

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemption granted from the requirement in item 14.2 of Form 51-102F5 to include in an information circular certain financial statements in respect of a newly-incorporated subsidiary of an income fund to be created solely to implement a proposed internal reorganization– The information circular will be sent to the fund's unitholders in connection with the proposed reorganization that will replace the fund's two wholly-owned subsidiaries with an operating trust and a limited partnership –As part of the reorganization the newly-incorporated subsidiary will issue shares and as a result the legislation would otherwise require financial statement disclosure for such entity – Financial position of the fund will be substantially the same after the reorganization- Relative holdings of units by unitholders of the fund will not be altered as a result of the reorganization – The circular will provide sufficient information, including sufficient financial information, to enable unitholders to make an informed decision.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, Form 51-102F5 – Information Circular, Item 14.2

April 12, 2006

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR AND NUNAVUT
(the "Jurisdictions")**

AND

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

AND

**IN THE MATTER OF
SECOND CUP ROYALTY 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") that:

1. the requirements of the Legislation to include financial statement disclosure for:

- (a) each entity whose securities are being changed, exchanged, issued or distributed in connection with a restructuring transaction, and
- (b) each entity that would result from a restructuring transaction,

in a management information circular sent in connection with an annual and special meeting of unitholders at which a reorganization transaction will be considered (the "Financial Statement Requirement"), shall not apply in respect of Newco (as defined below) and Amalco (as defined below) in the management information circular of the Filer (the "Information Circular") to be sent to holders of units of the Filer ("Unitholders") in connection with the annual and special meeting of Unitholders to be held on May 10, 2006 (the "Meeting") at which Unitholders will consider a reorganization transaction involving the Filer and its wholly owned subsidiaries ("Reorganization"); and

2. the application and this MRRS Decision Document be maintained confidential until the earlier of:

- (a) 30 days from the date of this MRRS Decision Document; and
- (b) such time as the Reorganization proposal is announced (collectively, the "Requested Relief").

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 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 an open ended trust established under the laws of the Province of Ontario pursuant to a declaration of trust that was amended and restated as of December 1, 2004.

2. The Filer completed its initial public offering on December 2, 2004.
3. The head office of the Filer is located at 6303 Airport Road, Mississauga, Ontario, L4V 1R8.
4. The Filer is a reporting issuer in each of the provinces and territories of Canada where such a concept exists, and is not to its knowledge in default of its obligations as a reporting issuer.
5. The Filer is authorized to issue an unlimited number of trust units. As of March 16, 2006, there were 9,638,076 units issued and outstanding. The units are listed and posted for trading on the TSX under the symbol "SCU.UN". 1,492,730 of the issued and outstanding units (approximately 15.5% of the issued and outstanding units) are held directly by The Second Cup Ltd. ("Second Cup"). Second Cup is a wholly-owned subsidiary of Cara Operations Limited, which is a private company.
6. The Filer has two wholly-owned subsidiaries. The first, 1636433 Ontario Inc. ("AcquisitionCo"), is directly owned. The second, Second Cup Trade-Marks Inc. ("MarksCo"), is a direct, wholly-owned subsidiary of AcquisitionCo. Each of AcquisitionCo and MarksCo is a corporation governed by the Business Corporations Act (Ontario).
7. The Filer holds all of the issued and outstanding shares and notes of AcquisitionCo. AcquisitionCo holds all of the issued and outstanding shares and notes of MarksCo.
8. Second Cup is an operating company that carries on business as a franchisor of Second Cup cafés and an operator of company-owned cafés in Canada. The Filer has no ownership interest in Second Cup.
9. Consistent with a restaurant royalty fund structure, Second Cup and MarksCo are parties to a licence and royalty agreement pursuant to which Second Cup makes royalty and other payments to MarksCo and MarksCo has granted Second Cup a licence to use certain Second Cup-related intellectual property, operating procedures, methods, systems, proprietary rights and associated rights (the "Second Cup Marks").
10. The Filer is proposing to undertake the Reorganization to restructure the manner in which the Filer holds its indirect interest in certain Second Cup Marks. The completion of the Reorganization will be conditional upon, among other things, the receipt of an advance tax ruling from Canada Revenue Agency upon terms and conditions satisfactory to the Filer and the approval of the Reorganization by special resolution of unitholders of the Filer at the Meeting. The Reorganization will be completed following the receipt of the advance tax ruling on a date or dates to be determined. The Reorganization will be implemented substantially in accordance with the steps set out below.
11. A trust ("GP Trust") will be created to act as general partner for a new limited partnership (the "Partnership") that will be established under the laws of one of the provinces of Canada. The Filer will subscribe for one unit of GP Trust for nominal consideration. The initial unit of GP Trust issued to the third party settlor of GP Trust will be repurchased by GP Trust for cash.

