

2002 BCSECCOM 244

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from prospectus requirement for resale of units issued by a mutual fund under its distribution reinvestment plan

Applicable British Columbia Provisions

Securities Act, RSBC 1996, c. 418, ss. 61, 76
Multilateral Instrument 45-102 *Resale of Securities*, s. 2.6(4)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN AND NOVA SCOTIA

AND

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

AND

IN THE MATTER OF INCOME FINANCIAL PLUS TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan and Nova Scotia (the “Jurisdictions”) has received an application from Income Financial Plus Trust (the “Trust”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) shall not apply to the first trade of units of the Trust (the “Units”) issued under a distribution reinvestment plan (the “Plan”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

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

1. the Trust is an investment trust established under the laws of Ontario and is a “mutual fund” as defined under the Legislation;
2. the Trust became a reporting issuer in each of the Jurisdictions on January 29, 2002 when it filed a prospectus in respect of distributing its Units;
3. the Units are listed and posted for trading on The Toronto Stock Exchange;
4. the Trust intends to provide holders of Units (“Unitholders”) with monthly cash distributions in the amount of \$0.2083 per Unit to yield 10% per annum;
5. Unitholders may elect to reinvest distributions from the Trust in additional Units under the Plan, and details of the Plan are set out in the Trust’s prospectus;
6. Unitholders may only enroll in the Plan through a participant of The Canadian Depository for Securities Limited (the “CDS Participant”);

2002 BCSECCOM 244

7. once a Unitholder enrolls in the Plan, participation continues automatically until it is terminated:

- (a) by the Unitholder providing requisite notice to its CDS Participant;
- (b) on January 1, 2008 when the Trust ends; or
- (c) otherwise according to the terms of the Plan;

8. the Trust will distribute additional Units under the Plan in reliance on exemptions under the Legislation from the requirement to be registered to trade in a security and the Prospectus Requirement;

9. no commission or sales charge will be paid to any person or company in connection with the Trust distributing additional Units under the Plan;

10. the first trade in additional Units acquired under the Plan cannot be made under section 2.6(4) of Multilateral Instrument 45-102 *Resale of Securities* ("45-102") until January 29, 2003 because the Trust will not have been a reporting issuer or equivalent for the 12 months immediately preceding the trade;

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 Prospectus Requirement shall not apply to the first trade of Units issued to Unitholders under the Plan, provided that:

- 1. at the time of the first trade, the Trust is a reporting issuer:
 - (a) in either Manitoba, Ontario, Quebec or one of the Jurisdictions, and is an electronic filer under NI 13-101 (as defined in 45-102); or
 - (b) in the local jurisdiction of the purchaser of the Units, if the Trust is not an electronic filer under NI 13-101;
- 2. no unusual effort is made to prepare the market or to create a demand for the Units;
- 3. no extraordinary commission or consideration is paid to a person or company in respect of the trade;
- 4. the selling securityholder has no reasonable grounds to believe that the Trust is in default of securities legislation; and
- 5. the trade is not a control distribution (as defined in 45-102).

DATED March 21, 2002

Brenda Leong,
Director