

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, NEW BRUNSWICK, NOVA SCOTIA, 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
TRANSFORCE INC.
AND TRANSFORCE INCOME FUND**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "**Decision Maker**") in each of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "**Jurisdictions**") has received an application from TransForce Inc. ("**TransForce**") and TransForce Income Fund (the "**Fund**") (collectively, the "**Applicants**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the requirements under the Legislation to be registered to trade in a security (the "**Registration Requirement**") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "**Prospectus Requirement**") shall not apply to certain trades and distributions of securities to be made in connection with or subsequent to the proposed effective conversion of TransForce into the Fund pursuant to a reorganization agreement among TransForce, the Fund and certain other parties;

AND WHEREAS pursuant to the Mutual Reliance Review System ("**MRRS**") for Exemptive Relief Applications (the "**System**"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Applicants have represented to the Decision Makers that:

1. TransForce was incorporated on April 30, 1985 pursuant to the *Companies Act* (Québec) under the name 2320-2351 Québec Inc. On October 19, 1987, TransForce amalgamated with Location Speribel Inc. The Articles were also amended on October

- 1, 1986 to change the corporate name to Groupe Cabano d'Anjou Inc.; on August 7, 1987 to change the corporate name to Cabano Expeditex Inc.; on December 4, 1990 to change the corporate name to Groupe Transport Cabano Inc./Cabano Transportation Group Inc.; on May 30, 1995 to change the corporate name to Cabano Kingsway Inc.; and on April 23, 1999 to change the corporate name to TransForce Inc. The head office of TransForce is located at 6600 Chemin St-François, Montreal, Quebec H4S 1B7;
2. TransForce's authorized share capital consists of an unlimited number of common shares (the "**Common Shares**") without par value and an unlimited number of preferred shares issuable in series. As at July 31, 2002, there were 51,681,585 Common Shares and no preferred shares issued and outstanding;
 3. the Common Shares are listed on the Toronto Stock Exchange (the "**TSX**"). TransForce is a reporting issuer in each of the provinces of Québec and Ontario and is not in default of any of the requirements of the Legislation;
 4. TransForce is a leading player in the freight transportation industry in eastern Canada, providing both transport and related logistic services to its clientele. TransForce believes that it directly services more urban centres than any other carrier in Canada;
 5. the Fund is an unincorporated open-ended limited purpose trust established pursuant to a declaration of trust dated as of July 31, 2002 under the laws of Québec. The Fund was created for the purpose of acquiring and holding certain investments, primarily units of TFI Operating Trust (the "**Operating Trust**"). The head office of the Fund is located at 6600 Chemin St.-François, Montreal, Québec H4S 1B7;
 6. the Fund is authorized to issue an unlimited number of trust units (the "**Trust Units**"), each of which represents an equal undivided beneficial interest in the Fund. The Trust Units are transferable and are redeemable at any time on demand by the holders thereof for a redemption price to be based on the market price of the Trust Units on the principal market on which they are listed for trading on the redemption date. In certain circumstances the redemption price for the Trust Units will be paid and satisfied by the issuance of notes of a wholly-owned subsidiary of the Fund. It is anticipated that the redemption right described above will not be the primary mechanism for holders of Trust Units to dispose of their Trust Units. Securities that may be distributed in specie to holders of Trust Units in connection with a redemption will not be listed on any stock exchange. As of July 31, 2002, the capitalization of the Fund consists of one Trust Unit which was issued for a consideration of \$10.00;
 7. in connection with the conversion of TransForce into the Fund (the "**Transaction**"), the Fund will issue Trust Units to shareholders of TransForce (the "**Shareholders**") (other than Shareholders electing to receive units of TFI Holdings Inc. (the "**Tracking Share Units**") indirectly in exchange for their Common Shares of TransForce. The Tracking Share Units are intended to be, to the greatest extent possible, the economic

equivalent of the Trust Units. The Tracking Share Units may be exchanged at any time for Trust Units on a one-for-one basis. The Fund has applied to the TSX for the listing on the TSX of the Trust Units issuable in connection with the Transaction. The Trust Units issuable from time to time in exchange for Tracking Share Units will also be listed on the TSX, subject to receipt of final listing approval from the TSX;

