

IN THE MATTER OF THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA  
SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF  
FIRM CAPITAL MORTGAGE INVESTMENT TRUST

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland (the "Jurisdictions") has received an application from Firm Capital Mortgage Investment 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 and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the "Registration and Prospectus Requirements") shall not apply to the distribution of units of the Trust pursuant to a distribution reinvestment plan (the "DRIP");

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 the Trust has represented to the Decision Makers that:

1. The Trust is an unincorporated closed-end investment trust governed by the laws of the Province of Ontario by an amended and restated declaration of trust dated as of May 24, 2001. As a mortgage investment trust, the Trust is a non-bank provider of residential and commercial real estate finance. The Trust generates fees and income from investments in a portfolio of mortgage loans and generates stable distributions for Unitholders.
2. The objectives of the Trust are to: (i) provide Unitholders with stable and secure cash distributions from the Trust's investments in mortgage loans in market segments which are underserved by Canadian banks and other large financial institutions; and (ii) obtain superior yields and maximize distributions and Unit value through the sourcing and efficient management of the Trust's mortgage investments in such market segments. The Trust makes regular monthly cash distributions to Unitholders and distributes all of the distributable cash of the Trust. The Trust paid aggregate distributions of distributable cash of \$0.95 per Unit to Unitholders in 2000 (which included a special year-end distribution of \$0.0429 per Unit) and is currently making regular monthly distributions of \$0.075 per Unit.

3. The Trust is not a "mutual fund" as defined in the Legislation because the unitholders of the Trust ("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.

4. The Trust is currently a reporting issuer (or its equivalent) in each of the Jurisdictions under the Legislation and has been a reporting issuer (or its equivalent) in each of the Jurisdictions under the Legislation since September 28, 1999 when it received a receipt in each of the Jurisdictions for a final prospectus filed in connection with its initial public offering of Units.

5. On April 20, 2001, the Trust received a Stability Rating of SR-3 from Standard & Poor's. Trusts rated SR-3 have a high level of distribution stability relative to other rated Canadian income funds.

6. The beneficial interests in the Trust are divided into a single class of Units and the Trust is authorized to issue an unlimited number of Units. As of the date hereof, 7,557,500 Units are issued and outstanding.

7. Units are listed and posted for trading on The Toronto Stock Exchange (the "TSE") under the symbol "FC.UN". The closing price on the TSE on November 29, 2001 was \$9.25.

8. The Trust intends to establish a DRIP pursuant to which Canadian resident Unitholders may, at their option, invest cash distributions paid on their Units in additional Units ("Additional Units") as an alternative to receiving cash distributions. The DRIP will not be available to Unitholders who are not Canadian residents.

9. Distributions due to participants in the DRIP ("DRIP Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the "DRIP Agent") and applied to purchase Additional Units. If the weighted average price of Units on the TSE for the five trading days immediately preceding the relevant distribution date (the "Average Market Price") is less than \$9.50, the DRIP Agent shall use such funds to purchase, through an investment dealer selected by the Trust, at a cost less than \$9.50 per Unit, Additional Units through the facilities of the TSE for a period of five trading days following the relevant distribution date. To the extent the DRIP Agent is unable to purchase Additional Units at a cost less than \$9.50 per Unit because Units are not offered or are offered at prices which, after payment of brokerage fees or commissions, would result in a cost at or exceeding \$9.50 per Unit, then the remaining funds will be applied to the purchase of Additional Units from the treasury of the Trust at \$9.50 per Unit. If the Average Market Price is \$9.50 or more, the funds will be applied to the purchase of Additional Units from the treasury of the Trust at the Average Market Price.

10. DRIP Participants may elect to purchase additional Units (the "Purchase Units") at the Average Market Price (the "Cash Top Up"). A minimum purchase of \$1,000.00 per month and maximum purchases of up to \$12,000.00 per year will be permitted under the Cash Top Up. These Purchase Units will be issued out of the treasury of the Trust. The aggregate number of Units that may be issued under the Cash Top Up may not exceed in each year 2% of the number

(at the commencement of the fiscal year of the Trust) of the outstanding Units of the Trust. In the event that the aggregate cash payments received in a particular month would, if fully applied to the purchase of Units, cause the Trust to issue a number of Units which exceeds 2% of the number (at the commencement of the fiscal year of the Trust) of the outstanding Units of the Trust, the DRIP Agent will apply a *pro rata* portion of the cash payments from each DRIP Participant. The balance of the cash payments will be refunded to the applicable DRIP Participants.

11. Full investment of a DRIP Participant's funds will be possible under the DRIP and the Cash Top Up because the DRIP and the Cash Top Up will permit fractions of Units, as well as whole Units, to be purchased and held for DRIP Participants. Also, distributions in respect of whole Units and fractions of Units purchased under the DRIP and the Cash Top Up will be held by the DRIP Agent for the DRIP Participant's account and automatically invested under the DRIP in Additional Units.

12. Additional Units and Purchase Units, as the case may be, purchased under the DRIP or Cash Top Up will be held by the DRIP Agent for DRIP Participants. Certificates for such Units will not be issued to DRIP Participants unless specifically requested.

13. Unitholders may terminate their participation in the DRIP at any time by written notice to the DRIP Agent. Such notice, if actually received prior to a distribution date, will have effect for such distribution. Thereafter, distributions payable to such Unitholders will be by cash. The Trust may amend (subject to prior TSE approval), suspend or terminate the DRIP and Cash Top Up at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants except as otherwise required by law. All DRIP Participants will be sent written notice of any such amendment, suspension or termination.

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 the trades of Additional Units (including the Purchase Units) by the Trust to the DRIP Participants pursuant to the DRIP (and the Cash Top Up incorporated therein) shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

(a) at the time of the trade the Trust is a reporting issuer or the equivalent under the Legislation;

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

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

(i) their right to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by the Trust; and

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

(d) the first trade in Additional Units (including Purchase Units) acquired pursuant to this Decision shall be deemed a distribution or primary distribution to the public unless

(i) except in Quebec, the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 are satisfied, and

(ii) in Quebec,

(a) the issuer is a reporting issuer in Quebec and has complied with the applicable requirements for 12 months immediately preceding the trade;

(b) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

(c) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and

(d) if the seller of the securities is an insider or officer of the issuer, the selling securityholder has no reasonable grounds to believe that the issuer is in default of any requirement of securities legislation;

(e) disclosure of the initial distribution of the Additional Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:

(i) an information circular or take-over bid circular filed in accordance with the Legislation; or

(ii) a letter filed with the Decision Maker in the relevant Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter, when the Trust distributes such Additional Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Additional Units so traded in any month exceeds 1% of the Units outstanding at the beginning of a month in which the Additional Units were traded, in which

case a separate report shall be filed in each relevant Jurisdiction (other than Quebec) in respect of that month within ten days of the end of such month; and

(f) in the financial year of the Trust during which a trade or trades in Purchase Units pursuant to the Cash Top Up takes place, the aggregate number of Purchase Units issued pursuant to the Cash Top Up before such trade or trades, plus the aggregate number of Purchase Units issued in the trade or trades or concurrently with the trade or trades, does not exceed two percent of the number of Trust Units outstanding at the commencement of that financial year.

Dated this 5th day of March, 2002.

*"Paul Moore"*

*"R. Stephen Paddon"*

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Close-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders pursuant to a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - first trade relief provided for additional units of trust, subject to certain conditions.

#### Statutes Cited

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

Rules Cited Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans 21 OSCB 3685.

Rule 81-501 Mutual Fund Reinvestment Plans 20 OSCB 5163.