

# **2002 BCSECCOM 1022**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - closed-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - first trade in additional units deemed a distribution unless made in compliance with paragraphs 2 through 5 of subsection 2.6(4) of MI 45-102

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 48 and 76

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

**AND**

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

**AND**

**IN THE MATTER OF BROMPTON STABLE INCOME FUND**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and Northwest Territories (the "Jurisdictions") has received an application from Brompton STABLE Income Fund (the "Fund") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation"), that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades in units of the Fund pursuant to a distribution reinvestment plan (the "Plan");

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AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications ("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 or in Québec Commission Notice 14-101;

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

1. The Fund is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by an amended and restated declaration of trust dated November 21, 2002.
2. The beneficial interests in the Fund are divided into a single class of limited voting units (the "Units"). The Fund is authorized to issue an unlimited number of Units. Each Unit represents a Unitholder's proportionate undivided beneficial interest in the Fund.
3. The Fund has filed a final long form prospectus dated November 21, 2002 (the "Prospectus") and has become a reporting issuer in each province and territory in Canada upon obtaining a receipt for its Prospectus dated November 22, 2002.
4. The Fund is not a "mutual fund" as defined in the Legislation because the holders of Units ("Unitholders") 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 as contemplated in the definition of "mutual fund" contained in the Legislation.
5. Application has been made to list the Units for trading on the Toronto Stock Exchange.
6. The investment objectives of the Fund are to:
  - (a) provide Unitholders with monthly Distributions initially targeted to yield approximately 7.5% per annum based on the offering price of the Units;
  - (b) maintain a Standard & Poor's SR-1 stability rating; and
  - (c) preserve the Net Asset Value per Trust Unit.

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7. The Fund currently intends to make cash distributions of distributable income ("Distributions") on the tenth business day of each month (each a "Distribution Date") to Unitholders of record on the last business day of the immediately preceding calendar month with the first Distribution to be made in the second month following the month in which the closing of the initial public offering of Units occurs.
8. The Fund intends to establish the Plan pursuant to which Unitholders may, at their option, invest cash Distributions paid on their Units in additional Units ("Plan Units"). The Plan will not be available to Unitholders who are not Canadian residents.
9. Distributions due to participants who opt to participate in the Plan ("Plan Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the Plan (in such capacity, the "Plan Agent") and applied to purchase Plan Units. Plan Units purchased under the Plan will be purchased by the Plan Agent directly from the Fund or in the market in the following manner:
  - (a) if the weighted average trading price on the TSX (or such other stock exchange on which the Units are listed, if the Units are no longer listed on the TSX) for the 10 trading days immediately preceding the relevant Distribution Date, plus applicable commissions and brokerage charges, (the "Market Price") is less than the Net Asset Value per Fund Unit (as determined in accordance with the Plan Agreement) on the Distribution Date, the Plan Agent shall apply the Distribution either to purchase Plan Units in the market or from treasury in accordance with subparagraph (c) below;
  - (b) if the Market Price is equal to or greater than the Net Asset Value per Unit on the relevant Distribution Date, the Plan Agent shall apply the Distribution to purchase Plan Units from the Fund through the issue of new Units at a purchase price equal to the higher of (i) the Net Asset Value per Unit on the relevant Distribution Date and (ii) 95% of the Market Price on the relevant Distribution Date;
  - (c) purchases of Plan Units made by the Fund in the market pursuant to subparagraph (a) above will be made by the Plan Agent on an orderly basis during the 10 trading day period following the Distribution Date and the price paid for those Plan Units will not exceed 115% of the Market Price of the Units on the relevant Distribution Date. On the expiry of such 10 day period, the unused part, if any, of the Distributions attributable to the Plan Participants will be used to purchase Plan Units

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from the Fund at a purchase price equal to the higher of (i) the Net Asset Value per Trust Unit on the relevant Distribution Date and (ii) 95% of the Market Price on the relevant Distribution Date.

