

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

AND

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

AND

IN THE MATTER OF  
CML HEALTHCARE INCOME FUND, CML HEALTHCARE INC., CIPHER  
PHARMACEUTICALS INC., CML HEALTHCARE ACQUISITIONCO INC. AND CML  
HEALTHCARE EXCHANGE CO INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, the Yukon Territory, the Northwest Territories and Nunavut (the "Jurisdictions") has received an application from CML Healthcare Income Fund (the "Fund"), CML Healthcare Inc. ("CML"), CML Healthcare Acquisitionco Inc. ("AcquisitionCo"), Cipher Pharmaceuticals Inc. ("New Cipher") and CML Healthcare Exchangeco Inc. ("ExchangeCo") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

(a) for the purposes of the Legislation in Ontario, Manitoba, Nova Scotia and Newfoundland and Labrador, the Fund be deemed or declared a reporting issuer at the effective date (the "Effective Date") of the proposed plan of arrangement (the "Arrangement") under section 182 of the *Business Corporations Act* (Ontario) (the "OBCA") involving the Fund, CML, New Cipher, AcquisitionCo and ExchangeCo and the security holders of CML and various holding companies ("Holding Companies")

(b) the requirements contained in the Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland and Labrador, with respect to AcquisitionCo (or its successor on amalgamation with CML and the Holding Companies, if any, ("New CML")), to issue a press release and file a report with the Jurisdictions upon the occurrence of a material change, file an annual report, file interim financial statements and audited annual financial statements with the Jurisdictions and deliver such statements to the security

holders of New CML, file and deliver an information circular or make an annual filing with the Jurisdictions in lieu of filing an information circular, file an annual information form and provide management's discussion and analysis of financial condition and results of operations (the "Continuous Disclosure Requirements"), where applicable, shall not apply to AcquisitionCo or New CML;

(c) for the purposes of the Legislation of the Jurisdictions other than Quebec, New Brunswick, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut, New Cipher be deemed or declared to be a reporting issuer at the Effective Date of the Arrangement;

(d) the requirement that the Fund have a current AIF filed on SEDAR in order to be a qualifying issuer under Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") not apply;

(e) the requirement that New Cipher have a current AIF filed on SEDAR in order to be a qualifying issuer under MI 45-102 not apply; and

(f) the registration requirement and the prospectus requirement shall not apply to the distribution of units ("Additional Units") pursuant to the Fund's distribution reinvestment plan (the "DRIP");

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

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or Quebec Commission Notice 14-101;

AND WHEREAS the Fund, CML, New Cipher, AcquisitionCo and ExchangeCo have represented to the Decision Makers as follows:

1. CML is a corporation amalgamated and subsisting pursuant to the provisions of the OBCA.
2. The head and principal office of CML is located at 6560 Kennedy Road, Mississauga, Ontario, L5T 2X4.
3. CML is actively engaged in the diagnostic services business and the drug development and pharmaceutical research business.
4. The authorized capital of CML consists of an unlimited number of common shares ("Common Shares").
5. As at January 16, 2004, 20,952,452 Common Shares were issued and outstanding.

6. The Common Shares are listed on the Toronto Stock Exchange (the "TSX").
7. CML is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador and has been for more than 12 months.
8. CML's fiscal year end is September 30.
9. CML has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador and is not in default of the securities legislation in any of these jurisdictions.
10. The Fund is an unincorporated open-ended investment trust governed by the laws of the Province of Ontario and created pursuant to a declaration of trust dated January 12, 2004 (the "Declaration of Trust").
11. The Fund was established for the purpose of, among other things.
  - (a) investing in the common shares and notes of AcquisitionCo and acquiring, directly or indirectly, the CML Shares pursuant to the Arrangement;
  - (b) investing in securities, including securities issued by New CML and its affiliates, and otherwise lending funds to New CML and its affiliates;
12. The head and principal office of the Fund is located at 6560 Kennedy Road, Mississauga, Ontario, L5T 2X4.
13. The Fund was established with nominal capitalization and currently has only nominal assets and no liabilities. The only activity which will initially be carried on by the Fund will be the holding of securities of AcquisitionCo, ExchangeCo and New CML.
14. The Fund is authorized to issue an unlimited number of units ("Units") and an unlimited number of special voting units ("Special Voting Units").
15. As of the date hereof, there is one Unit issued and outstanding, which is owned by CML, and no Special Voting Units are outstanding.
16. The Fund has received conditional approval from the TSX for the listing on the TSX of the Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The Units issuable from time to time in exchange for exchangeable shares of New CML will also be listed on the TSX, subject to receipt of final approval from the TSX.

