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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from dealer registration and prospectus requirements for trades by mutual funds of reinvested securities and additional securities to existing unitholders, subject to certain conditions – relief from requirement to report distribution of privately-placed units or additional units provided report filed and fees paid within 30 days after financial year-end

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN MANITOBA, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

**IN THE MATTER OF THE ROYAL TRUST COMPANY AND ITS
AFFILIATES**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the “Jurisdictions”) have received an application from The Royal Trust Company (the “Applicant”) and its affiliates (collectively, “Royal Trust”) in respect of certain investment funds (individually, a “Fund” and collectively, the “Funds”) that Royal Trust has established or may establish for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that

- (a) trades in units of the Funds to investors:
 - (i) subsequent to the initial investments by the investors (“Additional Units”) shall not be subject to the requirements to file a preliminary prospectus and a final prospectus in respect of a

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distribution or primary distribution to the public of a security (the “Prospectus Requirements”), nor to the requirements to be registered to trade in a security (the “Registration Requirements”) of the Legislation of Manitoba, Québec, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (together, the Prospectus Requirements and the Registration Requirements are the “Prospectus and Registration Requirements”);

- (ii) upon the reinvestment of distributions by the Funds in units (“Reinvested Units”) shall not be subject to the Prospectus and Registration Requirements of the Legislation of Manitoba, Québec and New Brunswick;
- (b) initial trades in units of the Funds to investors (“Initial Units”), and trades in Additional Units and Reinvested Units are not subject to the requirements of the Legislation of the Jurisdictions other than Manitoba, New Brunswick and Prince Edward Island relating to the filing of forms and the payment of fees within a prescribed time period following the date of the trade (the “Reporting Requirement”), subject to certain conditions; and
- (c) distributions of units in money market funds, as defined in National Instrument 81-102, (“Money Market Funds”) are exempt from the fees that would otherwise be payable in the province of Québec.

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

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

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

1. The Applicant is a trust company incorporated under the *Trust and Loan Companies Act*, S.C. 1991, c. 45.
2. Existing Funds have been established by the Applicant under the laws of Ontario. The Applicant acts as the trustee and manager of the Funds.
3. Future Funds may be established by the Applicant under the laws of Ontario or Canada or under the laws of a jurisdiction other than Ontario or Canada.

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4. Existing Funds are advised by UBS Global Asset Management (Canada) Co., a registered adviser, and it is currently contemplated that future Funds will be advised by a registered adviser.
5. The Funds are divided into units, which will evidence each investor's undivided interest in the assets of each Fund.
6. The Funds are mutual funds as defined in the Legislation of the Jurisdictions.
7. The Funds will include mutual funds that are Money Market Funds.
8. The Funds currently do not intend to become a reporting issuer or an equivalent as defined in the Legislation of the Jurisdictions, and the units of the Funds will not be listed on any stock exchange.
9. Units will be distributed by the Funds to institutional clients of Royal Trust in the Jurisdictions in reliance on exemptions from the Prospectus and Registration Requirements as follows:
 - (a) The initial distribution of units of the Funds (the "Initial Distribution") to an investor in all of the Jurisdictions may be made pursuant to the exemption from the Prospectus and Registration Requirements for trades that require the investor to purchase securities of an issuer having a minimum acquisition cost (the "Prescribed Amount"), for so long as such exemptions remain available. Where units are distributed in reliance upon this exemption in Québec, trades will be made through a registered dealer, unless specific exemptive relief is obtained.
 - (b) Alternatively, the Initial Distribution and subsequent sales of Additional Units and Reinvested Units may be made pursuant to the exemption from the Prospectus and Registration Requirements in respect of trades to accredited investors, as defined in the Legislation of certain Jurisdictions (or, in the case of Québec, in respect of distributions to sophisticated purchasers). Trades made pursuant to these exemptions may currently be made in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Québec.
10. The Legislation in certain Jurisdictions provides for Prospectus and Registration Exemptions in respect of sales of Additional Units in amounts less than the Prescribed Amount provided that: (i) the Initial Distribution was made pursuant to the exemption described above in respect of the trades for at least a Prescribed Amount, and (ii) either the net asset value or the aggregate

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acquisition cost of the units in the Fund held as at the date of the trade is not less than the Prescribed Amount.

