

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications -- closed-end investment trust that holds securities of other reporting issuers 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 -- exemption from prospectus requirement also granted to permit first trade in additional units even though issuer only reporting issuer for two and half months -- details of plan disclosed in issuer's prospectus - decision should not be used as a precedent for seasoning period exemption -- issuers should review seasoning period treatment for distribution reinvestment plans in proposed NI 45-106 -- Prospectus and Registration Exemptions.

## **Applicable Ontario Statutory Provisions**

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

## **Multilateral Instrument Cited**

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

July 4, 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  
FRONT STREET LONG/SHORT 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 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") in connection with the distribution of units of the Filer issued pursuant to a distribution reinvestment plan (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the 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 trust agreement dated April 28, 2005. Front Street Capital 2004 is the Filer's manager and the Filer is advised by Front Street Investment Management Inc. HSBC Trust Company (Canada) is the trustee of the Filer.
2. The Filer is authorized to issue an unlimited number of transferable units (the "Units") of the Filer, each of which represents an equal, undivided interest in the net assets of the Filer and entitles the holder (the "Unitholder") to one vote at meetings of Unitholders and to participate equally with respect to any and all distributions made by the Filer, including distributions of net income and net realized capital gains. Units may be surrendered for redemption annually for a price equal to the net asset value per Unit less any costs of funding the redemption, including commissions (to a maximum of 1% of the net asset value per Unit).
3. The Filer is not a mutual fund under the Legislation.
4. The Filer filed a final prospectus dated April 28, 2005 (the "Prospectus") with the securities regulatory authorities in each of the Jurisdictions qualifying for distribution of Units of the Filer and became a reporting issuer or the equivalent thereof in the Jurisdictions upon obtaining a receipt for the Prospectus on April 29, 2005 from each of the Jurisdictions. The Filer is not on the list of defaulting reporting issuers maintained by any of the Jurisdictions.

5. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbol "FLS.UN".

6. The Filer's investment objectives are: (a) to provide Unitholders with a stable stream of monthly cash distributions, initially targeted to be \$0.05 per Unit (or \$0.60 per annum), representing a yield of 6.0% per annum on the original issue price of the Units; and (b) to provide Unitholders with the opportunity for enhanced capital growth through the selection, management and strategic trading of long and short positions primarily in securities of income trusts. The Filer's portfolio will consist primarily of investments which generate capital gains, but will also include investments which generate income.

7. The Filer intends to make monthly cash distributions to Unitholders of record on the last business day of each month (the "Record Date") and pay such cash distributions on or about the 15th day following the month end with the first such distribution to be declared in June 2005. The monthly cash distributions are targeted to be \$0.05 per Unit. Distributions over the life of the Filer will be derived primarily from net realized capital gains and income from the Filer's portfolio.

8. The Filer proposes to establish a distribution reinvestment plan (the "Plan") pursuant to which Unitholders may elect to have distributions by the Filer automatically reinvested in additional Units of the Filer ("Plan Units"). The Filer described the Plan in the Prospectus.

9. Distributions payable to participants in the Plan ("Plan Participants") will be paid to CIBC Mellon Trust Company in its capacity as agent under the Plan (the "Plan Agent") and applied to purchase Plan Units. Such purchases will be made through the purchase of Plan Units from the Filer.

10. No commissions or service charges will be payable by Plan Participants in connection with the Plan.

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

12. The Plan Agent will apply the distribution to purchase Plan Units from the Filer through the issue of whole new Units at a price per Unit equal to the greater of (a) net asset value (the "NAV") per Unit on the Record Date; and (b) the weighted average of the trading prices of the Units for the five trading days preceding the Record Date.

13. The Plan Units purchased from the Filer under the Plan will be allocated to Plan Participants in proportion to their share of the distribution. Registrations and transfers of Plan Units will be made only through the book-entry system operated by the Canadian Depository for Securities Limited ("CDS") and, therefore, through participants in the CDS system (individually, a "CDS Participant" and, collectively, "CDS Participants"). Plan Participants will receive confirmation of the number of Plan Units issued to them under the Plan and the issue price per Unit from their CDS Participant.

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

15. The Plan Agent will be purchasing Plan Units only in accordance with the mechanism described in the Plan and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on changes in the NAV per Unit.

16. In light of the nature of the Filer and the terms of the Plan, the Filer believes that the potential for dilution arising from the issuance of Plan Units by the Filer at the NAV per Unit pursuant to the Plan is not significant.

17. The Plan is open for participation by all Unitholders (subject to certain restrictions on non-residents of Canada), so that such Unitholders can reduce potential dilution by electing to participate in the Plan. Under the Plan, Unitholders elect to participate in the Plan. Since the Filer is designed for long-term capital growth rather than short-term income generation, it is expected that most Unitholders will elect to participate in the Plan.

18. A Plan Participant may terminate his or her participation in the Plan at any time by written notice to the Plan Agent through his or her CDS Participant, following which distributions that become payable to such Plan Participant will be made in cash.

19. Plan Participants do not have the option of making cash payments to purchase additional Units under the Plan.

20. To the extent that the Filer distributes additional Plan Units to Plan Participants pursuant to the Plan, such distributions are subject to the Registration and Prospectus Requirements under the Legislation unless appropriate exemptions are available.

21. Except in Alberta, New Brunswick, and Saskatchewan, the distribution of additional Plan Units to Plan Participants pursuant to the Plan cannot be made in reliance on exemptions contained in the Legislation because the Plan involves the reinvestment of distributions of income and net realized capital gains.

22. The distribution of additional Plan Units to Plan Participants pursuant to the Plan cannot be made in reliance on exemptions contained in the Legislation for reinvestment plans of mutual funds because the Filer is not a "mutual fund" as defined in the Legislation.

## **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:

1. the Requested Relief is granted in British Columbia, Manitoba, Quebec, Ontario, Prince Edward Island, Newfoundland and Labrador, and Nova Scotia provided that:

(a) at the time of the trade or distribution, the Filer 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 trade;

(c) the Filer has caused to be sent to the person or company to whom 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 withdrawal right; and

(d) the first trade of the Plan Units acquired under this Decision shall be deemed to be a distribution or a primary distribution to the public; and

2. in each of the Jurisdictions, the Prospectus Requirement shall not apply to the first trade of Plan Units acquired by Plan Participants pursuant to the Plan, provided that:

(a) except in Québec, the Filer is a reporting issuer and the conditions in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 -- Resale of Securities are satisfied; and

(b) in Québec:

(i) at the time of the first trade the Filer 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; 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.

"David L. Knight"

Wendell S. Wigg