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December 7, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Trades by a non-mutual fund in connection with its distribution reinvestment plan. - Issuer is an investment trust; under its plan, income of the trust can be distributed to its investors through the automatic issuance of additional units to the investors; investors can elect to receive cash in lieu of additional trust units; no fee is paid by investors to participate in the plan

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR
(the “Jurisdictions”)**

AND

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

AND

**IN THE MATTER OF FRONT STREET PERFORMANCE FUND II
(the “Filer”)**

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 a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Prospectus Requirement”) shall not apply

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to the distribution or resale of units of the Filer issued pursuant to an automatic reinvestment plan (as described below).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (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. The Filer is a closed-end investment trust established under the laws of the Province of Ontario by declaration of trust dated September 29, 2004, as amended and restated on October 15, 2004.
2. The Filer is authorized to issue an unlimited number of transferable units (the “Units”) of the Filer, each of which represents an equal, undivided interest in the net assets of the Filer and entitles the holder (the “Unitholder”) to one vote at meetings of Unitholders and to participate equally with respect to any and all distributions made by the Filer, including distributions of net income and net realized capital gains.
3. The Filer is not a mutual fund under the Legislation.
4. The Filer filed a final prospectus dated September 29, 2004 (the “Prospectus”) with the securities regulatory authorities in each of the Jurisdictions qualifying for distribution of Units of the Filer and became a reporting issuer or the equivalent thereof in the Jurisdictions upon obtaining a receipt for the Prospectus on September 30, 2004 from each of the Jurisdictions. The Filer is not on the list of defaulting reporting issuers maintained by any of the Jurisdictions.
5. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the symbol “FPF.UN”.
6. The Filer’s investment objective is to provide Unitholders with long-term capital growth through selection, management and strategic trading of long

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and short positions in equity, debt and derivative securities. The Filer's portfolio will consist primarily of investments which generate capital gains, but will also include investments which generate income.

7. The Filer intends to make annual distributions to Unitholders of all of its income for tax purposes, including net realized capital gains (less applicable losses). Distributions over the life of the Filer will be derived primarily from net realized capital gains and income from the Filer's portfolio. Distributions will be payable to Unitholders of record at the close of business on or about the last business day of December in each year (the "Record Date") with the first such distribution to be declared in December 2004.
8. The Filer proposes to establish an automatic reinvestment plan (the "Plan") pursuant to which distributions by the Filer will be automatically reinvested in additional Units of the Filer ("Plan Units").
9. Distributions payable to participants in the Plan ("Plan Participants") will be paid to CIBC Mellon Trust Company in its capacity as agent under the Plan (the "Plan Agent") and applied to purchase Plan Units. Such purchases will either be made through the purchase of Plan Units from the Filer or in the market.
10. No commissions or service charges will be payable by Plan Participants in connection with the Plan.
11. Non-residents of Canada within the meaning of the *Income Tax Act* (Canada) are not eligible to participate in the Plan.
12. If the closing market price plus applicable commissions or brokerage charges (collectively, the "Market Price") of the Units on the Record Date is less than the net asset value (the "NAV") per Unit as at that date, the Plan Agent will apply the distribution to purchase Plan Units in the market. If the Market Price of the Units on the applicable Record Date is equal to or greater than the NAV per Unit, the Plan Agent will apply the distribution to purchase Plan Units from the Filer through the issue of whole new Units at a price per Unit equal to the greater of (a) NAV per Unit on the Record Date; and (b) the weighted average of the trading prices of the Units for the five trading days preceding the Record Date.
13. If the Market Price of the Units on the Record Date is less than the NAV per Unit as at that date, the Plan Agent will purchase Plan Units in the market for a period commencing on the fifth business day after the Record Date and ending on the twentieth business day after the Record Date, at such times as

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the Market Price of the Units is less than the NAV per Unit as at the Record Date. Upon the expiration of such period, the unused part, if any, of the distribution attributable to Plan Participants will be used to purchase Plan Units from the Filer on the basis set forth above.

