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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain of the self-dealing requirements to permit a merger of two mutual funds.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c.418, ss. 120(1), 120(2), 121(2)(b), 127(1)(b) and 130(b)

**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
MACKENZIE UNIVERSAL SELECT MANAGERS USA CAPITAL
CLASS
("USA Fund")
MACKENZIE UNIVERSAL SELECT MANAGERS JAPAN CAPITAL
CLASS
("Select Managers Japan Fund")
MACKENZIE UNIVERSAL GLOBAL ETHICS CAPITAL CLASS
("Global Ethics Capital Class")
MACKENZIE UNIVERSAL INTERNET TECHNOLOGIES CAPITAL
CLASS
("Internet Technologies Capital Class")
MACKENZIE UNIVERSAL DIVERSIFIED EQUITY CAPITAL CLASS
("Diversified Equity Fund")
MACKENZIE UNIVERSAL WORLD SCIENCE & TECHNOLOGY
CAPITAL CLASS ("SciTech Capital Class")
MACKENZIE UNIVERSAL WORLD REAL ESTATE CAPITAL CLASS
("Real Estate Capital Class")
MACKENZIE UNIVERSAL WORLD RESOURCE CAPITAL CLASS
("Resource Capital Class")**

MRRS DECISION DOCUMENT

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WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Participating Jurisdictions") has received an application (the "Application") from Mackenzie Financial Corporation (the "Mackenzie"), as manager of USA Fund, Select Managers Japan Fund, Global Ethics Capital Class, Internet Technologies Capital Class, Diversified Equity Fund, SciTech Capital Class, Real Estate Capital Class and Resource Capital Class (each a "Top Fund" and collectively, the "Top Funds") of Mackenzie Financial Capital Corporation ("Capitalcorp") for a decision pursuant to the securities legislation of the Participating Jurisdictions (the "Legislation") that the following requirements and restrictions contained in the Legislation (the "Requirements") shall not apply in respect of certain investments to be made by the Top Funds in Mackenzie Universal Americas Fund ("Americas Fund"), Mackenzie Universal Japan Fund ("Japan Fund"), Mackenzie Universal Global Ethics Fund ("Global Ethics Fund"), Mackenzie Universal Internet Technologies Fund ("Internet Technologies Fund"), Mackenzie Universal World Value Fund ("Value Fund"), Mackenzie Universal Communications Fund ("Communications Fund"), Mackenzie Universal World Science & Technology Fund ("SciTech Fund"), Mackenzie Universal World Real Estate Fund ("Real Estate Fund") and Mackenzie Universal World Resource Fund ("Resource Fund") (each an "Underlying Fund" and collectively, the "Underlying Funds"):

1. the Requirements 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 unitholder; and
2. the Requirements requiring the 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 pursuant to the Mutual Reliance Review System for Exemptive Relief Applications ("System"), the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS Mackenzie has represented to the Decision Makers that:

- (a) Mackenzie is a corporation governed by the laws of the province of Ontario with its head office in Toronto, Ontario. Mackenzie is the

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manager of the Top Funds and the manager and trustee of the Underlying Funds.

- (b) Each of the Underlying Funds is a mutual fund trust established by a declaration of trust governed by the laws of the Province of Ontario.
- (c) Each of the Top Funds and the Underlying Funds are reporting issuers in each of the Participating Jurisdictions and are not in default of any requirements of the Legislation.
- (d) Series A, F, I and O shares of each of the Top Funds, as well as Series R shares of USA Fund and Select Managers Japan Fund, are offered for sale under a simplified prospectus and annual information form dated October 25, 2001. The shares are offered in all provinces and territories of Canada.
- (e) Series A, F, I and O units of each of the Underlying Funds are offered for sale under an Amended and Restated Simplified Prospectus and Annual Information Form dated February 15, 2002. The funds are offered in all provinces and territories of Canada.
- (f) The following table reflects the proposed mergers (the "Proposed Mergers", and individually, as a "Proposed Merger") of each Underlying Fund and the Top Fund with which it will be merged:

Underlying Fund	Top Fund
Americas Fund	USA Fund
Japan Fund	Select Managers Japan Fund
Global Ethics Fund	Global Ethics Capital Class
Internet Technologies Fund	Internet Technologies Capital Class
Value Fund	Diversified Equity Fund
Communications Fund and SciTech Fund (together with Mackenzie Universal Communications Capital Class)	SciTech Capital Class
Real Estate Fund	Real Estate Capital Class
Resource Fund	Resource Capital Class

- (g) The Proposed Mergers are being approved by securityholders of the Top Funds and Underlying Funds at meetings of securityholders scheduled to be held on May 6 and 7, 2002. Securityholders would have received full disclosure of all relevant facts concerning the Proposed Mergers in advance of the above meetings. The costs associated with holding the meetings were borne by Mackenzie.

