

Headnote

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

Applicable Ontario Statutory Provisions

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

Applicable Ontario Rules

Rule 45-502 - Dividend or Interest Reinvestment and Stock Dividend Plans

Applicable Instruments

Multilateral Instrument 45-102 - Resale of Securities - section 2.6(4)

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN
MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA,
NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR AND YUKON**

AND

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

AND

IN THE MATTER OF COMPASS INCOME FUND

MRRS Decision Document

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Yukon (the “Jurisdictions”) has received an application from COMPASS Income Fund (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 or resale of units of the Trust pursuant to a distribution reinvestment plan (the “Plan”);

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 established under the laws of the Province of Ontario by a declaration of trust dated as of March 27, 2002, as amended and restated.
2. The Trust is not considered to be a “mutual fund” as defined in the Legislation because the holders of Units (“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.

3. The Trust became a reporting issuer or the equivalent thereof in the Jurisdictions on March 28, 2002 upon obtaining a receipt for its final prospectus dated March 27, 2002 (the "Prospectus"). As of the date hereof, the Trust is not in default of any requirements under the Legislation.
4. The beneficial interests in the Trust are divided into a single class of voting units (the "Units"). The Trust is authorized to issue an unlimited number of Units. Each Unit represents a Unitholder's proportionate undivided beneficial interest in the Trust. As of April 16, 2002, 13,500,000 Units were issued and outstanding.
5. The Units are listed and posted for trading on The Toronto Stock Exchange (the "TSE") under the symbol "CMZ.UN".
6. The Trust currently intends to make cash distributions ("distributions") of distributable income to Unitholders of record on the day on which the Trust declares a distribution to be payable (each a "Declaration Date"), and such distributions will be payable on a day which is on or before the last business day of the month following a Declaration Date (each a "Distribution Date").
7. The Trust has adopted the Plan which, subject to obtaining all necessary regulatory approvals, will permit distributions to be automatically reinvested, at the election of each Unitholder, to purchase additional Units ("Plan Units") pursuant to the Plan and in accordance with a distribution reinvestment plan agency agreement entered into by the Trust, Middlefield COMPASS Management Limited in its capacity as manager of the Trust (in such capacity, the "Manager") and MFL Management Limited in its capacity as agent under the Plan (in such capacity, the "Plan Agent"). The Plan will not be available to Unitholders who are not residents of Canada for the purposes of the *Income Tax Act* (Canada).
8. Pursuant to the terms of the Plan, a Unitholder will be able to elect to become a participant in the Plan by notifying the Manager, or by causing the Manager to be notified, in writing, of the Unitholder's decision to participate in the Plan.
9. Distributions due to participants in the Plan ("Plan Participants") will be paid to the Plan Agent and applied to purchase Plan Units. Plan Units purchased under the Plan will be purchased by the Plan Agent in the market or directly from the Trust in the following manner:
 - (a) after each Distribution Date, purchases of Plan Units shall be made in the market at the market price of Units on The Toronto Stock Exchange (or such other exchange or market on which Units are then listed) plus applicable commissions and brokerage charges (collectively, the "Market Price"). Such market purchases shall be made during the 15 business days next following the relevant Distribution Date, on any business day when the Market Price per Unit is less than the net asset value of the Trust ("Net Asset Value") per Unit determined as at such Distribution Date.

Upon the expiration of the 15 business day period, the remainder (if any) of the amount paid to the Plan Agent for the benefit of Plan Participants shall be applied to a purchase of Plan Units from the Trust on the 16th business day after the Distribution Date at a price equal to the Net Asset Value per Unit as at the Distribution Date, provided that if the Net Asset Value per Unit as at the Distribution Date is less than 95% of the Market Price per Unit on the Distribution Date, then the Plan Units will be purchased from the Trust at a price equal to 95% of the Market Price per Unit as at the Distribution Date; and

