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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from section 2.1 of National Instrument 81-105 *Mutual Fund Sales Practices* granted to a labour sponsored investment fund corporation to permit it to pay certain specified distribution costs out of fund assets, subject to certain conditions

Applicable British Columbia Provisions

National Instrument 81-105 *Mutual Fund Sales Practices*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND 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, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the Jurisdictions) has received an application from Quorum Expansion Capital Fund Inc. (the Fund) for a decision under section 9.1 of National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105) that the prohibition contained in section 2.1 of NI 81-105 against the making of certain payments by the Fund to participating dealers shall not apply to the Fund;

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

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

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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 applied to be 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).
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 for the Province of 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 the 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 an established 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 for sale in all of the Prospectus Jurisdictions.
8. The Fund was formed and organized by the Sponsor.

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9. As is disclosed in the Fund's Prospectus, investors who purchase Class A shares will not pay any sales commissions directly. The Fund proposes to pay the following distribution costs on behalf of the investors (collectively, the Distribution Costs):
 - (a) a sales commission (the Sales Commission) to participating dealers in the amount of 6% of the subscription price derived on the sale of each Class A share to the dealer originating such subscription;
 - (b) a monthly servicing commission (the Servicing Commission) to participating dealers of 1/12 of 0.50% of the total net asset value of Class A shares held by such participating dealer's clients, paid monthly or quarterly depending on the dealer; and
 - (c) the reimbursement of co-operative marketing expenses (the Co-op Expenses) incurred by certain dealers in promoting sales of the Class A Shares, pursuant to co-operative marketing agreements the Fund will enter into with such dealers from time to time.
10. The structural aspects of the Fund relating to the payment of commissions are consistent with the legislative requirements contemplated under the Ontario Act. Gross investment amounts will be paid to the Fund as opposed to, for example, first deducting a commission and remitting the net investment amount to the Fund, in order to ensure that the entire amount paid by an investor is eligible for applicable federal, and in the case of Ontario, provincial tax credits which arise on the purchase of the Class A shares of the Fund.
11. Due to the structure of the Fund, the most tax efficient way for the Sales Commission and Servicing Commission to be financed is for the Fund to pay them directly.
12. The payment of commissions on the sale of Class A shares by the Fund is an event contemplated under the Ontario Act and the Tax Act.
13. As other labour sponsored investment funds have been granted this relief, requiring investors to pay the Distribution Costs would put the Fund at a permanent and serious competitive disadvantage with its competitors.
14. The Fund undertakes to comply with all other provisions of NI 81-105. In particular, the Fund undertakes that all Distribution Costs paid by it will be compensation permitted to be paid to participating dealers under NI 81-105.

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15. The Fund will in its financial statements expense the Distribution Costs in the fiscal period when they are incurred.

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 section 9.1 of NI 81-105 is that the Fund shall be exempt from section 2.1 of NI 81-105 to permit the Fund to pay the Distribution Costs, provided that:

1. The Distribution Costs are otherwise permitted by, and paid in accordance with, NI 81-105;
2. The Distribution Costs are being included in the Fund's calculation of its management expense ratio;
3. The summary section of the prospectus of the Fund will have full, true and plain disclosure explaining to investors that they pay the Distribution Costs indirectly, as the Fund pays the Distribution Costs using investors' subscription proceeds. This summary section must be placed within the first 10 pages of the prospectus; and
4. This exemption shall cease to be operative on November 30, 2004.

Dated February 3, 2004

Paul M. Moore

Paul K. Bates