17. The Fund proposes to implement the DRIP pursuant to which holders of Units ("Unitholders") who are Canadian residents will be entitled to elect to have all cash distributions paid on any Units held by them automatically reinvested in Additional Units to be issued from treasury at a price equal to the 10-day weighted average trading price of the Units, or purchased on the market at the prevailing market price.

18. Cash distributions due to participants in the DRIP ("Participants") will be paid to the Fund's agent under the DRIP (the "Plan Agent") and applied by the Plan Agent to the purchase of Additional Units, which will be held under the DRIP for the account of Participants.

19. Additional Units will be purchased either, at the discretion of New CML, directly from the Fund or through the facilities of the TSX.

20. The acquisition price of Additional Units purchased through the facilities of the TSX, in respect of any date on which a cash distribution is paid by the Fund to Unitholders (a "Cash Distribution Date"), will be based on the average price for which the Additional Units are acquired through the facilities of the TSX for the purpose of the DRIP, in respect of that cash distribution commencing on such Cash Distribution Date (the "Market Purchase Price").

21. The acquisition price of Additional Units purchased directly from the Fund will be equal to the weighted average trading price of the Units on the TSX on the ten trading days preceding the Cash Distribution Date (the "Treasury Purchase Price").

22. Under the DRIP, the acquisition price of Additional Units will be 100% of the Treasury Purchase Price or the Market Purchase Price.

23. No commissions, service charges or brokerage fees will be payable by Participants in connection with the purchase of Additional Units under the DRIP.

24. Additional Units issued and held under the DRIP will be registered in the name of the Plan Agent or its nominee as agent for the Participants, and all cash distributions on Units so held for the account of a Participant will be automatically reinvested in Additional Units in accordance with the terms of the DRIP and the election of the Participants.

25. A Participant may terminate its participation in the DRIP at any time by written notice to the Plan Agent. A notice received at least seven business days prior to a distribution record date will be effective for the following Cash Distribution Date.

26. The Fund reserves the right to amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would

prejudice the interests of the Participants. All Participants will be sent written notice of any such amendment, suspension or termination.

27. Upon termination of the DRIP or a Participant's participation in the DRIP, the Participant(s) will receive a certificate for all the whole Additional Units held in their account and a cash payment for any fraction of a Unit.

28. The distribution of Additional Units by the Fund pursuant to the DRIP cannot be made in reliance on certain existing registration and prospectus exemptions contained in the Legislation because the DRIP involves the reinvestment of distributions of distributable cash of the Fund and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus.

29. The distribution of Additional Units by the Fund pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, because the Fund is not a "mutual fund" as defined in the Legislation.

30. The Fund is not a reporting issuer in any of the Jurisdictions.

31. The Fund's fiscal year end is December 31.

32. AcquisitionCo is a wholly-owned subsidiary of the Fund and was incorporated pursuant to the OBCA on January 9, 2004. AcquisitionCo was incorporated to participate in the Arrangement.

33. The head and registered office of AcquisitionCo is located at 6560 Kennedy Road, Mississauga, Ontario, L5T 2X4.

34. The authorized capital of AcquisitionCo currently consists of an unlimited number of common shares. Prior to the Arrangement, the articles of AcquisitionCo will be amended to create a class of exchangeable shares, unlimited in number (the "Exchangeable Shares").

35. As of the date hereof, there are 42 million common shares of AcquisitionCo issued and outstanding, all of which are owned by the Fund. All common shares of New CML will be owned beneficially (directly or indirectly) by the Fund, for as long as any outstanding Exchangeable Shares are owned by any person other than the Fund or any of the Fund's subsidiaries and other affiliates.

36. AcquisitionCo is not a reporting issuer in any of the Jurisdictions. Upon completion of the Arrangement, New CML will become a reporting issuer in certain of the Jurisdictions due to the fact that its existence will continue following the exchange of securities in connection with the Arrangement.

