

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, QUEBEC, 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  
ENBRIDGE INCOME FUND

MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the provinces of Ontario, British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the "**Jurisdictions**") has received an application from Enbridge Income Fund (the "**Fund**") 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 prospectus (the "**Registration and Prospectus Requirements**") shall not apply to the distribution of trust units of the Fund (the "**Units**") pursuant to the Fund's distribution reinvestment and unit purchase plan (the "**Plan**");

**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 shall have the meanings set out in National Instrument 14-101 *Definitions* or in Notice 14-101 of the Agence nationale d'encadrement du secteur financier;

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

1. The Fund is an unincorporated open-ended trust established under the laws of Alberta by a trust indenture dated May 22, 2003, as amended and restated on June 30, 2003 and August 18, 2003 (the "**Trust Indenture**"). The head office of the Fund is located in Calgary, Alberta.
2. The Fund is a limited purpose trust and its activities are restricted to acquiring, investing in, holding, transferring, disposing of and otherwise dealing with debt or equity securities of Enbridge Commercial Trust ("**ECT**") and other corporations, limited partnerships, trusts or other persons involved in the transportation of energy, having investments and other direct or indirect

rights in persons involved in such businesses and engaging in all activities ancillary or incidental thereto including, but not limited to, borrowing funds and guaranteeing the debts or liabilities of any person in furtherance of any of the aforementioned purposes.

3. The Fund is not 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 part of the net assets of the Fund as contemplated in the definition of "mutual fund" contained in the legislation.

4. Under the Trust Indenture, the Fund is authorized to issue an unlimited number of two classes of units: (i) ordinary units ("**Ordinary Units**"); and (ii) subordinated units ("**Subordinated Units**"), of which there were 20,125,000 Ordinary Units outstanding and 14,500,000 Subordinated Units outstanding on March 31, 2004. All of the Subordinated Units are owned by Enbridge Inc.

5. The Fund is a reporting issuer or the equivalent thereof in each of the Jurisdictions.

6. The Ordinary Units are listed on The Toronto Stock Exchange (the "**TSX**") under the symbol "ENF.UN".

7. CIBC Mellon Trust Company is the trustee of the Fund and Enbridge Management Services Inc. is the administrator of the Fund (the "**Administrator**").

8. The Fund currently makes monthly cash distributions out of its distributable cash on or about the 15th day of a given month (each, a "Distribution Payment Date") to persons who are Unitholders of record as of the close of business on the last business day of the immediately preceding month (each, a "**Record Date**").

9. The Fund has established the Plan to permit Unitholders, other than Unitholders who are resident in the United States or who are otherwise prohibited from participating in the Plan by the law of the jurisdiction in which they reside, at their discretion, to automatically reinvest the distributable cash paid on their Ordinary Units in additional Ordinary Units ("**Plan Units**") as an alternative to receiving cash distributions, in accordance with a distribution reinvestment plan agency agreement (the "**Plan Agreement**") to be entered into by the Fund, the Administrator and CIBC Mellon Trust Company in its capacity as agent under the Plan (in such capacity, the "**Plan Agent**").

10. The Plan was approved, subject to necessary regulatory approval, by the board of trustees of ECT on May 3, 2004.

11. Unitholders holding a minimum of 100 Ordinary Units may elect to participate in the plan (the "**Plan Participants**") by notifying the Plan Agent, via the investment dealer through which they hold their Ordinary Units who is a participant (a "**CDS Participant**") in The Canadian Depository for Securities Limited ("**CDS**") depository service, that the Unitholder wishes to become a Plan Participant. A CDS Participant must provide such notice on behalf of a Plan Participant to CDS in the prescribed form prior to 5:00 p.m. (Toronto time) on the day

immediately preceding the Record Date in respect of the initial distribution in which the Unitholder intends to participate in the Plan.

12. The Fund will disclose in a press release or on its website information regarding participation in the Plan including the minimum number of Ordinary Units to be held and any residency or related requirements.

