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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from prospectus requirement for a closed-ended investment trust for the sale of units repurchased from existing unit holders under a market purchase program - first trade in repurchased units deemed a distribution unless made in compliance with MI 45-102 – original decision document varied to provide relief from the prospectus requirement for units that are repurchased by the trust by way of redemption at the request of the unit holders, and for relief in connection with the resale of those units

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61, 76 and 171

Multilateral Instrument 45-102 - *Resale of Securities*, ss. 2.6 and 2.8

IN THE MATTER OF SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR AND YUKON

AND

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

AND

IN THE MATTER OF PATHFINDER INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Yukon (the “Jurisdictions”) has received an application from PATHFINDER Income Fund (the “Trust”) for a decision by each Decision Maker (collectively, the “Decision”), under the securities legislation of the Jurisdictions (the “Legislation”), varying the MRRS Decision Document dated February 17, 2003 entitled In the Matter of PATHFINDER Income Fund (the “Original Decision”) which decided 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 final prospectus (the “Registration and Prospectus Requirements”) did not apply to the trades of Units (as defined below) of the Trust which have been repurchased by the Trust pursuant to either the mandatory market purchase program or

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discretionary market purchase program of the Trust (collectively, the “Programs”), nor to the first trade or resale of such repurchased Units (the “Repurchased Units”) which have been distributed by the Trust;

AND WHEREAS the Trust has requested a Decision that the requirement contained in the Legislation to file and obtain a receipt for a preliminary prospectus and final prospectus (the “Prospectus Requirements”) shall not apply to the trades of Units of the Trust which have been repurchased by the Trust pursuant to the Redemption Program (as defined below), nor to the first trade or resale of such repurchased Units which have been distributed by the Trust;

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 TRUST has represented to the Decision Makers that:

1. The Trust is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust made as of September 25, 2002 and amended and restated as of December 1, 2003 (the “Declaration of Trust”).
2. The Trust is not considered to be a "mutual fund" as defined in the Legislation because the holders (“Unitholders”) of its units (“Units”) 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 Trust as contemplated in the definition of "mutual fund" in the Legislation.
3. The Trust became a reporting issuer or the equivalent thereof in the Jurisdictions on September 26, 2002 upon obtaining a receipt for its final prospectus dated September 25, 2002 (the “Prospectus”). As of the date hereof, the Trust is not in default of any requirements under the Legislation.
4. Each Unit represents an equal, undivided interest in the net assets of the Trust and is redeemable at net asset value of the Trust (“Net Asset Value”) per Unit on November 30 of each year commencing in 2003.
5. Each whole Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Trust.

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6. Middlefield PATHFINDER Management Limited, which was incorporated pursuant to the Business Corporations Act (Ontario), is the manager and the trustee of the Trust.
7. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the trading symbol "PAZ.UN".
8. Pursuant to the Declaration of Trust and subject to the Trust's right to suspend redemptions, Units may be surrendered for redemption (the "Redemption Program") by a Unitholder at any time in the month of November of each year to the Trust's registrar and transfer agent, and each Unit properly surrendered for redemption by a Unitholder not later than 5:00 p.m. (Toronto time) on the fifth business day prior to November 30th of such year (the "Redemption Valuation Date") will, subject to an investment dealer finding purchasers for Units properly surrendered for redemption upon the authorization of the Unitholder and at the direction of the Trust, be redeemed by the Trust pursuant to the Redemption Program for a price (the "Redemption Price") equal to the Net Asset Value of the Trust divided by the number of Units then outstanding determined as of the applicable Redemption Valuation Date.
9. A Unitholder who has surrendered Units for redemption will be paid the Redemption Price for such Units by the tenth business day following the Redemption Valuation Date.
10. Purchases of Units made by the Trust under the Redemption Program are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.
11. The Trust desires, and the Declaration of Trust has been amended in accordance with its terms to provide that the Trust shall have the ability, to sell through one or more securities dealers Units purchased by the Trust pursuant to the Redemption Program, in lieu of cancelling such Units and subject to obtaining all necessary regulatory approvals.
12. In order to effect sales of Units purchased by the Trust pursuant to the Redemption Program, the Trust intends to sell, in its sole discretion and at its option, any Units purchased by it under the Redemption Program primarily through one or more securities dealers and through the facilities of the TSX (or such other exchange on which the Units are then listed).
13. The Trust amended its Declaration of Trust in accordance with its terms in order to enable the Trust to resell Units that it acquires pursuant to the

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Redemption Program, in order to benefit and provide added protection to Unitholders.

14. Prospective Purchasers who subsequently acquire such Units will have equal access to all of the continuous disclosure documents of the Trust, which will be filed on SEDAR, commencing with the Prospectus.

AND WHEREAS under the System, this MRRS Decision Document evidences the Decision of each of the Decision Makers;

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 Original Decision is hereby varied as follows:

- (a) All references in the Original Decision to relief from the “Registration and Prospectus Requirements” are deleted and replaced with a reference to the “Prospectus Requirements”.
- (b) Paragraph 1 of the Original Decision is deleted and replaced with the following:

“The Trust is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust made as of September 25, 2002 and amended and restated as of December 1, 2003 (the “Declaration of Trust”).”

- (c) All references in the Original Decision to “Programs” shall include a reference to the Redemption Program;
- (d) All references in the Original Decision to “Repurchased Units” shall include those Units that are purchased by the Trust pursuant to the Redemption Program;
- (e) Paragraph 13 of the Original Decision is deleted and replaced with the following:

“Repurchased Units which the Trust does not sell within 16 months of the purchase of such Repurchased Units will be cancelled.”

Dated January 28, 2004.

Robert W. Korthals

Paul K. Bate