37. The articles of New CML will be the same as the articles of AcquisitionCo, and New CML's name will be "CML Healthcare Inc." The head and registered office of New CML will be the head and registered office of AcquisitionCo.
38. New Cipher was incorporated pursuant to the OBCA on January 9, 2004. New Cipher has not carried on any active business since incorporation.
39. The head and principal office of New Cipher will be located at 966 Pantera Drive, Mississauga, Ontario, L4W 2S1.
40. Pursuant to the Arrangement, New Cipher will acquire, directly or indirectly, from CML all of the outstanding shares of Cipher Holdings (Barbados) Limited, Cipher Canada Inc., 1430267 Ontario Limited, 1448345 Ontario Limited and Pharma Medica Research Inc. (collectively, the "New Cipher Assets"). Following the completion of the Arrangement, New Cipher will be a drug development and pharmaceutical research company engaged in developing medications utilizing advanced drug delivery technologies and providing contract research services.
41. The authorized capital of New Cipher consists of an unlimited number of New Cipher Shares.
42. As of the date hereof, one New Cipher Share is issued and outstanding.
43. New Cipher has applied to list the New Cipher Shares on the TSX. The New Cipher Shares issuable from time to time will also be listed on the TSX, subject to receipt of final approval from the TSX.
44. New Cipher is not a reporting issuer in any of the Jurisdictions.
45. ExchangeCo was incorporated pursuant to the OBCA on January 9, 2004. ExchangeCo has not carried on any active business since incorporation.
46. The head and principal office of ExchangeCo is located at 6560 Kennedy Road, Mississauga, Ontario, L5T 2X4.
47. The authorized capital of ExchangeCo consists of an unlimited number of common shares.
48. As of the date hereof, one common share of ExchangeCo is issued and outstanding. The sole common share of ExchangeCo is currently owned by the Fund.
49. The Arrangement will be effected by way of the Plan pursuant to section 182 of the OBCA, as described herein. The Arrangement will require: (i) approval by not less than two-thirds of the votes cast by the shareholders of CML ("Shareholders") (present in person or represented by proxy) at the meeting (the

"Meeting") of security holders to be held for the purpose of approving the Arrangement; and (ii) approval of the Ontario Superior Court of Justice (the "Court");.

50. CML's information circular dated January 16, 2004 (the "Information Circular") contains prospectus-level disclosure concerning the respective business and affairs of CML, New Cipher, the Fund and New CML and a detailed description of the Arrangement, and is being mailed to Shareholders in connection with the Meeting. The Information Circular has been prepared in conformity with the provisions of the OBCA and applicable securities laws and policies.

51. The assets that will make up the business of New Cipher have been the subject of continuous disclosure on an ongoing basis for more than 12 months, in accordance with CML's responsibilities as a reporting issuer subject to the Continuous Disclosure Requirements.

52. The Arrangement provides that on the Effective Date each of the events below shall, except as otherwise expressly provided, be deemed to occur sequentially without further act or formality:

(a) the CML Shares held by Dissenting Shareholders who have exercised dissent rights which remain valid immediately before the Effective Date shall be deemed to have been transferred to CML and be cancelled and cease to be outstanding and such Dissenting Shareholders shall cease to have any rights as Shareholders other than the right to be paid the fair value of their CML Shares;

(b) simultaneously with the transfers described in paragraphs (c), (d) and (e), each issued and outstanding CML Share in respect of which the holder has validly elected to receive an Exchangeable Share (except any such CML Shares in respect of which, as a result of proration, the Shareholder is deemed not to have so elected) shall be transferred to AcquisitionCo (free of any claims) in exchange for

(i) one Series A Note of AcquisitionCo (a "Series A Note"); and

(ii) four Exchangeable Shares and related ancillary rights;

and an amount equal to the difference between the fair market value of a CML Share and the aggregate fair market value of a Series A Note and the ancillary rights related to such Exchangeable Shares, in each case determined at the time of the transfer, shall be

added by AcquisitionCo to the stated capital of the Exchangeable Shares for each Exchangeable Share so issued;

(c) simultaneously with the transfers described in paragraphs (b), (d) and (e), each issued and outstanding share of any applicable Holding Company ("Holding Company Shares") (which have been tendered pursuant to the option (the "Holding Company Alternative") available to Shareholders who hold their CML shares through a Holding Company) in respect of which the holder has validly elected to receive Exchangeable Shares (except any such Holding Company Share in respect of which, as a result of proration, the Shareholder is deemed not to have so elected) shall be transferred to AcquisitionCo (free of any claims) in exchange for