8. in connection with the Transaction, the Fund may create and issue voting units to holders of Tracking Share Units ("**Special Voting Units**"). Special Voting Units will give holders of Tracking Share Units one vote at all meetings of unitholders of the Fund (the "**Unitholders**") for each Tracking Share held. Upon exchange of Tracking Share Units for Trust Units, the Special Voting Units will be redeemed for nominal consideration and cancelled;
9. the Fund filed a preliminary prospectus in respect of an initial public offering (the "**Public Offering**") on August 12, 2002. Upon receipt of the MRRS decision document with respect to the prospectus (the "**Prospectus**") for this offering, the Fund will become a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and Québec;
10. TFI Operating Trust (the "**Operating Trust**") is an unincorporated open-ended limited purpose trust to be established under the laws of the Province of Québec. The Operating Trust was created to invest in securities of entities carrying on, directly or indirectly, transportation and related businesses;
11. the Operating Trust is authorized to issue an unlimited number of trust units ("**Operating Trust Units**"). It is not intended that Operating Trust Units be issued or held by any person other than the Fund. Each Operating Trust Unit represents an equal undivided beneficial interest in the Operating Trust. The Operating Trust Units are redeemable and retractable for a price based on the redemption price of the Trust Units of the Fund which is payable in cash, notes or a combination of the two;
12. the Operating Trust is not a reporting issuer (or its equivalent) in any Jurisdiction and there is no intention for the Operating Trust to become one;
13. TFI Holdings will be incorporated under the *Canada Business Corporations Act* solely for the purpose of facilitating the Transaction. All of the shares of TFI Holdings will be owned by the Operating Trust with the exception of the Tracking Shares Units that will be issued in connection with the Transaction;
14. upon the completion of the Transaction, TransForce will be wound up into TFI Holdings;
15. the Transaction will be effected, in part, pursuant to sections 49 and 123.109 of the *Companies Act* (Québec) which requires (i) the adoption of a special resolution of the Shareholders to confirm a by-law to authorize the articles of amendment (the "**Articles**

- of Amendment**"); and (ii) final approval of the said by-law by the Québec Superior Court;
16. pursuant to the Articles of Amendment, all of the issued and outstanding Common Shares will be converted to new shares in the capital of TransForce ("**New Shares**") on a one-for-one basis;
 17. the attributes of the New Shares include exchange rights pursuant to which the holders of the New Shares, in connection with the Transaction, must elect to exchange their New Shares for either (i) notes issued by TFI Holdings ("**TFI Holdings Notes**"); or (ii) Tracking Share Units or a combination of Tracking Share Units and TFI Holdings Notes;
 18. pursuant to the reorganization agreement; (i) the TFI Holdings Notes will automatically be exchanged for notes issued by the Operating Trust ("**OT Notes**"); and (ii) the OT Notes will automatically be exchanged for Trust Units;
 19. any Shareholder who so elects will have his/her shares in an eligible holding company automatically exchanged with TFI Holdings for Tracking Share Units or a combination of TFI Holding Notes and Tracking Share Units;
 20. upon the completion of the Transaction, TransForce will be wound up into TFI Holdings. The issued and outstanding capital of the resulting company will be the Common Shares and TFI Holdings Notes held by the Operating Trust as well as Tracking Share Units;
 21. Completion of the Transaction is conditional upon, among other things:
 - (a) approval of the Articles of Amendment by at least three-quarters of the votes cast by the holders of Common Shares present in person or represented by proxy at the special general meeting of Shareholders to be held on September 12, 2002;
 - (b) receipt of a fairness opinion;
 - (c) completion of the Public Offering;
 - (d) certain necessary consents of regulatory authorities and third parties having been obtained, including the listing of the Trust Units on the TSX; and

- (e) the granting by the Quebec Superior Court of a final order approving the ratification by the Shareholders of a by-law of TransForce authorizing the proposed Articles of Amendment.
22. the Management Proxy Circular contains prospectus-level disclosure of the business and affairs of TransForce and the Fund (as does the Prospectus) and the particulars of the Transaction;
23. the steps under the Transaction, the terms of the Tracking Share Units and the exercise of certain rights provided for in connection with the Transaction and the Tracking Share Units including the subsequent issuance by the Fund of Trust Units in exchange for Tracking Share Units and the redemption of Trust Units by the Fund involve or may involve a number of trades or potential trades of Common Shares, Tracking Share Units, Special Voting Units, New Shares, TFI Holdings Notes, OT Notes, Trust Units and rights to acquire Trust Units under the Transaction (collectively, the "Trades") for which there may be no exemption from the Registration and the Prospectus Requirements;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "**Decision**");

AND WHEREAS 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) the Registration Requirement and the Prospectus Requirement will not apply to the Trades provided that the first trade in securities acquired under this Decision shall be deemed to be a distribution or primary distribution to the public; and
- (b) the Prospectus Requirement will not apply to the first trade in (i) Trust Units and Tracking Share Units acquired by Shareholders under the Transaction; or (ii) Trust Units issued upon the exchange of Tracking Share Units, provided that the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102"), with the

issuer being the Fund, are satisfied; and provided further that, for the purposes of determining the period of time that the Fund has been a reporting issuer under section 2.6 of MI 45-102, the period of time that TransForce was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Transaction may be included.

DATED September 17th, 2002

"Paul Moore"

"R.W. Korthals"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure.

Applicable Ontario Statutory Provisions

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

Applicable Instruments

Multilateral Instrument 45-102 *Resale of Securities*, s. 2.6