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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Trades by a non-mutual fund in connection with its distribution reinvestment plan - Issuer is an investment trust; under its plan, income of the trust can be distributed to its investors through the automatic issuance of additional units to the investors; investors can elect to receive cash in lieu of additional trust units; no fee is paid by investors to participate in the plan

Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, 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 PROFIT BOOKING BLUE CHIP TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Profit Booking Blue Chip 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 and optional trust unit purchase plan (the “Plan”), subject to certain conditions;

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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* or in Québec Commission Notice 14-101;

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

1. The Trust is a closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust dated as of May 19, 2004.
2. The Trust is not considered to be a “mutual fund” as defined in the Legislation because the holders of units of the Trust (“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 May 20, 2004 upon obtaining a receipt for its final prospectus dated May 20, 2004. As of the date hereof, to its knowledge, the Trust is not in default of any requirements under the Legislation, other than the requirement to file interim financial statements for the period ended June 30, 2004 in the province of British Columbia;
4. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the symbol “PBK.UN”.
5. Each unit of the Trust (“Unit”) represents an equal, undivided interest in the net assets of the Trust and is redeemable at the net asset value of the Trust (“Net Asset Value”) per Unit on the last business day in May of each year.
6. Each Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Trust.
7. The Trust intends to make monthly cash distributions to Unitholders. The distribution for the first twelve months following the closing of the offering of Units is expected to be \$0.60 per Unit, representing an annual distribution of 7.2% based on a subscription price of \$10.00 per Unit. Distributions will be payable to Unitholders of record on the last business day of each calendar month prior to the termination date of the Trust, commencing no later than

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July 30, 2004 (each, a “Distribution Record Date”). The Trust intends to pay distributions to Unitholders on or about the 15th business day after each Record Date (each, a “Distribution Payment Date”). The initial distribution will be payable on August 15, 2004 to Unitholders of record on July 30, 2004. 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).

8. 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 a Unitholder, to purchase additional Units (“Plan Units”) pursuant to the Plan and in accordance with the provisions of a reinvestment plan agency agreement entered into by Crown Hill Capital Corporation., as trustee of the Trust (in such capacity, the “Trustee”) and CIBC Mellon Trust Company (the “Plan Agent”).
9. Pursuant to the terms of the Plan, a Unitholder will be able to elect to become a participant in the Plan by notifying the Plan Agent, via the applicable participant (“CDS Participant”) in the Canadian Depository for Securities Limited (“CDS”) depository service through which such Unitholder holds Units, of its 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).
10. Distributions due to Unitholders who have elected to participate in the Plan (the “Plan Participants”) will be applied, on behalf of the Plan Participants to purchase Plan Units from the Trust or in the market in the following manner:
 - (a) If the weighted average trading price of the Units on the TSX (or such other exchange or market on which the Units are then listed) for the 10 trading days immediately preceding the relevant Distribution Payment Date (the “Market Price”) plus applicable commission and brokerage charges is less than the Net Asset Value per Unit on the Distribution Payment Date, the Plan Agent will apply the distribution to purchase Units in the market during the trading period following the Distribution Payment Date and prior to the next succeeding Distribution Record Date (the “Relevant Trading Period”) and the price paid for those Units will not exceed 115% of the Market Price of the Units on the relevant Distribution Payment Date.
 - (b) If the Market Price is equal to or greater than the Net Asset Value per Unit on the Distribution Payment Date, the Plan Agent will apply the distribution to purchase Units from the Trust through the issue of new

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Units at the higher of (i) Net Asset Value per Unit on the relevant Distribution Payment Date and (ii) 95% of the Market Price on the relevant Distribution Payment Date.