- (i) one Series A Note, and
- (ii) four Exchangeable Shares and related ancillary rights,

and an amount equal to the difference between the fair market value of a CML Share and the aggregate fair market value of a Series A Note and the ancillary rights related to such Exchangeable Shares, in each case determined at the time of the transfer, shall be added by AcquisitionCo to the stated capital of the Exchangeable Shares for each Exchangeable Share so issued;

(d) simultaneously with the transfers described in paragraphs (b), (c) and (e), each issued and outstanding CML Share not transferred to AcquisitionCo under paragraph 4.39.2 (other than CML Shares held by Holding Companies) shall be transferred to the Fund (free of any claims) in exchange for

- (i) one Series B Note of the Fund (a "Series B Note"), and
- (ii) four Units;

(e) simultaneously with the transfers described in paragraphs (b), (c) and (d), each issued and outstanding Holding Company Share not transferred to AcquisitionCo under paragraph (c) shall be transferred to the Fund (free of any claims) in exchange for

- (i) one Series B Note, and
- (ii) four Units;



(f) the Fund shall transfer to AcquisitionCo (free of any claims) each of the CML Shares held by it in exchange for

- (i) one Note of AcquisitionCo (a "Note"),
- (ii) one Series A Note, and
- (iii) one common share of AcquisitionCo (an "AcquisitionCo Share"),

and an amount equal to the difference between the fair market value of a CML Share and the aggregate fair market value of one Note and one Series A Note, in each case determined at the time of the transfer, shall be added by AcquisitionCo to the stated capital of the AcquisitionCo Shares for each AcquisitionCo Share so issued;

(g) the Fund shall transfer to AcquisitionCo (free of any claims) each of the Holding Company Shares held by it in exchange for

- (i) one Note,
- (ii) one Series A Note, and
- (iii) one AcquisitionCo Share,

and an amount equal to the difference between the fair market value of a CML Share and the aggregate fair market value of one Note and one Series A Note, in each case determined at the time of the transfer, shall be added by AcquisitionCo to the stated capital of the AcquisitionCo Shares for each AcquisitionCo Share so issued;

(h) AcquisitionCo shall deliver a drawdown notice to the agent for the Lenders under AcquisitionCo's new credit facilities and shall borrow \$190 million under such new credit facilities;

(i) AcquisitionCo, CML, each of the Holding Companies, if any, and Diagnostic Acquisition Inc. (hereinafter referred to in this paragraph (i) as "predecessor corporations") shall be amalgamated with effect from the Effective Time to form New CML with the effect that

- (i) all of the property of the predecessor corporations held immediately before the amalgamation (except any amounts receivable from

any predecessor corporations or shares of any predecessor corporations) will become the property of New CML;

(ii) all of the liabilities of the predecessor corporations immediately before the amalgamation (except amounts payable to any predecessor corporations) will become liabilities of New CML;

(iii) all of the CML Shares and all of the Holding Company Shares held by AcquisitionCo and the Diagnostic Acquisition shares held by CML immediately before the amalgamation will be cancelled;

(iv) the Fund will receive one New CML Share for each AcquisitionCo Share held by it before the amalgamation;

(v) each holder of an Exchangeable Share of AcquisitionCo will receive one Exchangeable Share of New CML for each Exchangeable Share of AcquisitionCo held by it immediately before the amalgamation;

(vi) the stated capital of the Exchangeable Shares of New CML will be fixed at an amount equal to the stated capital of the Exchangeable Shares of AcquisitionCo immediately before the amalgamation; and

(vii) the stated capital of the New CML Shares will be fixed at an amount equal to the stated capital of the AcquisitionCo Shares immediately prior to the amalgamation;

(j) each Series A Note shall be redeemed by New CML in exchange for one New Cipher Share and an amount equal to \$7.00;

(k) each option to purchase a CML Share (an "Option") shall be exchanged for one option to purchase a New Cipher Share (a "New Cipher Share") and one option to purchase a Unit (a "Fund Option"); and

(l) each Series B Note shall be redeemed by the Fund in exchange for one New Cipher Store and an amount equal to \$7.00.

53. New CML will become a reporting issuer under the Legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions.

54. The Fund will not be a reporting issuer under the Legislation in Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador at the Effective Date.

55. New Cipher will not be a reporting issuer within the definitions of the applicable Jurisdictions, other than Quebec, at the Effective Date.

