

# 2005 BCSECCOM 61

January 21, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 Financial Statements & Report - Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports - An issuer wants relief from the requirement to deliver audited annual financial statements for a particular year - The issuer filed a final prospectus with audited financials dated prior to its year end; the issuer had limited operations since the date of such audited financial statements and its year end; the issuer's audited annual financials will not disclose any material information that is not already disclosed in the audited financial statements in the prospectus

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

*Securities Rules*, B.C. Regulation 194/97, s. 149

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

and

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

and

In the Matter of Lawrence Payout Ratio Trust (the Filer)

## **MRRS Decision Document**

## **Background**

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 requirement contained in the Legislation to deliver annual financial statements and, where applicable, an annual report to security holders, shall not apply to the Filer for its fiscal year ended December 31, 2004 (the Requested Relief).

## 2005 BCSECCOM 61

Under the Mutual Reliance Review System (MRRS) for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is an investment trust established under the laws of the province of Ontario pursuant to a declaration of trust dated November 29, 2004. The fiscal year-end of the Filer is December 31 in each calendar year, with its first fiscal year ending on December 31, 2004 (the 2004 Financial Year). Lawrence Asset Management Inc. is the trustee, manager and investment advisor and portfolio manager of the Filer.
2. The address and principal office of the Issuer is 70 York Street, Suite 1500, Toronto, Ontario M5J 1S9.
3. The Filer is authorized to issue an unlimited number of units each of which represents an equal undivided beneficial interest in the net assets of the Filer.
4. The Filer 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 Jurisdictions a long form prospectus dated November 29, 2004 (the Prospectus) qualifying the issuance of up to 12,500,000 units. A receipt for the Prospectus was issued on November 30, 2004 by the Ontario Securities Commission on behalf of the Jurisdictions pursuant to the provisions of National Policy 43-201 of the Canadian Securities Administrators.
5. On December 16, 2004, the Filer issued 12,000,000 units at an issue price of \$10.00 per unit at the closing of the offering. The units were listed on the Toronto Stock Exchange on December 16, 2004.
6. The Filer has been created in order to pay unit holders monthly cash distributions and to preserve the net asset value per unit. The net proceeds of the offering together with any amounts drawn on the Filer's loan facility will

## 2005 BCSECCOM 61

be invested on a passive basis in an equally weighted diversified portfolio (the Portfolio) of securities of 40 income funds and trusts allocated among business and industrial funds, commodity based royalty trusts, real estate investment trusts and pipeline and power generation funds in accordance with the fixed sector weightings as specified in the declaration of trust that have the lowest payout ratio within each income fund sector as set out above, as determined by the manager of the Filer. To qualify for inclusion in the portfolio, each of the income funds must, at the time of investment and on January 1 and July 1 of each calendar year (i) have a market capitalization greater than \$200 million, (ii) have not reduced or suspended distributions for the previous 24 months, and (iii) have had its securities listed for trading on the Toronto Stock Exchange for at least 12 months.

7. The Prospectus included an audited balance sheet of the Filer as at November 29, 2004 and a compilation report on *pro forma* statement of financial position of the Filer as at November 29, 2004. As such, the financial position of the Filer as at December 31, 2004 was substantially reflected in the financial statements contained in the Prospectus.
8. A press release was issued by the Filer on December 16, 2004 announcing to the public the actual number of units that were issued by the Filer on the closing of the offering.
9. A press release was issued by the Filer on December 29, 2004 announcing to the public that it had completed the issuance of an additional 1,000,000 transferable, redeemable units of the Filer for aggregate gross proceeds of \$10,000,000 pursuant to the over-allotment option granted to the Filer's agents in its recently completed initial public offering.
10. The benefit to be derived by the unit holders of the Filer from receiving the annual financial statements and, where applicable, the annual report, would be minimal given (i) the extremely short period for the 2004 Financial Year; (ii) that the Filer will not yet have fully invested its funds by the end of the 2004 Financial Year; (iii) the disclosure already provided in the Prospectus; and (iv) there were no material changes in the affairs of the Filer since the date of the prospectus, except the closing of the offering and over-allotment option.
11. The expense to the Filer of printing and delivering the annual financial statements, and, where applicable, the annual report, to its unit holders for the 2004 Financial Year, would not be justified in view of the minimal benefit to be derived by the unit holders from receiving such annual financial statements and annual report.

## 2005 BCSECCOM 61

12. It would not be prejudicial to the public interest for the Decision Makers to grant the Requested Relief.

### **Decision**

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 pursuant to the Legislation is that the Requested Relief is granted provided that,

- (i) the Filer issue, and file on SEDAR, a press release informing unit holders of their right to receive the Filer's annual financial statements and annual report for the 2004 Financial Year upon request; and
- (ii) the Filer send a copy of such annual financial statements and annual report for the 2004 Financial Year to any unit holder of the Filer that so requests.

Suresh Thakrar  
Commissioner

Robert Davis  
Commissioner  
Ontario Securities Commission