

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - closed-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - first trade in additional units deemed a distribution unless made in compliance with MI 45-102.

Applicable Ontario Statutory Provisions

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

Multilateral Instrument Cited

Multilateral Instrument 45-102 Resale of Securities (2001), 24 OSCB 5522.

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
FAIRCOURT SPLIT SEVEN TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") has received an application from Faircourt Split Seven 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 (the "Registration Requirement") and to file and obtain a receipt for a preliminary and a final prospectus (the "Prospectus Requirement") shall not apply to certain trades of units of the Trust ("Units") pursuant to a distribution reinvestment 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 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 trust established under the laws of the Province of Ontario and governed by a trust agreement dated February 25, 2004.
2. The Trust filed a (final) prospectus dated February 25, 2004 (the "Prospectus") with the securities regulatory authorities in each of the Jurisdictions qualifying for distribution units of the Trust ("Units") and preferred securities of the Trust ("Preferred Securities") and became a reporting issuer or the equivalent thereof in the Jurisdictions on February 26, 2004 upon obtaining a receipt for the Prospectus. As of the date hereof, the Trust is not on the list of defaulting reporting issuers maintained by any of the Jurisdictions.
3. The Trust is not considered to be a "mutual fund" as defined in the Legislation because the holders of the Units (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 Trust as contemplated in the definition of "mutual fund" in the Legislation. Redemptions only occur once per year (January 31) at net asset value of the Trust ("Net Asset Value") per Unit.
4. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbol "FCN.UN".
5. The Preferred Securities are listed and posted for trading on the TSX under the symbol "FCN.PR.A".
6. The Preferred Securities were issued pursuant to an indenture entered into with CIBC Mellon Trust Company. Each Preferred Security is due March 31, 2011 and bears interest from the date of issue at 6.25% per annum, which is paid quarterly in arrears, on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2004.
7. Each Unit represents an equal, undivided interest in the net assets of the Trust. Each whole 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.
8. Faircourt Asset Management Inc. is the manager and the promoter of the Trust (the "Manager").
9. The Royal Trust Company is the trustee of the Trust.

10. Acuity Investment Management Inc. (the "Investment Advisor") has been retained by the Trust and the Manager to provide investment advisory and portfolio management services to the Trust.

11. The Trust intends to make monthly cash distributions to Unitholders. The objectives of the Trust are to first pay the holders of Preferred Securities ("Securityholders") interest on the Preferred Securities in priority to any distributions on the Units, in the amount of \$0.15625 per \$10 principal amount per quarter, and second, to provide the holders of the Units ("Unitholders") with a stable stream of monthly cash distributions targeted to be approximately \$0.1125 per Unit per month. The Trust further intends to repay Securityholders, on March 31, 2011, in priority to any return of the original subscription price to Unitholders, the original subscription price of the Preferred Securities and to return to Unitholders, on March 31, 2011, at least the original subscription price of the Units.

12. The Trust intends to adopt the Plan so that distributions will, if a Unitholder so elects, be automatically reinvested on such Unitholder's behalf in accordance with the provisions of the agreement governing the operation of the Plan (the "DRIP Agreement") entered into by the Manager, on behalf of the Trust, and CIBC Mellon Trust Company, as plan agent (the "Plan Agent").

13. Non-residents of Canada within the meaning of the Income Tax Act (Canada) are not eligible to participate in the Plan.

14. Pursuant to the terms of the Plan, a Unitholder may elect to become a participant in the Plan by notifying a participant in CDS (the "CDS Participant") through which the Unitholder holds his or her Units of the Unitholder's intention to participate in the Plan. The CDS Participant shall, on behalf of the Unitholder, provide notice to the CDS (the "Participation Notice") of the Unitholder's participation in the Plan no later than the close of business on the business day which is two business days prior to the last business day of each calendar month commencing with the last day of the third month following the month in which the closing of the initial public offering of the Units occurs (the "Record Date") in respect of the next expected distribution in which the Unitholder intends to participate, by delivering to CDS a completed authorization form in the manner prescribed by CDS from time to time. CDS shall, in turn, notify the Plan Agent no later than the close of business on the business day immediately preceding such Record Date of such Unitholder's participation in the Plan.

15. Distributions due to Unitholders who have elected to participate in the Plan (the "Plan Participants") will automatically be reinvested on their behalf by the Plan Agent to purchase Units ("Plan Units") in accordance with the following terms and conditions:

- (a) if the market price (plus applicable commissions and brokerage charges on a per Unit basis) on the relevant distribution date is less than the Net Asset Value per Unit on the distribution date, the Plan Agent shall apply the distributions otherwise payable in cash by the Trust on the Units beneficially held by such Plan Participants on such distribution date (the "Distributions") to purchase Plan Units in the market or from treasury as set out below;

(b) purchases of Plan Units described above will be made in the market by the Plan Agent during the 10 trading day period following the distribution date and the price paid for those Plan Units will not exceed 115% of the market price of the Units on the relevant distribution date. On the expiry of such 10 day period, the unused part, if any, of the distributions will be used to purchase Plan Units from the Trust at a purchase price equal to the higher of: (A) the Net Asset Value per Unit on the relevant distribution date; and (B) 95% of the market price on the relevant distribution date; and

(c) if the market price (plus applicable commissions and brokerage charges on a per Unit basis) on the relevant distribution date is equal to or greater than the Net Asset Value per Unit on such distribution date, the Plan Agent shall apply the distributions to purchase Plan Units from the Trust through the issue of new Units at a purchase price equal to the higher of: (A) the Net Asset Value per Unit on the relevant distribution date; and (B) 95% of the market price on the relevant distribution date.