56. The Exchangeable Shares provide a holder with a security having economic and voting rights which are, as nearly as practicable, equivalent to those of the Units.

57. Under the terms of the Exchangeable Shares and certain ancillary rights to be granted in connection with the Arrangement, holders of Exchangeable Shares will be able to exchange them at their option at any time for Units.

58. Under the terms of the Exchangeable Shares and certain ancillary rights to be granted in connection with the Arrangement, the Fund, ExchangeCo or AmalgamationCo will redeem, retract or otherwise acquire Exchangeable Shares in exchange for Units in certain circumstances.

59. In order to ensure that the Exchangeable Shares remain the voting and economical equivalent of the Units prior to their exchange, the Arrangement provides for:

(a) a voting and exchange trust agreement to be entered into among the Fund, AcquisitionCo and CIBC Mellon Trust Company (the "Voting and Exchange Agreement Trustee") which will, among other things, (i) grant to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares, the right to require the Fund or ExchangeCo to exchange the Exchangeable Shares for Units, and (ii) trigger automatically the exchange of the Exchangeable Shares for Units upon the occurrence of certain specified events;

(b) the deposit by the Fund of Special Voting Units with the Voting and Exchange Agreement Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Units; and

(c) a support agreement to be entered into between the Fund, AcquisitionCo and ExchangeCo which will, among other things,

restrict the Fund from issuing or distributing to the holders of all or substantially all of the outstanding Units:

- (i) additional Units or securities convertible into Units;
- (ii) rights, options or warrants for the purchase of Units; or
- (iii) units or securities of the Fund other than Units, rights, options or warrants other than those mentioned above, evidence of indebtedness of the Fund or other assets of the Fund,

unless the same or an equivalent distribution is simultaneously made to holders of Exchangeable Shares, an equivalent change is simultaneously made to the Exchangeable Shares, such issuance or distribution is made in connection with a distribution reinvestment plan instituted for holders of Units or a unitholder rights protection plan approved for holders of Units by the board of directors of AcquisitionCo, or the approval of holders of Exchangeable Shares has been obtained.

60. The Information Circular discloses that application will be made to relieve New CML from the Continuous Disclosure Requirements.

61. The Fund will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Units pursuant to the Legislation.

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:

1. the Fund shall be deemed or declared a reporting issuer at the Effective Date for the purposes of the Legislation of Ontario, Manitoba, Nova Scotia and Newfoundland and Labrador;
2. the Continuous Disclosure Requirements of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland and Labrador (other than the requirement to file an annual information form and to

file and deliver interim and annual management's discussion and analysis) shall not apply to New CML for so long as:

(a) the Fund is a reporting issuer in Québec and at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;

(b) the Fund sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Units under the Continuous Disclosure Requirements;

(c) the Fund complies with the requirements of the TSX, or such other market or exchange on which the Units may be quoted or listed, in respect of making public disclosure of material information on a timely basis;

(d) New CML is in compliance with the requirements of the Legislation to issue a press release and file a report with the Jurisdictions upon the occurrence of a material change in respect of the affairs of New CML that is not also a material change in the affairs of the Fund;

(e) the Fund includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to the Fund and not to New CML, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Units and the right to direct voting at meetings of Unitholders:

(f) the Fund remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of New CML, other than the Exchangeable Shares; and

(g) New CML does not issue any preferred shares or debt obligations other than debt obligations issued to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions;

3. New Cipher shall be deemed or declared a reporting issuer at the Effective Date for the purposes of the Legislation of the Jurisdictions, other than Quebec, New Brunswick, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut;

4. the registration requirement and the prospectus requirement shall not apply to trades of Additional Units by the Fund to the Fund's agent under the DRIP for the account of participants in the DRIP pursuant to the DRIP provided that:

(a) at the time of the trade the Fund 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 Fund has caused to be sent to the person or company to whom the Additional Units are traded, 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 Additional Units on the making of a distribution of income by the Fund (the "Withdrawal Right"); and

(ii) instructions on how to exercise the Withdrawal Right; and

(d) the first trade of Additional Units acquired under such decision shall be deemed to be a distribution or a primary distribution to the public; and

5. the prospectus requirement shall not apply to the first trade in Additional Units acquired pursuant to the DRIP, provided that

(a) except in Qu<sup>灑</sup>c, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied;

(b) in Qu<sup>灑</sup>c,

(i) the Fund is and has been a reporting issuer in Qu<sup>灑</sup>c for the 12 months preceding the trade, including the period of time that CML was a reporting issuer in Qu<sup>灑</sup>c immediately before the Arrangement;

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

(iii) no extraordinary commission or other consideration is paid to a person or company in respect of the trade; and

(iv) if the selling security holder is an insider or officer of the Fund, the selling security holder has no reasonable grounds to believe that the Fund is in default of securities legislation.

