

2003 BCSECCOM 548

Headnote

Mutual Reliance Review System for Exemptive Relief Application - application for relief from the registration and prospectus requirements in connection with the distribution and resale of units of the applicant trust pursuant to a distribution reinvestment plan - relief granted subject to conditions – first trade in additional units deemed a distribution unless made in compliance with MI 45-102

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 48 and 76

Multilateral Instrument 45-102 *Resale of Securities*

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

AND

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

AND

IN THE MATTER OF HOME EQUITY INCOME TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Home Equity Income Trust (the “Trust”) for a decision, pursuant to the securities legislation of the Jurisdictions (the “Legislation”), 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 a final prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution or resale of units of the Trust pursuant to a distribution reinvestment plan (the “Plan”);

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;

2003 BCSECCOM 548

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS THE TRUST has represented to the Decision Makers that:

1. The Trust is an unincorporated open-end investment trust established under the laws of Ontario with its head office in Ontario.
2. The Trust is not considered to be a “mutual fund” as defined in the Legislation because the holders of Units (“Unitholders”) 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 July 30, 2002 upon obtaining a receipt for its final prospectus dated July 30, 2002 (the “Prospectus”). As of the date hereof, the Trust is not in default of any requirements under the Legislation.
4. The authorized capital of the Trust consists of an unlimited number of Units. As at the date hereof, 11,108,052 Units are issued and outstanding. The Units are listed on the Toronto Stock Exchange (the “TSX”).
5. The Trust makes monthly cash distributions (“distributions”) to Unitholders of record on the last business day of each month (each a “Declaration Date”) in an amount equal to the income of the Trust, subject to certain adjustments, less an amount for cash reserves as determined by the trustees of the Trust. Distributions are payable to Unitholders of record on the Declaration Date and will be paid within 30 days of the end of each month (each a “Distribution Date”). The Trust may also make other distributions at any time in addition to monthly distributions, if it considers it appropriate, including to ensure that the Trust will not be liable for income tax under the *Income Tax Act* (Canada).
6. The Trust has adopted the Plan which, subject to obtaining all necessary regulatory approvals, will permit distributions to be automatically reinvested, at the election of each Unitholder, to purchase additional Units (the “Plan Units”) pursuant to the Plan and in accordance with the provisions of a distribution reinvestment plan agency agreement (the “Plan Agreement”) entered into by the Trust and Computershare Trust Company of Canada (the “Plan Agent”).

2003 BCSECCOM 548

7. Pursuant to the terms of the Plan, a Unitholder will be able to elect to become a participant in the Plan by notifying the broker or other investment dealer through which the Unitholder holds Units (the “CDS Participant”) of the Unitholder’s decision to participate in the Plan. Participation in the Plan will not be available to Unitholders who are not residents of Canada for the purposes of the *Income Tax Act* (Canada).
8. Distributions due to Unitholders who have elected to participate in the Plan (the “Plan Participants”) will be automatically reinvested on their behalf by the Plan Agent to purchase Plan Units from the Trust. The Plan Units will be issued by the Trust at a price (the “Market Price”) equal to the weighted average of the closing price of the Units on the TSX (or such other exchange or market on which the Units are listed) for each of the ten trading days immediately preceding the Distribution Date on which there were trades provided that if there was trading on the applicable exchange or market for fewer than six of the preceding ten trading days, the Market Price shall be the weighted average of the following prices established for each of the preceding ten trading days: (i) the weighted average of the last bid and last asking prices of the Units for each day there was no trading; and (ii) the closing price of the Units for each day that there was trading.
9. Each Plan Participant’s account maintained by his or her CDS Participant will be credited with that number of whole Units issued to the Plan Participant which is equal to the amount to be reinvested for the Plan Participant divided by the Market Price. In addition, each Plan Participant’s account will be credited with that number of whole Units which is equal to 4% of the Units issued to the Plan Participant pursuant to the Plan.
10. The Plan Agent will purchase Plan Units only in accordance with mechanics described in the Plan and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on the Market Price.
11. The Plan is open for participation by all Unitholders (other than non-residents of Canada), so that such Unitholders can ensure protection against potential dilution, albeit insignificant, by electing to participate in the Plan.
12. Plan Units purchased under the Plan will be registered in the name of CDS & Co. (“CDS”).
13. A Plan Participant may terminate his or her participation in the Plan by providing, or by causing to be provided, written notice to the relevant CDS Participant. If notice is received on or before 5:00 p.m. on the business day that is five business days prior to the date of determination of Unitholders

2003 BCSECCOM 548

entitled to receive a distribution (a “Record Date”), the termination will have effect beginning with the distribution to be made with respect to such Record Date. Thereafter, distributions payable to such Unitholder will be in cash.

14. The Trust reserves the right to suspend or terminate the Plan at any time in its sole discretion. The Trust may amend or modify the Plan at any time in its sole discretion, subject to any necessary approvals of applicable regulatory authorities, but such action shall have no retroactive effect that would prejudice the interest of the Plan Participants.
15. In the event the Plan is modified or terminated, the Trust will send to CDS, each CDS Participant and those Plan Participants which it is able to identify, written notice of such termination or modification (a “Notice”). The Notice shall set forth the nature of the modification, if applicable, the purpose of the modification or the reason for the termination and the effective date of the modification or termination. In the event of a modification, the Notice will contain sufficient detail to enable Plan Participants to determine whether they wish to continue to participate in the modified Plan. Any modification or termination of the Plan will not be effective prior to the month following the month in which the Notice was issued.
16. The Trust may, in its sole discretion, and upon not less than 90 days’ prior written notice to the Plan Agent, remove the Plan Agent and appoint another person as the Plan Agent. The Plan Agent may resign as agent under the Plan upon not less than 90 days’ prior written notice to the Trust and upon delivery to the Trust of all documents and monies being held by the Plan Agent on the Trust’s behalf pursuant to the Plan Agreement.
17. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the Plan involves the reinvestment of distributable income distributed by the Trust and not the reinvestment of dividends or interest of the Trust.
18. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Trust is not considered to be a “mutual fund” as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in a portion of the net assets of the Trust.

2003 BCSECCOM 548

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

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Plan Units to the Plan Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the Trust is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the distributions of Plan Units from treasury;
- (c) the Trust has caused to be sent to the person or company to whom the Plan Units are traded, not more than 12 months before the trade, a statement describing:
 - (i) their right to withdraw from the Plan and to make an election to receive cash instead of Plan Units on the making of a distribution by the Trust; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) except in Québec, the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions of paragraphs 1 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied; and
- (e) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public unless:
 - (i) at the time of the first trade, the Trust is a reporting issuer in Québec and is not in default on any of the requirements of securities legislation in Québec;

2003 BCSECCOM 548

- (ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;
- (iii) no extraordinary commission or consideration is paid to a person or company other than the vendor of the Plan Units in respect of the first trade; and
- (iv) the vendor of the Plan Units, if in a special relationship with the Trust, has no reasonable grounds to believe that the Trust is in default of any requirement of the Legislation of Québec.

DATED August 1st, 2003.

Robert W. Korthals

Paul K. Bates