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December 2, 2005

## **Headnote**

### **Mutual Reliance Review System for Exemptive Relief Applications**

National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations - General  
- A credit support issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its credit supporter - The issuer is a credit support issuer that complies with all of the conditions for continuous disclosure relief in section 13.4 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not incorporated in the United States and the credit support issuer has issued securities that differ in some ways from those described in the credit support issuer exemption

Multilateral Instrument 52-109, s. 4.5 - An issuer wants relief from the requirement in parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

National Instrument 58-101, s. 3.1 - A credit support issuer wants an exemption from NI 58-101 - The issuer is a credit support issuer that cannot rely on the exemption in s. 1.3(c) because it does not comply with all of the conditions for continuous disclosure relief in s. 13.4 of National Instrument 51-102 Continuous Disclosure Obligations; the issuer has been granted discretionary relief from the NI 51-102 requirements

Securities Act, s. 91 Insiders - Continuous Disclosure (Insider Reports) - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is a credit support issuer that cannot rely on the exemption in National Instrument 51-102 *Continuous Disclosure Obligations* because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has been granted discretionary relief from NI 51-102 requirements

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 87, 91, 119 and 171

*Securities Rules*, B.C. Reg. 194/97, ss. 144 and 145

National Instrument 51-102, ss. 13.1 and 13.4

Multilateral Instrument 52-109, s. 4.5

National Instrument 55-102, ss. 2.3 and 6.1

National Instrument 58-101, s. 3.1

BC Instrument 52-509

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In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova  
Scotia, New Brunswick 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  
Home Equity Income Trust and CHIP Mortgage Trust

## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from Home Equity Income Trust (“HOMEQ”) and CHIP Mortgage Trust (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”):

- (a) exempting the Filer from the requirements of National Instrument 51-102 - *Continuous Disclosure Obligations* (“NI 51-102”) and the application of any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the “Continuous Disclosure Requirements”);
- (b) exempting the Filer from the application of Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers’ Annual and Interim Filings* (“MI 52-109”), pursuant to section 4.5 of MI 52-109 (the “52-109 Requirements”);
- (c) exempting the Filer from the application of Multilateral Instrument 52-110 - *Audit Committees* (“52-110”) and any comparable requirements under the Legislation (the “52-110 Requirements”);
- (d) exempting the Filer from the application of National Instrument 58-101 - *Corporate Governance Practices* (“NI 58-101”), pursuant to section 3.1 of NI 58-101 (the “58-101 Requirements”); and

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- (e) exempting insiders of the Filer from the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders*, subject to certain terms and conditions.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (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 HOMEQ and the Filer:

1. HOMEQ is an unincorporated open-end investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated May 15, 2002 as amended and restated on July 30, 2002 and as further amended and restated on April 30, 2004 (the "Declaration of Trust").
2. HOMEQ is a limited purpose trust. Pursuant to the Declaration of Trust, its activities are restricted to:
  - (a) acquiring, investing in, holding, transferring, disposing of and otherwise dealing with (i) debt or equity securities of the Filer, (ii) Reverse Mortgages and other Residential Reverse Financial Instruments (each as defined in the Declaration of Trust), and (iii) corporations, partnerships, trusts or other persons involved in the origination, holding, servicing or management of Reverse Mortgages or other Residential Reverse Financial Instruments;
  - (b) borrowing funds for the purposes of HOMEQ's activities;
  - (c) temporarily holding cash and other investments permitted by the Declaration of Trust in connection with and for the purposes of HOMEQ's activities, including paying administration and trust expenses, paying any

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amounts required in connection with the redemption or repurchase of HOMEQ's units ("Units") and making distributions to holders of Units ("Unitholders"), as well as maintaining any reserve account and the monies and investments therein from time to time;

