

# 2005 BCSECCOM 379

May 20, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 91 Financial Statements & Report - Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports -

An issuer wants relief from the requirement to deliver audited annual financial statements for a particular year - The issuer filed a final prospectus with audited financials dated prior to its year end; the issuer had limited operations since the date of such audited financial statements and its year end; the issuer's audited annual financials will not disclose any material information that is not already disclosed in the audited financial statements in the prospectus

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

*Securities Rules*, B.C. Reg. 194/97, s. 149

In the Matter of  
the Securities Legislation

of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia 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 Criterion Business Trust TA Fund (The "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 the Trust for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Trust is exempt from the following requirements in respect of its financial year ended December 31, 2004:

- (a) the requirement to deliver annual financial statements to holders of units of the Trust (the "Financial Statement Relief");

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- (b) in Alberta, Saskatchewan, New Brunswick, and Newfoundland and Labrador only, the requirement to file an annual filing (the “Annual Filing Relief”);
- (c) in Quebec only, the requirement to file and deliver an annual report (the “Annual Report Relief”); and
- (d) in Ontario and Quebec only, the requirements to:
  - i) file an annual information form; and
  - ii) file and deliver an annual management discussion and analysis,

as would otherwise be required pursuant to applicable Legislation. (The relief requested in item (d) is referred to as the “AIF and MD&A Relief”).

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 the Trust:

1. The head office of the Trust is located in Toronto, Ontario.
2. The Trust is a closed-end investment trust established under the laws of Ontario pursuant to a declaration of trust dated December 15, 2004 made by Criterion Investments Limited as trustee of the Trust.
3. The Trust is authorized to issue an unlimited number of units (“Units”).
4. The Trust issued 4 million Units pursuant to the initial closing (the “Initial Closing”) of its initial public offering by way of a prospectus dated December 15, 2004 (the “Offering”), that was filed in all provinces to qualify the units of the Trust for distribution (the “Prospectus”). An additional 400,000 Units were issued pursuant to the exercise of the over-allotment option as described

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in the Prospectus (the “Over-Allotment Closing”). The Initial Closing occurred on December 23, 2004 and the Over-Allotment Closing occurred on December 30, 2004.

5. The return to holders of Units of the Trust (the “Unitholders”) and the Trust is dependent upon the return on an investment portfolio (the “Investment Portfolio”) by virtue of a forward agreement (described below). The Investment Portfolio is comprised of certain business trusts listed on the Toronto Stock Exchange which are held by the CIL Business Trust Fund.
6. The net proceeds of the Offering were invested by the Trust in a portfolio of common shares of Canadian public companies (the “Common Share Portfolio”) on December 23, 2004 and again on December 30, 2004 following the Over-Allotment Closing. The Trust then entered into a forward purchase and sale agreement with Royal Bank of Canada (the “Counterparty”) pursuant to which the Counterparty agreed to pay to the Trust on or about the termination date as the purchase price for the Common Share Portfolio an amount equal to 100% of the redemption proceeds of a corresponding number of units of the CIL Business Trust Fund (subject to variations in such correspondence). The Counterparty is the sole holder of Units of the CIL Business Trust Fund.
7. As a result of the Offering, the Trust became a reporting issuer in each of the provinces of Canada.
8. The fiscal year end of the Trust occurred on December 31, 2004.
9. The audited Statement of Financial Position of the Trust as of December 15, 2004 contained in the Prospectus reflected the issuance of 1 Unit on that date in consideration of \$10.00 in connection with the creation of the Trust.
10. The CIL Business Trust Fund is a reporting issuer in Quebec and is required to file financial statements in Quebec.
11. As at December 31, 2004, the CIL Business Trust Fund had not acquired any of the securities comprising the Investment Portfolio on which the return to the Trust was to be based.
12. As at December 31, 2004, the Net Asset Value of the Units was equivalent to the net proceeds of the Offering, less an accrual for operating expenses of \$26,163 or approximately one-half of one cent per Unit, and accordingly, other than the Initial Closing and the Over-Allotment Closing, there were no

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material changes to the financial position of the Trust during the period from December 15, 2004 to December 31, 2004.

13. The Prospectus contains substantially the same information as would otherwise have been disclosed in an annual filing and there were no changes in such information between the date of the Prospectus and December 31, 2004.
14. The benefit to be derived by the Unitholders from receiving the annual financial statements for the financial year ended December 31, 2004 and, where applicable, the annual report and annual management discussion and analysis for the same period, would be minimal given (i) the extremely short period for the financial year ended December 31, 2004; (ii) the limited nature of business carried on by the Trust; (iii) the disclosure already provided in the Prospectus; (iv) the fact that there were no material changes to the affairs of the Trust since the date of the Prospectus, except the Initial Closing and the Over-Allotment Closing; and (v) the fact that the annual financial statements for the financial year ended December 31, 2004 will be filed and available on SEDAR.
15. The expense to the Trust of printing and delivering the annual financial statements for the financial year ended December 31, 2004 and, where applicable, the annual report and annual management discussion and analysis for the same period, to its Unitholders would not be justified in view of the minimal benefit to be derived by the Unitholders from receiving such annual financial statements, annual report, and annual management discussion and analysis.
16. The Trust is a “non-redeemable investment fund” for the purposes of National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”). As a result, the Trust is not subject to the continuous disclosure requirements set out in NI 51-102.
17. As proposed National Instrument 81-106 – *Investment Fund Continuous Disclosure* is not yet in effect, the Trust is currently subject to pre-NI 51-102 continuous disclosure obligations in each of the Jurisdictions.

### 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 Financial Statement Relief is granted provided that:

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- i) the Trust issue, and file on SEDAR, a press release informing Unitholders of their right to receive the Trust's annual financial statements for the financial year ended December 31, 2004 upon request; and
- ii) the Trust send a copy of such annual financial statements for the financial year ended December 31, 2004 to any Unitholder that so requests.

The decision of the Decision Makers in Ontario, Alberta, Saskatchewan, New Brunswick, and Newfoundland and Labrador is that the Annual Filing Relief is granted.

The decision of the Decision Makers in Ontario and Quebec is that the Annual Report Relief is granted.

Paul Moore  
Vice-Chair  
Ontario Securities Commission

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission

The further decision of the securities regulatory authority or securities regulator in Ontario and Quebec is that the AIF and MD&A Relief is granted for the year ended December 31, 2004.

Leslie Byberg  
Manager, Investment Funds Branch