

IN THE MATTER OF
**THE SECURITIES LEGISLATION OF
MANITOBA, ONTARIO, NEW BRUNSWICK
AND YUKON**

AND

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

AND

IN THE MATTER OF
LEITH WHEELER INVESTMENT COUNSEL LTD.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Manitoba, New Brunswick and Yukon (the "Jurisdictions") has received an application (the "Application") from Leith Wheeler Investment Counsel Ltd. (the "Applicant") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that certain trades in Subscribed Units and Reinvested Units (as defined below) of the Funds (as defined below) to existing holders of Units of the Funds ("Units") are not subject to the prospectus or registration requirements contained in the Legislation subject to certain conditions;

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 it has been represented by the Applicant to the Decision Makers that:

1. Leith Wheeler is the manager, principal portfolio advisor and promoter of the Leith Wheeler Diversified Pooled Fund (the "Diversified Pooled Fund") and will be the manager, principal portfolio advisor and promoter of additional funds which may be established from time to time ("collectively, the "Funds");
2. Leith Wheeler is a corporation incorporated under the laws of British Columbia and is registered as a mutual fund dealer and portfolio manager in British Columbia, as investment counsel in Alberta, Ontario, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Yukon Territory and as a limited market dealer in Ontario;
3. Units may be offered on a continuous basis in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Yukon Territory to taxable and non-taxable investors, including but not limited to, high net worth individuals, pension plans, religious orders, charitable organizations, endowments and insurance companies;

4. The Diversified Pooled Fund is, and the other Funds will each be, an open-end mutual fund trust established under the laws of British Columbia;
5. None of the Funds is or currently intends to become a "reporting issuer" (or equivalent) as defined in the Legislation;
6. Units will be offered in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Yukon Territory on a private placement basis;
7. Units will not be offered by prospectus, however, an offering memorandum describing applicable prescribed rights of action and rescission will be delivered to prospective investors in respect of each of the Funds;
8. The initial minimum investment in any of the Funds by an investor in a Jurisdiction will be not less than the minimum aggregate purchase amount prescribed by the applicable Legislation of such Jurisdiction (the "Prescribed Amount") and will be made in reliance upon the prospectus and registration exemptions in each of the Jurisdictions other than Ontario and British Columbia (the "Private Placement Exemption");
9. Following an initial investment in a Fund, it is proposed that unitholders of the Fund who were sold Units in reliance upon the Private Placement Exemption be permitted to subscribe for additional units (the "Subscribed Units"), provided that at the time of such subsequent acquisition the investor holds Units of the Fund with an aggregate acquisition cost or aggregate net asset value of at least the Prescribed Amount; and
10. Each Fund proposes to distribute additional units (the "Reinvested Units") by way of automatic reinvestment of distributions attributable to outstanding Units, unless otherwise requested by the unitholder;

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 pursuant to the Legislation is that:

the Registration Requirements and the Prospectus Requirements of the Legislation shall not apply to

- (i) the issuance of Subscribed Units of a Fund to a Unitholder of that Fund provided that

1. the initial investment in Units of that Fund was pursuant to the applicable Private Placement Exemption;

2. at the time of the issuance of such Subscribed Units, the Unitholder then owns Units of that Fund having an aggregate acquisition cost or an aggregate net asset value of not less than the Prescribed Amount of the applicable Jurisdiction;

3. at the time of the issuance of such Subscribed Units, Leith Wheeler is registered under the Legislation of British Columbia as a portfolio manager and such registration is in good standing; and

4. this clause (i) will cease to be in effect 90 days after the coming into force of any legislation, regulation or rule in such Jurisdiction relating to the distribution of Subscribed Units of pooled funds; and

(ii) an issuance of Reinvested Units of a Fund to a Unitholder of that Fund provided that

1. no sales commission or other charge in respect of such issuance of Reinvested Units is payable; and

2. each Unitholder who receives Reinvested Units has received, not more than 12 months before such issuance, a statement describing (A) the details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of a Unit, (B) any right that the Unitholder has to make an election to receive cash instead of Units on the payment of the net income or net realized capital gains distributed by the Fund, (C) instructions on how the right referred to in subsubclause (B) can be exercised, and (D) the fact that no prospectus is available for the Fund as Units are offered pursuant to prospectus exemptions only;

provided that the first trade in Subscribed Units or Reinvested Units shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless otherwise exempt thereunder or unless such first trade is made in the following circumstances:

(i) the applicable Fund is a reporting issuer or the equivalent under the Applicable Legislation;

(ii) if the seller of the Subscribed Units or Reinvested Units is in a special relationship (as defined in the Applicable Legislation) with the Fund, the seller has reasonable grounds to believe that the Fund is not in default of any requirement of the Applicable Legislation;

(iii) no unusual effort is made to prepare the market or to create a demand for the Subscribed Units or Reinvested Units and no extraordinary commission or consideration is paid in respect of such trade; and

(iv) the Subscribed Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Subscribed Units or the Reinvested Units have been held for a period of at least eighteen months from the date they were acquired by the seller of the Reinvested Units.

May 10, 2001.

"Howard I. Wetson"

"Robert W. Davis"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - trades by pooled funds of additional units to existing unitholders holding units having an aggregate acquisition cost or net asset value of not less than the minimum amount prescribed by legislation under "private placement" exemption exempted from registration and prospectus requirement - trades by pooled funds of units to existing unitholders pursuant to automatic reinvestment of distributions by pooled funds exempted from registration and prospectus requirement.

Statutes Cited

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

Rules Cited

Ontario Securities Commission Rule 81-501 - Mutual Fund Reinvestment Plans (1998) 21 OSCB 2713.