- (d) issuing Units and other securities of HOMEQ (including securities convertible into or exchangeable for Units or other securities of HOMEQ, or warrants, options or other rights to acquire Units or other securities of HOMEQ) for the purposes of (i) obtaining funds to conduct the activities described in paragraph (a) above, including raising funds for further acquisitions or investments; (ii) repayment of any indebtedness or borrowings of HOMEQ; (iii) implementing Unitholder rights plans or incentive options or other compensation plans, if any, established by HOMEQ; and (iv) making non-cash distributions to Unitholders as contemplated by the Declaration of Trust including pursuant to distribution reinvestment plans, if any, established by HOMEQ;
  - (e) repurchasing or redeeming Units or other securities of HOMEQ, subject to the provisions of this Declaration of Trust and applicable law;
  - (f) guaranteeing the obligations of any direct or indirect wholly-owned entity of HOMEQ pursuant to any good faith debt for borrowed money incurred by any such entity and pledging securities held by HOMEQ or any such entity, as the case may be, as security for that guarantee; and
  - (g) engaging in all activities ancillary or incidental to the foregoing.
- 3. HOMEQ is a reporting issuer or the equivalent in each of the provinces of Canada. Accordingly, in each such jurisdiction, HOMEQ, among its other continuous disclosure obligations, files and, where applicable, sends to its Unitholders, audited financial statements and unaudited interim financial statements together with an auditor's report, where applicable, and management's discussion and analysis of financial condition and results of operations relating thereto. As at October 31, 2005, HOMEQ was not in default of its requirements under the Legislation.
  - 4. The Units are listed on the Toronto Stock Exchange under the symbol "HEQ" and, as at October 31, 2005, had an aggregate market value in excess of \$150 million.
  - 5. HOMEQ has a current annual information form pursuant to NI 44-101 and has filed annual financial statements for its most recently completed financial year.

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6. HOMEQ holds all of the issued and outstanding units of the Filer.
7. The Filer is an unincorporated open-end investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated May 15, 2002 as amended and restated on July 30, 2002 (the “CHIP Declaration of Trust”).
8. The Filer is also a limited purpose trust and pursuant to the CHIP Declaration of Trust, its activities are restricted to:
  - (a) acquiring, investing in, holding, transferring, disposing of and otherwise dealing with (i) Reverse Mortgages and other Residential Reverse Financial Instruments, and (ii) debt or equity securities of corporations, partnerships, trusts or other persons involved in the origination, holding, investments in, servicing or management of Reverse Mortgages or other Residential Reverse Financial Instruments;
  - (b) borrowing funds for the purposes of the Filer’s activities;
  - (c) temporarily holding cash and other investments permitted by the CHIP Declaration of Trust in connection with and for the purposes of the Filer’s activities, including paying mortgage origination and servicing fees, administration and trust expenses, any amounts required in connection with the redemption or repurchase of units of the Filer (“CHIP Units”) and making distributions to holders of CHIP Units, as well as maintaining any reserve account and the monies and investments therein from time to time;
  - (d) issuing CHIP Units, unsecured notes and other securities of the Filer (including securities convertible into or exchangeable for CHIP Units) for any purpose;
  - (e) repurchasing or redeeming CHIP Units or other securities of the Filer, subject to the provisions of the CHIP Declaration of Trust and applicable law;
  - (f) guaranteeing the obligations of any direct or indirect wholly-owned entity of the Filer pursuant to any good faith debt for borrowed money incurred by any such entity and pledging securities held by the Filer or any such entity, as the case may be, as security for that guarantee; and
  - (g) engaging in all activities ancillary or incidental to the foregoing.

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9. The Filer is the sole borrowing entity within the HOMEQ structure. Pursuant to a trust indenture dated August 2, 2002, as amended, the Filer is authorized to issue an unlimited amount of senior and subordinated short term notes having terms less than one year, as well as an unlimited amount of senior and subordinated medium term notes issuable in series.
10. As at October 31, 2005, the Filer had a commercial paper program backed by a \$200,000,000 liquidity loan facility with a Schedule 1 Canadian chartered bank and had outstanding medium-term debt of \$150,000,000. The commercial paper program and medium-term debt are rated R-1 (high) and AAA, respectively, by Dominion Bond Rating Service Limited.
11. The Filer does not have operations that are independent of HOMEQ and is an entity that functions essentially as a special purpose division of HOMEQ.
12. The Filer's financial results are included in the consolidated financial results of HOMEQ.
13. On November 18, 2005, the Filer filed with the securities regulatory authority in each of the provinces of Canada a base shelf prospectus (the "Prospectus") for which a MRRS document was issued by each such securities regulatory authority. As a result, the Filer became a reporting issuer or the equivalent in each of the provinces of Canada.
14. The Prospectus relates to offerings by the Filer from time to time of up to \$600 million principal amount of non-convertible debt securities (the "Debt Securities"). Pursuant to a guarantee to be granted by HOMEQ, any payments to be made by the Filer as stipulated in the terms of the Debt Securities or in an agreement governing the rights of the holders of the Debt Securities will be fully, unconditionally and irrevocably guaranteed by HOMEQ.
15. In accordance with section 2.5 of National Instrument 44-101 - *Short Form Distributions* ("NI 44-101") and section 2.5 of National Instrument 44-102 - *Shelf Distributions* ("NI 44-102"), and on the basis that HOMEQ act as "credit supporter" of the Debt Securities in accordance with NI 44-101, the Prospectus provided disclosure with respect to the consolidated business and operations of HOMEQ and incorporated by reference the required disclosure documents of HOMEQ. The Prospectus also included disclosure with respect to the guarantee granted by HOMEQ and a certificate executed by HOMEQ in its capacity as guarantor.
16. The Debt Securities will not be listed on any securities exchange.

