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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements to allow a limited purpose trust (that is not reporting in all jurisdictions), 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, 76

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

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

AND

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

AND

IN THE MATTER OF PARKLAND INCOME FUND

MRRS DECISION DOCUMENT

1. WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory (the “Jurisdictions”) has received an application from Parkland Income Fund (the “Fund”) for a decision under the securities legislation (the “Legislation”) of the Jurisdictions that the requirements under the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”), will not apply in respect of certain trades or distributions of securities to be made in connection with a distribution reinvestment plan (the “Plan”) relating to units (the “Units”) in the Fund;

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2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (the "System"), the Alberta Securities Commission is the principal regulator for the application;
3. AND WHEREAS the Fund has represented to the Decision Makers that:
 - 3.1 Parkland Industries Ltd. ("Parkland") is a corporation incorporated under the *Business Corporations Act* (Alberta);
 - 3.2 Parkland, a wholly owned subsidiary of Parkland and affiliated companies, entered into a plan of arrangement (the "Arrangement") pursuant to which the shareholders of Parkland became holders of Units in the Fund or holders of Class B limited partnership units (the "Rollover LP Units") of Parkland Holdings Limited Partnership ("Holdings LP");
 - 3.3 as a result of the Arrangement, the shares of Parkland were delisted from trading on TSX Inc. ("TSX") and Parkland has made application to cease to be a reporting issuer, or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;
 - 3.4 the Fund is an open-ended limited purpose trust formed under the laws of the Province of Alberta under a declaration of trust (the "Fund Declaration of Trust") dated April 30, 2002;
 - 3.5 the Fund is authorized to issue an unlimited number of Units of which there were 5,196,893 Units outstanding as of July 1, 2002;
 - 3.6 there were also 6,929,820 Rollover LP Units outstanding as of July 1, 2002, each of which is indirectly exchangeable for Units on a one for one basis;
 - 3.7 the Fund holds all of the outstanding units ("Trust Units") and notes ("Trust Notes") of Parkland Investment Trust (the "Trust");
 - 3.8 the Trust owns all of the Class A limited partnership units of Holdings LP;
 - 3.9 Holdings LP holds 99.9% of the participating LP units of Parkland Industries Limited Partnership ("Industries LP"), all of the shares of Parkland and all of the notes of Parkland issued pursuant to the Arrangement;

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- 3.10 Parkland is the general partner of Industries LP and holds a 0.1% equity interest in Industries LP in its capacity as general partner, as well as all of the preferred LP units in Industries LP;
- 3.11 Industries LP currently carries on the business historically carried on by Parkland and its subsidiaries;
- 3.12 the Fund is an electronic filer under National Instrument 13-101, SEDAR;
- 3.13 on the effective date of the Arrangement, June 28, 2002, the Fund became a reporting issuer in British Columbia, Alberta, Saskatchewan, and Ontario;
- 3.14 the Units are listed for trading on the TSX;
- 3.15 under the terms of the Fund Declaration of Trust, the Fund will make monthly distributions of distributable income, if any, to the holders ("Unitholders") of Units;
- 3.16 the amount of cash to be distributed to the Unitholders monthly per Unit will generally be equal to a pro rata share of all amounts received by the Fund in each month, including without limitation, interest payments and principal repayments on the Trust Notes and distributions on or in respect of Trust Units, less:
 - 3.16.1 costs and expenses of the Fund; and
 - 3.16.2 any amounts which have become payable in cash by the Fund relating to the redemption of Units;
- 3.17 at the option of the trustees of the Fund, the distributions payable may include additional Units or fractions of Units, if necessary;
- 3.18 the Fund's income is initially expected to consist of the interest income on the principal amount of the Trust Notes and distributions (if any) received on the Trust Units;
- 3.19 the Fund may make additional distributions in excess of the monthly distributions during the year as the trustees of the Fund may determine;
- 3.20 a Unitholder may elect at any time to participate in the Plan;

