

# 2005 BCSECCOM 744

November 29, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - An investment fund wants relief from section 6.2 of NI 81-106, which requires the fund to prepare quarterly portfolio disclosure and to post that disclosure on the fund's website - The only investors in the fund are clients of the portfolio manager who enter into an investment counsel agreement that grants the manager full discretionary authority over the client's account; the portfolio manager, not the individual investor, makes all decisions about an investor's holdings in the fund; investors receive from the portfolio manager alternative disclosure no less frequently than quarterly

## **Applicable British Columbia Provisions**

National Instrument 81-106, ss. 6.2 and 17.1

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

and

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

and

In the Matter of Burgundy Asset Management Ltd. (the "Filer")

and

Burgundy American Equity Fund, Burgundy Balanced Income Fund, Burgundy Bond Fund, Burgundy Canadian Equity Fund, Burgundy European Equity Fund, Burgundy European Foundation Fund, Burgundy Focus Canadian Equity Fund, Burgundy Focus Equity RSP Fund, Burgundy Focus Japanese Equity Fund (formerly, Burgundy Focus Japan Fund), Burgundy Foundation Trust Fund, Burgundy Money Market Fund, Burgundy Partners' Balanced RSP Fund, Burgundy Partners Equity RSP Fund, Burgundy Partners' Global Fund, and Burgundy U.S. Money Market Fund  
(the "Funds")

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## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer for a decision under National Instrument 81-106 Investment Fund Continuous Disclosure (“NI 81-106”) for an exemption (the “Requested Relief”) from the requirement in section 6.2 of NI 81-106 to prepare quarterly portfolio disclosure in the specified form and to post such disclosure to the website of the Filer and provide it to any securityholder of the Funds upon request (the “Disclosure Requirement”).

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.

### **Interpretation**

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

### **Representations**

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

1. The Filer acts as the portfolio manager of its client’s accounts on a discretionary fully managed basis. All clients of the Filer enter into an investment counsel agreement (the “ICA”) that grants the Filer full discretionary authority to invest the client’s assets into securities including mutual funds managed by the Filer.
2. The Filer is the portfolio manager of the Funds. The Funds are designed and established for the sole purpose of efficiently implementing the Filer’s investment models used for the discretionary investment of its clients’ mandates. Only clients of the Filer that have entered into an ICA may become investors in the Funds.
3. The Filer makes all investment decisions on behalf of its clients with respect to investment in the Funds and directs all trades in securities of the Funds on their behalf. No client or any other person makes a decision to invest in any of the Funds.

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4. The Funds are distributed only in Ontario pursuant to a prospectus dated July 26, 2005. Certain Funds are reporting issuers in all of the Jurisdictions, while others are only reporting issuers in Ontario.
5. Unlike other mutual funds distributed under prospectus, the Filer makes all of the investment decisions for its clients with respect to the Funds and only clients of the Filer may become investors in the Funds. Because no person relies on the information required by the Disclosure Requirement to make investment decisions with respect to the Funds, no securityholder requires the disclosure specified in the Disclosure Requirement.
6. The Filer sends no less frequently than quarterly to each of its clients who are securityholders of the Funds a report of their investments including, *inter alia*, reconciliation, portfolio valuation and commentary and a description of the holdings of the applicable Funds. Such reports are not in the form required by the Disclosure Requirement but discharge the Filer's duty as the discretionary manager of its clients' assets and are suited to its clients needs.
7. Because the Funds are reporting issuers, they are obliged to comply with the Disclosure Requirement.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provided 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:

- (a) all securityholders of the Funds are and will be discretionary management clients of the Filer; and
- (b) the Filer continues to send the quarterly reports described in paragraph 6 above to each securityholder of the Funds.

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Ontario Securities Commission