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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief to permit funds to file reports of exempt distribution within 30 days of each fund's financial year end

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 74(2)(4), 74(1)(19) and 76

Securities Rules, B.C. Reg. 194/97, s. 139

Multilateral Instrument 45-103 *Capital Raising Exemptions*, ss. 5.1 and 7.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA AND BRITISH COLUMBIA

AND

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

AND

IN THE MATTER OF iPERFORMANCE FUND CORP.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta and British Columbia (the “Jurisdictions”) has received an application from iPerformance Fund Corp. (the “Manager”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that certain trades in units (“Units”) in respect of certain investment trusts (individually a “Fund” and collectively the “Funds”) are not subject to the requirements of the Legislation relating to the filing of forms and the payment of fees within certain prescribed time periods (the “Reporting Requirements”);
- ¶ 2 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;

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- ¶ 3 AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 4 AND WHEREAS the Manager has represented to the Decision Makers that:
1. the Manager is a corporation incorporated pursuant to the laws of Ontario and is registered under the *Securities Act* (Ontario) as an adviser in the category of investment counsel and portfolio manager, and as a mutual fund dealer;
 2. the Manager has established the Funds as open-end investment trusts from time to time pursuant to a declaration of trust, as amended from time to time, whereby the Manager acts as the trustee of the Funds;
 3. the Manager may establish additional Funds in the future;
 4. each of the Funds is, or is expected to be, a “mutual fund” as such term is defined in the Legislation;
 5. none of the Funds is, nor is it expected that any of the Funds will become, a “reporting issuer” as such term is defined in the Legislation;
 6. Units of the Funds are, or will be, distributed on a continuous basis to investors in the Jurisdictions in reliance on the “accredited investor” exemption (the “Accredited Investor Exemption”) and the “private placement” exemption (the “Private Placement Exemption”) from the dealer registration requirement and prospectus requirement of the Legislation;
 7. each Fund will provide investors with an offering memorandum describing the Fund and its securities;
 8. where Units of any of the Funds are distributed to a purchaser in reliance on the Private Placement Exemption, the minimum initial investment by a resident of either Jurisdiction will not be less than the prescribed amount in that Jurisdiction;
 9. the Funds may distribute additional Units to an existing Unit holder in increments of less than the amount prescribed by the Legislation in reliance on an exemption (the “Additional Units Exemption”) from the dealer registration requirement and prospectus requirement of the Legislation, provided the existing Unit holder holds Units of such Fund having an aggregate acquisition cost or aggregate net asset value of not less than the amount prescribed by the Legislation in that Jurisdiction;

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10. Units of the Funds will not be transferable, but will be redeemable upon the request of the holder;

11. under the Legislation in Alberta, the Funds are required to file a copy of any offering memorandum sent to investors in connection with distributions under the Private Placement Exemption;

¶ 5 AND WHEREAS under the System, the MRRS Decision Document evidences the decision of the Decision Makers (collectively, the “Decision”);

¶ 6 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;

¶ 7 THE DECISION of the Decision Makers pursuant to the Legislation is that the Reporting Requirements shall not apply to trades by a Fund under the Accredited Investor Exemption, the Private Placement Exemption or the Additional Units Exemption, provided that within 30 days after each financial year end of each Fund, such Fund:

- (i) files with the applicable Decision Maker a report in respect of all such trades in Units of that Fund during such financial year, in the form prescribed by the applicable Legislation,
- (ii) remits to the applicable Decision Maker the fee prescribed by the applicable Legislation, and
- (iii) in Alberta, files two copies of the offering memorandum, including any amendments to the offering memorandum, sent to investors in connection with distributions under the Private Placement Exemption.

¶ 8 January 17, 2003

Brenda Leong
Director