

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF ONTARIO, MANITOBA,  
QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND,  
NOVA SCOTIA AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF  
ALGONQUIN POWER INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authorities or regulators (the "Decision Makers") in Ontario, Manitoba, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland (the "Jurisdictions") have received an application on behalf of Algonquin Power Income Fund (the "Fund") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement in the Legislation to register to trade in a security (the "Registration Requirement") and to file and obtain a receipt for preliminary prospectus and a prospectus (the "Prospectus Requirements") shall not apply to the issuance by the Fund of additional trust units ("Additional Units") pursuant to a unitholder distribution reinvestment plan (the "Plan") and shall not apply to first trades of Additional Units, subject to conditions;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

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

1. The Fund is an unincorporated open-ended trust, created by a declaration of trust (the "Declaration of Trust") dated September 8, 1997, as amended, in accordance with the laws of the Province of Ontario. An unlimited number of trust units may be issued pursuant to the Declaration of Trust. Each trust unit is transferable and represents an equal undivided beneficial interest in any distribution from the Fund, whether of net income, net realized capital gains or other amounts, and in any net assets of the Fund in the event of the termination or winding-up of the Fund.
2. The Declaration of Trust provides that, notwithstanding any other provision thereof, the only undertaking of the Fund is (a) the investing of its funds in property (other than real property or an interest in real property), (b) the acquiring, holding, maintaining, improving, leasing or managing

of any real property (or an interest in real property) that is capital property of the Fund, or (c) any combination of the activities in (a) and (b).

3. The Fund has acquired a direct or indirect equity interest in 38 hydroelectric generating facilities located in Canada and the United States, and is, through those interests, engaged indirectly in the business of generating and marketing electrical energy within the independent power generation industry. The Fund is managed by Algonquin Management Inc.

4. The Fund's trust units are listed on The Toronto Stock Exchange (the "TSE"). The Fund is current in all its filings as required by the TSE.

5. The Fund is a reporting issuer or the equivalent in every province in Canada and not in default of any requirements under the Legislation. The Fund has been a reporting issuer or the equivalent in every province for more than 12 months.

6. The purpose of the Plan is to provide a simple and convenient method for Unitholders participating in the Plan (the "Participants") to invest, in Additional Units, any and all cash distributions received in respect of their trust units. The Plan enables the Fund to issue additional equity capital to Participants.

7. Unitholders who are Canadian residents may enrol in the Plan at any time. Unitholders who are resident outside of Canada will be entitled to participate in the Plan only if permitted without registration or qualification of the trust units under applicable law of the jurisdiction in which those Unitholders reside. Unitholders who are resident in the United States or who are United States persons (as defined in Regulation S under the *Securities Act of 1933* (United States)) will not be entitled to participate in the Plan.

8. The Plan will be administered by CIBC Mellon Trust Company (the "Agent"), which will act as agent for the Participants.

9. The Plan provides that the Fund shall pay over to the Agent, on behalf of Participants, all cash distributions paid on their trust units, net of applicable withholding taxes. The Agent shall then use such funds to purchase Additional Units for the Participants directly from the Fund, as outlined in paragraphs 10 to 15 below.

10. On the cash distribution dates in each calendar year, currently the 15<sup>th</sup> of February, May, August and November, the Agent will pay to the Fund, for investment in Additional Units, all distribution funds held by the Agent as of such date on behalf of Participants.

11. The price of Additional Units purchased under the Plan will be the weighted average of the trading price for trust units of the Fund on the TSE for the twenty (20) trading days immediately preceding the relevant distribution date.

12. No commissions, service charges or brokerage fees will be payable by Participants in connection with the purchase by the Agent of Additional Units. All administrative costs of the Plan will be borne by the Fund.

13. Additional Units purchased under the Plan will be registered in the name of the Agent, to be held by the Agent or its nominee for Participants in the Plan. Certificates for such Additional Units will not be issued to Participants unless specifically requested.

14. The Agent will maintain accounts for Participants in the names in which trust units were registered at the time the Participants entered the Plan. Statements will be mailed to each Participant quarterly, as the Participants' continuing record of purchases made and Additional Units issued under the Plan.

15. When participation in the Plan is terminated, the Participant will receive a certificate for the whole Additional Units held for such Participant's account and a cash payment for any fractional Additional Units.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers are 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 pursuant to the Legislation is that the trades of Additional Units by the Fund to Participants pursuant to the Plan shall not be subject to the Registration Requirement and the Prospectus Requirements in the Legislation provided that:

(a) at the time of the distribution the Fund is a reporting issuer or the equivalent under the Legislation and, to the best of its belief is not in default under the Legislation;

(b) no sales charge is payable in respect of the distributions;

(c) the Fund has caused to be sent to the person or company to whom the Additional Units is traded, not more than 12 months before the trade, a statement describing:

(i) his or her right to withdraw from the plan and to make an election to receive cash instead of Units on the making of a distribution of income, capital gains or other amounts by the Fund; and

(ii) instructions on how to exercise the right referred to in (i);

(d) the first trade in Additional Units acquired pursuant to this decision in a Jurisdiction shall be deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") unless:

(i) at the time of the first trade, the Fund is and has been a reporting issuer or the equivalent under the Applicable Legislation for the 12 months immediately preceding the trade;

- (ii) no unusual effort is made to prepare the market or to create a demand for the Units;
- (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade;
- (iv) if the seller of the Additional Units is an insider of the Fund, the seller has no reasonable grounds to believe that the Fund is in default of any requirement of the Applicable Legislation; and
- (v) except in Quebec, the first trade is not from the holdings of a person or company or a combination of persons or companies holding a sufficient number of trust units (including Additional Units) of the Fund so as to affect materially the control of the Fund or more than 20% of the outstanding voting securities of the Fund, except where there is evidence showing that the holding of those securities does not affect materially the control of the Fund.

DATED on this 23rd day of January, 2001.

Howard I. Wetston R. Stephen Paddon

#### Headnote

MRRS - open-end investment trust is exempt from prospectus and registration requirements in respect of the issuance of units pursuant to a reinvestment plan whereby distributions of income and/or capital gains are reinvested in additional units of the trust - first trade relief is subject to certain conditions

#### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 72(5) and 74(1)

#### Applicable Ontario Rules

Rule 45-502 - *Dividend or Interest Reinvestment and Stock Dividend Plans* (1998), 21 OSCB 3685

Rule 81-501 - *Mutual Funds Reinvestment Plans* (1997), 20 OSCB 5135