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- 3.21 distributions paid on any Units held within the Plan will be applied to acquire:
 - 3.21.1 additional Units ("Additional Units") from treasury; or
 - 3.21.2 additional Units on the market;
- 3.22 the acquisition of Units under the Plan will be made either on the market at the prevailing market price or issued from treasury at a price equal to the 10 day weighted average trading price of the Units, whichever price is lower;
- 3.23 no fees or commissions will be payable by Unitholders in connection with the acquisition of additional Units under the Plan;
- 3.24 under the Plan, Unitholders do not have the option of making cash payments to purchase Additional Units;
- 3.25 the Fund may, in its discretion, limit the number of Units available to Unitholders under the Plan;
- 3.26 a Unitholder may terminate its participation in the Plan at any time by submitting a termination form to the Plan agent (the "Plan Agent");
- 3.27 the Fund reserves the right to amend, suspend or terminate the Plan at any time;
- 3.28 the Plan is open to participation by all Unitholders, other than residents and citizens of the United States of America;
- 3.29 the Plan Agent will be purchasing Units from the Fund only in accordance with the mechanism described in the Plan;
- 3.30 the distribution of Additional Units by the Fund under the Plan cannot be made in reliance on certain existing exemptions from the Registration Requirement and Prospectus Requirement contained in the Legislation as the Plan involves the reinvestment of distributions of distributable income of the Fund and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus;
- 3.31 the distribution of Additional Units by the Fund under the Plan cannot be made in reliance on exemptions from the Registration Requirement and Prospectus Requirement contained in the Legislation for distribution

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reinvestment plans of mutual funds, as the Fund is not a “mutual fund” as defined in the Legislation, since the holders of Units 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;

4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (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;
6. THE DECISION of the Decision Makers under the Legislation is that the Registration Requirement and the Prospectus Requirement will not apply to trades and distributions by the Fund of Additional Units under the Plan provided that:
 - 6.1 at the time of the trade or distribution, the Fund is a reporting issuer in a jurisdiction listed in Appendix B of Multilateral Instrument 45-102, *Resale of Securities* (“MI 45-102”) and is not in default of any of the requirements of the Legislation;
 - 6.2 no sales charge is payable by the Unitholder in respect of the trade or distribution;
 - 6.3 the Fund has caused to be sent annually to the person or company to whom the Additional Units are issued, not more than 12 months before the trade or distribution, a statement describing:
 - 6.3.1 their right to withdraw from the Plan; and
 - 6.3.2 instructions on how to exercise the right referred to in paragraph 6.3.1 above;
 - 6.4 disclosure of the initial distribution of Additional Units under this Decision is made to the relevant Jurisdictions by providing particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:
 - 6.4.1 an information circular or take-over bid circular filed in accordance with the Legislation; or

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6.4.2 a letter filed with the Decision Maker in the relevant 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 Additional Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Additional Units so traded in any month exceeds 1% of the Units outstanding at the beginning of the month in which the Additional 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 the first trade in Additional Units acquired under this Decision will be deemed to be a distribution or a primary distribution to the public under the Legislation unless:

6.5.1 except in Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied, except that for the purposes of determining the period of time that the Fund has been a reporting issuer under section 2.6 of MI 45-102 the period of time that Parkland was a reporting issuer immediately before the Arrangement may be included;

6.5.2 in Québec,

6.5.2.1 the first trade (alienation) of Additional Units is made on an organized market outside of Québec or upon the Fund becoming a reporting issuer in Québec and having, or being deemed to have, complied with the appropriate requirements for more than 12 months immediately preceding the trade or distribution;

6.5.2.2 no unusual effort is made to prepare the market or to create a demand for the Additional Units that are the subject of the trade or distribution;

6.5.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade or distribution;
and

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6.5.2.4 the vendor of the Additional Units, if an insider or officer of the Fund, has no reasonable grounds to believe that the Fund is in default of any requirement of the securities legislation in Québec.

DATED this 28th day of August, 2002.

Glenda A. Campbell, Q.C., Vice-Chair

James E. Allard, Member