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December 2, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A labour sponsored investment fund wants relief from the provision in s. 2.1 of the Instrument that prohibits a mutual fund from making certain payments to participating dealers - The applicant is registered as a labour sponsored investment fund in Ontario and is, or has applied to be, registered as a labour sponsored venture capital corporation under the Income Tax Act (Canada). The prospectus will contain full disclosure about how investors indirectly support the payment of sales commissions; the distribution costs are permitted by and paid in accordance with the Instrument; the applicant would be disadvantaged if the relief were not granted because other labour sponsored investment funds have obtained the relief.

Applicable British Columbia Provisions

National Instrument 81-105 Mutual Fund Sales Practices

**In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,
New Brunswick, Nova Scotia, Prince Edward Island,
Newfoundland and Labrador (the Jurisdictions)**

and

**In the Matter of
the Mutual Reliance Review System Forex Exemptive Relief Applications**

and

**In the Matter of
National Instrument 81-105 Mutual Fund Sales Practices (NI 81-105)**

and

In the Matter of Front Street Alternative Asset Fund Inc. (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

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pursuant to section 9.1 of NI 81-105 for an exemption from the prohibition contained in section 2.1 of NI 81-105 against making of certain payments by the Fund to participating dealers such that the Filer can pay the Distribution Expenses, defined herein, to participating dealers (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS),

- (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 Fund is a corporation incorporated under the *Business Corporations Act* (Ontario). It is registered as a labour sponsored investment management corporation under the *Community Small Business Investment Funds Act* (Ontario).
2. The Fund is a mutual fund as defined in the legislation of each of the Jurisdictions. The Fund has filed a preliminary prospectus dated October, 2005 (the Preliminary Prospectus) in each of the Jurisdictions in connection with the proposed offering to the public of Class A Shares.
3. The authorized capital of the Fund consists of an unlimited number of Class A Shares of which none are currently issued and outstanding as of the date hereof and an unlimited number of Class B Shares in the capital of the Fund, of which 10 shares are issued and outstanding as of the date hereof.
4. Front Street Capital 2004 (the Manager), the manager of the Fund, along with The National Guild of Canadian Media, Manufacturing, Professional and Services Workers/CWA, the sponsor, are the organizers of the Fund.
5. The Fund proposes to pay directly to participating dealers associated with the distribution of its Class A Shares, a service fee of 1.25% annually of the net

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asset value of the Class A Shares held by the clients of the sales representatives of the dealers (the Services Fee).

6. The Fund may also pay for the reimbursement of co-operative marketing expenses (the Co-op Expenses) incurred by certain dealers in promoting sales of the Class A Shares, pursuant to co-operative marketing agreements the Fund may enter into with such dealers.
7. All of the costs associated with the distribution of Class A Shares, including the Service Fee and the Co-op Expenses (collectively the Distribution Expenses) are fully disclosed in the Prospectus. The fact that the Fund intends to pay certain of these expenses out of the assets of the Fund is also disclosed.
8. The Manager, or an affiliate, is the only member of the organization of the Fund, other than the Fund, available to pay the Distribution Expenses. The Manager would be obliged to borrow money, to pay the Distribution Expenses upfront, unless the requested discretionary relief is granted.
9. Any loans obtained by the Manager to finance the Distribution Expenses would result in the Manager increasing the management fee chargeable to the Fund, by an amount equal to the borrowing costs incurred by the Manager plus an amount required to compensate the Manager for any risks associated with fluctuations in the net asset value of the Fund and, therefore, fluctuations in the Manager's fee. Requiring compliance with section 2.1 of NI 81-105 would cause the expenses of the Fund to increase above those contemplated in the Preliminary Prospectus.
10. Requiring the Manager to pay the Distribution Expenses while granting an exemption to other labour funds permitting such funds to pay similar Distribution Expenses directly would put the Fund at a permanent and serious competitive disadvantage with its competitors.
11. The Fund undertakes to comply with all other provisions of NI 81-105. In particular, the Fund undertakes that all Distribution Expenses paid by it will be compensation permitted to be paid to participating dealers under NI 81-105.

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 Requested Relief is granted provided that:

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- (a) the Distribution Expenses are otherwise permitted by, and paid in accordance with, NI 81-105;
- (b) the Fund will in its financial statements expense the Distribution Expenses in the fiscal period when incurred and will ensure that the Distribution Expenses are being included in the Fund's calculation of its management expense ratio;
- (c) the summary section of the prospectus of the Fund (the Summary Section) has full, true and plain disclosure explaining to investors that they indirectly support the payment of the Distribution Expenses. The Summary Section must be placed within the first 10 pages of the prospectus;
- (d) the Fund shall include in the Summary Section a summary table of fees and expenses payable by the Fund in the following format:

Summary of Fees, Charges and Other Expenses Payable by the Fund

Type and Amount of Fee Description

- (e) the summary table shall also include the annual management expense ratio of the Fund for each of the last five completed financial years of the Fund with a brief description of the method of calculating the management expense ratio and the annual returns of the Fund for each of the last five completed financial years of the Fund; and
- (f) this exemption shall cease to be operative with respect to the Decision Makers on the date that a rule or regulation replacing or amending section 2.1 of NI 81-105 comes into force.

Paul M. Moore
Vice Chair
Ontario Securities Commission

Robert W. Davis
Commissioner
Ontario Securities Commission