13. Distributions due to Plan Participants will be paid to the Plan Agent and applied to the purchase of Plan Units. Such Plan Units will, at the discretion and direction of the Administrator, be acquired either through: (i) the facilities of the TSX (the "**Market Purchase Option**"), in which case the issue price of the Plan Units will be based upon the average price at which such Plan Units are purchased; (ii) through issuance directly from the treasury of the Fund (the "**Treasury Issuance Option**"), in which case the issue price of the Plan Units will be based upon the weighted average of the trading prices for the Ordinary Units on the TSX on the ten (10) trading days preceding a Distribution Payment Date (and for which purposes "trading day" will mean a day on which not less than 500 Ordinary Units were traded); or (iii) some combination of the Market Purchase Option and the Treasury Issuance Option.

14. The Plan also allows Plan Participants to make optional cash payments of up to \$1,000 per month (subject to a minimum of \$100 per month) (the "**Optional Cash Payments**") which will be used by the Plan Agent to purchase Plan Units in the manner described in paragraph 13 above. Under the Treasury Issuance Option, the Fund may not issue in any financial year, pursuant to Optional Cash Payments, more than the maximum number of Ordinary Units permitted by applicable law and regulatory policies (as at the effective date of the Plan, this maximum was equal to 2% of the number of Ordinary Units outstanding at the start of the financial year).

15. Optional Cash Payments, along with a Plan Participant's notice in the prescribed form of his or her intention to make an Optional Cash Payment, must be received by the Plan Agent via the applicable CDS Participant on or before 5:00 p.m. (Toronto time) on the day immediately preceding the Record Date to be used to purchase Plan Units on the immediately following Distribution Payment Date. Optional Cash Payments received after the above referenced deadline 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.

16. As all Ordinary Units, including the Plan Units to be 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. Each CDS Participant will have its own procedures with respect to fractional units and each Plan Participant will be required to consult their respective CDS Participant as to the manner in which fractional entitlements will be handled.

18. No commission, service charges or brokerage fees will be payable by the Plan Participants. All commissions and administrative costs associated with the operation of the Plan will be paid by the Fund as set out in the Plan Agreement.

19. Plan Participants may terminate their participation in the Plan by providing written notice to the relevant CDS Participant prior to 5:00 p.m. (Toronto time) on the day immediately preceding the Record Date that the Unitholder wishes to terminate his or her participation in the Plan. Such notice, if actually received by the relevant CDS Participant by the above referenced deadline will have effect in respect of the distribution to be paid to the withdrawing Plan Participant following such Record Date.

20. The Administrator may terminate the Plan, in its sole discretion, upon not less than 30 days' notice to the Plan Participants via the CDS Participants through which the Plan Participants hold their Ordinary Units. The Plan Agreement also contains provisions to allow the Administrator to amend, modify or suspend the Plan under certain circumstances.

21. A distribution of securities by an issuer to its security holders pursuant to a dividend/distribution reinvestment plan or similar arrangement is subject to the Registration and Prospectus Requirements of the Legislation unless appropriate exemptions are available.

22. The distributions of the Plan Units pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions in the Legislation as the Plan involves the reinvestment of distributable cash distributed by the Fund and the not the reinvestment of dividends or interest of the Fund, capital gains or distribution out of earnings or surplus.

23. In addition, Legislation in some of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for reinvestment plans of mutual funds. However, such exemptions are not available to the Fund because the Fund is not a "mutual fund" as defined in the Legislation.

**AND WHEREAS** under the System, the 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 Plan Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements of the Legislation, provided that:

(a) at the time of the trade the Fund is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

(b) no sales charge is payable by Plan Participants in respect of the trade;

(c) the Fund 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:

(i) 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 of distributable cash by the Fund; and

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

(d) in the financial year during which the trade takes place, the aggregate number of Plan Units issued under the Treasury Issuance Option in respect of the Optional Cash Payments shall not exceed two (2%) percent of the aggregate number of Ordinary Units outstanding at the commencement of that financial year;

(e) except in Quebec, the first trade or resale of Plan Units acquired pursuant to the Plan will be a distribution or primary distribution to the public under the Legislation unless the conditions in paragraphs 1 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and

(f) in Quebec, the first trade (alienation) of Plan Units acquired pursuant to the Plan will be a distribution unless:

(i) at the time of the first trade, the Fund is a reporting issuer in Quebec and is not in default of any of the requirements of the Legislation in Quebec;

(ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;

(iii) no extraordinary commission or other 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 Fund, has no reasonable grounds to believe that the Fund is in default of any requirement of the Legislation of Quebec.

June 17, 2004.

"Wendell S. Wigle"

Harold P. Hands"