

2002 BCSECCOM 983

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – exemption from the requirement contained in MI 45-102 for a qualifying issuer to have a current AIF filed on SEDAR, subject to certain conditions – issuer is an income fund that has filed a prospectus but has not completed a financial year

Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities* – ss. 1.1 and 4.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, NEWFOUNDLAND AND LABRADOR, NOVA
SCOTIA, NORTHWEST TERRITORIES, NUNAVUT, ONTARIO AND
SASKATCHEWAN**

AND

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

AND

IN THE MATTER OF CLEARWATER SEAFOODS INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Ontario and Saskatchewan (the “Jurisdictions”) has received an application from Clearwater Seafoods Income Fund (the “Fund”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to have a “current AIF” (a “Current AIF”) as defined in Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”) filed on SEDAR to be a “qualifying issuer” (a “Qualifying Issuer”) under MI 45-102 shall not apply to the Fund;

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*;

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

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1. The Fund is an unincorporated open-ended trust established under the laws of Ontario pursuant to a declaration of trust dated June 5, 2002, as amended and restated on July 31, 2002.
2. The head office of the Fund is located at 757 Bedford Highway, Bedford, Nova Scotia, B4A 3Z7.
3. The authorized capital of the Fund is an unlimited number of units and an unlimited number of special trust units, of which 23,287,478 units and 23,381,217 special trust units are outstanding.
4. The principal economic interest of the Fund is the partnership units it holds, indirectly through Clearwater Seafoods Holdings Trust (the "Trust"), in Clearwater Seafoods Limited Partnership (the "Partnership"). The partnership units in the Partnership were purchased by the Fund with the proceeds from the offering pursuant to the Prospectus, as defined below. On the closing of the offering, the Partnership acquired the seafood business (the "Clearwater Seafoods Business") previously carried on by Clearwater Fine Foods Incorporated ("Clearwater"). Clearwater is not a reporting issuer or the equivalent under the Legislation. None of the Fund, the Trust or the Partnership carried on at the time of the offering or currently carries on, directly or indirectly, any business other than the Clearwater Seafoods Business.
5. A decision document pursuant to National Policy 43-201 Mutual Reliance Review for Prospectuses and Annual Information Forms was issued on July 18, 2002 for the Fund's (final) prospectus dated July 17, 2002 (the "Prospectus").
6. Since the Fund had not completed a full financial year, the Prospectus did not include audited financial statements for the Fund's most recently completed financial year. The Prospectus did include audited financial statements of the Clearwater Seafoods Business for the years ended December 31, 2001, 2000, 1999 and 1998.
7. The Fund is a reporting issuer or its equivalent in each of the Jurisdictions. The Fund is not in default of its reporting issuer obligations under the Legislation.
8. The units of the Fund are listed and posted for trading on The Toronto Stock Exchange.

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9. To be a Qualifying Issuer under MI 45-102, the Fund must have a Current AIF that contains audited financial statements for the issuer's most recently completed financial year filed on SEDAR.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (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 under the Legislation is that the requirement contained in the Legislation to have a Current AIF filed on SEDAR in order to be a Qualifying Issuer under MI 45-102 shall not apply to the Fund provided that:

- (a) the Fund files a notice on SEDAR advising that it has filed the Prospectus as an alternative form of annual information form and identifying the SEDAR project number under which the Prospectus was filed;
- (b) the Fund files a Form 45-102F2 on or before the tenth day after the distribution date of any securities certifying that it is a Qualifying Issuer except for the requirement that it have a Current AIF; and
- (c) this Decision expires 140 days after the Fund's financial year ending December 31, 2002.

DATED December 4, 2002.

H. Leslie O'Brien