

## **2002 BCSECCOM 503**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements to allow a closed-end investment trust to issue units to existing unitholders under a distribution reinvestment plan subject to conditions - first trade relief for additional units not subject to a seasoning period

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

Multilateral Instrument 45-102 *Resale of Securities*, ss. 2.6(3) and (4)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
ONTARIO, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,  
NEWFOUNDLAND & LABRADOR, NOVA SCOTIA, PRINCE EDWARD  
ISLAND, QUEBEC AND SASKATCHEWAN**

**AND**

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

**AND**

**IN THE MATTER OF MYDAS FUND**

### **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Ontario, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan (the "Jurisdictions") has received an application from MYDAS Fund (the "Fund"), for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the "Registration and Prospectus Requirements") shall not apply to the distribution of trust units of the Fund under a distribution reinvestment plan (the "DRIP");
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;

## **2002 BCSECCOM 503**

3. AND WHEREAS the Fund has represented to the Decision Makers that:
  - 3.1 the Fund is a closed-end investment trust established under the laws of Alberta under a declaration of trust dated December 18, 2001 (the "Declaration of Trust");
  - 3.2 Computershare Trust Company of Canada is the trustee of the Fund (in such capacity, the "Trustee");
  - 3.3 under the Declaration of Trust, the Fund is authorized to issue an unlimited number of transferable, non-redeemable trust units (the "Trust Units"), of which there were 9,905,631 Trust Units outstanding on March 25, 2002;
  - 3.4 the Fund is not a mutual fund as described in the Legislation because the holders of Trust Units (the "Unitholders") are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund as contemplated in the definition of mutual fund in the Legislation;
  - 3.5 the assets of the Fund consist of a portfolio of securities including Canadian income funds and Canadian high yielding investment grade debt, as well as cash (the "Assets");
  - 3.6 the Fund was created to:
    - 3.6.1 provide Unitholders with a stable, tax effective income stream derived from the distribution of income to the Fund from the portfolio of securities that it holds ("Distributable Income"); and
    - 3.6.2 return at least the original issue price of the Trust Units to Unitholders upon termination of the Fund;
  - 3.7 each Trust Unit represents an equal fractional undivided beneficial interest in the net assets of the Fund, and entitles its holder to one vote at meetings of Unitholders and to participate equally with respect to any and all distributions made by the Fund, including distributions of net income and net realized capital gains, if any;
  - 3.8 the Fund became a reporting issuer in each province of Canada on January 28, 2002 when it obtained a Final Decision Document for its prospectus dated January 28, 2002 (the "Prospectus");

## 2002 BCSECCOM 503

- 3.9 the Fund is not a qualifying issuer as defined in Multilateral Instrument 45-102 *Resale of Securities*;
- 3.10 MYDAS Management Inc. (the "Administrator") is the authorized attorney of the Fund;
- 3.11 the Trust Units are listed on The Toronto Stock Exchange;
- 3.12 the Trust Units are only available in book-entry form whereby CDS & Co., a nominee of The Canadian Depository for Securities Limited, is the only registered holder of Trust Units;
- 3.13 the Fund has established the DRIP to permit Unitholders, at their discretion, to automatically reinvest the Distributable Income paid on their Trust Units in additional Trust Units ("DRIP Units") as an alternative to receiving cash distributions;
- 3.14 distributions due to participants in the DRIP ("DRIP Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the "DRIP Agent") and applied to the purchase of DRIP Units;
- 3.15 no commissions, service charges, or brokerage fees will be payable by DRIP Participants in connection with the DRIP;
- 3.16 the DRIP Agent will purchase DRIP Units from the Fund at the net asset value per Trust Unit as at the applicable distribution date;
- 3.17 DRIP Participants may terminate their participation in the DRIP by providing 10 days' written notice to the DRIP Agent prior to the applicable record date;
- 3.18 DRIP Participants do not have the option of making cash payments to purchase additional DRIP Units under the DRIP;
- 4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- 5. AND WHEREAS 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;

## **2002 BCSECCOM 503**

6. THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements will not apply to trades and distributions by the Fund of DRIP Units, provided that:
  - 6.1 at the time of the trade or distribution the Fund is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
  - 6.2 no sales charge is payable in respect of the trade or distributions;
  - 6.3 the Fund has caused to be sent to the person or company to whom the DRIP Units are traded, not more than 12 months before the trade, a statement describing:
    - 6.3.1 their right to withdraw from the DRIP and to make an election to receive cash instead of DRIP Units on the making of a distribution of income by the Fund; and
    - 6.3.2 instructions on how to exercise the right referred to in 6.3.1;
  - 6.4 disclosure of the distribution of the DRIP Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such DRIP Units, the number of such DRIP Units and the purchase price paid or to be paid for such DRIP Units in:
    - 6.4.1 an information circular or take-over bid circular filed in accordance with the Legislation; or
    - 6.4.2 a letter filed with the Decision Maker in the appropriate Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter;

when the Fund distributes such DRIP Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of DRIP Units so traded in any month exceeds 1% of the Trust Units outstanding at the beginning of the month in which the DRIP Units were traded, in which case a separate report will be filed in each relevant Jurisdiction in respect of that month within 10 days of the end of such month;

- 6.5 except in Quebec, the first trade in DRIP Units acquired under this Decision in a Jurisdiction will be deemed a distribution or primary

## **2002 BCSECCOM 503**

distribution to the public under the Legislation unless the conditions in paragraphs 2 through 5 of subsection 2.6(4) of MI 45-102 are satisfied;

6.6 in Quebec, the first trade (alienation) of DRIP Units acquired under this Decision in a Jurisdiction will be deemed a distribution or a primary distribution to the public unless:

6.6.1 at the time of the first trade the Fund is a reporting issuer in Quebec and is not in default of any of the requirements of securities legislation in Quebec;

6.6.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units;

6.6.3 no extraordinary commission or consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the trade;

6.6.4 the vendor of the DRIP Units, if in a special relationship with the Fund, has no reasonable grounds to believe that the Fund is in default of any requirement of the securities legislation in Quebec.

DATED this 31<sup>st</sup> day of May, 2002

Glenda A. Campbell

Walter B. O'Donoghue