

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  
TALVEST FUND MANAGEMENT INC.

AND

TALVEST GLOBAL SECTOR MULTI MANAGEMENT RSP FUND

#### MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the **ADecision Maker@**) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, and Newfoundland and Labrador (the **AJurisdictions@**) has received an application from Talvest Fund Management Inc., (**ATalvest@**) as manager of the Top Funds (as defined below) for a decision by each Decision Maker (collectively, the **ADecision@**) under the securities legislation of the Jurisdictions (the **ALegislation@**) that:

- (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 shall not apply in respect of investments by the Top Funds in the Underlying Funds (defined herein);
- (b) the requirements contained in the Legislation 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, shall not apply in respect of investments by the Top Funds in the Underlying Funds or in forward contracts or other specified derivative instruments (**AForward Contracts@**) with the Canadian Imperial Bank of Commerce

and/or with any of its affiliates (ACIBC@) as counterparty;

- (c) the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making an investment in a person or company who is a substantial securityholder of the mutual fund, its management company or distribution company shall not apply in respect of investments by the Top Funds in Forward Contracts with CIBC as counterparty;
- (d) the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company has a significant interest shall not apply in respect of investments by the Top Funds in the Forward Contracts; and
- (e) the restrictions contained in the Legislation prohibiting a portfolio manager or, in British Columbia, a mutual fund, from knowingly causing an investment portfolio managed by it to invest in any issuer in which a ~~A~~responsible person@ (as that term is defined in the Legislation) is an officer or director, unless that specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase, shall not apply in respect of investments by the Top Funds in the Forward Contracts.

The above requirements and restrictions contained in the Legislation are herein collectively referred to as the ~~A~~Applicable Requirements@.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the ~~A~~System@), the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS Talvest has been represented to the Decision Makers as follows:

1. Talvest is a corporation established under the laws of Canada and its head office is located in the Province of Quebec. Talvest is or will be the manager of the Top Funds and the Underlying Funds (collectively, the ~~A~~Funds@).
2. The Top Funds are or will be open-end mutual fund trusts and the Underlying Funds are or will be open-ended mutual fund trusts or classes of shares of a mutual fund corporation, each established under the laws of Ontario. Securities of the Funds are or will be qualified for distribution under a simplified prospectus and annual information form (collectively, the ~~A~~Prospectus@) filed in all provinces and territories of Canada.
3. Each of the Funds is or will be a reporting issuer and not in default of any requirements of the Legislation.
4. Talvest proposes to establish a new mutual fund, the Talvest Global Sector Multi

Management RSP Fund (the **Existing Top Fund**). Talvest may in the future establish other mutual funds with investment objectives similar to the Existing Top Fund (the **Future Top Funds**) and collectively with the Existing Top Fund, the **Top Funds**.

5. Talvest is the manager of mutual funds in which the Existing Top Fund will invest its assets (collectively, the **Existing Underlying Funds**).
6. Talvest may in the future be the manager of other mutual funds in which the Top Funds will invest their assets (the **Future Underlying Funds**) and collectively with the Existing Underlying Funds, the **Underlying Funds**.
7. Each Top Fund seeks to achieve its investment objective while ensuring that its units do not constitute **foreign property** for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and similar plans (**Registered Plans**).
8. To achieve their investment objectives, the Top Funds will invest their assets in securities such that their units will be **qualified investments** for Registered Plans and will not constitute foreign property in a Registered Plan.
9. As part of their investment objectives, the Top Funds will invest a fixed percentage (the **Fixed Percentages**) of their assets directly and indirectly (through derivative exposure) in specified Underlying Funds, subject to a variation of 2.5% above or below the Fixed Percentages (the **Permitted Ranges**) to account for market fluctuations. Each Top Fund's total direct investment in the Underlying Funds which constitute foreign property in a Registered Plan will at all times be at or below the maximum foreign property limit under the *Income Tax Act* (Canada) for Registered Plans (the **Permitted Limit**).
10. The Top Funds will not invest in an Underlying Fund with an investment objective which includes investing directly or indirectly in other mutual funds.
11. The Top Funds will enter into Forward Contracts based on the returns of an Underlying Fund considered to be foreign property for Registered Plans with one or more financial institutions (each a **Counterparty**). CIBC, which indirectly controls all of the voting shares of Talvest (the **Related Counterparty**), may be a Counterparty.
12. In order to hedge their obligations under the Forward Contracts, the Counterparties may purchase securities of the Underlying Funds.
13. The Top Funds will enter into an ISDA Master Agreement (a **Master Agreement**) with the Related Counterparty for the purposes of entering a series of Forward Contracts typically one month in duration.