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- (h) Mackenzie will carry out the following steps to complete the Proposed Mergers:
 - (i) the declaration of trust of each Underlying Fund will be amended to create the right of its corresponding Top Fund to purchase all the units held by each securityholder of the Underlying Fund;
 - (ii) each Top Fund will purchase all of the units of securityholders of its corresponding Underlying Fund and it will thereby be a “fund-of-funds” (the “Investments”) of the Underlying Fund;
 - (iii) in exchange for purchasing their units, each Top Fund will issue to each securityholder of the Underlying Fund shares of a series of the Top Fund equal in value to the units it previously owned in the Underlying Fund.
 - (iv) If securityholders of the Underlying Fund have an accrued gain on the units which they previously held in the Underlying Fund, then they will be given the opportunity to authorize Mackenzie to file a joint election with Mackenzie pursuant to Section 85 of the *Income Tax Act* (Canada), and pursuant to applicable tax legislation in the Province of Quebec for a unitholder who is resident in such province, to treat the disposition of their securities to the Top Fund as a tax deferred rollover. Mackenzie will mail election forms for tax purposes to certain securityholders of the Underlying Funds.
 - (v) Each of the Underlying Funds will be terminated on or before December 31, 2002.
- (i) The portfolio and other assets of each Underlying Fund to be acquired by its corresponding Top Fund arising from the Proposed Mergers may be acquired by the Top Fund and are acceptable to the portfolio advisors of each Top Fund and consistent with the investment objectives of each Top Fund. No sales charges will be payable in connection with the acquisition by each Top Fund of the investment portfolio and other assets of its Underlying Fund.
- (j) The portfolio of each Underlying Fund will continue to be managed by Mackenzie on the same basis as the portfolio of the corresponding Top Fund until they are merged into a single portfolio. There will be no

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duplication of management fees, advisor fees or operating expenses in connection with the management of the portfolios.

- (k) During the period until the Underlying Fund is terminated, conditional upon regulatory approval, each Top Fund will produce financial statements on a consolidated basis, meaning that it will combine the results of the Top Fund and its Underlying Fund with its financial statements as if the portfolio investments were held by the same legal entity.
- (l) Following implementation of the Proposed Mergers, the simplified prospectus and annual information form of the Top Funds will be amended to the extent necessary to reflect the Proposed Mergers.
- (m) In order to obtain the regulatory approvals necessary to implement the Proposed Mergers, an application under National Instrument 81-102 has been filed with applicable securities regulatory authorities.
- (n) In the absence of this Decision, pursuant to the Legislation, each Top Fund is prohibited from 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 unitholder. As a result, in the absence of this Decision, each Top Fund would be required to divest itself of the units of its corresponding Underlying Fund acquired pursuant to the Proposed Mergers.
- (o) In the absence of this Decision, pursuant to the Legislation, Mackenzie would be required to file a report on every purchase or sale of units of a Underlying Fund by its corresponding Top Fund.

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

AND WHEREAS each of the Decision Makers are 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 Requirements shall not apply to each Top Fund or the Manager, as the case may be, in respect of the Investments;

PROVIDED IN EACH CASE THAT:

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1. The Decision as it relates to the jurisdiction of a Decision Maker, will terminate on December 31, 2002; and
2. the foregoing Decision shall only apply in respect of the Investments made by a Top Fund in compliance with the following conditions:
 - (a) the securities of both the Top Fund and the Underlying Fund are eligible 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 investment by the Top Fund in the Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;
 - (c) the Underlying Fund is not a mutual fund whose investment objective includes investing directly or indirectly in other mutual funds;
 - (d) subsequent to each Proposed Merger, each respective Underlying Fund will not issue additional units, other than investments as a result of the reinvestment of distributions of the Underlying Fund;
 - (e) the simplified prospectus of each Top Fund is amended to disclose details of the Proposed Merger;
 - (f) no sales charges are payable by the Top Funds in relation to their purchase of units of the Underlying Funds;
 - (g) 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 purchase, holding or redemption by the Top Fund of the units of the Underlying Funds;
 - (h) the arrangements between or in respect of the Top Funds and the Underlying Funds are such as to avoid the duplication of management fees;
 - (i) each of the Top Fund will consolidate its interests in the corresponding Underlying Fund for preparing financial statements; and

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(j) the respective securityholders' approval for each Proposed Mergers.

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

Theresa McLeod

Robert L. Shirriff