

2004 BCSECCOM 491

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement to file the interim financial statements - interim period is less than three months in length and final prospectus included audited statements for a portion of the period

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, s. 91

Securities Rules, B.C. Reg. 194/97, s. 144

National Instrument 51-102 – *Continuous Disclosure Obligations*, ss. 4.6, 4.7 and 13.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF THE
PROVINCES OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA,
AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

IN THE MATTER OF THE BRICK GROUP INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from The Brick Group Income Fund (the “Fund”) for a decision under the securities legislation of each of the Jurisdictions and, in Québec, by a revision of the general order that will provide the same result as an exemption order (the “Legislation”) that the requirement to file and deliver interim financial statements (the “Interim Statements”) for the period beginning on May 25, 2004 (being the date on which the Fund was established) and ending on June 30, 2004 (which period is referred to herein as the “Interim Period”), being the interim period immediately following the periods for which financial statements were included in the Fund’s prospectus dated July 9, 2004, (the “Interim Statement Requirement”) shall not apply to the Fund.

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AND WHEREAS under the Mutual Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for the Application;

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

AND WHEREAS the Fund has represented to the Decision Makers as follows:

- (a) The Fund is an open-ended, limited purpose trust established under the laws of Alberta pursuant to a declaration of trust dated May 25, 2004, as amended and restated as of July 20, 2004. The Fund was established to hold a beneficial interest in The Brick Trust (the “Trust”).
- (b) The Fund is a reporting issuer or its equivalent in each of the provinces and territories of Canada. The Fund is not in default of its reporting issuer obligations under the securities legislation of each of the Jurisdictions.
- (c) The Fund has a financial year-end of December 31.
- (d) On May 28, 2004 the Fund filed a preliminary prospectus in each of the Jurisdictions. On June 11, 2004 the Fund filed an amended and restated preliminary prospectus in each of the Jurisdictions. On July 9, 2004 the Fund filed a (final) prospectus (the “Prospectus”) in each of the Jurisdictions in connection with an initial public offering (the “Offering”) of class A units of the Fund (the “Units”) and, upon receipt of the MRRS decision document dated July 9, 2004 with respect to the Prospectus, the Fund became a reporting issuer or the equivalent in each of the Jurisdictions.
- (e) The Prospectus contained an audited balance sheet of the Fund as at May 25, 2004 as well as a pro forma balance sheet and pro forma consolidated income statement of the Fund as at and for the year ended February 29, 2004.
- (f) The authorized capital of the Fund consists of an unlimited number of Units and an unlimited number of class B units (the “Class B Units”). As of the date hereof, 42,924,016 Units and 11,247,117 Class B Units are issued and outstanding.
- (g) The Units are listed and posted for trading through the facilities of the Toronto Stock Exchange (the “TSX”) under the symbol “BRK.UN”.

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- (h) On closing of the Offering, the Fund used the proceeds of the Offering to indirectly acquire all of the issued and outstanding shares of the Brick GP and all of the limited partnership units of the Brick LP (the “Acquisition”). The Brick LP is one of Canada’s largest volume retailers of household furniture, mattresses, appliances and home electronics.
- (i) The Acquisition was completed by the Fund on July 20, 2004.
- (j) The Fund will file a business acquisition report by October 4, 2004 in respect of the Acquisition, which will include: (i) the consolidated financial statements of The Brick Warehouse Corporation for the year-ended February 29, 2004, as previously filed in the Prospectus, (ii) combined financial statements of the business operations owned by the Brick LP and its subsidiaries as of July 20, 2004 (the “Brick Business”), as at and for the four month period ended June 30, 2004; and (iii) pro forma financial statements for the Brick Business as at and for the four month period ended June 30, 2004.

AND WHEREAS under the System, this 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 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 Interim Statement Requirement shall not apply to the Fund, provided that the Fund issues a press release informing the unitholders that on the basis of this Decision, interim financial statements of the Fund will not be issued for the period ended June 30, 2004, and confirming that the Acquisition was completed on the terms described in the Prospectus and will be reflected in the business acquisition report to be filed and in the interim consolidated financial statements of the Fund as at and for the period ended September 30, 2004.

DATED at Calgary, Alberta on this 16th day of August, 2004.

Agnes Lau, CA
Deputy Director, Capital Markets