- (b) the Plan Units purchased in the market or from the Trust shall be allocated by the Plan Agent on a *pro rata* basis to the Plan Participants.
10. The Plan also allows Plan Participants to make optional cash payments (“Optional Cash Payments”) which will be used by the Plan Agent to purchase Plan Units. A Plan Participant must invest a minimum of \$100 per Optional Cash Payment. Optional Cash Payments will be used by the Plan Agent to purchase Plan Units on the same basis as distributions as described above. The aggregate number of Plan Units that may be purchased with Optional Cash Payments in a calendar year will be limited to 2% of the outstanding Units at the commencement of that calendar year, provided that for the 2002 calendar year, the number of Plan Units that may be purchased with Optional Cash Payments will be limited to 2% of the outstanding Units immediately following the Closing of the initial public offering of Units pursuant to the Prospectus. The Plan Agent may limit the maximum amount of Optional Cash Payments in any calendar year to ensure that the 2% limit is not exceeded.
 11. Optional Cash Payments, along with a Plan Participant’s notice of his or her intention to make an Optional Cash Payment, must be received by the Plan Agent on or before 5:00 p.m. (Toronto time) on the day which is at least five business days prior to a Distribution Date, in order to be invested in Plan Units immediately following such Distribution Date. Optional Cash Payments and/or notices received less than five business days prior to a Distribution Date will result in the Plan Agent holding (without interest) the Optional Cash Payment and using the same to purchase Plan Units after the second Distribution Date following the date of receipt of the Optional Cash Payment.
 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 Plan is open for participation by all Unitholders (other than non-residents of Canada), so that such Unitholders can ensure protection against potential dilution, albeit insignificant, by electing to participate in the Plan.
 14. Plan Units purchased under the Plan will be registered in the name of the Plan Agent, as agent for the Plan Participants.

15. A Plan Participant may terminate his or her participation in the Plan by providing, or by causing to be provided, at least ten business days' prior written notice to the Manager and, such notice, if actually received no later than ten business days prior to the next Declaration Date, will have effect beginning with the distribution to be made with respect to such Declaration Date. Thereafter, distributions payable to such Unitholder will be in cash.
16. The Manager reserves the right to suspend or terminate the Plan at any time in its sole discretion, in which case Plan Participants and the Plan Agent will be sent written notice thereof. In particular, the Manager may, on behalf of the Trust, terminate the Plan in its sole discretion, upon not less than 30 days' prior written notice to the Plan Participants and the Plan Agent.
17. The Manager may amend or modify the Plan at any time in its sole discretion, provided that it obtains the prior approval of the TSE (if Units are then listed thereon) and provided further that if, in the Manager's reasonable opinion: (i) the amendment or notification is material to Plan Participants, then at least 30 days' prior written notice thereof is given to Plan Participants and the Plan Agent; and (ii) the amendment or modification is not material to Plan Participants, then notice thereof may be given to Plan Participants and the Plan Agent after effecting the amendment or modification. The Manager may also, in consultation with the Plan Agent, adopt additional rules and regulations to facilitate the administration of the Plan.
18. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as, in Jurisdictions other than the province of Alberta, the Plan involves the reinvestment of distributable income distributed by the Trust and not the reinvestment of dividends or interest of the Trust and, with respect to Alberta, because participation in the Plan is not available to all Unitholders.
19. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Trust 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 Trust.

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 Plan Units to the Plan Participants pursuant to the Plan 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 and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the distributions of Plan Units from treasury;
- (c) the Trust 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 Trust; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) in the calendar year during which the trade takes place, the aggregate number of Plan Units issued pursuant to the Optional Cash Payments shall not exceed 2% of the aggregate number of Units outstanding at the commencement of that calendar year (or for the 2002 calendar year, outstanding at the closing of the Trust's initial public offering of Units pursuant to the Prospectus);
- (e) except in Québec, the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in paragraphs 2 through 5 of subsection 2.6(4) of Multilateral Instrument 45-102 are satisfied;
- (f) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed a distribution or primary distribution to the public unless:
 - i. at the time of the first trade the Trust 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 consideration is paid to a person or company other than the vendor of the Plan Units in respect of the trade; and

- iv. the vendor of the Plan Units, if in a special relationship with the Trust, has no reasonable grounds to believe that the Trust is in default of any requirement of the securities legislation in Québec; and
- (g) disclosure of the distribution of the Plan Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Plan Units, the number of such Plan Units and the purchase price paid or to be paid for such Plan 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 Plan Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Plan Units so traded in any month exceeds 1% of the Units outstanding at the beginning of a month in which the Plan Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction in respect of that month within ten days of the end of such month.

June 25, 2002

"Harold P. Hands"

"Lorne Morphy"