

May 13, 2005

**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  
(THE "JURISDICTIONS")**

**AND**

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

**AND**

**IN THE MATTER OF  
FAIRWAY INVESTMENT GRADE INCOME FUND  
(THE "FILER")**

**MRRS DECISION DOCUMENT**

**Background**

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**") for an exemption from the dealer registration requirement and the prospectus requirements of the Legislation (the "**Requested Relief**") for certain trades of units of the Filer pursuant to a distribution reinvestment plan (the "**Plan**"):

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences that 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 Filer:

1. The Filer is a closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust made as of February 25, 2005 as amended and restated on March 15, 2005.
2. The Filer is not considered to be a "mutual fund" as defined in the Legislation because the holders of units of the Filer ("**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 Filer as contemplated in the definition of "mutual fund" in the Legislation.
3. The Filer became a reporting issuer or the equivalent thereof in the Jurisdictions on February 28, 2005 upon obtaining a receipt for its final prospectus dated February 25, 2005. As of the date hereof, the Filer is not in default of any of the requirements under the Legislation.
4. Each unit of the Filer ("**Unit**") represents an equal, undivided interest in the net assets of the Filer and is redeemable at the net asset value of the Filer ("**Net Asset Value**") per Unit on the second last business day in August of each year. Each Unit is also redeemable on a monthly basis at a price determined by reference to the market price of the Units.
5. Each 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 Filer.
6. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbol "FGF.UN".
7. Fairway Advisors Inc. is the manager ("**Manager**") and trustee ("**Trustee**") of the Filer.
8. The Filer intends to make monthly cash distributions to Unitholders. The distribution for the first twelve months following the closing of the offering of Units is expected to be \$0.60 per Unit, representing an annual distribution of 6% based on a subscription price of \$10.00 per Unit. Distributions will be payable to Unitholders of record on the last business day of each calendar month prior to the termination date of the Filer, or such other date determined by the Trustee from time to time (each, a "Record Date"). The Filer intends to pay distributions to Unitholders not more than 15 days after each Record Date (each, a "Distribution Date"). The first distribution was payable to Unitholders of record on April 30, 2005. The Filer may also make other distributions at any time in addition to monthly distributions, if it considers it appropriate, including to ensure that the Filer will not be liable for income tax under the Income Tax Act (Canada).
9. The Filer has adopted the Plan which, subject to obtaining all necessary regulatory approvals, will permit distributions to be automatically reinvested, at the election of a Unitholder, to purchase additional Units ("**Plan Units**") pursuant to the Plan and in accordance with the provisions of a distribution reinvestment plan agency agreement entered into by Fairway Advisors Inc., as trustee of the Filer (in such capacity, the "**Trustee**") and Computershare Investor Services Inc. (the "**Plan Agent**").

10. Pursuant to the terms of the Plan, a Unitholder will be able to elect to become a participant in the Plan by notifying the Plan Agent, via the applicable participant ("CDS Participant") in the Canadian Depository for Securities Limited ("CDS") depository service through which such Unitholder holds Units, of its decision to participate in the Plan. Participation in the Plan will not be available to Unitholders who are not residents of Canada for the purposes of the Income Tax Act (Canada).

11. Distributions due to Unitholders who have elected to participate in the Plan (the "Plan Participants") will be automatically reinvested on their behalf by the Plan Agent to purchase Plan Units directly from the Filer at a price equal to the weighted average trading price on the TSX for the five trading days immediately preceding the relevant Distribution Date. Plan Participants will receive a report of the Units purchased for the Plan Participant's account in respect of each distribution and the cumulative total of all Units purchased for that account from the applicable CDS Participant in accordance with the practices and procedures of such CDS Participant.

12. 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.

13. The amount of distributions that may be reinvested in Plan Units issued from treasury will be small relative to a Unitholder's equity in the Filer.

14. The Plan is open for participation by all Unitholders (other than non-residents of Canada), so that such Unitholders can reduce potential dilution by electing to participate in the Plan.

15. Since all Units, including those 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.

16. A cash adjustment for any fractional Plan Unit to which a Plan Participant is entitled will be paid by the Plan Agent upon each distribution, provided that the Filer has first caused the amount of any such cash adjustment to be paid to the Plan Agent. The Plan Agent's fees for administering the Plan will be paid by the Filer out of the assets of the Filer.

17. A Plan Participant may terminate his or her participation in the Plan by causing to be provided, via the applicable CDS Participant, at least ten business days' prior written notice to the Plan Agent and, such notice, if actually received no later than ten business days prior to the next Record Date, will have effect beginning with the distribution to be made with respect to such Record Date. Thereafter, distributions payable to such Unitholder will be in cash.

18. The Trustee may terminate or suspend the Plan in its sole discretion, upon not less than 30 days' prior written notice to the Plan Participants via the applicable CDS Participant and the Plan Agent.

19. The Trustee may amend or modify the Plan at any time, provided that it gives notice of that amendment or modification to (i) CDS Participants through which the Plan Participants hold

their Units and (ii) the Plan Agent. Any amendments to the Plan are subject to the approval of the TSX. The Trustee may adopt additional rules and regulations to facilitate the administration of the Plan subject to the approval of any applicable securities regulatory authority or stock exchange.

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

21. The distribution of the Plan Units by the Filer pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Filer 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 Filer.

## **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:

(a) except in Alberta, New Brunswick, and Saskatchewan, the Requested Relief is granted provided that:

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

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

(iii) the Filer 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 by the Filer; and

(II) instructions on how to exercise the right referred to in (I);

(b) in each of the Jurisdictions the first trade (alienation) of the Plan Units acquired under this Decision shall be deemed to be a distribution or a primary distribution to the public; and

(c) in each of the Jurisdictions the prospectus requirement contained in the Legislation shall not apply to the first trade (alienation) of Plan Units acquired by the Plan Participants pursuant to the Plan, provided that:

(i) except in Québec, the conditions in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 – Resale of Securities are satisfied; and

(ii) in Québec:

(I) at the time of the first trade, the Filer is a reporting issuer in Québec and is not in default on 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 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 Filer, has no reasonable grounds to believe that the Filer is in default of any requirement of the Legislation of Québec.

"Paul M. Moore"  
"Vice-Chair"

"Susan Wolburgh Jenah"  
" Vice-Chair"

ONTARIO SECURITIES COMMISSION

### **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.