

2005 BCSECCOM 361

May 30, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 44-101, s. 15.1 - Short Form Prospectus Distributions - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer would satisfy the qualification criteria following an arrangement, but must file its preliminary prospectus as a condition of the arrangement

Applicable British Columbia Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, ss. 2.1 and 15.1

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

and

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

and

In the Matter of
Premium Brands Inc. (Premium) and
Premium Brands Income Fund (the Fund and, collectively, the Filer)

MRRS Decision Document

Background

- ¶ 1 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 Fund be exempted from the provisions of section 2.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) so as to permit the Fund to file a short form prospectus under NI 44-101 (the Requested Relief).

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Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based upon the following facts represented by the Filer:
1. Premium is incorporated under the *Canada Business Corporations Act* and has its principal business office in Richmond, British Columbia;
 2. Premium is, and has been for the last 12 months, a reporting issuer, or holds equivalent status, under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec, and is also a reporting issuer in New Brunswick, and, to its knowledge, is not in default of any applicable requirement under the Legislation in any of those jurisdictions;
 3. Premium's authorized capital consists of an unlimited number of common shares, of which 11,706,444 were issued and outstanding as of May 10, 2005;
 4. based on the closing price of the common shares on May 10, 2005, Premium's total market capitalization is \$131,697,495;
 5. Premium's common shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "FFF";
 6. it is expected that the Fund will be a trust settled by a declaration of trust under the laws of British Columbia;
 7. it is expected that the Fund's authorized capital will consist of an unlimited number of trust units (Units) and an unlimited number of special voting units, and that the outstanding Units will be listed and posted for trading on the Toronto Stock Exchange;
 8. Premium currently satisfies the eligibility requirements of section 2.2 of NI 44-101 and so could file a short form prospectus in connection with the distribution of its securities;
 9. Premium proposes to convert its business into an income trust structure through the following steps:
 - (a) the Fund will be formed under the laws of British Columbia;

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- (b) Premium will propose that its shareholders and the British Columbia Supreme Court approve a plan of arrangement under which
 - (i) the Fund will indirectly acquire Premium's current business, and
 - (ii) all Premium's shareholders will receive Units, either directly or following an exchange of an exchangeable interest (the Arrangement);
 - (c) concurrent with the proposal of the Arrangement, the Fund will file the preliminary prospectus under NI 44-101 to qualify
 - (i) the distribution of approximately \$35 million in Units by the Fund, and
 - (ii) the sale of additional Units in a secondary offering by existing holders of securities of Premium,

(the "Prospectus Offering"); and
 - (d) it will be a condition of the Arrangement that the Prospectus Offering and the Arrangement will close simultaneously, such that the Fund will indirectly acquire the current business of Premium and will be able to use the funds raised by it under the Prospectus as part of that business;
10. following the Arrangement, the Fund's only business will be the business currently carried on by Premium;
 11. the Fund will be a "successor issuer" to Premium, as defined in NI 44-101, given that it is acquiring the current business of Premium through a statutory plan of arrangement;
 12. the Fund will adopt Premium's current annual information form as its own annual information form; and
 13. immediately following the closing of the Arrangement, and without regard to the Prospectus Offering, the Fund will have sufficient issued capital to satisfy the market value requirements in NI 44-101.

Decision

- ¶ 4 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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that

- (a) the Fund complies with section 2.8 of NI 44-101, other than items 2 and 3;
- (b) the Prospectus Offering and the Arrangement close simultaneously; and
- (c) the Units are listed and posted for trading on an exchange in Canada.

Martin Eady, CA
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British Columbia Securities Commission