March 10, 2004.

"Paul Moore"

"Robert Davis"

AND THE FURTHER DECISION of the Decision Makers under the Legislation is that:

1. in Saskatchewan, Ontario, Quebec, and Newfoundland and Labrador, the requirement to file an annual information form and to provide management's discussion and analysis of financial condition and results of operations shall not apply to New CML for so long as the conditions in paragraph 2 of the decision above are complied with;

2. in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador, upon the Effective Date, the requirement contained in the Legislation to have a current AIF filed on SEDAR in order to be a qualifying issuer under MI 45-102 shall not apply to the Fund provided that the Fund files:

(a) a notice on SEDAR advising that the Information Circular has been filed as an alternate form of annual information form and identifying the SEDAR Project Number under which the Information Circular was filed and the portions of the Information Circular containing disclosure specific to the Fund; and

(b) a copy of the Information Circular under the Fund's SEDAR profile;

(c) to the extent that the Fund relies upon this decision in connection with a distribution of securities under any of the provisions listed in Appendix D or E of MI 45-102 or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6 of MI 45-102, the Fund files a Form 45-102F2 on or before the tenth day after the distribution date of any securities certifying that it is a qualifying issuer except for the requirement to have a current AIF; and

(d) this decision expires 90 days after the Fund's financial year ending December 31, 2004;

3. in Québec, the Fund will be exempt from the requirements of subparagraph 1(e) of decision no. 2003-C-0377 of the Commission des valeurs mobilières du Québec

given that the Information Circular contains prospectus level disclosure including financial statements of CML for the year ended September 30, 2003, for the purpose of the Fund qualifying for the shortened hold period; this exemption will expire 90 days after the Fund's financial year ending December 31, 2004;

4. in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador, upon the Effective Date, the requirement contained in the Legislation to have a current AIF filed on SEDAR in order to be a qualifying issuer under MI 45-102 shall not apply to New Cipher provided that New Cipher files:

(a) a notice on SEDAR advising that the Information Circular has been filed as an alternate form of annual information form and identifying the SEDAR Project Number under which the Information Circular was filed and the portions of the Information Circular containing disclosure specific to New Cipher; and

(b) a copy of the Information Circular under New Cipher's SEDAR profile;

(c) to the extent that New Cipher relies upon this decision in connection with a distribution of securities under any of the provisions listed in Appendix D or E of MI 45-102 or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6 of MI 45-102, New Cipher files a Form 45-102F2 on or before the tenth day after the distribution date of any securities certifying that it is a "qualifying issuer" except for the requirement to have a current AIF; and

(d) this decision expires 90 days after New Cipher's financial year ending September 30, 2004; and

5. in Québec, New Cipher will be exempt from the requirements of subparagraph 1(e) of decision no. 2003-C-0377 of the Commission des valeurs mobilières du Québec given that the Information Circular contains prospectus level disclosure including financial statements for the year ended September 30, 2003, for the purpose of New Cipher qualifying for the shortened hold period; this exemption will expire 90 days after New Cipher's financial year ending September 30, 2004.

March 10, 2004.

"Erez Blumberger"

Headnote



Mutual Reliance Review System for Exemptive Relief Applications -- issuer participating in plan of arrangement to form itself into income fund -- issuer "spinning off" portion of its existing business into new separate entity -- issuer granted relief from the continuous disclosure requirements -- fund and new separate entity deemed to be reporting issuer -- fund and new separate entity granted relief from the requirement to have a "current AIF" filed on SEDAR for the purposes of resale legislation -- fund granted relief from registration and prospectus requirement for trades made in connection with its distribution reinvestment plan.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74, 80, 80(b)(iii), 83(1), 88(2)(b).

Applicable Ontario Rules

Rule 51-501AIF and MD&A.

Multilateral Instrument 45-102 Resale of Securities.