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May 20, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 91 Financial Statements & Report - Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports - An issuer wants relief from the requirement to deliver audited annual financial statements for a particular year - The issuer filed a final prospectus with audited financials dated prior to its year end; the issuer had limited operations since the date of such audited financial statements and its year end; the issuer's audited annual financials will not disclose any material information that is not already disclosed in the audited financial statements in the prospectus

## **Applicable British Columbia Provisions**

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

*Securities Rules*, B.C. Reg. 194/97, ss. 144(1) and 149

In the Matter of  
the Securities Legislation  
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New  
Brunswick, Nova Scotia, and Newfoundland and Labrador (collectively, the  
“Jurisdictions” and, individually, a “Jurisdiction”)

and

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

and

In the Matter of Sceptre Income & High Growth Trust (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 Filer be exempt from the following:

- (a) the requirement to deliver to holders of units of the Filer (“Unitholders”) audited annual financial statements and an

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auditors' report ("Annual Financial Statements") for its financial year ended December 31, 2004 (the "2004 Financial Year");

- (b) the requirement to prepare, file and deliver to Unitholders interim unaudited financial statements (the "Interim Financial Statements") for its first financial quarter ended March 31, 2005 (the "2005 First Quarter") and its third financial quarter ended September 30, 2005 (the "2005 Third Quarter");
- (c) in Alberta, Saskatchewan, New Brunswick, and Newfoundland and Labrador only, the requirement to prepare and file an annual filing ("Annual Filing") for the 2004 Financial Year;
- (d) in Quebec only, the requirement to prepare, file and deliver to Unitholders resident in the Province of Quebec an annual report (the "Quebec Annual Report") for the 2004 Financial Year;
- (e) in Ontario and Quebec only, the requirements to:
  - i) prepare and file an annual information form ("AIF") for the 2004 Financial Year;
  - ii) prepare, file and deliver to Unitholders resident in such Jurisdictions annual management's discussion and analysis ("Annual MD&A") for the 2004 Financial Year; and
- (f) in Ontario only, the requirement to prepare, file and deliver interim management's discussion and analysis ("Interim MD&A") for the 2005 First Quarter and the 2005 Third Quarter,

as would otherwise be required pursuant to applicable Legislation. (The relief requested in item (a) is referred to as the "Annual Financial Statement Relief"; the relief requested in item (b) is referred to as the "Interim Financial Statement Relief"; the relief requested in item (c) is referred to as the "Annual Filing Relief"; the relief requested in item (d) is referred to as the "Annual Report Relief"; and the relief requested in items (e) and (f) are referred to as the "AIF and MD&A Relief").

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.

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### **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 pursuant to a declaration of trust dated as of December 16, 2004 (the "Declaration of Trust"). The financial year-end of the Filer is December 31 in each calendar year.
2. Sceptre Fund Management Inc. (the "Manager") is the manager and trustee of the Filer. Sceptre Investment Counsel Limited is the portfolio manager of the Filer.
3. The address of the principal office of the Manager is Suite 1200, 26 Wellington Street East, Toronto, Ontario, M5E 1W4.
4. The Filer filed a final prospectus dated December 16, 2004 (the "Prospectus") with the securities regulatory authorities in each of the provinces of Canada pursuant to which a distribution of 4,000,000 units of the Filer ("Units") was completed on December 30, 2004 (the "Offering"). A receipt for the Prospectus was issued on December 20, 2004.
5. The Filer issued an additional 335,000 Units to the public on January 28, 2005 pursuant to the agents' exercise of the over-allotment option in connection with the Offering.
6. The authorized capital of the Filer consists of an unlimited number of Units, of which 4,335,000 are issued and outstanding, with the attributes described in the Prospectus.
7. The Filer is not a "mutual fund" and does not intend to hold annual meetings for Unitholders, as described in the Prospectus.
8. The principal undertaking of the Filer is the investment in a broadly diversified portfolio consisting primarily of income funds and common shares of small and mid-capitalization Canadian corporations.
9. The Filer is an investment vehicle designed to (i) provide Unitholders with monthly cash distributions; (ii) return at least the original issue price of the

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Units to Unitholders upon termination of the Filer on February 28, 2015; and (iii) provide Unitholders with an opportunity for capital appreciation.

10. Unitholders will be entitled to receive distributions if and when declared by the Filer. The Filer intends to make monthly cash distributions to Unitholders of record on the last business day of each month and pay such cash distributions on or about the fifteenth business day following the relevant month end.
11. The Filer did not declare a distribution in the financial year ended December 31, 2004 and paid its first monthly distribution on February 21, 2005.
12. At the end of February, 2005, the Filer was substantially invested and held cash and cash equivalents in accordance with the permitted ranges established in the Declaration of Trust.
13. The Prospectus included an audited statement of financial position of the Filer as at December 16, 2004 along with an auditors' report dated December 16, 2004. Press releases were issued by the Filer on December 30, 2004 and January 28, 2005, respectively, announcing to the public the actual number of Units that were issued by the Filer pursuant to the Offering and the over-allotment option closing in connection therewith.
14. The Prospectus contains substantially the same information as would otherwise have been disclosed in an Annual Filing and there were no changes in such information between the date of the Prospectus and December 31, 2004.
15. The Filer only satisfied the criteria under the securities legislation of each of the provinces of Ontario and Quebec which triggers the AIF requirement under such legislation for a period of 2 days during the 2004 Financial Year.
16. The benefit to be derived by Unitholders from receiving Annual Financial Statements, an Annual Filing, an AIF, an Annual MD&A or a Quebec Annual Report for the for the 2004 Financial Year would be minimal in view of:
  - (a) the short period from the date of the Prospectus to the Filer's financial year-end;