11. In Manitoba, Québec, New Brunswick, Prince Edward Island, and Newfoundland and Labrador, where the Initial Distribution was for at least the Prescribed Amount, there are no exemptions from the Prospectus and Registration Requirements that would enable the Funds to issue Additional Units upon further subscriptions by investors in amounts less than the Prescribed Amount.
12. The Legislation in several Jurisdictions provides for Prospectus and Registration Exemptions in respect of sales of Additional Units by way of reinvested distributions provided that no sales charge is applicable to the trade.
13. In Manitoba, Québec and New Brunswick, no exemption from the Prospectus and Registration Requirements of the Legislation is available in respect of such trades.
14. The Legislation of the Jurisdictions other than New Brunswick and Prince Edward Island has a Reporting Requirement in respect of Initial Distributions made pursuant to the exemptions from the Prospectus Requirements for trades of at least a Prescribed Amount.
15. The Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and Newfoundland and Labrador has a Reporting Requirement in respect of Initial Distributions and distributions of Additional Units or Reinvested Units made pursuant to the exemption from the Prospectus Requirements in respect of trades to accredited investors.
16. The Legislation of Québec has a Reporting Requirement in respect of Initial Distributions and distributions of Additional Units or Reinvested Units made pursuant to the exemption from the Prospectus Requirements in respect of distributions to sophisticated purchasers. The Legislation of Saskatchewan has a Reporting Requirement in respect of Initial Distributions and distributions of Additional Units or Reinvested Units made pursuant to the exemption from the Prospectus Requirements in respect of distributions of at least a Prescribed Amount. The Legislation of Nova Scotia has a Reporting Requirement in respect of Initial Distributions and distributions of Additional Units made pursuant to the exemption from the Prospectus Requirements in respect of distributions of at least a Prescribed Amount.
17. The Legislation of British Columbia has an annual Reporting Requirement in respect of Initial Distributions and distributions of Additional Units or

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Reinvested Units made pursuant to the exemption from the Prospectus Requirements for trades in units of mutual funds, and in certain cases requires the filing of reports within ten days after the end of the calendar year in which the trade took place.

18. The Legislation of certain Jurisdictions requires that reporting fees with respect to money market funds be calculated based on a percentage of proceeds in the relevant Jurisdiction. With the exception of British Columbia and Québec, such fees are calculated on the basis of net proceeds realized in the jurisdiction. The Legislation of Québec requires that reporting fees with respect to the notice required when making trades in reliance on the exemption from the Prospectus Requirement for trades of at least a Prescribed Amount or trades to sophisticated purchasers be calculated on the basis of gross proceeds.

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

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:

1. The distribution of Additional Units of the Funds to a unitholder is not subject to the Prospectus and Registration Requirements of the Legislation of Manitoba, Québec, New Brunswick, Prince Edward Island, and Newfoundland and Labrador, provided that:
 - (a) the Initial Distribution was for at least the Prescribed Amount;
 - (b) at the time of the acquisition of the Additional Units of the Fund, the unitholder then owns units of the relevant Fund having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount;
 - (c) the Applicant complies with such other conditions as the decision-makers in the Jurisdictions impose;
 - (d) at the time of the initial distributions, a copy of the investment policies of the Funds will be provided to the unitholder.
2. The distribution of Additional Units of the Fund to a Unitholder upon reinvestment of distributions made by the Fund is not subject to the Prospectus

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and Registration Requirements of the Legislation of Manitoba, Québec and New Brunswick, provided that:

- (a) no sales charge is applicable to the trade; and
 - (b) the Applicant complies with such other conditions as the decision-makers in the Jurisdictions impose;
3. The Reporting Requirements of the Legislation of the Jurisdictions other than Manitoba, New Brunswick and Prince Edward Island do not apply to a trade in Initial Units, Additional Units, or Reinvested Units of the Funds provided that, within 30 days of the end of each financial year of each Fund, the relevant Fund:
- (a) files with the applicable Jurisdiction a report in respect of all trades in Initial Units, Additional Units and Reinvested Units during such financial year, in the form prescribed by the applicable Legislation;
 - (b) files with the Commission des valeurs mobilières du Québec (i) a report in respect of all trades in units during such financial year, in the form prescribed by the applicable Legislation, and (ii) annual financial statements of the Fund within 140 days of the Fund's year end; and
 - (c) remits to the applicable Jurisdiction the fee prescribed by the applicable Legislation, or the fee prescribed pursuant to this Application; and
4. The requirement in Québec to calculate fees on the basis of gross proceeds does not apply, provided that:
- (a) units of any Money Market Funds are only issued in reliance on exemptions from the Prospectus Requirement of the applicable Legislation of Québec, or pursuant to the relief granted under this order;
 - (b) the relevant Money Market Fund pays a fee within 30 days after the financial year end of the Fund; and
 - (c) the fee payable is equal to the percentage set out in Chapter II of Title VI of the Québec Regulation Concerning Securities applicable to the filing of the notice prescribed by section 46 or 51 of the *Québec Securities Act* of the net sales in Québec from the distribution of units of the relevant Money Market Fund in such financial year, where net sales is the amount calculated by the following formula:

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X – Y

Where

“X” is the aggregate gross proceeds realized in the relevant Jurisdiction from distributions of units of the relevant Money Market Fund during the financial year in reliance on exemptions from the Prospectus Requirement; and

“Y” is the aggregate of the redemption and repurchase prices paid to redeem or repurchase units of the relevant Money Market Fund held by persons in the relevant Jurisdiction during the financial year;

provided that any future Funds intending to rely on this decision will first notify the Commission des valeurs mobilières du Québec of such an intention and shall first receive consent from the Commission des valeurs mobilières du Québec to so rely on this decision.

DATED at Montreal, Quebec, this 12th day of August, 2003.

Guy Lemoine

Jean Meloche