

**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
COUNSEL GROUP OF FUNDS INC.**

AND

**COUNSEL BALANCED RSP PORTFOLIO
COUNSEL GROWTH RSP PORTFOLIO
COUNSEL ALL EQUITY RSP PORTFOLIO**

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 Counsel Group of Funds Inc. ("Counsel"), 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 (as defined below); and
- (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.

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

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the **System**), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Counsel has represented to the Decision Makers as follows:

1. Counsel is a corporation established under the laws of the Ontario and its head office is located in the Province of Ontario. Counsel is or will be the manager of the Top Funds and the Counsel Underlying Funds (collectively, the **Counsel Funds** and **Counsel Underlying Funds** being Underlying Funds that are managed by Counsel).
2. The Counsel Funds are or will be open-end mutual fund trusts or classes of shares of a mutual fund corporation, each established under the laws of Ontario. Securities of the Counsel Funds are or will be qualified for distribution under a simplified prospectus and annual information form filed in all provinces (except Quebec) and territories of Canada (collectively, the "Prospectus") to be filed with and accepted by the Decision Makers.
3. Each of the Counsel Funds is or will be a reporting issuer and not in default of any of the requirements of the Legislation.
4. The Top Funds will invest their assets in mutual funds, including Counsel Underlying Funds, and future mutual funds managed by Counsel or a person or company unrelated to Counsel (the **Underlying Funds**).
5. Counsel proposes to establish a new group of mutual funds. Three of these new funds include the Counsel Balanced RSP Portfolio, Counsel Growth RSP Portfolio and Counsel All Equity RSP Portfolio (the **Existing Top Funds**). Counsel may in the future establish other mutual funds with investment objectives similar to the Existing Top Funds (the **Future Top Funds** and collectively with the Existing Top Funds, the **Top Funds**).
6. As part of its investment objective, each Top Fund will invest a certain fixed percentage (the **Fixed Percentages**) of its assets (excluding cash and cash equivalents) 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. Investments by each of the Top Funds will be made in accordance with the fundamental investment objectives of the Top Funds.
7. The Top Funds seek to achieve their investment objectives while ensuring that their securities 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 objective, the Top Funds 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. The Top Funds' total direct investments in the Underlying Funds which constitute foreign property in a Registered Plan will at no time exceed 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 or other specified derivative instruments (Forward Contracts) based on the returns of specified Underlying Funds with one or more financial institutions (each a Counterparty).
12. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to National Instrument 81-102 (NI 81-102"), the investments by the Top Funds in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.
13. In the absence of this Decision, each of the Top Funds 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.
14. In the absence of this Decision, Counsel is required to file a report on every purchase or sale of securities of the Underlying Funds by each of the Top Funds.
15. The investments by the Top Funds in securities of the Underlying Funds represents the business judgement of responsible persons (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 pursuant to 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 to require Counsel 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 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.

DATED this 15th day of January, 2002.

AHoward I. Wetston@
Howard I. Wetston

AR. Stephen Paddon@
R. Stephen Paddon

Headnote

Investment by mutual funds directly and indirectly (through derivative exposure) in securities of other mutual funds exempted from the reporting requirements and self-dealing prohibitions of s.113 and s.117

Statutes Cited

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