

2004 BCSECCOM 602

October 19, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 1(1) - Designation as a Reporting Issuer - An issuer wants to be designated as a reporting issuer. - Comprehensive disclosure about the issuer that would have appeared in the issuer's initial public offering prospectus was included in a prospectus filed by its parent company; the issuer has been a reporting issuer in Ontario for four months; issuer's common shares are, or will be, listed - 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 - An issuer's securities are converted into or redeemed for securities of another issuer. - the securities to be issued on the redemption are not securities of the redeeming issuer; the investors had prospectus level disclosure about the redemption rights when deciding whether to acquire the redeemable securities

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 1(1), 48 and 76

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, QUÉBEC,
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR, YUKON TERRITORY,
NUNAVUT AND THE NORTHWEST TERRITORIES
(collectively, the Jurisdictions)**

AND

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

AND

**IN THE MATTER OF ACS MEDIA INCOME FUND (the Fund) AND ACS
MEDIA CANADA INC.
(Media Canada and, collectively with the Fund, the Filers)**

MRRS DECISION DOCUMENT

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

- (a) the dealer registration requirement and prospectus requirement do not apply to the distribution of common shares of Media Canada (the Media Canada Shares) and 14% unsecured subordinated promissory notes of Media Canada (the Media Canada Notes) held by the Fund to a holder of the Fund's trust units (the Units) upon a redemption *in specie* of the Units effected in accordance with the Fund's declaration of trust dated March 5, 2003, as amended (the Declaration of Trust); and
- (b) Media Canada is deemed or declared to be a reporting issuer in the Jurisdictions (other than Manitoba, Prince Edward Island, Northwest Territories, Nunavut and the Yukon Territory) (the Reporting Jurisdictions).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Nova Scotia 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 Filers:

1. The Fund is an unincorporated, open-ended, limited purpose trust established under the laws of Ontario pursuant to the Declaration of Trust. Its registered and head office is located in Toronto, Ontario.
2. The authorized capital of the Fund consists of an unlimited number of Units. The initial public offering of 17,500,000 Units was made pursuant to a final prospectus dated April 29, 2003 (the Prospectus). The Fund is a reporting issuer or the equivalent in each of the jurisdictions in Canada that recognize such a concept and, to the best of its knowledge, information and belief, is not in default of any requirements of securities legislation in any of the

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jurisdictions in Canada. As at September 20, 2004, there were 20,000,000 Units issued and outstanding.

3. The Fund's assets consist of all of the 91,876,582 issued and outstanding Media Canada Shares and all of the \$91,876,581.71 principal amount of Media Canada Notes issued and outstanding as at September 20, 2004 (along with a small related party receivable). The Fund may, from time to time, subscribe for additional Media Canada Shares and Media Canada Notes but, as a "fixed investment trust" for United States federal income tax purposes under U.S. Treasury Regulation section 301.7701-4(c), and consistent with other restrictions contained in the Declaration of Trust, it is precluded from directly owning any other securities or investments.
4. Through its ownership of Media Canada Shares and Media Canada Notes, the Fund indirectly owns an approximately 99.9% economic interest in the business of ACS Media LLC (the Company), an Alaskan limited liability company whose business primarily consists of the publication of print and electronic advertising directories for the Alaskan market.
5. The Units are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the symbol "AYP.UN".
6. Media Canada is a corporation incorporated on February 10, 2003 pursuant to the *Business Corporations Act* (Ontario). Its registered and head office is located in Toronto, Ontario.
7. The authorized capital of Media Canada consists of an unlimited number of Media Canada Shares and an unlimited number of preferred shares. As at September 20, 2004, there were 91,876,582 Media Canada Shares and no preferred shares issued and outstanding.
8. Media Canada was deemed by a ruling and order of the Ontario Securities Commission dated March 19, 2004 (the OSC Order) to be a reporting issuer for the purposes of Ontario securities law. It is not in default of the securities legislation in Ontario. Media Canada is not a reporting issuer or the equivalent in any other jurisdiction in Canada.
9. Media Canada is a wholly-owned subsidiary of the Fund and carries on no independent operations. It acts solely as a funding conduit between the Fund and its operating subsidiary, the Company.
10. The Media Canada Shares are listed, but not posted for trading, on the TSX under the symbol "AYC".

