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July 27, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – A registrant wishes to act as an underwriter in an initial public offering made under a prospectus where the issuer is a “related issuer” and there is no independent underwriter underwriting at least 20% of the distribution - There are a number of independent underwriters involved in the distribution and they will underwrite a substantial portion of the distribution. Major bank dealers are among the independent underwriters and they are underwriting a significant portion of the distribution. All underwriters participated in the due diligence process. The related and connected underwriters will receive only the normal arms-length underwriting commissions. The prospectus will contain disclosure of the relationship between the applicant and the issuer.

Applicable British Columbia Provisions

National Instrument 33-105 *Underwriting Conflicts*

**In the Matter of the Securities Legislation of Ontario, British Columbia,
Alberta, Québec, Nova Scotia, New Brunswick, Newfoundland and
Labrador, Prince Edward Island, Northwest Territories, Nunavut Territory
and Yukon Territory**

and

**In the Matter of the Mutual Reliance Review System
for Exemptive Relief Applications**

and

**In the Matter of Newport Securities Inc. (the “Filer” or “NSI”)
and Newport Partners Income Fund**

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer for an exemption under the requirement contained in National Instrument 33-105 (“NI 33-105”) and Sections 236.1 and 236.2 of the Regulations of the *Securities Act* (Québec) and Section 181 of the Regulations to the *Securities Act* (Newfoundland and Labrador) relating to the limitations imposed on underwriters in respect of offerings involving a “related issuer”.

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Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. Newport Partners Income Fund (the “Fund”) is an unincorporated open-ended limited purpose trust established under the laws of Ontario.
2. The Fund’s head office and principal business office is located in Toronto, Ontario.
3. The Fund was created to acquire and hold, indirectly, an interest in Newport Private Yield LP (“NPY LP”).
4. NPY LP is a limited partnership formed under the laws of the Province of Ontario.
5. NPY LP’s head office and registered office is located in Toronto, Ontario.
6. NPY LP, together with its general partner, Newport Private Yield Inc. (collectively, “Newport”), have indirect interests in a variety of operating businesses.
7. The Fund is currently not a “reporting issuer” in any Canadian province or territory. The Offering will be made under a prospectus (the “Prospectus”). A preliminary prospectus relating to the Offering was filed on June 29, 2005 and an amended and restated preliminary Prospectus relating to the Offering was filed on July 7, 2005.
8. The Fund will use the net proceeds of the Offering to indirectly capitalize NPY LP. NPY LP will use the proceeds of the Offering to pay the expenses of the Offering and related acquisition costs, to pay a portion of a performance fee due to Newport Investment Counsel Inc. (“NICI”) to enable NICI to pay

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source deductions due on related employee bonuses, to pay GST on the performance fee and to redeem certain units in the capital of NPY LP.

9. The underwriters of the Offering (the “Underwriters”) are RBC Dominion Securities Inc. (“RBC”), CIBC World Markets Inc. (“CIBC”), BMO Nesbitt Burns Inc. (“BMO”), Scotia Capital Inc. (“SCI”), TD Securities Inc. (“TD”), Newport Securities Inc. (“NSI”), Canaccord Capital Corporation (“CCC”), First Associates Investments Inc. (“FAII”), HSBC Securities (Canada) Inc. (“HSBC”), Orion Securities Inc. (“OSI”), Research Capital Corporation (“RCC”), Desjardins Securities Inc. (“DSI”), and Raymond James Ltd. (“RJL”).
10. The proportionate share of the Offering underwritten by each of the Underwriters is expected to be as follows:

<u>Underwriter</u>	<u>Proportionate Share</u>
RBC	32.0%
CIBC	17.5%
BMO	11.0%
SCI	11.0%
TD	9.0%
NSI	3.0%
CCC	2.5%
FAII	2.5%
HSBC	2.5%
OSI	2.5%
RCC	2.5%
DSI	2.0%
RJL	2.0%
TOTAL	100%

11. The amended and restated preliminary prospectus contains, and the final prospectus will contain a certificate signed by each of the Underwriters.
12. Upon the closing of the Offering, Newport Holdings LP expects to enter into a credit facility with the Canadian chartered bank affiliates of RBC and HSBC.

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13. NSI is a wholly-owned subsidiary of Newport Partners Inc. The amended and restated preliminary prospectus contains, and the final prospectus will contain a certificate signed by Newport Partners Inc. as promoter of the Fund.
14. Contemporaneously with the closing of the Offering, Newport will acquire the business assets of Newport Partners Inc.
15. Prior to conducting the Offering, OSI provided a fairness opinion to Newport in respect of the purchase price to be paid by Newport for the business assets of Newport Partners Inc.
16. Each of CIBC, BMO, SCI, TD, CCC, FAII, RCC, DSI and RJL (the “Independent Underwriters”) are unrelated and not connected to RBC, HSBC, OSI, NSI and the Fund, and the Independent Underwriters are collectively underwriting 60% of the Offering.
17. All of the underwriters have participated in the due diligence process in connection with the Offering.
18. In light of the credit facility to be entered into between Newport Holdings LP and the Canadian chartered bank affiliates of RBC and HSBC, the Fund may be considered a connected issuer of RBC and HSBC.
19. In light of the fairness opinion provided by OSI to Newport in respect of the purchase price to be paid by Newport for the business assets of Newport Partners Inc., the Fund may be considered a connected issuer of OSI.
20. In light of the fact that NSI is a wholly-owned subsidiary of Newport Partners Inc., the Fund may be considered a connected issuer and a related issuer of NSI pursuant to subsection 1.1 and 1.2(2) of NI 33-105, respectively.
21. NSI did not actively participate in the terms or pricing of the Offering.
22. RBC, HSBC, OSI and NSI will not receive any benefit from the Offering other than their portion of the Underwriters’ commission payable by the Fund.
23. NSI did not require that the Fund conduct the Offering, nor was its consent required to be obtained for the Offering to proceed.
24. Subsection 2.1(3) of NI 33-105 provides for an exemption for registrants to whom subsection 2.1(2) applies, whereby at least one registrant acting as direct underwriter acts as principal, so long as an independent underwriter underwrites not less than the lesser of (A) 20% of the dollar value of the

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distribution, and (B) the largest portion of the distribution underwritten by a registrant that is not an independent underwriter. However, under the Offering, no independent underwriter within the meaning of NI 33-105 will underwrite 20% or more of the dollar value of the distribution, and the largest portion of the distribution is not being underwritten by a registrant that is an independent underwriter.

Decision

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 under the Legislation is that the Requested Relief is granted provided that:

1. The Prospectus contains the information required in Appendix C to NI 33-105.
2. Each of the Independent Underwriters is unrelated to RBC, HSBC, OSI, NSI and the Fund, and the Independent Underwriters will collectively underwrite 60% of the Offering.

Erez Blumberger