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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from prospectus and registration requirements for an open-ended investment trust for the sale of units repurchased from existing unit holders under a market purchase program - first trade in repurchased units deemed a distribution unless made in compliance with MI 45-102

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

Multilateral Instrument 45-102 - *Resale of Securities*, ss. 2.6 and 2.8

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

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

AND IN THE MATTER OF PATHFINDER *INCOME FUND*

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Yukon (the “Jurisdictions”) has received an application from PATHFINDER *Income Fund* (the “Trust”) for a decision, pursuant to the securities legislation of the Jurisdictions (the “Legislation”), that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution of units of the Trust (the “Units”) which have been repurchased by the Trust pursuant to either the mandatory or discretionary market purchase program of the Trust nor to the resale of such Units which have been distributed by the Trust;

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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

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AND WHEREAS THE TRUST has represented to the Decision Makers that:

1. The Trust is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust dated as of September 25, 2002 (the “Declaration of Trust”).
2. The Trust is not considered to be a “mutual fund” as defined in the Legislation because the holders of Units (“Unitholders”) are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust as contemplated in the definition of “mutual fund” in the Legislation.
3. The Trust became a reporting issuer or the equivalent thereof in the Jurisdictions on September 26, 2002 upon obtaining a receipt for its final prospectus dated September 25, 2002 (the “Prospectus”). As of the date hereof, the Trust is not in default of any requirements under the Legislation.
4. Each Unit represents an equal, undivided interest in the net assets of the Trust and is redeemable at net asset value of the Trust (“Net Asset Value”) per Unit on November 30 of each year commencing in 2003.
5. Each whole Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Trust.
6. Middlefield PATHFINDER Management Limited (the “Manager”), which was incorporated pursuant to the *Business Corporations Act* (Ontario) on July 31, 2002, is the manager and the trustee of the Trust.
7. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the trading symbol “PAZ.UN”. As December 19, 2002, 15,254,600 Units were issued and outstanding.
8. In order to enhance liquidity and to provide market support for the Units, pursuant to the Declaration of Trust and the terms and conditions that attach to the Units, the Trust shall, subject to compliance with any applicable regulatory requirements, be obligated to purchase (the “Mandatory Purchase Program”) any Units offered in the market on a business day at the then prevailing market price if, at any time after the closing of the Trust’s initial public offering pursuant to the Prospectus, the price at which Units are then offered for sale is less than 95% of the Net Asset Value per Unit determined as at the close of

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business in Toronto, Ontario on the immediately preceding business day, provided that:

- (a) the maximum number of Units that the Trust shall purchase in any three month period (commencing with the three month period that begins on the first day of the month following the month in which the closing of the Trust's initial public offering occurs) will be 2.50% of the number of Units outstanding at the beginning of each such three month period; and
 - (b) the Trust shall not be required to purchase Units pursuant to the Mandatory Purchase Program if:
 - (i) in the opinion of the Manager, the Trust lacks the cash, debt capacity or resources in general to make such purchases; or
 - (ii) in the opinion of the Manager, the making of any such purchases by the Trust would adversely affect the ongoing activities of the Trust or the remaining Unitholders.
9. In addition, the Declaration of Trust provides that the Trust, subject to applicable regulatory requirements and limitations, shall have the right, but not the obligation, exercisable in its sole discretion, at any time, to purchase outstanding Units in the market at then prevailing market prices (the "Discretionary Purchase Program" and, together with the Mandatory Purchase Program, the "Programs"). Such discretionary purchases may be made through the facilities and under the rules of any exchange or market on which the Trust Units are listed (including the TSX) or as otherwise permitted by applicable securities laws.
10. Purchases of Units made by the Trust under the Programs (such Units shall be referred to as "Repurchased Units") are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.
11. The Trust desires to, and the Declaration of Trust provides that the Trust shall, have the ability to sell through one or more securities dealers Repurchased Units, in lieu of cancelling such Repurchased Units and subject to obtaining all necessary regulatory approvals.
12. In order to effect sales of Repurchased Units by the Trust, the Trust intends to sell, in its sole discretion and at its option, any Repurchased Units purchased by it under the Programs primarily through one or more securities dealers and through the facilities of the TSX (or such other exchange on which the Units are then listed).

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13. Repurchased Units which the Trust does not sell within seven months of the purchase of such Repurchased Units will be cancelled.
14. Prospective Purchasers who subsequently acquire Repurchased Units will have equal access to all of the continuous disclosure documents of the Trust, which will be filed on SEDAR, commencing with the Prospectus.
15. Legislation in some of the Jurisdictions provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution subject to the Registration and Prospectus Requirements.
16. Legislation in some of the Jurisdictions provides that the first trade in Repurchased Units acquired by a purchaser will be a distribution subject to the Registration and Prospectus Requirements unless such first trade is made in reliance on an exemption therefrom.
17. The Prospectus disclosed that the Trust may repurchase Units under the Mandatory Purchase Program and the Discretionary Purchase Program and that, subject to receiving all necessary regulatory approvals, the Trust may arrange for one or more dealers to find purchasers for any Repurchased Units.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Repurchased Units pursuant to the Programs shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) the Repurchased Units are sold by the Trust through the facilities of and in accordance with the regulations and policies of the TSX or the market on which the Units are then listed;
- (b) the Trust complies with the insider trading restrictions imposed by securities legislation with respect to the trades of Repurchased Units;

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- (c) the Trust complies with the conditions of paragraphs 1 through 5 of subsection 2.8(2) of Multilateral Instrument 45-102 with respect to the sale of the Repurchased Units; and
- (d) the resale of Repurchased Units acquired by a purchaser from the Trust pursuant to the Programs in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions of paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied.

Dated: February 17, 2003

Robert W. Korthals

Robert L. Shirriff