14. Except for the transaction costs payable to the Related Counterparty in relation to any Forward Contracts with the Related Counterparty, none of the Top Funds, the Underlying Funds, Talvest or any affiliate or associate of any of the foregoing will pay any fees or charges of any kind to the Related Counterparty in respect of the Forward Contracts.
15. The independent auditors of the Top Funds (the Independent Auditors<sup>®</sup>), none of whom are themselves directors, officers or employees of Talvest, or any affiliate of Talvest, will review all proposed Master Agreements with the Related Counterparty and any amendments to the pricing terms of the Forward Contracts to ensure that the Top Funds will receive terms and pricing that are at least as favourable as those available to the Top Funds with arm's length Counterparties from time to time.
16. The Prospectus, and any renewal thereof, will disclose the involvement of the Related Counterparty in the Forward Contracts as well as all applicable charges in connection with any Forward Contracts with the Related Counterparty.
16. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to National Instrument 81-102 (ANI 81-102"), the investments by the Top Funds in the Underlying Funds or in Forward Contracts with the Related Counterparty have been structured to comply with the investment restrictions of the Legislation and NI 81-102.
17. In the absence of this Decision, each Top Fund is prohibited from knowingly making or holding an investment in the Underlying Funds in which the Top Fund alone or together with one or more related mutual funds is a substantial securityholder.
18. In the absence of this Decision, each Top Fund is prohibited from knowingly making or holding an investment in securities of CIBC.
19. In the absence of this Decision, Talvest is required to file a report on every purchase or sale of securities of the Underlying Funds by the Top Funds.
20. In the absence of this Decision, Talvest is required to file a report on every purchase or sale of securities of CIBC.
21. In the absence of this Decision, the portfolio manager, or mutual fund, is prohibited from causing each Top Fund to invest its assets in securities of CIBC unless the specific fact is disclosed to investors and, if applicable, the written consent of investors is obtained before the purchase.
22. The investments by the Top Funds in securities of the Underlying Funds or in Forward Contracts with the Related Counterparty represents the business judgement of Responsible persons<sup>®</sup> (as defined in the Legislation) uninfluenced by considerations other than the best interests of the Top Funds.

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;

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 or holding an investment in securities of the Underlying Funds, or investing in Forward Contracts issued by the Related Counterparty, or so as to require Talvest to file a report relating to the purchase or sale of such securities;

PROVIDED THAT IN RESPECT OF the investments by the Top Funds in securities of the Underlying Funds:

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 subsection 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 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 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) in the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages and the Permitted Ranges within which such Fixed Percentages may vary;
  - (d) the investment objective of the Top Fund discloses that the Top Fund invests directly and indirectly (through derivative exposure) in other mutual funds and that the Top Fund is fully eligible for Registered Plans;
  - (e) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;
  - (f) the Top Fund restricts its direct investment in the Underlying Funds which constitute foreign property in Registered Plans to a percentage of its assets that is within the

Permitted Limit;

- (g) the Top Fund invests its assets directly and indirectly (through derivative exposure) in the Underlying Funds in accordance with the Fixed Percentages disclosed in the simplified prospectus of the Top Fund;
- (h) the Top Fund's derivative exposure to, and direct investment in, the Underlying Funds does not deviate from the Permitted Ranges;
- (i) any deviation from the Fixed Percentages is caused by market fluctuations only;
- (j) if a direct or indirect 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 the net asset value was calculated following the deviation;
- (k) if the Fixed Percentages and/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 filed to reflect the change, and the securityholders of the Top Fund have been given at least 60 days' notice of the change;
- (l) there are compatible dates for the calculation of the net asset value of the Top Fund and the Underlying Funds for the purpose of the issue and redemption of securities of such mutual funds;
- (m) no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Funds;
- (n) 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;
- (o) no fees and 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;
- (p) the arrangements between or in respect of the Top Fund and the Underlying Funds are such as to avoid the duplication of management fees;
- (q) any notice provided to securityholders 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 securityholders;

- (r) all of the disclosure and notice material prepared in connection with a meeting of securityholders of an Underlying Fund and received by the Top Fund has been provided to its securityholders, the securityholders 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 securityholders of the Top Fund have directed;
- (s) in addition to receiving the annual and, upon request, the semi-annual financial statements of the Top Fund, securityholders 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
- (t) 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 securityholders of the Top Fund and the right to receive these documents is disclosed in the simplified prospectus of the Top Fund.

AND PROVIDED THAT IN RESPECT OF the investments by the Top Fund in Forward Contracts:

- 3. the Decision shall only apply if, at the time a Top Fund makes an investment in Forward Contracts of the Related Counterparty, the following conditions are satisfied:
  - (a) the pricing terms offered by the Related Counterparty to the Top Fund under the Forward Contracts are at least as favourable as the terms committed by the Related Counterparty to other third parties which are of similar size as the Top Fund;
  - (b) prior to the Top Fund entering into a Forward Contract and/or Master Agreement with the Related Counterparty, the Independent Auditors of the Top Fund have reviewed the pricing offered by the Related Counterparty to the Top Fund against the pricing offered by the Related Counterparty to other fund groups offering top funds of similar size, to ensure that the pricing is at least as favourable;
  - (c) the review by the Independent Auditors of the pricing terms of the Master Agreements and the Forward Contracts thereunder has been undertaken not less frequently than on an annual basis and, in addition on any pricing amendment to the Master Agreement and/or Forward Contract, during the term of such contract;
  - (d) the Top Fund's simplified prospectus discloses the Independent Auditor's role and their review of the Forward Contracts, as well as the involvement of the Related Counterparty; and

- (e) the Top Fund will enter into Forward Contracts with the Related Counterparty only once confirmation of favourable pricing is received from the Independent Auditors of the Top Fund.

DATED 29th day of January, 2002.

*APaul Moore@*

Paul Moore

*AR. Stephen Paddon@*

R. Stephen Paddon



## Headnote

Investment by RSP Alone@fund in another mutual fund for specified purpose exempted from the reporting requirements and self-dealing provisions of s.113 and s.117.

Investment by mutual fund directly and indirectly in other mutual funds exempted from the reporting requirements and self-dealing provisions of s.113 and s.117.

Investment by mutual fund in forward contracts issued by related counterparties exempted from the requirements of s.113, s.117 and s.121(a)(2)(a).

## Statutes Cited

*Securities Act* (Ontario), R.S.O. 1990 c.S.5., as am., 111(2)(b), 111(2)(c), 111(3), 117(1)(a), 117(1)(d) and 118(2)(a).