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## 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 Filer be exempt from the Continuous Disclosure Requirements, the 52-109 Requirements, the 52-110 Requirements and the 58-101 Requirements provided that and for so long as:

- (a) HOMEQ, as a “credit supporter” (as defined in NI 51-102), and the Filer, as a “credit support issuer” (as defined in NI 51-102), are in compliance with the requirements and conditions of section 13.4(2) of NI 51-102, other than the requirements of:
  - (i) subsection 13.4(2)(b) that the “credit supporter” of the Filer (being HOMEQ) be an SEC MJDS issuer (as defined in NI 51-102); and
  - (ii) subsections 13.4(2)(c), (d), (e), (h) and (i) of NI 51-102;
- (b) HOMEQ remains a reporting issuer or the equivalent thereof in each of the Jurisdictions which has such a concept and remains an electronic filer pursuant to National Instrument 13-101 - *System for Electronic Document Analysis and Retrieval (SEDAR)*;
- (c) HOMEQ continues to comply with the Continuous Disclosure Requirements and to file with the Decision Makers all documents required to be filed under the Legislation;
- (d) HOMEQ continues to comply with the rules of the Toronto Stock Exchange or any other organized market or exchange on which the units of HOMEQ are listed;
- (e) all audited annual comparative financial statements and interim comparative financial statements filed by HOMEQ under the Legislation are prepared on a consolidated basis in accordance with Canadian generally accepted accounting principles or such other standards as may be permitted under the Legislation from time to time;
- (f) HOMEQ continues to fully, unconditionally and irrevocably guarantee the Debt Securities as to the payments required to be made by the Filer to the holders of the Debt Securities;

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- (g) the Filer does not issue any securities other than:
- (i) securities described in subparagraphs 13.4(2)(c)(i) through (iii) of NI 51-102, as amended or replaced from time to time; or
  - (ii) securities issued on a private placement basis pursuant to section 2.35 of National Instrument 45-106 - *Prospectus and Registration Exemptions* [the short-term debt exemption]; and
- (h) the documents required to be filed by HOMEQ with the Decision Makers under the Legislation will be filed under each of HOMEQ's and the Filer's SEDAR profiles within the time limits and in accordance with applicable fees required by the Legislation for the filing of such documents;

Charlie MacCready  
Assistant Manager, Corporate Finance, Team #3  
Ontario Securities Commission

The further decision of the Decision Makers under the Legislation is that the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* do not apply to an insider of the Filer in respect of securities of the Filer provided that and for so long as:

- (a) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning HOMEQ before the material facts or material changes are generally disclosed;
- (b) the insider is not an insider of HOMEQ in any capacity other than by virtue of being an insider of the Filer;
- (c) HOMEQ is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer;
- (d) HOMEQ remains a reporting issuer or the equivalent thereof in each of the Jurisdictions which has such a concept and remains an electronic filer pursuant to National Instrument 13-101 - *System for Electronic Document Analysis and Retrieval (SEDAR)*;
- (e) HOMEQ continues to comply with the Continuous Disclosure Requirements and to file with the Decision Makers all documents required to be filed under the Legislation; and

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(f) the Filer does not issue any securities other than:

- (i) securities described in subparagraphs 13.4(2)(c)(i) through (iii) of NI 51-102, as amended or replaced from time to time; or
- (ii) securities issued on a private placement basis pursuant to section 2.35 of National Instrument 45-106 - *Prospectus and Registration Exemptions* [*the short-term debt exemption*].

Robert W. Davis, Commissioner  
Ontario Securities Commission

Paul K. Bates, Commissioner  
Ontario Securities Commission