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**VIA SEDAR**

January 16<sup>th</sup>, 2002

Borden Ladner Gervais

**Attention: Kyle S. Pohanka**

Dear Sirs/Mesdames:

**Re: Counsel Balanced RSP Portfolio, Counsel Growth RSP Portfolio and Counsel All Equity RSP Portfolio (the “Existing Top Funds” or “Funds”)  
MRRS Exemptive Relief Application under National Instrument 81-102 Mutual Funds (“NI 81-102”), Application No. 1314/01, SEDAR 408123**

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By letter dated December 5, 2001 (the “Application”), you applied to the securities regulatory authority or regulator in each of the provinces and territories of Canada, excluding Quebec (the “Decision Maker”), on behalf of Counsel Group of Funds Inc. (“Counsel”), as manager of the proposed New RSP Portfolios (as defined in the Application) and other mutual funds established by Counsel from time to time (the “Future RSP Portfolios” and collectively with the New RSP Portfolios, the “Top Funds”), for exemptions from the following provisions of NI 81-102 in order to permit the Top Funds to invest their assets directly and indirectly (through derivative exposure), in specified mutual funds managed by Counsel or a person or company unrelated to Counsel from time to time (the “Underlying Funds”):

- subsections 2.1(1) and 2.2(1); and
- clauses 2.5(1) and 2.8(1)(d).

We confirm that further to discussions with staff, relief from subsection 2.2(2) and clause 5.5(1)(d) of NI 81-102 were withdrawn by letter dated January 2, 2002.

A preliminary simplified prospectus and annual information form (the “Prospectus”) has been filed under SEDAR Project No. 398161 with respect to the New RSP Portfolios and is currently under review.

As part of its investment objective, each of the Top Funds will invest a certain fixed percentage (the “Fixed Percentages”) of its assets directly and indirectly 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.

The Top Funds seek to achieve their investment objectives while ensuring that their units do not constitute foreign property in registered retirement savings plans and other similar plans (“Registered Plans”). Each of the Top Fund’s total direct investments in the Underlying Funds which constitute foreign property in Registered Plans will at all times be below the maximum foreign property limit for Registered Plans (the “Permitted Limit”).

This letter confirms that, based on the information and representations contained in the Application, and for the purposes described in the Application, the Decision Makers hereby grant exemptions from the following regulatory requirements:

- (a) subsection 2.1(1) of NI 81-102 - to permit the Top Funds to obtain exposure, through the use of forward contracts and other specified derivatives, to the specified Underlying Funds beyond the prescribed limits, as determined under subsections 2.1(3) and (4);
- (b) subsections 2.1(1) and 2.2(1) and clause 2.5(1) of NI 81-102 - to permit the Top Funds to invest directly in units of the specified Underlying Funds beyond the prescribed limits; and
- (c) clause 2.8(1)(d) of NI 81-102 - to permit the Top Funds, in respect of their exposure under forward contracts or other specified derivatives, to have a shortfall in their cash cover position for a period not to exceed one business day.

The Decision Makers grant the exemptions to permit each of the Top Funds to gain exposure to the Underlying Funds through the use of forward contracts and other specified derivatives, subject to the following conditions:

- (a) there is no duplication of fees or sales charges to the Top Fund’s securityholders as a result of gaining exposure to the Underlying Funds through forward contracts and other specified derivatives;
- (b) to the extent that the Top Fund and 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;
- (c) all of the disclosure and notice material prepared in connection with a meeting of securityholders of the Underlying Funds and received by the Top Fund has been provided to its securityholders;
- (d) 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 units of the Underlying Funds in the financial statements of the Top Fund; and
- (e) the simplified prospectus of the Top Fund contains full disclosure of:

- (i) the investment objectives, strategies and risks of the Underlying Funds, and
- (ii) the fact that securityholders of the Top Fund have no direct voting rights in respect of any changes, whether fundamental or otherwise, that may be proposed to the Underlying Funds.

The Decision Makers grant the exemptions to permit each of the Top Funds to invest directly in units of specified Underlying Funds, subject to the following conditions:

1. the Decision, as it relates to the jurisdiction of the 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 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 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 each 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 objective 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 will maintain 100% eligibility 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's derivative exposure to, and direct investment in, the Underlying Funds does not deviate from the Permitted Ranges;
  - (h) any deviation from the Fixed Percentages is caused by market fluctuations only;

- (i) 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;
- (j) if the Fixed Percentages and 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;
- (k) 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 the securities of such mutual funds;
- (l) no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Funds;
- (m) 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;
- (n) 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;
- (o) the arrangements between or in respect of the Top Fund and the Underlying Funds are such as to avoid the duplication of management fees;
- (p) 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;
- (q) all of the disclosure and notice material prepared in connection with a meeting of securityholders of the Underlying Funds 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;
- (r) 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

- (s) 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 prospectus of the Top Fund.

Yours very truly,

*Merilyn Dasil*

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