

2004 BCSECCOM 535

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 76 - Exemption from s. 61 requirement to file a prospectus in connection with a distribution - An issuer wants to resell its own securities that it purchased in the secondary market - The securities will be sold through an exchange; the issuer will comply with the insider continuous disclosure requirements

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 61 and 76

Multilateral Instrument 45-102 *Resale of Securities*

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

AND

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

AND

IN THE MATTER OF STRATA INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Yukon (the “Jurisdictions”) has received an application from STRATA *Income Fund* (the “Trust”) for a decision, pursuant to 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 final prospectus (the “Prospectus Requirements”) shall not apply to the distribution of units of the Trust (the “Units”) and preferred securities (the “Preferred Securities”) which have been repurchased by the Trust pursuant to the mandatory market purchase program, the discretionary market purchase program, the call right in respect of the Preferred Securities, or by way of redemption of Units and Preferred Securities at the request of holders thereof, nor to the first trade or resale of such repurchased Units and Preferred Securities (collectively, the “Repurchased Securities”) which have been distributed by the Trust;

2004 BCSECCOM 535

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;

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

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

1. The Trust is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust dated as of January 29, 2004 (the “Declaration of Trust”).
2. The Trust filed a final long form prospectus dated January 29, 2004 (the “Prospectus”) with the securities regulatory authorities in each of the Jurisdictions and became a reporting issuer or the equivalent thereof in the Jurisdictions on January 30, 2004 upon obtaining a receipt for the Prospectus. As of the date hereof, the Trust is not in default of any requirements under the Legislation.
3. The Trust is not considered to be a “mutual fund” as defined in the Legislation because the holders of the Units (“Unitholders”) and holders of Preferred Securities (“Securityholders”) 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.
4. The Units and Preferred Securities are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the trading symbols “STW.UN” and “STW.PR.A” respectively. As at August 31, 2004, 8,250,800 Units and 8,539,300 Preferred Securities were issued and outstanding.
5. Each Unit represents an equal, undivided beneficial interest in the net assets of the Trust. Preferred Securities are debt instruments and Securityholders are entitled to receive fixed quarterly interest payments of \$0.15 per Preferred Security or 6.0% per annum.
6. Middlefield STRATA Administration Limited (the “Administrator”), which was incorporated pursuant to the *Business Corporations Act* (Ontario), is the administrator and the trustee of the Trust.
7. In order to enhance liquidity and to provide market support for the Units, pursuant to the Declaration of Trust and the terms and conditions that attach to

2004 BCSECCOM 535

the Units, the Trust shall, subject to compliance with any applicable regulatory requirements, be obligated to purchase (the “Mandatory Purchase Program”) any Units offered in the market on a business day at the then prevailing market price if, at any time after the closing of the Trust’s initial public offering pursuant to the Prospectus, the price at which Units are then offered for sale is less than 95% of the net asset value per Unit of the Trust as at the close of business in Toronto, Ontario on the immediately preceding business day, provided that:

- (a) the maximum number of Units that the Trust shall purchase in any calendar quarter will be 1.25% of the number of Units outstanding at the beginning of each such calendar quarter; and
 - (b) the Trust shall not be required to purchase Units pursuant to the Mandatory Purchase Program if:
 - (i) the Administrator reasonably believes that the Trust would be required to make an additional distribution in respect of the year to Unitholders of record on December 31 of such year in order that the Trust will generally not be liable to pay income tax after the making of such purchase;
 - (ii) in the opinion of the Administrator, the Trust lacks the cash, debt capacity or resources in general to make such purchases;
 - (iii) in the opinion of the Administrator, the making of any such purchases by the Trust would adversely affect the ongoing activities of the Trust or the remaining Unitholders; or
 - (iv) the Trust is unable to repurchase an equivalent number of Preferred Securities either in the market or pursuant to the Trust’s call right described below (the “Call Right”)
8. Pursuant to the Call Right, Preferred Securities may be called by the Trust prior to their maturity date, at a price which until December 31, 2004 is equal to \$11.00 per Preferred Security and which declines by \$0.20 at the beginning of each calendar year thereafter until it is equal to \$10.00 on and after January 1, 2009, together with accrued and unpaid interest thereon, at any time the number of Preferred Securities outstanding exceeds the number of Units outstanding. The Call Right may be exercised only to the extent that an equal number of Preferred Securities and Units will be outstanding following the exercise thereof.

