2003 BCSECCOM 290

Headnote
Mutual Reliance Review System for Exemptive Relief Applications – open-end investment trust – trades of trust units to existing unit holders under a distribution reinvestment plan exempt from prospectus and registration requirements – trades of trust units to holders of limited partnership units under a distribution reinvestment plan exempt from prospectus and registration requirements – partnership units economic equivalent of trust units – relief subject to conditions

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76
Multilateral Instrument 45-102

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, NOVA SCOTIA, NUNAVUT, PRINCE EDWARD ISLAND, QUÉBEC, SASKATCHEWAN AND YUKON

AND

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

AND

IN THE MATTER OF CONTRANS INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Québec and Saskatchewan and in each of the Northwest Territories, the Yukon and Nunavut (the "Jurisdictions") has received an application from Contrans Income Fund (the "Fund") for a decision pursuant to 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 prospectus (the "Registration and Prospectus Requirements") shall not apply to the distribution of subordinate voting trust units of the Fund (the "Units") pursuant to a distribution reinvestment plan (the "DRIP");

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Fund has represented to the Decision Makers that:

1. The Fund is an unincorporated, open-end limited purpose trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated as of April 16, 2002. The Fund was created for the purpose of acquiring and holding certain investments.

2. The only activity currently carried on by the Fund is the holding of units and notes of Contrans Operating Trust (the "Operating Trust"), a trust wholly-owned by the Fund.

3. The Fund is not a "mutual fund" as defined in the Legislation because the holders of 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 a part of the net assets of the Fund as contemplated in the definition of "mutual fund" in the Legislation.

4. The beneficial interests in the Fund are divided into interests of three classes designated as Units, non-transferable Series A special voting rights (the "Subordinate Voting Rights") and non-transferable Series B special voting rights (the "Multiple Voting Rights"). The Fund is authorized to issue an unlimited number of Units and Subordinate Voting Rights and a limited number of Multiple Voting Rights. As of March 31, 2003, 16,790,710, 5,464,182 and 1,467,724 Units, Subordinate Voting Rights and Multiple Voting Rights are issued and outstanding, respectively.

5. The Fund became a reporting issuer under the Legislation on July 15, 2002 when it obtained a Final Decision Document for its prospectus dated July 12, 2002. As of the date hereof, the Fund is not in default of any requirements under the Legislation.

6. The Units are listed and posted for trading on the Toronto Stock Exchange under the symbol "CSS.UN". The Subordinate Voting Rights and the Multiple Voting Rights are not listed or posted on any stock exchange.

7. The Fund makes distributions of its available cash to Unitholders and intends to make monthly cash distributions of substantially all of the amounts received by the Fund from the Operating Trust in each month. Cash distributions are

payable monthly to Unitholders of record on the last business day of each month and are paid on or about the 15th day of the following month.

8. Contrans Holding Limited Partnership (the "Partnership") is a limited partnership formed under the laws of the Province of Ontario.

9. The Partnership is authorized to issue three classes of partnership interests, Class A, B and C limited partnership units (collectively, the "Partnership Units").

10. The Partnership is not a reporting issuer (or its equivalent) in any of the Jurisdictions and there is no intention for the Partnership to become a reporting issuer (or its equivalent).

11. The Partnership Units are not listed or posted for trading on any stock exchange.

12. Partnership Units are intended to be, to the greatest extent practicable, the economic equivalent of the Units and were initially created solely for Canadian tax purposes. Holders of Partnership Units (the "Partnership Unitholders") are entitled to receive distributions paid by the Partnership, which distributions are equal, to the greatest extent practicable, to distributions paid by the Fund to Unitholders. Partnership Units are exchangeable for an equal number of Units at any time and are required to be exchanged for an equal number of Units in certain circumstances.

13. Cash distributions are payable monthly to Partnership Unitholders of record on the last business day of each month and will be paid on or about the 15th day of the following month.

14. The Fund intends to establish the DRIP pursuant to which all Unitholders and Partnership Unitholders (other than United States residents) may, at their option, invest cash distributions paid on their Units and Partnership Units in additional Units (the "Plan Units") as an alternative to receiving cash distributions. The DRIP will not be available to Unitholders and Partnership Unitholders who are resident in the United States.