10. The Plan Agent will be purchasing Plan Units only in accordance with the mechanisms described in the Plan and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on changes in the Net Asset Value per Unit.
11. The Fund will invest in the assets with the objective of maintaining a Standard & Poor's SR-1 stability rating which rating will be based on the composition of the Fund's portfolio of income securities, investment objectives, investment restrictions and investment strategy. An SR-1 stability rating represents S&P's current opinion that the Units have the highest level of expected sustainability and lowest level of expected variability in the distributions of the Fund relative to the distributions of other rated Canadian income funds. Accordingly, the Net Asset Value per Unit should be less volatile than that of a typical equity fund, and the potential for significant changes in the Net Asset Value per Unit over short periods of time is moderate.
12. The amount of Distributions that may be reinvested in Plan Units issued from treasury is small relative to the Unitholders' equity in the Fund. The potential for dilution arising from the issuance of Units by the Fund at the Net Asset Value per Unit on a Distribution Date is not significant.
13. The Plan is open to participation by all Unitholders other than Unitholders who are non-residents of Canada, so that any Unitholder can ensure protection against potential dilution, albeit insignificant, by electing to participate in the Plan.
14. No commissions, service charges or brokerage fees will be payable by Plan Participants in connection with the Plan.
15. Pursuant to the Plan, Plan Participants may also make cash payments ("Optional Cash Payments") which will be invested in Units by the Plan Agent. Any Plan Participant may invest a minimum of \$100 per Optional Cash Payment with a maximum \$20,000 per calendar year per Plan Participant. Optional Cash Payments will be invested on the same basis as Distributions. Optional Cash Payments must be received by the Plan Agent at least five business days prior to a Distribution Date. Optional Cash Payments received less than five business days prior to a Distribution Date will be held by the Plan Agent until the next Distribution Date.

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16. Plan Units purchased under the Plan will be registered in the name of the Canadian Depository for Securities Limited ("CDS") and credited to the account of the participant in the CDS depository service (the "CDS Participant") through whom a Unitholder holds Units.
17. Each Unitholder must elect to participate in the Plan on a monthly basis through the applicable CDS Participant and will not be required to participate in the Plan in respect of any particular Distribution unless a Unitholder has specifically elected to do so. The Fund has the right to amend, suspend or terminate the Plan at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the Plan Participants. All Plan Participants will be sent notice of any such amendment, suspension or termination via the applicable CDS Participant.
18. The distribution of the Plan Units by the Fund pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the Plan involves the reinvestment of income distributed by the Fund and not the reinvestment of dividends, interest, capital gains or distributions out of earnings or surplus of the Fund.
19. The distribution of the Plan Units by the Fund pursuant to the Plan cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Fund is not a "mutual fund" as defined in the Legislation.

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

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades in Plan Units by the Fund to the Plan Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the Fund is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the distributions;

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- (c) the Fund has caused to be sent to the person or company to whom the Plan Units are traded, not more than 12 months before the trade, a statement describing:
  - (i) their right to elect to participate in the Plan on a monthly basis to receive Plan Units instead of cash on the making of a distribution of income by the Fund; and
  - (ii) instructions on how to exercise the election referred to in (i);
- (d) in the financial year during which the trade takes place, the aggregate number of Plan Units issued pursuant to the Cash Payment Option of the Plan before the trade plus the aggregate number of Plan Units issued in the trade, shall not exceed 2% of the aggregate number of Units outstanding at the commencement of that financial year;
- (e) except in Québec, the first trade in Plan Units acquired pursuant to this Decision in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions set out in paragraphs 2 through 5 of subsection 2.6(4) of Multilateral Instrument 45-102 0- *Resale of Securities* are satisfied;
- (f) in Québec, the first trade (alienation) in Plan Units acquired pursuant to this Decision will be a distribution unless:
  - (i) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation;
  - (ii) no extraordinary commission or other consideration is paid in respect of the alienation;
  - (iii) if the seller of the securities is an insider of the Fund, the seller has no reasonable grounds to believe that the Fund is in default of any requirement of securities legislation; and
- (g) disclosure of the distribution of the Plan Units to Plan Participants is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Plan Units, the number of such Plan Units and the purchase price paid or to be paid for such Plan Units in:
  - (i) an information circular or take-over bid circular filed in accordance with the Legislation; or

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- (ii) a letter 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 Plan Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Plan Units so traded in any month exceeds 1% of the Units outstanding at the beginning of a month in which the Plan Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction in respect of that month within ten days of the end of such month.

DATED December 11, 2002

Howard I. Weston

Theresa McLeod