16. The Plan Agent will purchase Plan Units only in accordance with mechanics described in the Plan and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on Net Asset Value per Unit.

17. The Plan is open for participation by all Unitholders (other than non-residents of Canada), so that such Unitholders can ensure protection against potential dilution, albeit insignificant, by electing to participate in the Plan.

18. The Trust will invest in securities with the objective of providing Unitholders with a high level of sustainable income (as described in the Prospectus) as well as a cost-effective method of reducing the risk of investing in such securities through broad diversification. In addition, the Net Asset Value per Unit should be less volatile than that of a typical equity fund based on historical data. As a result, the potential for significant changes in the Net Asset Value per Unit over short periods of time is moderate.

19. The amount of Distributions that may be reinvested in Plan Units issued from treasury is small relative to the Unitholders' equity in the Trust. The potential for dilution arising from the issuance of Plan Units by the Trust at the Net Asset Value per Unit on a relevant distribution date is not significant.

20. The Plan Agent will not issue certificates representing Plan Units to Plan Participants but may issue certificates to CDS to evidence additional book-entry only Units being issued.

21. No fractional Units will be issued under the Plan. A cash adjustment for any fractional Units will be paid by the Plan Agent to CDS on a monthly basis to be credited to the Plan Participant via the applicable CDS Participant.

22. A Plan Participant may terminate his or her participation in the Plan by written notice to the CDS Participant through which the Plan Participant holds his or her Units. CDS will then inform

the Plan Agent and thereafter distributions on such Units held by such Unitholder will be paid directly to such Plan Participant.

23. The Plan Agent's charges for administering the Plan will be paid by the Trust out of the assets of the Trust.

24. The Manager may terminate the Plan at any time in its sole discretion upon not less than 30 days' notice to the Plan Participants, via the applicable CDS Participant, and to the Plan Agent.

25. The Manager also reserves the right in its sole discretion to suspend the Plan at any time, in which case the Manager must give, or must cause to be given, written notice of the suspension to all Plan Participants via the applicable CDS Participant.

26. The Manager may, in consultation with the Plan Agent, adopt additional rules and regulations to facilitate the administration of the Plan, which shall, once adopted, be deemed to form part of the DRIP Agreement.

27. The Manager may also amend the Plan or the DRIP Agreement at any time, in its sole discretion, provided that: (i) if the amendment is material to Plan Participants, at least 30 days' notice thereof shall be given to Plan Participants via the applicable CDS Participant and to the Plan Agent; and (ii) if the amendment is not material to Plan Participants, notice thereof may be given to Plan Participants and to the Plan Agent after effecting the amendment. No material amendment will be effective until it has been approved by the TSX (if required) nor will any amendment have the effect of modifying any duties or responsibilities of the Plan Agent without the Plan Agent's prior written consent.

28. The Manager may, in its sole discretion, upon 90 days' written notice to the Plan Agent, and upon payment to the Plan Agent of all outstanding fees payable hereunder, remove the Plan Agent and appoint any person or entity licensed to carry on business of a trustee in Ontario as the agent under the Plan.

29. 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 distributable income distributed by the Trust and not the reinvestment of dividends or interest of the Trust.

30. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on 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.

31. The Trust has an exemption from the Prospectus Requirement and the Registration Requirement under the Legislation in 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:

1. in British Columbia, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador, trades or distributions by the Trust or by an administrator or agent of the Trust of Plan Units for the account of Plan Participants pursuant to the Plan shall not be subject to the Registration Requirement and the Prospectus Requirement, provided that:

(a) 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 requirements of the Legislation;

(b) no sales charge is payable in respect of the distributions of Plan Units from treasury;

(c) 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:

(i) their right to elect to participate in the Plan on a monthly basis to receive Plan Units instead of cash on the making of a distribution by the Trust and how to terminate such participation; and

(ii) instructions on how to make the election referred to in (i);

(d) in 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 a distribution or primary distribution to the public under the Legislation, unless the conditions set out in paragraphs 1 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied;

(e) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public unless:

(i) at the time of the first trade (alienation), the Trust is a reporting issuer in Québec and is not in default of 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;

(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 (alienation); 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 securities legislation in Québec.

2. in Alberta and Saskatchewan, trades by an administrator or agent of the Trust of Plan Units for the account of Plan Participants pursuant to the Plan shall not be subject to the Registration Requirement.

September 3, 2004.

"Paul K. Bates"

"Robert L. Shirriff"