

# 2004 BCSECCOM 131

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the provisions that a mutual fund may not knowingly make or hold an investment in a person in which the mutual fund is a substantial security holder, provided that the investment is an eligible investment under the *Income Tax Act* (Canada) and the *Community Small Business Investment Funds Act* (Ontario)

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 120(2)(c), 123

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

## **IN THE MATTER OF QUORUM EXPANSION CAPITAL FUND INC.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Quorum Expansion Capital Fund Inc. (the “Fund”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation that prohibits a mutual fund from knowingly making or holding an investment in a person or company which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder (the “Conflict Provisions”) shall not apply to the Fund;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Saskatchewan Financial Services Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

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

1. The Fund is a corporation incorporated under the *Canada Business Corporations Act* by articles of incorporation dated December 17, 2003;
2. The Fund has been registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) (the "Ontario Act"). The Fund will not be applying for registration as a labour sponsored venture capital corporation, or similar concept, under the legislation of any province other than Ontario;
3. The Fund has applied to be registered as a labour sponsored venture capital corporation under the *Income Tax Act* (Canada) (the "Tax Act") and anticipates being registered as such in February 2004;
4. The Fund is a mutual fund pursuant to the securities legislation of the Jurisdictions, and intends to distribute securities in each of the provinces of Canada except Quebec (the "Prospectus Jurisdictions") pursuant to a final prospectus. On December 29, 2003, the Fund filed a preliminary prospectus in each of the Prospectus Jurisdictions (the "Prospectus");
5. The Fund will become a "reporting issuer" or equivalent under applicable securities legislation in each of the Prospectus Jurisdictions that have this concept when its final prospectus is receipted by each of the Decision Makers in the Prospectus Jurisdictions;
6. The Fund will invest in small and medium-sized eligible Canadian businesses with the objective of achieving capital appreciation as well as interest and dividend income. The Fund's investment focus will be on expansion-stage investments in eligible Canadian businesses that the Manager believes are financially stable with both a proven business model and a customer base. Further, investments will be sought in companies which have both strong growth prospects and a superior market position relative to the competition;
7. The authorized capital of the Fund consists of an unlimited number of Class A shares, none of which are issued nor outstanding and 25,000 Class B shares, of which 100 are issued and outstanding as of the date hereof and are owned by the sponsor of the Fund, The Hotel, Hospitality and Casino Workers Union (the "Sponsor"). The Class A shares will be offered for sale on a continuous basis at the net asset value per share, and will be qualified by prospectus for sale in all of the Prospectus Jurisdictions;
8. The Fund's securities are not listed on any exchange;

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9. The Fund was formed and organized by the Sponsor;
10. As a labour sponsored investment fund under the Ontario Act, the Fund's investment objectives and redemption restrictions will be governed by the Ontario Act and the Tax Act. It is recognized in subsection 240(1) of regulation 1015 promulgated under the *Securities Act* (Ontario) R.S.O. 1990, c. S.5, (the "Ontario Regulation") that the rules that govern conventional mutual funds are inappropriate for labour sponsored investment funds, and as such, the Ontario Regulation relieves labour sponsored investment funds from many of the rules applicable to conventional mutual funds, including the Conflict Provisions;
11. Since the Fund is filing a prospectus in each of the Jurisdictions, it must obtain relief similar to that provided by the Ontario Regulation in order to allow it to fulfill its mandate;
12. The Fund's investment mandate and the Ontario Act allow the Fund to make and hold investments in a person or company in which it is a "substantial security holder", within the meaning of the Conflict Provisions; and
13. The directors of the Fund are of the opinion that it may be in the Fund's best interest to make and hold investments in issuers in which the Fund is a "substantial security holder", as defined in the Legislation, and confirm that the making and holding of these investments will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund;

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

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;

THE DECISION of the Decision Makers under the Legislation is that the Conflict Provisions shall not apply to the Fund provided that the investment is an eligible investment for the Fund under the Ontario Act and the Tax Act.

DATED January 29, 2004.

Barbara Shourounis  
Director, Securities Division  
Saskatchewan Financial Services Commission