

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND
NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF
UPLAND INVESTMENT MANAGEMENT LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the "Jurisdictions") has received an application from Upland Investment Management Limited (the "Applicant") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

(a) certain trades to investors and their Registered Plans (as defined herein) in units ("Units") of open-end unit trusts established, or to be established from time to time by the Applicant (the "Funds") shall not be subject to the registration and prospectus requirements of the Legislation of the Non-Exempt Jurisdictions (as defined below);

(b) trades in additional Units ("Additional Units") of the Funds to an investor upon:

(i) the subsequent subscription of the investor shall not be subject to the registration and prospectus requirements of the Legislation of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island; and

(ii) the reinvestment of distributions by a Fund shall not be subject to the registration and prospectus requirements of the Legislation of Manitoba, New Brunswick, Newfoundland and Prince Edward Island; and

(c) trades in Units and Additional Units are not subject to the requirements of the Legislation of the Jurisdictions other than Manitoba relating to the filing of forms and the payment of fees within certain prescribed time periods;

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 the Applicant has represented to the Decision Maker that:

- (a) the Applicant is registered under the *Securities Act* (Ontario) as an adviser in the categories of investment counsel and portfolio manager and as a limited market dealer;
- (b) the Applicant intends to establish one or more Funds pursuant to declarations of trust for which the Applicant will act as the manager and trustee;
- (c) each Fund will be a "mutual fund" as defined in the Legislation;
- (d) none of the Funds currently intends to become a reporting issuer, as such term is defined in the Legislation, and the Units of the Funds will not be listed on any stock exchange;
- (e) each Fund will be divided into Units which will evidence the undivided interest of each investor in the assets of the Fund;
- (f) it is intended that Units of the Funds will be qualified for investment by a trust governed by a self-administered registered retirement savings plan or registered retirement income fund ("Registered Plans");
- (g) the initial distribution of Units of a Fund ("Initial Investment") to an investor and to the Registered Plans of the investor will have an aggregate acquisition cost to the investor and the investor's Registered Plans (an investor alone, an investor's Registered Plan alone, or any combination of the foregoing, a "Unitholder") of at least the amount prescribed by the Legislation (the "Prescribed Amount") in connection with exemptions from the prospectus and registration requirements (the "Private Placement Exemptions") which require the investor to purchase securities of an issuer having a minimum acquisition cost;
- (h) in Jurisdictions other than British Columbia (the "Non-Exempt Jurisdictions") where the Prescribed Amount of an Initial Investment in a Fund is met through the aggregation of the acquisition cost of Units of a Fund by some or all of an investor and an investor's Registered Plans, the Private Placement Exemptions would not be available;
- (i) following an Initial Investment, it is proposed that a Unitholder be able to subscribe and pay for Additional Units of a Fund in increments of less than the Prescribed Amount, provided that at the time of such subsequent acquisition the Unitholder holds Units of the Fund with an aggregate acquisition cost or aggregate net asset value, whichever is higher, of at least the Prescribed Amount.

(j) each Fund proposes to distribute Additional Units by way of automatic reinvestment of distributions to Unitholders of such Fund; and

(k) Units of the Funds will be non-transferable, except with the consent of the Applicant, in the limited circumstances set out in the declaration of trust of the particular Fund, but will be redeemable in accordance with the procedures set out in the declaration of trust of the particular Fund;

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

AND WHEREAS each of the Decision Makers 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:

(a) the registration and prospectus requirements contained in the Legislation of the Non-Exempt Jurisdictions shall not apply to:

(i) an Initial Investment in Units of a Fund in each of the Jurisdictions provided that:

(a) the aggregate acquisition cost to a Unitholder of the Initial Investment is not less than the Prescribed Amount;

(b) at the time of the Initial Investment of Units, the Applicant is registered under the Legislation of Ontario as an adviser in the categories of investment counsel and portfolio manager and such registration is in good standing; and

(c) this clause (i) will cease to be in effect in a Jurisdiction 90 days after the coming into force, subsequent to the date of this Decision, of any legislation, regulation or rule in the Jurisdiction exempting from the registration and prospectus requirements of the Legislation Initial Investments by Unitholders in securities of a pooled fund as described in this Decision;

(ii) trades in Additional Units pursuant to a subsequent subscription and payment by a Unitholder in Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island provided that:

(a) the Initial Investment was made pursuant to the Private Placement Exemption or the exemption granted in clause (i) of this Decision

(b) at the time of trade of Additional Units, the Applicant is registered under the Securities Act (Ontario) as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer and such registration is in good standing;

(c) at the time of the trade of Additional Units, the Unitholder then owns Units of a Fund having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount;

(d) this clause (ii) will cease to be in effect in a Jurisdiction 90 days after the coming into force, subsequent to the date of this Decision, of any legislation, regulation or rule in the Jurisdiction exempting from the registration and prospectus requirements of the Legislation Initial Investments by Unitholders in securities of a pooled fund as described in this Decision;

(iii) trades in Additional Units of a Fund pursuant to the reinvestment of distributions of the Fund in Manitoba, New Brunswick, Newfoundland and Prince Edward Island provided that:

(a) no sales commissions or other charge in respect of such issuance of Additional Units is payable; and

(b) each Unitholder who so receives Additional Units has received, not more than 12 months before such issuance, a statement describing (a) the details of any deferred or contingent sales charges or redemption fee that is payable at the time of the redemption of a Unit, (b) any rights that the Unitholder has to make an election to receive cash instead of Units in the payment of the net income or net realized capital gains distributed by the Fund, (c) instructions on how the right referred to in subclause (b), if any, can be exercised and (d) the fact the no prospectus is available for the Fund as

Units are offered pursuant to prospectus exemptions only;

provided that the first trade in Units and Additional Units that are issued pursuant to this Decision shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless otherwise exempt thereunder or unless such first trade is made in the following circumstances:

(i) the applicable Fund is a reporting issuer or the equivalent under the Applicable Legislation;

(ii) if the seller of the Units or Additional Units is in a special relationship (as defined in the Applicable Legislation) with the Fund, the seller has reasonable grounds to believe that the Fund is not in default of any requirement of the Applicable Legislation;

(iii) no unusual effort is made to prepare the market or to create a demand for the Units or Additional Units and no extraordinary commission or consideration is paid in respect of such trade; and

(iv) the Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Units or the Additional Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Additional Units;

(b) the requirements contained in the Legislation of the Jurisdictions other than Manitoba to file a report of trades in Units or Additional Units within 10 days of such trade (or in some cases within 10 days after the calendar year in which the distribution takes place) and pay the associated fee shall not apply to a trade in Units or Additional Units of a Fund made in reliance on the exemptions from the

registration and prospectus requirements contained in this Decision or in reliance on the Private Placement Exemptions provided that within 30 days of the end of each financial year end of each Fund, such Fund:

- (i) files with the applicable Decision Maker a report in respect of all trades in Units of that Fund during such financial year, in the form prescribed by the applicable Legislation; and
- (ii) remits to the applicable Decision Maker the fee prescribed by the applicable Legislation.

DATED August 8, 2001

"Paul M. Moore"

"R. Stephen Paddon"