

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – exemption from continuous disclosure, annual information form and certification requirements for an exchangeable share issuer, subject to certain conditions – exchangeable shares are exchangeable into units of an income fund that owns all of the common shares of the issuer.

## Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

**DATE: March 2, 2006**

**In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba,  
Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador,  
Yukon, Northwest Territories and Nunavut  
(collectively, the Jurisdictions)**

**and**

**In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications**

**and**

**In the Matter of  
CML Healthcare Inc. (the Filer)**

**MRRS Decision Document**

## Background

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

1.1 in Ontario, British Columbia, Alberta, Manitoba and Nova Scotia (collectively, the **AIF Jurisdictions**), the Filer be exempted (the **AIF Relief**) from Part 6 (Annual Information Form) of National Instrument 51-102 - *Continuous Disclosure Obligations* (**NI 51-102**);

1.2 in Ontario, New Brunswick, Yukon, Northwest Territories and Nunavut, the Filer be exempted (the **NI 51-102 Relief**) from NI 51-102 and any comparable

continuous disclosure requirements under the securities legislation of such Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the **NI 51-102 Requirements**); and

1.3 in each of the Jurisdictions, the Filer be exempted from the requirements contained in Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* (**MI 52-109**) (the **MI 52-109 Relief**).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the **MRRS**):

2.1 the Ontario Securities Commission is the principal regulator for this application; and

2.2 this MRRS decision document evidences the decision of each Decision maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

4. The decision is based on the following facts represented by the Filer:

4.1 The Filer was amalgamated under the Business Corporations Act (Ontario) on February 23, 2004 in accordance with the terms of the a plan of arrangement pursuant to the amalgamation of CML, as it existed prior to the said amalgamation, AcquisitionCo, Diagnostic Acquisition Limited, 1603728 Ontario Inc. and 1602928 Ontario Inc.

4.2 The head office and registered office of the Filer is located in Mississauga, Ontario.

4.3 The Filer is a reporting issuer in each of the Jurisdictions where such status exists.

4.4 The authorized share capital of the Filer includes an unlimited number of common shares (the **Common Shares**) and an unlimited number of exchangeable shares (the **Exchangeable Shares**).

4.5 Neither the Common Shares nor the Exchangeable Shares are listed or quoted on any marketplace.

4.6 CML Healthcare Income Fund (the **Fund**) was established pursuant to a declaration of trust dated January 12, 2004 under the laws of Ontario.

- 4.7 The Fund is, for the purposes of the Income Tax Act (Canada), an unincorporated, open-ended trust.
- 4.8 The head office of the Fund is located in Mississauga, Ontario.
- 4.9 The Fund is a reporting issuer in each of the Jurisdictions where such status exists, and is not in default of any of its obligations under the Legislation.
- 4.10 Units of the Fund (the **Units**) are listed and posted for trading on the TSX.
- 4.11 The authorized capital of the Fund consists of an unlimited number of Units and an unlimited number of special voting units.
- 4.12 The Fund owns all of the issued and outstanding securities of the Filer, other than the Exchangeable Shares.
- 4.13 The unitholders of the Fund (the **Unitholders**) are the sole beneficiaries of the Fund and the Filer is the administrator of the Fund.
- 4.14 The Exchangeable Shares are exchangeable into Units having voting attributes equivalent to those of the Units and, to the extent possible, are the economic equivalent of the Units.
- 4.15 Holders of Exchangeable Shares will receive all disclosure that the Fund is required to send to holders of Units under the Legislation.
- 4.16 The exchange rights attaching to the Exchangeable Shares are governed by a voting and exchange trust agreement among the Fund, the Filer and CIBC Mellon Trust Company, as the initial trustee thereunder (the Voting Trust Trustee) that provides the Voting Trust Trustee the right to require the Fund to exchange the Exchangeable Shares and which will trigger automatically the exchange of the Exchangeable Shares for Units upon the occurrence of certain specified events.
- 4.17 Under a support agreement among the Fund and the Filer, the Fund will take certain actions and make certain payments and will deliver or cause to be delivered Units in satisfaction of the obligations of the Filer.
- 4.18 Pursuant to an MRRS decision document dated March 10, 2004 (the **2004 Decision**), the Filer obtained relief from the following requirements under the Legislation:
- 4.18.1 in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (collectively, the **Original Jurisdictions**), the requirements to issue a press release and file a report upon the occurrence of a material change, file an annual report, file interim

financial statements and audited annual financial statements and deliver such statements to its securityholders, and file and deliver an information circular or make an annual filing in lieu of filing an information circular; and

4.18.2 in each of Saskatchewan, Ontario Quebec and Newfoundland and Labrador, the requirements to file management's discussion and analysis of financial condition and results of operations (the **MD&A**) and an annual information form (the **AIF**).

