

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the requirement to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus with respect to securities issued pursuant to a distribution reinvestment and optional trust unit purchase plan – Relief for first trades of additional trust units, subject to conditions. Sunset provision included in decision document in anticipation of the coming into force of National Instrument 45-106 – Prospectus and Registration Exemptions.

Statutes Cited

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

Instruments Cited

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

August 22, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA,
PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR
(THE "JURISDICTIONS")**

AND

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

AND

**IN THE MATTER OF
PHOENIX CAPITAL INCOME TRUST (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, 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 of units of the Filer pursuant to a distribution reinvestment plan (the

"Requested Relief");

Under the Mutual Reliance Review System for Exemptive Relief Applications (the "MRRS"):

(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 unincorporated, open-ended, limited purpose trust established under and governed by the laws of the Province of Ontario pursuant to a declaration of trust dated April 30, 2005.
2. The Filer's head office is located in Toronto, Ontario.
3. The Filer is a reporting issuer in Alberta, British Columbia, Manitoba and New Brunswick, by virtue of its units (the "Units") being listed on the TSX Venture Exchange ("TSXV"). The Filer is not in default of any requirements under the Legislation.
4. On July 27, 2005 the Filer filed a preliminary prospectus in all of the provinces and territories of Canada. Upon the issuance of a final receipt in respect of such prospectus, the Filer will be a reporting issuer or the equivalent in each province and territory of Canada.
5. The beneficial interests in the Filer are divided into interests of one class, described and designated as "Trust Units". The Filer is authorized to issue an unlimited number of Trust Units, of which 507,838 are issued and outstanding as of July 29, 2005.
6. The objectives of the Filer are to: (i) generate stable and growing cash distributions on a tax efficient basis regularizing the intermittent cash flows of Phoenix Capital Inc.; (ii) enhance the value of the Filer's assets and maximize long-term Unit value; and (iii) expand the asset base of the Filer through an accretive acquisition program.
7. The Filer intends to make cash distributions on the 15th day of each month (the "Distribution Payment Date") to the Filer's Unitholders (the "Unitholders") of record on the last day of the preceding month (the "Distribution Record Date").
8. The Filer has adopted a distribution reinvestment plan (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 (the "Plan Agreement") to be entered into by the Filer and Equity Transfer Services Inc. in its capacity as agent under the Plan (in such capacity, the "Plan Agent").

9. Pursuant to the terms of the Plan, a Unitholder will be able to elect to become a participant in the Plan by notifying the Plan Agent, or with respect to beneficial owners, by causing the Plan Agent to be notified, in writing, of the Unitholder's decision to participate in the Plan. Participation in the Plan will not be available to Unitholders who are not residents of Canada for the purposes of the Income Tax Act (Canada).

10. Distributions due to participants in the Plan ("Plan Participants") will be paid to the Plan Agent and applied to purchase Plan Units in accordance with the terms and conditions of the Plan.

11. The Plan Agent will purchase Plan Units only in accordance with the mechanics described in the Plan and Plan Agreement.

12. 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.

13. Plan Units purchased under the Plan will be registered in the name of the Plan Participants, or Canadian Depository for Securities Limited with respect to beneficial owners.

14. A Plan Participant may terminate his or her participation in the Plan by providing written notice to the Plan Agent at least five business days prior to a Distribution Record Date. If a notice of termination is received less than five business days before the Distribution Record Date, the termination will be effective only after the Distribution Payment Date.

15. The price at which the Plan Units will be purchased with purchaser's distributions will be the weighted average closing price of all Units traded on the exchange upon which Units are then listed for trading for the 5 trading days immediately preceding the relevant Distribution Payment Date.

16. No commissions, services charges or brokerage fees will be payable on the purchase of Plan Units and administrative costs will be borne by the Filer.

17. The Filer reserves the right to amend, suspend or terminate the Plan at any time in its sole discretion, subject to approval of the TSXV, in which case Plan Participants and the Plan Agent will be sent written notice. The Filer 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 Filer pursuant to the Plan can be made in reliance on certain registration and prospectus exemptions contained in the securities Legislation of Alberta, New Brunswick and Saskatchewan but not in reliance on registration and prospectus exemptions

contained in the Legislation of the other Jurisdictions because the Plan involves the reinvestment of distributable income distributed by the Filer and not the reinvestment of dividends or interest of the Filer.

19. The distribution of the Plan Units by the Filer 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 Filer is not considered to be a "mutual fund" as defined in the applicable securities legislation.

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:

- a) at the time of the trade the Filer is a reporting issuer or the equivalent in a jurisdiction in Canada, and is not in default of any requirements under the securities legislation of any jurisdiction;
- b) no sales charge is payable in respect of the distributions of Plan Units from treasury;
- c) the Filer 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 Filer; and
 - ii) instructions on how to exercise the right referred to in (i);
- d) except in Québec, the first trade in Plan Units acquired pursuant to this Decision will be a distribution or primary distribution to the public under the Legislation unless the conditions of subsection 2.6(3) of Multilateral Instrument 45-102 Resale of Securities are satisfied; and
- e) in Québec, the first trade (alienation) in Plan Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless:
 - i) the Filer is and has been a reporting issuer in Québec for the four (4) months preceding the alienation;

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 in respect of the alienation; and

(iv) if the seller of the securities is an insider of the Filer, the seller has no reasonable grounds to believe that the Filer is in default of any requirement of the Legislation; and

f) this Decision will expire in a Jurisdiction on the date which is sixty (60) days from the date National Instrument 45-106 Prospectus and Registration Exemptions comes into force in that Jurisdiction.

"Paul Moore"
Commissioner
Ontario Securities Commission

"Robert Davis"
Commissioner
Ontario Securities Commission