14. The Plan Units purchased in the market or from the Filer under the Plan will be allocated to Plan Participants in proportion to their share of the distribution. Registrations and transfers of Plan Units will be made only through the book-entry system operated by the Canadian Depository for Securities Limited (“CDS”) and, therefore, through participants in the CDS system (individually, a “CDS Participant” and, collectively, “CDS Participants”). Plan Participants will receive confirmation of the number of Plan Units issued to them under the Plan and the issue price per Unit from their CDS Participant.
15. No fractional Units will be issued under the Plan. A cash adjustment for any uninvested distributions will be paid by the Plan Agent to CDS on a monthly basis to be credited to the Plan Participants via the applicable CDS Participants.
16. The Plan Agent will be purchasing Plan Units only in accordance with the mechanism described in the Plan and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on changes in the NAV per Unit.
17. In light of the nature of the Filer and the terms of the Plan, the Filer believes that the potential for dilution arising from the issuance of Plan Units by the Filer at the NAV per Unit pursuant to the Plan is not significant.
18. The Plan is open for participation by all Unitholders (subject to certain restrictions on non-residents of Canada), so that such Unitholders can reduce potential dilution by electing to participate in the Plan. Under the Plan, distributions by the Filer are automatically reinvested in additional Units, unless a Unitholder elects not to participate in the Plan. Since the Filer is designed for long-term capital growth rather than short-term income generation, it is expected that most Unitholders will not elect to opt out of the Plan.
19. A Plan Participant may terminate his or her participation in the Plan at any time by written notice to the Plan Agent through his or her CDS Participant, following which distributions payable to such Plan Participant will be made in cash.

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20. Plan Participants do not have the option of making cash payments to purchase additional Units under the Plan.
21. To the extent that the Filer distributes additional Plan Units to Plan Participants pursuant to the Plan, such distributions are subject to the Registration and Prospectus Requirements under the Legislation unless appropriate exemptions are available.
22. Except in Alberta, the distribution of additional Plan Units to Plan Participants pursuant to the Plan cannot be made in reliance on certain prospectus exemptions contained in the Legislation in respect of the reinvestment of dividends, interest or distributions of capital gains out of earnings or surplus, because the Plan involves the reinvestment of distributions of income and net realized capital gains.
23. The distribution of additional Plan Units to Plan Participants pursuant to the Plan cannot be made in reliance on prospectus exemptions contained in the Legislation for reinvestment plans of mutual funds because the Filer is not a “mutual fund” as defined in the Legislation.

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:

1. except in Alberta, the Registration Requirements and Prospectus Requirements contained in the Legislation shall not apply to trades or distributions by the Filer or by an administrator or agent of the Filer of Plan Units for the account of Plan Participants pursuant to the Plan, provided that:
 - (a) at the time of the trade or distribution, the Filer is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
 - (b) no sales charge is payable in respect of the trade;
 - (c) the Filer has caused to be sent to the person or company to whom the Plan Units are traded, not more than 12 months before the trade, a statement describing:

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- (i) their right to elect to not participant in the Plan, and
 - (ii) instructions on how to make the election referred to in (i);
 - (d) the first trade of the Plan Units acquired under this Decision shall be deemed to be a distribution or a primary distribution to the public; and
- 2. the Prospectus Requirement contained in the Legislation shall not apply to the first trade of Plan Units acquired by Plan Participants pursuant to the Plan, provided that:
 - (a) except in Québec, the conditions in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 – Resale of Securities are satisfied; and
 - (b) in Québec:
 - (i) at the time of the first trade the Filer is a reporting issuer in Québec and is not in default of any of the requirements of securities legislation in Québec;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;
 - (iii) no extraordinary commission or other consideration is paid to a person or company other than the vendor of the Plan Units in respect of the first trade; and
 - (iv) the vendor of the Plan Units, if in a special relationship with the Filer, has no reasonable grounds to believe that the Filer is default of any requirement of the Legislation of Québec.

Paul Moore
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