

# 2008 BCSECCOM 25

November 28, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – *Securities Act*, s. 88 – An order deeming the issuer to have ceased to be a reporting issuer - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer is a investment trust in the process of winding up; the issuer will have made a final distribution of assets to unitholders and received its final tax clearance; no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 88

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Ontario, Québec  
and Newfoundland and Labrador  
(the “Jurisdictions”)

and

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

and

In the Matter of  
FCMI Precious Metals Fund Inc.  
(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 Filer be deemed to have ceased to be a reporting issuer in each of the Jurisdictions (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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- (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 a corporation subsisting under the *Business Corporations Act* (Ontario). The principal office of the Filer is located in Ontario.
2. The Filer is a commodity pool pursuant to National Instrument 81-104 – *Commodity Pools*.
3. The Filer is a reporting issuer in all of the Jurisdictions.
4. Friedberg Mercantile Group Ltd. is the manager of the Filer (the “Manager”).
5. In 1983, the Filer was created as a closed-end investment fund when it completed an initial public offering (the “IPO”) and its Class A shares (the “Class A Shares”) were listed on the Toronto Stock Exchange. The Class A Shares of the Filer were subsequently delisted and a redemption right was provided. Since the IPO, no additional securities of the Filer have been distributed.
6. The Filer currently has approximately 229 securityholders (the “Securityholders”).
7. An affiliate of the Manager is the only Securityholder that holds full voting shares in the capital of the Filer. The remainder of the Securityholders hold partial voting, Class A Shares, which entitle the holders to vote only in respect of select matters. These select matters do not include dissolution of the Filer or approval to convert the portfolio of the Filer to cash and to distribute the net assets to the Securityholders.
8. As of November 20, 2007, the Filer had total net assets of \$1,105,077.

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9. The ongoing operating expenses of FCMI consist mainly of accounting and auditing fees, legal fees in connection with annual meetings and director's fees. The increasing management expense ratio has reached the point where it has become very difficult to achieve a positive increase in net asset value ("NAV") per share. As a result, the Filer has determined that it is in the best interests of the Securityholders that an orderly wind-up of the Filer takes place.
10. The Filer intended to wind-up prior to November 30, 2007 but cannot do so until it receives a tax clearance certificate. The tax clearance certificate is not expected until February 2008.
11. On November 8, 2007, the Filer issued a press release announcing that the Manager has liquidated the portfolio investments of the Filer and that the assets will be distributed to the Securityholders.
12. Prior to November 30, 2007, the Filer will distribute all of its assets (other than amounts being paid to satisfy amounts owing by the Filer to service providers) to the Securityholders by way of a special distribution.
13. The special distribution will be made to Securityholders on a pro rata basis taking into account the number of Class A Shares held by each Securityholder. The value of each pro rata distribution will be based on the NAV of the Filer as of a date immediately prior to the special distribution. The calculation of NAV will be in accordance with the articles of the Filer and National Instrument 81-106 *Investment Fund Continuous Disclosure*.
14. Prior to November 30, 2007, the Manager will provide written notice under section 5.8(2) of NI 81-102 (the "Notice") to the Securityholders that the Filer will be wound up no sooner than 60 days from when the Notice is received. The Notice will be provided with the special distribution.
15. Once the special distribution has been made, Securityholders will have received all of the assets to which they are entitled from the Filer and all management fees paid by the Filer will cease.
16. The Filer is not in default of its obligations under the Legislation as a reporting issuer other than the requirement to file compliance reports under sections 6.7 and 12.1 of National Instrument 81-102 *Mutual Funds* ("NI 81-102"). Through inadvertence and because the Filer became a mutual fund after it ceased distribution, these reports were not filed.

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17. No securities of the Filer are traded on a marketplace, as defined in National Instrument 21-101 *Marketplace Operation*.
18. Given that the assets of the Filer will be distributed to Securityholders and the Filer will be wound up pending receipt of a tax clearance certificate, the costs to the Filer of remaining a reporting issuer will outweigh any benefit to the Securityholders.

### **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 under the Legislation is that the Requested Relief is granted.

Margot C. Howard  
Commissioner  
Ontario Securities Commission

David L. Knight  
Commissioner  
Ontario Securities Commission