12. GP Trust, as general partner, and MarksCo, as limited partner, will form the Partnership.
13. AcquisitionCo and MarksCo will amalgamate to form a continuing corporation ("New AcquisitionCo"). All of the shares and notes of MarksCo will be cancelled by virtue of the amalgamation.
14. New AcquisitionCo and the Partnership will enter into a transfer agreement pursuant to which New AcquisitionCo will transfer the Second Cup Marks and assign all of its rights under the licence and royalty agreement to the Partnership. The Partnership will satisfy the purchase price by assuming any outstanding liabilities and obligations of NewAcquisitionCo and by increasing the capital account maintained for NewAcquisitionCo in respect of the Partnership units it already owns. Concurrently with this transfer, the Filer will subscribe for additional units of GP Trust for a cash contribution. GP Trust will use these funds to subscribe for additional general partner units of the Partnership.
15. The Filer will incorporate a new corporation ("Newco") under the Business Corporations Act (Ontario). The authorized share capital of Newco will consist of an unlimited number of common shares, Class A Shares and Class B Shares. Both the Class A Shares and the Class B Shares will be redeemable and retractable.
16. The Filer will subscribe for one common share of Newco on incorporation for nominal consideration.
17. The Class A Shares of Newco will be listed on the Toronto Stock Exchange. Following the listing, the Filer will subscribe for that number of Class A Shares equal to the number of units owned by unitholders of the Filer.
18. The Filer will distribute to its unitholders, as a return of capital, all of its Class A Shares. Each unitholder will receive a number of Class A Shares equal to the number of units of the Filer owned by such holder immediately before the distribution.
19. The Filer and Newco will enter into a transfer agreement pursuant to which the Filer will transfer all of its NewAcquisitionCo shares and notes to Newco. Newco will satisfy the purchase price by issuing Class B Shares to the Filer.
20. Newco and NewAcquisitionCo will be amalgamated to form a continuing corporation ("Amalco"). All of the shares and notes of NewAcquisitionCo will be cancelled by virtue of the amalgamation. Each share of Newco held by the Filer and unitholders of the Filer will be converted into a share of Amalco with the same terms and conditions as that governing the class of Newco shares converted (upon the amalgamation, common shares of Newco will become common shares of Amalco, Class A Shares of Newco will become Class A Shares of Amalco and Class B Shares of Newco will become Class B Shares of Amalco).
21. The Filer and Amalco will enter into a combination agreement pursuant to which Amalco will transfer all of its assets to the Filer. As consideration for this transfer, the Filer will assume any outstanding liabilities of Amalco and will issue units and special units to Amalco. The

special units of the Filer will be a new class of units of the Filer created solely for the purpose of effecting the Reorganization. The special units of the Filer will only be outstanding temporarily, and will be cancelled as part of the Reorganization such that they will not be outstanding following the completion of the Reorganization.

