the Manager by investing all of its assets, other than cash or cash equivalents, in a combination of Underlying Funds. The Underlying Funds in which a Top Fund will invest its assets, as well as the target asset allocations of the Top Fund in its Underlying Funds, will be determined by the Manager based upon the risk/return profile of the Top Fund. The Top Funds will provide investors with access to asset allocation services and automatic rebalancing services provided by the Manager.
5. Securities of each Underlying Fund in which a Top Fund invests its assets will be distributed pursuant to a prospectus that has been filed with and accepted by the Decision Maker in each Jurisdiction where the Top Fund distributes its securities. A preliminary prospectus and annual information form dated July 3, 2003 for the Initial Top Funds has been filed under Sedar Project No. 555589 in all the provinces and territories of Canada for purposes of qualification for distribution.
6. Each Top Fund will not invest in any other mutual funds whose investment objectives include investing directly or indirectly in other mutual funds.
7. In order to achieve its investment objective, each of the Top Funds will invest fixed percentages (the “Fixed Percentages”) of its assets, excluding cash and cash equivalents held to meet redemptions and expenses, directly in securities of the Underlying Funds, subject to variation of 2.5 percent above or below the Fixed Percentages (the “Permitted Ranges”) resulting from market fluctuations and, in respect of certain Top Funds, subject to compliance with restrictions in the *Income Tax Act* (Canada) (the “Tax Act”) relating to holdings of foreign property.
8. To achieve its investment objective, Marquis RSP All Equity Portfolio will invest its assets such that the units of the Top Fund will, in the opinion of tax counsel to the Top Fund, be “qualified investments” for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and similar plans (“Registered Plans”) and will not constitute “foreign property” under the *Income Tax Act* (Canada) (the “Tax Act”). This will primarily be achieved through the implementation of a derivative strategy that provides a return linked to the returns of specified Underlying Funds. The Top Fund will also invest a portion of its assets directly in securities of

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Underlying Funds. This investment will at all times be below the maximum foreign property limit for Registered Plans (the “Permitted Limit”).

9. The prospectus of each Top Fund will disclose the names and investment objectives of the Underlying Funds, the manager of the Underlying Funds along with the Fixed Percentages and the Permitted Ranges.
10. Each Top Fund’s target asset allocations will be reviewed by the Manager on an ongoing basis and the Manager may change the target asset allocation for an Underlying Fund, or remove or add an Underlying Fund, as a result of such reviews. Any such changes to the Underlying Funds of a Top Fund will be treated by the Manager as a “significant change” for the Top Fund (as defined in National Instrument 81-102 (“NI 81-102”)). In addition, the Top Fund will give its existing securityholders not less than 60 days’ prior notice of any such change.
11. The investments by a Top Fund in securities of the Underlying Fund or Underlying Funds represent the business judgement of “responsible persons” (as defined in the Legislation) uninfluenced by considerations other than the best interests of the Top Fund.
12. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to NI 81-102, the investments by a Top Fund in the Underlying Fund or Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.
13. In the absence of this Decision, pursuant to the Legislation, each Top Fund is 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 each Top Fund would be required to divest itself of any such investments.
14. In the absence of the Decision, the Legislation requires the Manager to file a report on every purchase or sale of securities of an Underlying Fund by a Top Fund.

AND WHEREAS under the System, this MRRS 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;

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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 an investment in securities of the Underlying Funds or to require the Manager 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 one year 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 a Top Fund makes or holds an investment in its Underlying Fund or Underlying Funds, the following conditions are satisfied:
 - (a) the securities of both the Top Fund and the Underlying Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which have been filed with and accepted by the Decision Maker;
 - (b) the investment by the Top Fund in the Underlying Funds is compatible with the fundamental investment objectives of the Top Fund;
 - (c) the simplified prospectus of the Top Fund discloses the intent of the Top Fund to invest directly and indirectly (through derivative exposure), where applicable, in securities of the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages, the Permitted Ranges within which such Fixed Percentages may vary and with respect to the Marquis RSP All Equity Portfolio, that the Top Fund is fully eligible for registered plans;
 - (d) the investment objective of the Top Fund discloses that the Top Fund invests in securities of other mutual funds;
 - (e) the Underlying Funds are not mutual funds whose investment objectives include investing directly or indirectly in other mutual funds;
 - (f) the Marquis RSP All Equity Portfolio restricts its direct investment in the Underlying Funds to a percentage of its assets that is within the Permitted Limit;

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- (g) the Top Fund invests substantially all of its assets, exclusive of cash and cash equivalents, in securities of the Underlying Funds in accordance with the Fixed Percentages disclosed in the simplified prospectus of the Top Fund;
- (h) the Top Fund's holdings of securities in the Underlying Funds does not deviate from the Permitted Ranges;
- (i) subject to condition (k), any deviation from the Fixed Percentages is caused by market fluctuations only;
- (j) subject to condition (k), if an investment by the Top Fund in any of the Underlying Funds has deviated from the Permitted Ranges as a result of market fluctuations, the Top Fund's investment portfolio was re-balanced to comply with the Fixed Percentages on the next day on which net asset value was calculated following the deviation;
- (k) if, due to the foreign property investment limitations under the Tax Act, the Top Fund was precluded from purchasing additional securities or re-instating the Fixed Percentages in order to comply with condition (j), or the Top Fund was re-balanced in order to comply with those foreign property investment limitations and such re-balancing required the Top Fund to temporarily deviate beyond the Permitted Ranges, the Top Fund complied with condition (j) as soon as it was possible to do so in compliance with those foreign property investment limitations;
- (l) if the Fixed Percentages or the Underlying Funds which are disclosed in the simplified prospectus of the Top Fund have been changed, either the simplified prospectus has been amended or a new simplified prospectus has been filed to reflect the change and the security holders of the Top Fund have been given at least 60 days' notice of the change;
- (m) there are compatible dates for the calculation of the net asset value of a Top Fund and the Underlying Fund or Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;
- (n) no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Funds;
- (o) no redemption fees or other charges are 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;

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- (p) 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 the Top Fund's purchase, holding or redemption of the securities of the Underlying Funds;
- (q) the arrangements between or in respect of the Top Fund and the Underlying Funds are such as to avoid the duplication of management fees;
- (r) any notice provided to security holders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund has been delivered by the Top Fund to its security holders;
- (s) all of the disclosure and notice material prepared in connection with a meeting of security holders of the Underlying Fund (other than regular business conducted at an annual meeting of an Underlying Fund that is a mutual fund corporation) and received by the 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 Funds except to the extent the security holders of the Top Fund have directed;
- (t) in addition to receiving the annual and, upon request, the semi-annual financial statements of the Top Fund, security holders of the Top Fund have received appropriate summary disclosure in respect of the Top Fund's holdings of securities of the Underlying Funds in the financial statements of the Top Fund; and
- (u) to the extent that the Top Fund and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Top Fund and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds have been provided upon request to security holders of the Top Fund and the right to receive these documents is disclosed in the simplified prospectus of the Top Fund.

DATED the 12th day of August, 2003.

Harold P. Hinds

Wendell S. Wigle