

2004 BCSECCOM 245

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from prospectus requirement for a closed-ended investment trust that is a “mutual fund” 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. 61, 76

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

**IN THE MATTER OF THE 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 STaRS 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 Labrador and Yukon (the “Jurisdictions”) has received an application from STaRS *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 file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Prospectus Requirements”) shall not apply to the distribution of units of the Trust (the “Units”) which have been repurchased by the Trust pursuant to the discretionary market purchase program or by way of redemption of Units at the request of holders thereof, nor to the first trade or resale of such repurchased Units (the “Repurchased 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;

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AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

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 made as of November 27, 2001 as amended and restated (the "Declaration of Trust").
2. The Trust is considered to be a "mutual fund" as defined in the Legislation.
3. The Trust became a reporting issuer or the equivalent thereof in the Jurisdictions on November 29, 2001 upon obtaining a receipt for its final prospectus dated November 27, 2001 (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 beneficial interest in the net assets of the Trust. 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.
5. Middlefield STRS Management Limited (the "Manager"), which was incorporated pursuant to the *Business Corporations Act* (Ontario), is the manager and the trustee of the Trust.
6. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the trading symbol "STZ.UN". As at January 30, 2004, 7,306,230 Units were issued and outstanding.
7. 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 prevailing market prices provided the price per Unit does not exceed the net asset value of the Trust ("Net Asset Value") per Unit on the date immediately prior to the offer to purchase such Units (the "Discretionary Purchase Program"). 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.
8. Pursuant to the Declaration of Trust and subject to the Trust's right to suspend redemptions, Units may be surrendered for redemption (the "Redemption

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Program” and, together with the Discretionary Purchase Program, the “Programs”) by a Unitholder to the Trust’s registrar and transfer agent, and each Unit properly surrendered for redemption by a Unitholder not later than 5:00 p.m. (Toronto time) on the fifth business day prior to the last day of a month (a “Redemption Valuation Date”) will, subject to an investment dealer finding purchasers for Units properly surrendered for redemption upon the authorization of the Unitholder and at the direction of the Trust, be redeemed by the Trust pursuant to the Redemption Program for a price (the “Redemption Price”) equal to:

- (a) in the case of a redemption on the December Redemption Valuation Date, the Net Asset Value per Unit; or
 - (b) in the case of a redemption on any Redemption Valuation Date other than a December Redemption Valuation Date, Net Asset Value per Unit determined as of such Redemption Valuation Date less the lesser of:
 - (i) 4% of the Net Asset Value per Unit as of such Redemption Valuation Date; and
 - (ii) \$0.40 per Unit.
9. A Unitholder who has surrendered Units for redemption will be paid the Redemption Price for such Units by the tenth business day following the Redemption Valuation Date.
10. Purchases of Units made by the Trust under the Programs are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.
11. The Trust desires, and the Declaration of Trust has been amended in accordance with its terms to provide 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 sixteen months of the purchase of such Repurchased Units will be cancelled by the Trust.
14. The Trust amended its Declaration of Trust in accordance with its terms in order to enable the Trust to resell Repurchased Units that it acquires pursuant to the Programs, in order to provide added protection to Unitholders.
15. 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.
16. 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 Prospectus Requirements.
17. Legislation in some of the Jurisdictions provides that the first trade or resale of Repurchased Units acquired by a purchaser will be a distribution subject to the Prospectus Requirements unless such first trade is made in reliance on an exemption therefrom.

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 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;
- (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

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- (d) the first trade or resale of Repurchased Units acquired by a purchaser from the Trust in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions of paragraphs 1 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied.

DATED April 13, 2004

Lorne Morphy

Wendell S. Wigle