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Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the registration and prospectus requirements to permit the distribution of underlying securities on the redemption of the issuer’s securities – prospectus-level disclosure was provided about the issuers of the underlying securities when the redeemable securities were distributed – issuers of underlying securities deemed to be reporting issuers

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 1(1), 34(1)(a), 48, 61 and 76

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

AND

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

AND

**IN THE MATTER OF GREAT LAKES CARBON INCOME FUND,
CARBON CANADA INC. AND HURON CARBON ULC**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Nunavut and the Northwest Territories (the “Jurisdictions”) has received an application from Great Lakes Carbon Income Fund (the “Fund”), Carbon Canada Inc. (“Carbon Canada”) and Huron Carbon ULC (“Carbon ULC”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- (a) the dealer registration requirement and prospectus requirement do not apply to the distribution of common shares of Carbon Canada (the “Carbon Canada Shares”) and 16% unsecured subordinated notes of Carbon ULC (the “Carbon ULC Notes”) held by the Fund to a holder of the Fund’s trust units (the “Units”) upon a redemption *in specie* of the

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Units effected in accordance with the Fund's declaration of trust dated June 25, 2003, as amended (the "Declaration of Trust"); and

- (b) each of the Carbon Canada and Carbon ULC is deemed or declared to be a reporting issuer in the Jurisdictions (other than Manitoba, Prince Edward Island, Northwest Territories, Nunavut and the Yukon Territory) (the "Reporting Jurisdictions");

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Nova Scotia 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 Agence nationale d'encadrement du secteur financier Notice 14-101;

AND WHEREAS each of the Fund, Carbon Canada and Carbon ULC has represented to the Decision Makers as follows:

1. The Fund is an unincorporated, open-ended, limited purpose trust established under the laws of Ontario pursuant to the Declaration of Trust. Its registered and head office is located in Toronto, Ontario.
2. The authorized capital of the Fund consists of an unlimited number of Units. The initial public offering of 18,500,000 Units was made pursuant to a prospectus dated July 29, 2003 (the "Prospectus"). The Fund is a reporting issuer or the equivalent in each of the jurisdictions in Canada that recognize such a concept and, to the best of its knowledge, information and belief, is not in default of any requirements of securities legislation in any of the jurisdictions in Canada. As at July 8, 2004, there were 21,349,139 Units issued and outstanding.
3. The Fund's assets consist solely of all of the 21,349,139 issued and outstanding Carbon Canada Shares and all of the \$146,455,090.39 principal amount of Carbon ULC Notes issued and outstanding as at July 8, 2004. The Fund may, from time to time, subscribe for additional Carbon Canada Shares and Carbon ULC Notes but, as a "fixed investment trust" for United States federal income tax purposes under U.S. Treasury Regulation section 301.7701-4(c), and consistent with other restrictions contained in the Declaration of Trust, it is precluded from directly owning any other securities or investments.

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4. Through its ownership of Carbon Canada Shares and Carbon ULC Notes, the Fund indirectly owns a 40.45% economic interest in the business of Great Lakes Carbon LLC (the “Company”), a Delaware limited liability company whose business primarily consists of the production of anode and industrial grade calcined petroleum coke.
5. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the symbol “GLC.UN”.
6. Carbon Canada is a corporation incorporated on June 18, 2003 pursuant to the *Business Corporations Act* (Ontario). Its registered and head office is located in Toronto, Ontario.
7. The authorized capital of Carbon Canada consists of an unlimited number of Carbon Canada Shares and no preferred shares. As at July 8, 2004, there were 21,349,139 Carbon Canada Shares and no preferred shares issued and outstanding.
8. Carbon Canada was deemed by a ruling and order of the Ontario Securities Commission dated March 19, 2004 (the “OSC Order”) to be a reporting issuer for the purposes of the Ontario securities law. It is not in default of the securities legislation in Ontario. Carbon Canada is not a reporting issuer or the equivalent in any other jurisdiction in Canada.
9. Carbon Canada is a wholly-owned subsidiary of the Fund and carries on no independent operations. It acts solely as a funding conduit between the Fund and its operating subsidiary entities.
10. The Carbon Canada Shares are listed, but not posted for trading, on the TSX under the symbol “GLX”.
11. The Carbon ULC is an unlimited liability company organized under the laws of Nova Scotia on June 18, 2003. It registered and head office is located in Halifax, Nova Scotia.
12. The authorized capital of Carbon ULC consists of 5,000,000 common shares and no preferred shares. As of July 8, 2004, one common share and no preferred shares were issued and outstanding.
13. Carbon ULC was deemed by the OSC Order to be a reporting issuer for the purposes of Ontario securities law. It is not in default of the securities legislation in Ontario. Carbon ULC is not a reporting issuer or the equivalent in any other jurisdiction in Canada.