2004 BCSECCOM 535

9. In addition, the Declaration of Trust and the trust indenture governing the Preferred Securities (the “Trust Indenture”) respectively provide that the Trust, subject to applicable regulatory requirements and limitations, shall have the right, but not the obligation, exercisable in its sole discretion, at any time, to purchase outstanding Units or Preferred Securities in the market at prevailing market prices (the “Discretionary Purchase Program”). Such discretionary purchases may be made through the facilities and under the rules of any exchange or market on which the Units or Preferred Securities are listed (including the TSX) or as otherwise permitted by applicable securities laws.
10. Pursuant to the Declaration of Trust and the Trust Indenture, and subject to the Trust’s right to suspend redemptions, a Unit or a Unit together with a Preferred Security (a “Combined Security”) may be surrendered for redemption (the “Redemption Program” and, together with the Mandatory Purchase Program, the Call Right and the Discretionary Purchase Program, the “Repurchase Programs”) by a Unitholder in any month on any day that is at least 15 business days prior to the last day of each month but will be redeemed only on the last day of each month (the “Redemption Valuation Date”). A Unitholder who surrenders a Unit or Combined Security for redemption on the November Redemption Valuation Date of any year commencing in 2005 will receive an amount calculated with reference to the net asset value of the Trust. If the Unit or Combined Security is surrendered for redemption on any other Redemption Valuation Date, the Unitholder will receive an amount calculated with reference to the market price of the Unit or Combined Security (the amount to be received by a Unitholder on the November Redemption Valuation Date or any other Redemption Valuation Date, being referred to as the “Redemption Price”). Any such Units or Combined Securities so surrendered will, subject to an investment dealer finding purchasers for Units or Combined Securities properly surrendered for redemption be redeemed by the Trust pursuant to the Redemption Program for the applicable Redemption Price.
11. A Unitholder who has surrendered Units or Combined Securities for redemption will be paid the Redemption Price for such Units or Combined Securities by the fifteenth business day following the applicable Redemption Valuation Date (the “Redemption Payment Date”).
12. Purchases of Units or Preferred Securities made by the Trust under the Repurchase Programs are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.

2004 BCSECCOM 535

13. The Trust disclosed in the Prospectus that, subject to receiving all necessary regulatory approvals, the Trust could arrange for one or more securities dealers to find purchasers for any Repurchased Securities.
14. It is the intention of the Trust to resell, in its sole discretion and at its option, any Repurchased Securities primarily through one or more securities dealers and through the facilities of the TSX (or such other exchange on which the Units and Preferred Securities are then listed).
15. All Repurchased Securities will be held by the Trust for a period of 4 months after the repurchase thereof by the Trust (the "Holding Period"), prior to the resale thereof.
16. Repurchased Securities that the Trust does not resell within 12 months after the Holding Period (or 16 months after the date of repurchase) will be cancelled by the Trust.
17. Prospective purchasers who subsequently acquire Repurchased Securities will have equal access to all of the continuous disclosure documents of the Trust, which will be filed on SEDAR, commencing with the Prospectus.
18. Legislation in some of the Jurisdictions provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution subject to the Prospectus Requirements.
19. Legislation in some of the Jurisdictions provides that the first trade or resale of Repurchased Securities acquired by a purchaser will be a distribution subject to the Prospectus Requirements unless such first trade is made in reliance on an exemption therefrom.

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 Repurchased Securities pursuant to the Repurchase Programs shall not be subject to the Prospectus Requirements of the Legislation provided that:

2004 BCSECCOM 535

- (a) the Repurchased Securities are sold by the Trust through the facilities of and in accordance with the regulations and policies of the TSX or the market on which the Units and Preferred Securities are then listed;
- (b) the Trust complies with the insider trading restrictions imposed by securities legislation with respect to the trades of Repurchased Securities;
- (c) the Trust complies with the conditions of paragraphs 1 through 5 of subsection 2.8(2) of Multilateral Instrument 45-102 with respect to the sale of the Repurchased Securities; and
- (d) the first trade or resale of Repurchased Securities acquired by a purchaser from the Trust 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.

DATED September 13, 2004

Paul Moore

Wendell S. Wigle