

IN THE MATTER OF
THE SECURITIES LEGISLATION
OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
TRIMARK INVESTMENT MANAGEMENT INC.
TRIMARK SELECT GROWTH RSP FUND
TRIMARK RSP FUND
TRIMARK DISCOVERY RSP FUND
THE AMERICAS RSP FUND
TRIMARK INDO-PACIFIC RSP FUND
TRIMARK EUROPLUS RSP FUND

DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Trimark Investment Management Inc. ("Trimark"), as manager and trustee of Trimark Select Growth RSP Fund, Trimark RSP Fund, Trimark Discovery RSP Fund, The Americas RSP Fund, Trimark Europlus RSP Fund and Trimark Indo-Pacific RSP Fund (the "Funds"), for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following requirements and restrictions contained in the Legislation will not apply in respect of certain investments to be made by the Funds in, respectively, Trimark Select Growth Fund, Trimark Fund, Trimark Discovery Fund, The Americas Fund, Trimark Europlus Fund and Trimark Indo-Pacific Fund (the "Underlying Funds"):

A. the requirements contained in the Legislation requiring the Funds and Trimark (as manager) to issue a news release and file a report where the aggregate holdings by each Fund of securities of its Underlying Fund exceed 10% of the outstanding securities of its Underlying Fund and the requirements not to acquire or offer to acquire securities of its Underlying Fund pending the expiration of one business day from the date the report is filed;

B. the requirements contained in the Legislation prohibiting a 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 security holder; and

C. the requirements contained in the Legislation requiring Trimark to file a report relating to the purchase or sale of securities between a Fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading and portfolio securities, the Fund is a joint participant with one or more of its related persons or companies.

The Legislation outlined above in paragraphs A through C will be referred to in this Decision Document as the "Applicable Legislation";

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application,

AND WHEREAS Trimark has represented to the Decision Makers that:

1. Trimark is a corporation established under the laws of Ontario. Trimark is the manager, trustee and promoter of the Funds and the Underlying Funds. Trimark's registered office is in Ontario.
2. The Funds are or will be open-end mutual fund trusts established under the laws of Ontario and their units are qualified for distribution in all Jurisdictions under a simplified prospectus and annual information form (the "Prospectus").
3. The Underlying Funds are open-end mutual fund trusts established under the laws of Ontario and their units are qualified for distribution in all Jurisdictions by means of a simplified prospectus and annual information form.
4. The Funds and the Underlying Funds are or will be reporting issuers under the securities laws of each of the provinces and territories of Canada. None of them is in default of any requirements of the Legislation.
5. The Prospectus contains disclosure with respect to the investment objective and restrictions of the Funds. The investment objective of each Fund is to provide long-term capital growth that is linked to the returns of its Underlying Fund by investing in bank deposits, as well as money market instruments and other securities, and by using forward contracts and other derivatives based on the units of its Underlying Fund or the securities forming part of the portfolio of its Underlying Fund. Each Fund may also invest in its Underlying Fund. Purchases of the Underlying Funds are expected to be made through Trimark.
6. Each Fund will make investments such that its units will be "qualified investments" for registered retirement savings plans, registered retirement income funds and deferred profit sharing plans (collectively, the "Registered Plans") under the *Income Tax Act* (Canada) (the "Tax Act") and, based on an opinion of counsel to Trimark, will not constitute foreign property to a Registered Plan.

7. Any direct investment by each Fund in units of its Underlying Fund (the "Permitted RSP Fund Investment") will be in an amount not to exceed the amount prescribed from time to time as the maximum permitted amount which may be invested in foreign property under the Tax Act without the imposition of tax under Part XI of the Tax Act (the "Foreign Property Maximum").

8. Trimark is of the view that the requested relief is in the best interests of the Funds and the Underlying Funds and represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds and the Underlying Funds.

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

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 Legislation will not apply so as to prevent the Funds from investing in, or redeeming the securities of, the Underlying Funds provided that:

(a) 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 clause 2.04(4)(b) of National Policy No. 39;

(b) each Fund and its corresponding Underlying Fund are under common management and the units of the Underlying Fund are offered for sale in the Jurisdiction of the Decision Maker pursuant to a prospectus which has been filed with and accepted by the Decision Maker,

(c) each Fund restricts the aggregate amount of its direct investment in units of its corresponding Underlying Fund to a percentage of its assets that is within the Foreign Property Maximum;

(d) the investment by each Fund in units of its corresponding Underlying Fund is compatible with the fundamental investment objectives of the Fund;

(e) the Prospectus discloses the intent of each Fund to invest in units of its corresponding Underlying Fund;

(f) each Fund may change its Permitted RSP Fund investment if it changes its fundamental investment objective in accordance with the Legislation;

(g) the arrangements between or in respect of each Fund and its corresponding Underlying Fund are such as to avoid the duplication of management fees;

- (h) no sales charges are payable by each Fund in relation to its purchases of units of its corresponding Underlying Fund;
- (i) no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by a Fund of units of the Underlying Fund owned by the Fund;
- (j) no fees and charges of any sort are paid by any Fund or Underlying Fund or by the manager or principal distributor of that Fund or Underlying Fund or by any affiliate or associate of any of the foregoing entities to anyone in respect of that Fund's investment in, or redemption of, the securities of its corresponding Underlying Fund;
- (k) in the event of the provision of any notice to unitholders of an Underlying Fund as required by the constating documents of the Underlying Fund or by the laws applicable to the Underlying Fund, such notice will also be delivered to the unitholders of its Fund; all voting rights attached to the securities of an Underlying Fund which are owned by its Fund will be passed through to the unitholders of the Fund; in the event that a unitholders' meeting is called for an Underlying Fund, all of the disclosure and notice material prepared in connection with such meeting will be provided to the unitholders of its Fund and such unitholders will be entitled to direct a representative of the Fund to vote that unitholder's proportionate holding in the Underlying Fund in accordance with its direction; the representative of a Fund will not be permitted to vote the Fund's holdings in its corresponding Underlying Fund except to the extent the unitholders of the Fund so direct;
- (l) there are compatible dates for the calculation of the net asset value of each Fund and its corresponding Underlying Fund for the purpose of the issue and redemption of the securities of such mutual funds;
- (m) to the extent that any Fund and its corresponding Underlying Fund do not use a combined report containing both that Fund's and its corresponding Underlying Fund's financial statements, in addition to receiving the annual and, upon request, the semi-annual financial statements of that Fund, the unitholders of that Fund will receive the annual and, upon request, the semi-annual financial statements of its corresponding Underlying Fund; and
- (n) to the extent that any Fund and its corresponding Underlying Fund do not use a combined simplified prospectus and annual information form containing disclosure about that Fund and its corresponding Underlying Fund, copies of the simplified prospectus and annual information form relating to the Underlying Fund may be obtained upon request by a unitholder of that Fund.

DATED at Toronto, Ontario this "3rd" day of "December", 1999