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11. The Fund's principal operating subsidiary has significant U.S.-based operations and, as such, the Fund was established as a "fixed investment trust". As a fixed investment trust, the Fund is disregarded for U.S. federal income tax purposes, and each holder of Units is treated as directly owning its proportionate share of the Fund's investments.
12. The Declaration of Trust contains a redemption *in specie* feature whereby holders of Units have the right to tender their Units to the Fund for redemption, with the redemption price paid by a distribution of a proportionate share of the Fund's assets (being a proportionate number of Media Canada Shares and Media Canada Notes and a pro rata share of any other property held by the Fund (less a pro rata share of any accrued liabilities of the Fund)).
13. The exercise of this redemption right was identified in the Prospectus as being subject to any applicable regulatory approvals, as no general prospectus exemption would be available to permit the distribution of these securities (as Media Canada, being the issuer of the Media Canada Shares and Media Canada Notes, was not then a reporting issuer). Moreover, the Prospectus identified that no trading market was expected to develop for the Media Canada Shares and Media Canada Notes so distributed.
14. The Fund, having determined that it was desirable to ensure that there are no significant trading or other restrictions that would be imposed on a holder of Units that exercised its redemption right to obtain Media Canada Shares and Media Canada Notes, made an application for listing the Media Canada Shares on the TSX.
15. Following receipt of the OSC Order deeming Media Canada to be a reporting issuer for the purposes of Ontario securities law, the TSX approved the listing of the Media Canada Shares.
16. The Media Canada Shares do not satisfy the public distribution requirements established by the TSX and a sufficient trading market in the shares does not presently exist. As such, the Media Canada Shares have initially been listed, but not posted for trading, on the TSX until such time as a sufficient number of redemptions *in specie* have occurred.
17. As a result of the Fund's dependence on cash flows from its subsidiary entities, the Prospectus contained substantially all of the disclosure concerning Media Canada and its direct and indirect investments and operations that would have been included in a prospectus for an initial public offering of Media Canada securities. This disclosure was sufficient to enable an investor

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in Units to evaluate his, her or its indirect investment in the Fund's subsidiary entities and to understand the *in specie* redemption right and the securities that the investor would directly (rather than indirectly) hold on the exercise of that right.

18. To date, all material information in respect of Media Canada and its subsidiary entity, the Company, has been reported in the continuous disclosure filings of the Fund in the Jurisdictions and in the continuous disclosure filings of Media Canada in Ontario.

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 dealer registration requirement and prospectus requirement do not apply to the distribution of the Media Canada Shares and the Media Canada Notes by the Fund to a holder of Units upon a redemption *in specie* of the Units effected in accordance with the Declaration of Trust, provided that the first trade in the Media Canada Shares or Media Canada Notes received by a holder of Units under this decision is deemed to be a distribution or a primary distribution to the public under the Legislation unless:

- (a) except in Québec, the conditions contained in subsection 2.6(3) of Multilateral Instrument 45-102 - Resale of Securities are satisfied; and
- (b) in Québec:
 - (i) the Fund is a reporting issuer in Québec at the date of such trade;
 - (ii) the Fund has been a reporting issuer in Québec for the four months immediately preceding the trade;
 - (iii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
 - (iv) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
 - (v) if the selling security holder is an insider or officer of the Fund, the person has no reason to believe that any of such parties is in default of the Legislation.

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The further decision of the Decision Makers (other than the Decision Makers in Manitoba, Prince Edward Island, Northwest Territories, Nunavut and the Yukon Territory) under the Legislation is that Media Canada is deemed or declared to be a reporting issuer in the Reporting Jurisdictions.

R. Daren Baxter
Vice-Chairman
Nova Scotia Securities Commission