- (c) If purchases of Plan Units in the market within the Relevant Trading Period cannot, in the reasonable opinion of the Trustee (based on information provided by the Plan Agent), be completed prior to the next succeeding Distribution Record Date such that all Plan Participants for the current Distribution would not be credited with the Units prior to such Distribution Record Date, the Plan Agent may, notwithstanding anything else in this Agreement, purchase Units from the Trust with the unused part of the Distributions such that, on the next succeeding Distribution Record Date, all Plan Participants will be credited with Units and no unused Distributions remain, such purchase price to be equal to the higher of: (A) the Net Asset Value per Unit on the relevant Distribution Payment Date; and (B) 95% of the Market Price on the relevant Distribution Payment Date.
 - (d) The Plan Units purchased in the market or from the Trust will be allocated by CDS on a *pro rata* basis to the Plan Participants via the applicable CDS Participant based on their respective entitlement to the distributions used to purchase Plan Units.
11. The Plan also allows Plan Participants, to the extent permitted under applicable law and regulatory rulings obtained, to make option cash payments ("Optional Cash Payments") that will be used by the Plan Agent to purchase Plan Units. Any Plan Participant may invest a minimum of \$100 per Optional Cash Payment up to a maximum amount as determined by the Manager from time to time. Optional Cash Payments will be invested on the same basis as distributions as described above. The aggregate number of Plan Units that may be purchased with Optional Cash Payments in a calendar year will be limited to 2% of the outstanding Units at the commencement of that calendar year.
12. Optional Cash Payments, along with a Plan Participant's notice of his or her intention to make an Optional Cash Payment, must be received by the Plan Agent via the applicable CDS Participant by 5:00 p.m. (Toronto time) on the day which is five business days prior to a Distribution Payment Date to be used to purchase Plan Units immediately following such Distribution Payment Date. Optional Cash Payments and/or notices received less than five business days prior to a Distribution Payment Date will be held by the Plan Agent and will not be used by the Plan Agent to purchase Plan Units until the next Distribution Payment Date.

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13. The Plan Agent will purchase Plan Units only in accordance with the mechanics described in the Plan and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on changes in the Net Asset Value per Unit.
14. The amount of distributions that may be reinvested in Plan Units issued from treasury will be small relative to a Unitholder's equity in the Trust.
15. The Plan is open for participation by all Unitholders (other than non-residents of Canada), so that such Unitholders can reduce potential dilution by electing to participate in the Plan.
16. Since all Units, including those issued pursuant to the Plan, are issued in book-entry only form and are held by, and registered in the name of CDS, Plan Participants will not be entitled to receive certificates representing Plan Units purchased or issued under the Plan.
17. A cash adjustment for any fractional Plan Unit to which a Plan Participant is entitled will be paid by the Plan Agent upon each distribution, provided that the Trust has first caused the amount of any such cash adjustment to be paid to the Plan Agent.
18. The Trustee will pay out of the assets of the Trust the Plan Agent's fees for administering the Plan.
19. A Plan Participant may terminate his or her participation in the Plan by providing, via the applicable CDS Participant, at least 5 business days' prior written notice to the Plan Agent and, such notice, if actually received no later than 5 business days prior to the next Distribution Record Date, will have effect for the distribution to be made on the following Distribution Payment Date. Thereafter, distributions payable to such Unitholder will be in cash.
20. The Trustee may terminate or suspend the Plan in its sole discretion, upon not less than 30 days' prior written notice to the Plan Participants via the applicable CDS Participant and the Plan Agent.
21. The Trustee may amend the Plan at any time, provided that it gives notice of that amendment to (i) the Plan Participants via the CDS Participants through which the Plan Participants hold their Units and (ii) the Plan Agent. Any amendments to the Plan are subject to the approval of the Toronto Stock Exchange. The Trustee may adopt additional rules and regulations to facilitate

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the administration of the Plan subject to the approval of any applicable securities regulatory authority or stock exchange.

22. 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 cash distributions and not the reinvestment dividends, interest, capital gains or earnings or surplus.
23. 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 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.
24. The distribution of the Plan Units by the Trust pursuant to the Plan to Unitholders resident in Alberta and Saskatchewan can be made in reliance on exemptions from the Registration and Prospectus Requirements in each of Alberta and Saskatchewan.

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) in each of British Columbia, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador:
 - (i) 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 requirement of the Legislation, other than the requirement to file interim financial statements for the period ended June 30, 2004 in the province of British Columbia;

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- (ii) no sales charge is payable in respect of the distributions of Plan Units from treasury; and
- (iii) 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:
 - (1) 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
 - (2) instructions on how to exercise the right referred to in (1);
- (b) in the calendar year during which the trade takes place, the aggregate number of Plan Units issued pursuant to the Optional Cash Payments shall not exceed 2% of the aggregate number of Units outstanding at the commencement of that calendar year;
- (c) in each of British Columbia, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador, the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be, and in each of Alberta and Saskatchewan the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be, a distribution or primary distribution to the public under the Legislation unless the conditions of paragraphs 2 through 5 of Section 2.6(3) of Multilateral Instrument 45-102 – Resale of Securities are satisfied; other than the requirement to file interim financial statements for the period ended June 30, 2004 in the province of British Columbia in respect of complying with the requirement contained in subsection 2.6(3)5 of Multilateral Instrument 45-102; and
- (d) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the Plan in Québec shall 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;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;

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- (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 September 28, 2004.

Paul M. Moore

Lorne H. Morphy