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14. Carbon ULC is a wholly-owned subsidiary of GLC Carbon USA Inc. (“GLC Carbon USA”), which is in turn a controlled subsidiary entity of the Fund and Carbon Canada. Carbon ULC carries on no independent operations. It acts solely as a funding conduit between the Fund and its operating subsidiary entities.
15. The Fund’s subsidiary entities have significant U.S.-based operations and, as such, the Fund was established as a “fixed investment trust”. As a fixed investment trust, the Fund is disregarded for U.S. federal income tax purposes, and each holder of Units is treated as directly owning its proportionate share of the Fund’s investments.
16. The Declaration of Trust contains a redemption *in specie* feature whereby holders of Units have the right to tender their Units to the Fund for redemption, with the redemption price paid by a distribution of a proportionate share of the Fund’s assets (being a proportionate number of Carbon Canada Shares and Carbon ULC Notes).
17. The exercise of this redemption right was identified in the Prospectus as being subject to regulatory approval, as no general prospectus exemption would be available to permit the distribution of these securities (as the issuers of the Carbon Canada Shares and Carbon ULC Notes were not then reporting issuers). Moreover, the Prospectus identified that there would be no trading market for the Carbon Canada Shares and Carbon ULC Notes so distributed.
18. The Fund, having determined that it was desirable to ensure that there are no significant trading or other restrictions that would be imposed on a holder of Units that exercised its redemption right to obtain Carbon Canada Shares and Carbon Canada ULC Notes, made an application for listing the Carbon Canada Shares on the TSX.
19. Following receipt of the OSC Order deeming Carbon Canada to be a reporting issuer for the purposes of Ontario securities law, the TSX approved the listing of the Carbon Canada Shares.
20. The Carbon Canada Shares do not satisfy the public distribution requirements established by the TSX and a sufficient trading market in the shares does not presently exist. As such, the Carbon Canada Shares have initially been listed, but not posted for trading, on the TSX until such time as a sufficient number of redemptions *in specie* have occurred.

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21. As a result of the Fund's dependence on cash flows from its subsidiary entities, the Prospectus contained substantially all of the disclosure concerning Carbon Canada and Carbon ULC and their respective direct and indirect investments and operations that would have been included in a prospectus for an initial public offering of Carbon Canada or Carbon ULC securities. This disclosure was sufficient to enable an investor in Units to evaluate its indirect investment in the Fund's subsidiary entities and to understand the *in specie* redemption right and the securities that the investor would directly (rather than indirectly) hold on the exercise of that right.
22. To date, all material information in respect of Carbon Canada, Carbon ULC and their respective subsidiary entities has been reported in the continuous disclosure filings of the Fund in the Jurisdictions and in the continuous disclosure filings of Carbon Canada and Carbon ULC in Ontario.

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 Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the dealer registration requirement and prospectus requirement do not apply to the distribution of the Carbon Canada Shares and the Carbon ULC Notes by the Fund to a holder of Units upon a redemption *in specie* of the Units effected in accordance with the Declaration of Trust, provided that the first trade in the Carbon Canada Shares or Carbon ULC Notes received by a holder of Units under this Decision is deemed to be a distribution or a primary distribution to the public under the Legislation unless:

1. except in Québec, the conditions contained in subsection 2.6(3) of Multilateral Instrument 45-102 - *Resale of Securities* are satisfied; and
2. in Québec:
 - (a) the Fund is a reporting issuer in Québec at the date of such trade;
 - (b) the Fund has been a reporting issuer in Québec for the four months immediately preceding the trade;
 - (c) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

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- (d) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- (e) if the selling security holder is an insider or officer of the Fund, the person has no reason to believe that any of such parties is in default of the Legislation;

AND THE FURTHER DECISION of the Decision Makers (other than the Decision Makers in Manitoba, Prince Edward Island, Northwest Territories, Nunavut and the Yukon Territory) is that each of Carbon Canada and Carbon ULC is deemed or declared to be a reporting issuer in the Reporting Jurisdictions.

DATED this 11th day of August, 2004.

H. Leslie O'Brien