

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- exemption granted from the requirement to include certain financial statements in respect of a newly-incorporated, wholly-owned subsidiary of an income fund in an information circular -- the information circular will be sent to the fund's unitholders in connection with a proposed internal reorganization that will replace the fund's operating company with a new operating limited partnership -- shares of the subsidiary will be issued to the fund's unitholders for an instant in time in order to allow the reorganization to be effected in a tax-deferred manner -- the rights of unitholders in respect of the fund and their relative indirect interests in and to the revenues of the fund's business will not be affected by the reorganization.

## Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, Form 51-102 F5 -- Information Circular, Item 14.2.

April 5, 2006

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, MANITOBA, ONTARIO,  
QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA  
AND NEWFOUNDLAND AND LABRADOR  
(the Jurisdictions)

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

AND

IN THE MATTER OF  
SCI 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 of the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be exempt from the requirements of section 14.2 of Form 51-102F5 Information Circular of National Instrument 51-102 - Continuous Disclosure Obligations to include the following financial statements in the Filer's management information circular (the **Circular**) prepared in connection with the annual general and special

meeting (the **Meeting**) of the Filer's unitholders (Unitholders) to consider and approve, among other things, the Reorganization (as defined below):

(a) audited financial statements of Newco (as defined below), and

(b) audited financial statements in respect of a probable significant acquisition of the Business (as defined below) by Newco

(the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(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 a limited purpose trust established under the laws of Ontario pursuant to an amended and restated declaration of trust dated as of May 23, 2002. The Filer is authorized to issue an unlimited number of units (**Units**). As of December 31, 2005, 7,779,000 Units were issued and outstanding.
2. The Filer holds all of the voting common shares and the notes issued by Simmons Canada Inc. (SCI Opco), an Ontario corporation, which carries on the Simmons Canada mattress and foundation manufacturing business (the **Business**).
3. The Filer completed its initial public offering on October 16, 1997 pursuant to a long form prospectus dated October 2, 1997 (the **Prospectus**).
4. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of its obligations under the Legislation.
5. It is proposed that the Filer's present organizational structure undergo an internal reorganization (the **Reorganization**) to replace SCI Opco with a new operating limited partnership (**SCI LP**) to carry on the Business. SCI LP will be indirectly owned by the Filer through a subsidiary trust (the **Trust**).

6. The Filer has scheduled the Meeting for May 25, 2006 to, among other things, approve the Reorganization.

7. The Reorganization will occur on a tax-deferred basis for the Filer and its Unitholders resident in Canada.

8. After giving effect to the Reorganization, the direct and indirect interests of the Filer in the assets of SCI LP and its general partner and in the Business will be the same as the interests that the Filer held in SCI Opco and the Business immediately prior to the Reorganization.

9. As part of the Reorganization:

(a) all of the operating assets of SCI Opco will be transferred to SCI LP for consideration that includes limited partnership units of SCI LP;

(b) the Filer will incorporate a wholly-owned subsidiary corporation (**Newco**) in connection with, and for the purpose of effecting, the Reorganization;

(c) the Filer will distribute to Unitholders Class A shares of Newco (the **Class A Shares**) on a pro rata basis, as a return of capital on the date of the Reorganization;

(d) the Filer will transfer its securities and notes of SCI Opco to Newco;

(e) Newco will amalgamate with SCI Opco, and the Filer will acquire the assets of the amalgamated entity (hereinafter referred to as **Amalco**), including the limited partnership Units of SCI LP in exchange for Units;

(f) the Class A Shares distributed to Unitholders will be redeemed by Amalco on the date of the Reorganization in exchange for the Units it received in the preceding step;

(g) the Units received by Unitholders upon the redemption of the Class A Shares in the preceding step will be automatically consolidated on the same date as the Reorganization; and

(h) the Filer will transfer the assets acquired from Amalco, including the limited partnership units of SCI LP, to the Trust in exchange for units and notes of the Trust.

10. Neither the number of issued and outstanding Units nor the relative holdings of Units by any Unitholder will be altered as a result of the completion of the Reorganization.

11. The Class A Shares and additional Units distributed to Unitholders will be outstanding for an instant in time on the date of the Reorganization prior to their automatic redemption and consolidation, respectively.

12. The Reorganization is being undertaken in order to structure the flow of revenues created by the Business and distributed to the Filer by its operating subsidiary on an efficient basis. The rights of Unitholders in respect of the Filer and their relative indirect interests in and to the revenues of the Business will not be affected by the Reorganization.

13. The distribution of the Class A Shares and additional Units are, in each case, done solely to allow the Reorganization to be effected in such a manner as to ensure that Unitholders, the Filer and the Filer's subsidiaries will be able to make use of available roll-overs under applicable tax legislation, thus preserving the tax-deferred status of the Reorganization.

14. Prior to the mailing of the Circular, the audited consolidated annual financial statements of the Filer for the financial year ended December 31, 2005 (the **2005 Financial Statements**) (which include the financial results for SCI Opco for such period) will be filed on SEDAR and will be incorporated by reference into the Circular. The Filer has prepared and filed on SEDAR audited annual financial statements for the financial years ended December 31, 2003 and 2004 (collectively, together with the 2005 Financial Statements, the **SCI Financial Statements**). The SCI Financial Statements will be incorporated by reference in the Circular.

#### 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) the Filer complies with all other requirements of the Legislation applicable to the Circular; and

(b) the SCI Financial Statements are incorporated by reference into the Circular.

"Erez Blumberger"

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