4.19 Pursuant to section 13.2 of NI 51-102, the Filer is exempt, in each of the Original Jurisdictions, from the provisions of NI 51-102 that are substantially similar to the provisions that the Filer is exempt from under the 2004 Decision.

4.20 MI 52-109 requires every issuer to file certain certificates at the time of filing an AIF, annual and interim financial statements and MD&As. As the Filer is not required to file continuous disclosure, the required certification is not useful.

## **Decision**

5. 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.

6. The decision of the Decision Makers under the Legislation is as follows:

6.1 The NI 51-102 Relief is granted for so long as:

6.1.1 the Fund is a reporting issuer in at least one of the jurisdictions listed in Appendix "B" of Multilateral Instrument 45-102 - Resale of Securities and is an electronic filer under SEDAR;

6.1.2 the Fund concurrently sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Units under the continuous disclosure requirements in NI 51-102 (the **Continuous Disclosure Requirements**);

6.1.3 the Fund files with each Decision Maker copies of all documents required to be filed pursuant to NI 51-102 (the **Fund Continuous Disclosure Documents**);

6.1.4 concurrently with the filing of the Fund Continuous Disclosure Documents, the Fund files in electronic format under the SEDAR profile of the Filer either:

6.1.4.1 the Fund Continuous Disclosure Documents,  
or

6.1.4.2 a notice that indicates that:

6.1.4.2.1 the Filer has been granted  
an exemption from the Continuous  
Disclosure Requirements;

6.1.4.2.2 the Fund has filed the Fund  
Continuous Disclosure Documents,  
and

6.1.4.2.3 where a copy of the Fund  
Continuous Disclosure Documents  
can be found for viewing on SEDAR  
by electronic means;

6.1.5 the Fund is in compliance with the requirements in the  
Legislation and of any marketplace on which the securities of the  
Fund are listed or quoted in respect of making public disclosure of  
material information on a timely basis;

6.1.6 the Filer issues a news release and files a material change  
report in  
accordance with Part 7 of NI 51-102 for all material changes in  
respect of the affairs of the Filer that are not also material changes  
in the affairs of the Fund;

6.1.7 the Fund includes in all mailings of proxy solicitation  
materials to holders of Exchangeable Shares a clear and concise  
statement that explains the reason the mailed material relates solely  
to the Fund, indicates that Exchangeable Shares are the economic  
equivalent of the Units and describes any rights associated with the  
Exchangeable Shares;

6.1.8 the Fund remains a direct or indirect beneficial owner of all  
of the issued and outstanding voting securities of the Filer;

6.1.9 the business of the Filer continues to be the same as the  
business of the Fund in that the Fund has no independent business  
operations, interests in other businesses or material assets and  
liabilities other than its direct or indirect investment in the Filer  
and its subsidiaries; and

6.1.10 the Filer does not issue any securities other than Exchangeable Shares, securities issued to the Fund or its affiliates or debt securities issued to credit unions, insurance companies or other financial institutions.

6.2 The AIF Relief is granted for so long as:

6.2.1 the Filer is exempt from or otherwise not subject to the NI 51-102 Requirements;

6.2.2 the business of the Filer continues to be the same as the business of the Fund in that the Fund has no independent business operations, interests in other businesses or material assets and liabilities other than its direct or indirect investment in the Filer and its subsidiaries; and

6.2.3 the Filer and the Fund are in compliance with the conditions of the 2004 Decision specifically related to the exemptive relief granted to the Filer from Continuous Disclosure Requirements and the requirements to file an AIF and to provide an MD&A (the **2004 Decision Conditions**).

6.3 The MI 52-109 Relief is granted for so long as:

6.3.1 the Filer is not required to, and does not, file its own interim filings and annual filings (as those terms are defined under MI 52-109);

6.3.2 the Fund files in electronic format under the SEDAR profile of the Filer the:

6.3.2.1 interim financial statements required under section 4.3 of NI 51-102;

6.3.2.2 annual financial statements required under section 4.2 of NI 51-102;

6.3.2.3 certification of interim filings required under Part 3 of MI 52-109; and

6.3.2.4 certification of annual filings required under Part 2 of MI 52-109 of the Fund, at the same time as such documents are required to be filed on its own behalf under the Legislation; and

6.3.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements and the Filer and the Fund are in compliance with the 2004 Decision Conditions.

"Iva Vranic"

Iva Vranic

Manager, Corporate Finance

Ontario Securities Commission