

2002 BCSECCOM 705

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to an issuer from requirement to deliver annual financial statements to security holders, subject to certain conditions – short time period between filing of prospectus and issuer's year-end

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 91(1)(b)

Securities Rules, B.C. Reg. 194/97, s. 149

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, QUÉBEC, SASKATCHEWAN, MANITOBA, 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 HIGH INCOME PREFERRED SHARES CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from High Income Preferred Shares Corporation (the "Company") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the Company be exempted from delivering to security holders annual financial statements for the period ended June 30, 2002 and be exempted from preparing, filing and delivering to its security holders an annual report, where applicable, for the period ended June 30, 2002, as would otherwise be required pursuant to applicable Legislation;

AND WHEREAS pursuant to 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 Company has represented to the Decision Maker that:

1. The Company was incorporated under the laws of Canada on April 26, 2002. The fiscal year-end of the Company is the last day of June in each calendar year.

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2. The Company is authorized to issue an unlimited number of Class A Shares, Equity Shares, Series 1 Shares and Series 2 Shares of which, as at June 20, 2002, 1,000 Class A Shares, 1,260,000 Equity Shares, 1,260,000 Series 1 Shares and 1,260,000 Series 2 Shares are outstanding. The Series 1 Shares, Series 2 Shares and Equity Shares of the Company are together referred to as the “Offered Shares”.
3. The Company became a reporting issuer or the equivalent in each of the Jurisdictions by virtue of it filing with the securities regulatory authority in each of the provinces of Canada a long form prospectus dated May 31, 2002 (the “Prospectus”) qualifying the issuance of up to 2,775,324 Series 1 Shares, up to 2,775,324 Series 2 Shares and up to 2,775,324 Equity Shares (collectively, the “Offering”) (plus up to 5% of the number of each of the Series 1 Shares, the Series 2 Shares and the Equity Shares issued at the closing of the Offering).
4. On June 20, 2002, the Company issued 1,260,000 Series 1 Shares, 1,260,000 Series 2 Shares and 1,260,000 Equity Shares at an issuance price of \$25.00 per Series 1 Share, \$14.70 per Series 2 Share and \$3.54 per Equity Share at the closing of the Offering. The Series 1 Shares and Series 2 Shares were listed on The Toronto Stock Exchange on June 19, 2002.
5. The principal undertaking of the Company is the holding of (i) a diversified portfolio (the “Managed Portfolio”) consisting principally of equity securities issued by American companies that have a market capitalization of greater than U.S.\$2 billion or companies which form part of the Standard & Poor’s 500 Composite Stock Price Index, equity shares of Canadian public companies which form part of the S&P/TSX 60 Index, units or similar equity securities of ongoing business income funds, pipeline/energy income funds, power generation income funds and real estate investment trusts and debt securities that are rated to be at least investment grade and (ii) a portfolio of equity securities agreed upon by the Company and an affiliate of Canadian Imperial Bank of Commerce that the Company will acquire with approximately 32% of the gross proceeds of the Offering.
6. The Offered Shares are redeemable at the option of the holder on a monthly basis at a price computed by reference to the value of a proportionate interest in the net assets of the Company. As a result, the Company is a “mutual fund” under the securities legislation of certain provinces of Canada (excluding the Province of Québec).

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7. The Prospectus included an audited balance sheet of the Company as at May 31, 2002 and an unaudited pro forma balance sheet as at May 31, 2002 prepared on the basis of the completion and sale of up to 2,775,324 Series 1 Shares, up to 2,775,324 Series 2 Shares and up to 2,775,324 Equity Shares, the maximum number of Offered Shares of the Company being qualified for distribution by the Prospectus. On June 20, 2002, the Company actually issued 1,260,000 Series 1 Shares, 1,260,000 Series 2 Shares and 1,260,000 Equity Shares pursuant to the Offering. A press release was issued by the Company on June 20, 2002 announcing to the public the actual number of Offered Shares that were issued by the Company pursuant to the Offering.
8. Although the Company came into existence on April 26, 2002, up to the time of the closing of the Offering, the Company had no significant assets or operations. The Company had only six business days of operations after the closing of the Offering prior to the end of the period for which the annual financial statements and annual report, where applicable, would be required.
9. The benefit to be derived by the security holders of the Company from receiving the annual financial statements and annual report, where applicable, would be minimal given (i) the extremely short period from the date of the Prospectus to the end of the applicable period; (ii) that the Company had not yet fully invested its funds by the end of the applicable period; (iii) the disclosure already provided in the Prospectus; and (iv) there were no material changes in the affairs of the Company from June 20, 2002 to the date of this application.
10. The expense to the Company of printing and delivering to its security holders the annual financial statements and of preparing, filing and delivering to its security holders an annual report, where applicable, would not be justified in view of the minimal benefit to be derived by the security holders from receiving such annual financial statements and annual report, where applicable, and would be detrimental to security holders in light of the unnecessary costs that would as a consequence be incurred by the Company.

AND WHEREAS pursuant to 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;

IT IS HEREBY DECIDED by the Decision Makers pursuant to the Legislation that the Company is exempted from delivering to its security holders annual

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audited financial statements for the period ended June 30, 2002 and is exempted from preparing, filing and delivering to its security holders an annual report, where applicable, for the period ended June 30, 2002 provided that,

- (i) the Company sends a copy of such annual financial statements to any security holder of the Company who so requests.

DATED at Toronto this 2nd day of August, 2002

Howard I. Wetston

Robert L. Shirriff