22. Upon the issuance of the special units, the entitlement of other unitholders of the Filer to receive distributions from the Filer will be temporarily subordinated such that they will not receive any distributions from the Filer until the holders of special units of the Filer have been paid the redemption price for such special units or until there are no special units of the Filer issued and outstanding. However, no distributions will be made by the Filer during the time that the special units of the Filer are outstanding. As a result, distributions to unitholders of the Filer will not be affected because of the Reorganization.

23. The Filer and the Partnership will enter into a transfer agreement pursuant to which the Filer will transfer all of its Class B Shares of Amalco to the Partnership. The Partnership will satisfy the purchase price by increasing the capital account maintained for the Filer in respect of the units of the Partnership it already owns. Concurrently with this transfer, the Filer will subscribe for additional units of GP Trust for a cash contribution. GP Trust will use these funds to subscribe for additional general partner units of the Partnership.

24. Amalco will redeem all of the issued and outstanding Class B Shares of Amalco held by the Partnership and all of the issued and outstanding Class A Shares of Amalco held by unitholders of the Filer. Amalco will satisfy the redemption prices by transferring the special units of the Filer to the Partnership and by transferring units of the Filer to the unitholders of the Filer.

25. Upon receipt of the special units of the Filer, the Partnership will renounce, release and surrender all of its interest in the Filer (income, capital or otherwise). As a result, the special units of the Filer held by the Partnership will be cancelled and the units of the Filer held by other unitholders of the Filer will no longer be subordinated.

26. The outstanding units of the Filer held by the Filer's unitholders will be consolidated on a basis such that the number of units outstanding following such consolidation will be equal to the number of units outstanding immediately before the Reorganization. As a result, neither the number of issued and outstanding units of the Filer, nor the relative holdings of units by any unitholder will be altered as a result of the completion of the Reorganization.

27. A new trust ("Operating Trust") will be created. Under the declaration of trust establishing Operating Trust, Operating Trust will be entitled to issue an unlimited number of trust units of one class.

28. The Filer will subscribe for one unit of Operating Trust for nominal consideration. The initial unit issued to the third party settlor on the settlement of Operating Trust will be repurchased by Operating Trust.

29. The Filer will transfer all of its units of the Partnership to Operating Trust for one or more units of Operating Trust. As a result, Operating Trust will own all of the issued and outstanding

limited partner units of the Partnership and GP Trust will continue to own all of the general partner units of the Partnership. The Filer will own all of the issued and outstanding units of Operating Trust.

30. The Reorganization is being proposed to reorganize the manner in which the Filer holds its assets. Following completion of the Reorganization, unitholders of the Filer will continue to hold units of the Filer and the Filer will continue to indirectly own the Second Cup Marks. Accordingly, while changes to the financial statements of the Filer will likely be required to reflect the Filer's organizational structure following the Reorganization, the financial position of the Filer will be substantially the same as is reflected in the Filer's audited annual financial statements for the year ended December 31, 2005.

31. Newco will be incorporated solely for the purposes of implementing the Reorganization. Newco will not carry on any business prior to the Reorganization.

32. Following the amalgamation of Newco and NewAcquisitionCo pursuant to the Reorganization, Amalco will not carry on any business and eventually will be dissolved.

33. The Information Circular will include or incorporate by reference prospectus level disclosure of the Filer, including the Filer's audited annual consolidated financial statements for the year ended December 31, 2005 and Second Cup's audited annual consolidated financial statements for the year ended December 31, 2005.

34. The Information Circular will contain prospectus level disclosure of Newco and Amalco as appropriate and applicable (other than the financial statement disclosure required by the Financial Statement Requirement).

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 the Requested Relief is granted provided that the Filer complies with all other requirements of the Legislation, including but not limited to the requirement that the Information Circular include the audited consolidated financial statements of the Filer for the year ended December 31, 2005 and the audited consolidated financial statements of Second Cup for the year ended December 31, 2005.

"Erez Blumberger"
Assistant Manager, Corporate Finance