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- (b) the fact that the Filer was only substantially capitalized for 2 days during the 2004 Financial Year;
  - (c) the fact that the Filer did not declare any distributions in the 2004 Financial Year;
  - (d) the fact that the Filer was not fully invested during the 2004 Financial Year and, therefore, a balance sheet in respect of the 2004 Financial Year would simply show cash held on deposit and an income statement in respect of the 2004 Financial Year would only show interest income rather than income from operations; and
  - (e) the absence of any material changes in the affairs of the Filer from December 16, 2004 to December 31, 2004, other than the closing of the Offering on December 30, 2004.
17. The expense in (i) delivering Annual Financial Statements to Unitholders; (ii) preparing and filing an Annual Filing and an AIF; and (iii) preparing, filing and delivering to Unitholders Annual MD&A and a Quebec Annual Report for the 2004 Financial Year would not be justified in view of the minimal benefit to be derived by Unitholders from receiving such financial statements and reports.
18. The benefit to be derived by Unitholders from receiving Interim Financial Statements or Interim MD&A for the 2005 First Quarter and 2005 Third Quarter would be minimal in view of:
- (a) the fact that the Filer was not fully invested until late February, 2005 and the Filer's investment portfolio has a low turnover rate; and
  - (b) the absence of any material changes in the affairs of the Filer from December 16, 2004 to the date of this application, other than the closing of the Offering on December 30, 2004.
19. National Instrument 81-106 Investment Fund Continuous Disclosure ("NI 81-106") has removed the requirement for investment funds to provide interim quarterly financial statements. Pursuant to section 2.3 of NI 81-106, an investment fund need only provide interim financial statements in respect of the six month period that occurs before the end of its financial year. While section 2.3 of NI 81-106 will not apply until interim financial periods of the Filer beginning after December 31, 2005, we submit that the benefit to be derived by Unitholders from receiving Interim Financial

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Statements for the 2005 First Quarter and 2005 Third Quarter would be minimal, which fact was acknowledged by the Canadian Securities Administrators through their implementation of section 2.3 of NI 81-106.

20. NI 81-106 has also removed the requirement for investment funds to provide Annual and Interim MD&A.
21. The Filer currently discloses its top ten holdings on the Sceptre Investment Counsel Limited website at [www.sceptre.ca](http://www.sceptre.ca) and updates this information on a monthly basis. The Filer is prepared to post on its website within 60 days of the 2005 First Quarter and the 2005 Third Quarter a summary of its investment portfolio prepared in accordance with Item 5 of Part B of Form 81-106F1 as at the end of the 2005 First Quarter and the 2005 Third Quarter, respectively, in order to provide Unitholders with disclosure regarding the financial performance of the Filer and in order to comply in advance with Section 6.2 of NI 81-106. The Filer will promptly send copies of such summaries of its investment portfolio, without charge, to Unitholders upon request.
22. The expense in preparing, filing and delivering to Unitholders the Interim Financial Statements and Interim MD&A for the 2005 First Quarter and the 2005 Third Quarter would not be justified in view of the minimal benefit to be derived by Unitholders from receiving such Interim Financial Statements and Interim MD&A.
23. The Interim Financial Statements of the Filer for the period ending June 30, 2005 will include the 2005 First Quarter period and the Annual Financial Statements of the Filer for the period ending December 31, 2005 will include both the 2005 First Quarter and the 2005 Third Quarter periods.
24. Unless a material change takes place in the business and affairs of the Filer, the Unitholders will obtain adequate financial information concerning the Filer from receiving semi-annual financial statements of the Filer for the six month period ended June 30, 2005 and Annual Financial Statements of the Filer for the year ended December 31, 2005 as well as from the posting by the Filer of a summary of its investment portfolio on the Sceptre Investment Counsel Limited website within 60 days of the 2005 First Quarter and the 2005 Third Quarter.
25. It would not be prejudicial to the public interest for the Decision Makers to grant the relief requested herein.

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### **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 Annual Financial Statement Relief is granted provided that:

- (a) the Filer issue and file on SEDAR a press release informing Unitholders of their right to receive the Annual Financial Statements of the Filer for the 2004 Financial Year upon request; and
- (b) the Filer send a copy of the Annual Financial Statements for the 2004 Financial Year to any Unitholder that so requests.

The decision of the Decision Makers under the Legislation is that the Interim Financial Statement Relief is granted provided that this exemption shall terminate upon:

- (i) the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemption should continue, which satisfaction shall be evidenced in writing; and
- (ii) NI 81-106 coming into force.

The decision of the Decision Makers in Ontario, Alberta, Saskatchewan, New Brunswick, and Newfoundland and Labrador is that the Annual Filing Relief is granted.

The decision of the Decision Makers in Ontario and Quebec is that the Annual Report Relief is granted.

Paul Moore  
Vice-Chair  
Ontario Securities Commission

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission

The further decision of the Decision Makers in Ontario and Quebec is that the AIF and MD&A Relief is granted provided that this exemption shall terminate upon:

- (i) the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemption should continue, which satisfaction shall be evidenced in writing; and

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- (ii) NI 81-106 coming into force.

Leslie Byberg  
Manager, Investment Funds Branch