15. The DRIP will also enable Unitholders and Partnership Unitholders to make additional cash investments through optional cash payments ("Optional Cash Payments") which will be invested in Plan Units on the same basis as the distributions which are invested under the DRIP (except as to price), and any Unitholder or Partnership Unitholder may participate by way of Optional Cash Payments. The Fund may impose limitations on the maximum amount of

Optional Cash Payments in any financial year of the Fund to ensure that the number of Plan Units issued pursuant to the Optional Cash Payments does not exceed two percent of the aggregate number of Units and Partnership Units outstanding at the commencement of that financial year.

16. Cash distributions due to participants in the DRIP (the "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 purchase Plan Units. All Plan Units purchased under the DRIP will be purchased by the DRIP Agent directly from the Fund. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP.

17. The price of Plan Units purchased with such cash distributions will be 95% of the weighted average trading price of the Units on the TSX for the ten trading days immediately preceding a distribution payment date.

18. The price of Plan Units purchased with Optional Cash Payments will be the weighted average trading price of the Units on the TSX for the ten trading days immediately preceding a distribution payment date.

19. Where applicable, Participants will receive either fractional Plan Units or a cash equivalent payment in lieu of such fractional Plan Units.

20. Cash distributions in respect of Plan Units purchased under the DRIP will be held by the DRIP Agent for the DRIP Participant's account and automatically invested under the DRIP in Plan Units.

21. Plan Units purchased under the DRIP for those DRIP Participants whose Units or Partnership Units are not held by The Canadian Depository for Securities Limited will be registered in the name of the DRIP Agent, as agent for the DRIP Participants.

22. DRIP Participants may terminate their participation in the DRIP at any time by written notice to the DRIP Agent and the Fund at least ten business days before a distribution record date. Such notice, if actually received at least ten business days before a distribution record date, will have effect for such distribution payment date. Thereafter, distributions payable to such Unitholders or Partnership Unitholders will be made in the customary manner.

23. The Fund may amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants. All DRIP Participants will be sent written

notice of any such amendment, suspension or termination at least ten business days before the effective date of such amendment, suspension or termination.

24. The distribution of the Plan Units by the Fund pursuant to the DRIP cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of income distributed by the Fund and the Partnership and not the reinvestment of dividends or interest of the Fund and the Partnership.

25. The distribution of the Plan Units by the Fund pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Fund is not a "mutual fund" as defined in the Legislation because 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 a portion of the net assets of the Fund;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Plan Units by the Fund to the DRIP Participants, including the Partnership Unitholders, pursuant to the DRIP shall not be subject to the Registration and Prospectus Requirements of the Legislation, provided that:

(a) at the time of the trade the Fund is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

(b) no sales charge is payable by DRIP Participants in respect of the trade;

(c) the Fund has caused to be sent to the person or company to whom the Plan Units are traded, not more that 12 months before the trade, a statement describing:

(i) their right to withdraw from the DRIP and to make an election to receive cash instead of Plan Units on the making of a distribution of income by the Fund or the Partnership; and

(ii) instructions on how to exercise the right referred to in (1);

(d) in the financial year during which the trade takes place, the aggregate number of Plan Units issued pursuant to the Optional Cash Payments shall not exceed two percent of the aggregate number of Units and Partnership Units outstanding at the commencement of such financial year;

(e) except in Québec, the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation unless the conditions set out in paragraphs 1 through 5 of subsection 2.6(3) of Multilateral Instrument 45 – 102 *Resale of Securities* are satisfied at the time of such first trade or resale; and

(f) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the Plan shall be deemed to be a distribution or primary distribution to the public unless:

(i) at the time of the first trade, the Fund is a reporting issuer in Québec and is not in default on any of the requirements of securities legislation in Québec;

(ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;

(iii) no extraordinary commission or consideration is paid to a person or company other than the vendor of the Plan Units in respect of the first trade; and

(iv) the vendor of the Plan 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 Québec.

DATED April 15, 2003.

Paul M.Moore Lorne Morphy