

# 2007 BCSECCOM 167

March 23, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds

AIF requirement - A fund wants relief from subsection 9.2 of NI 81-106 that requires a fund that does not have a current prospectus as at its financial year end to prepare an annual information form - The issuer is a short-term vehicle formed solely to invest its available funds in flow-through shares of resource issuers; the issuer's securities are not redeemable and there is no secondary trading in the issuer's securities; the issuer's other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuer's business, financial position and future plans

Proxy voting record - A fund wants relief from subsections 10.3 and 10.4 of NI 81-106 that requires a fund to maintain a proxy voting record and annually to post the proxy voting record on its website - The issuer is a short-term vehicle formed solely to invest its available funds in flow-through shares of resource issuers; the issuer's securities are not redeemable and there is no secondary trading in the issuer's securities; the issuer's other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuer's business, financial position and future plans

## **Applicable British Columbia Provisions**

National Instrument 81-106, ss. 9.2, 10.3, 10.4 and 17.1

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New  
Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest  
Territories and Nunavut  
(the "Jurisdictions")

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

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In the Matter of  
Canada Dominion Resources 2006 Limited Partnership  
Canada Dominion Resources 2006 II Limited Partnership  
Canada Dominion Resources 2007 Limited Partnership  
CMP 2006 Resource Limited Partnership  
CMP 2007 Resource Limited Partnership  
(the “Partnership Filers”)

and

Goodman & Company Investment Counsel Ltd.  
 (“Goodman”, together with the Partnership Filers, the “Filers”)

## 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 Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from:

- (i) the requirement in section 9.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (“NI 81-106”) to prepare and file an annual information form (the “AIF”),
- (ii) the requirement in section 10.3 of NI 81-106 to maintain a proxy voting record (“Proxy Voting Record”), and
- (iii) the requirements in section 10.4 of NI 81-106 to prepare a Proxy Voting Record on an annual basis for the period ending June 30 of each year, to post the Proxy Voting Record on each Partnership Filer’s website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of such Partnership Filer (the “Limited Partners”) upon request.

((i), (ii) and (iii) are collectively, the “Requested Relief”)

For the purposes of this Decision, the term “Partnership Filers” shall include other partnerships that are established by Goodman from time to time in a similar manner.

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Under the Mutual Reliance Review System for Exemptive Relief Applications (“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 Filers:

1. The principal offices of the Filers are located at 1 Adelaide Street East, Toronto, Ontario, M5C 2V9.
2. Goodman is registered under the *Securities Act* (Ontario) as an advisor in the categories of investment counsel and portfolio manager, and is also registered under the legislation of the other Jurisdictions in the equivalent categories.
3. The Partnership Filers were formed to invest in certain flow-through shares (“Flow-Through Shares”) and other securities of companies involved primarily in oil and gas, mining or renewable energy exploration and development (“Resource Companies”) pursuant to agreements (“Resource Agreements”) between each Partnership Filer and the relevant Resource Company. Under the terms of each Resource Agreement, each Partnership Filer subscribes for Flow-Through Shares of the Resource Company and the Resource Company agrees to incur and renounce to such Partnership Filer expenditures in respect of resource exploration and development which qualify as Canadian exploration expense or as Canadian development expense which may be renounced as Canadian exploration expense to such Partnership Filer.
4. Canada Dominion Resources 2006 Limited Partnership is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) (the “Act”) on November 16, 2005. On February 7, 2006, it became a reporting issuer in each

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of the Jurisdictions. On or about July 1, 2008, it will be dissolved and the Limited Partners will receive their *pro rata* share of its net assets.

5. Canada Dominion Resources 2006 II Limited Partnership is a limited partnership formed pursuant to the Act on November 16, 2005. On September 21, 2006, it became a reporting issuer in each of the Jurisdictions. On or about July 1, 2008, it will be dissolved and the Limited Partners will receive their *pro rata* share of its net assets.
6. Canada Dominion Resources 2007 Limited Partnership is a limited partnership formed pursuant to the Act on November 14, 2006. On January 26, 2007, it became a reporting issuer in each of the Jurisdictions. On or about July 1, 2009, it will be dissolved and the Limited Partners will receive their *pro rata* share of its net assets.
7. CMP 2006 Resource Limited Partnership is a limited partnership formed pursuant to the Act on November 16, 2005. On January 23, 2006, it became a reporting issuer in each of the Jurisdictions. On or about July 1, 2008, it will be dissolved and the Limited Partners will receive their *pro rata* share of its net assets.
8. CMP 2007 Resource Limited Partnership is a limited partnership formed pursuant to the Act on November 14, 2006. On January 17, 2007, it became a reporting issuer in each of the Jurisdictions. On or about July 1, 2009, it will be dissolved and the Limited Partners will receive their *pro rata* share of its net assets.
9. It is the current intention of the general partners of the Partnership Filers that, following each Partnership Filer's dissolution, each Partnership Filer will enter into an agreement with Dynamic Managed Portfolios Ltd. ("DMP Ltd."), an open-ended mutual fund corporation, whereby assets of such Partnership Filer would be exchanged for redeemable DMP Resource Class shares, a class of shares authorized by DMP Ltd., which constitutes a separate mutual fund. Upon dissolution of a Partnership Filer, the Limited Partners of the Partnership Filer would then receive their *pro rata* share of the DMP Resource Class shares.
10. The Partnership Filers are short-term special purpose vehicles which are dissolved within approximately 2 years of their formation. The primary investment purpose of the Partnership Filers is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the

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Limited Partners the significant tax benefits that accrue when Resource Companies renounce resource exploration and development expenditures to the Partnership Filers through the Flow-Through Shares.

11. The limited partnership units of the Partnership Filers (the “Units”) are not and will not be listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units are not transferred by Limited Partners since Limited Partners must be holders of the Units on the last day of each fiscal year of a Partnership Filer in order to obtain the desired tax deduction.
12. Given the limited range of business activities to be conducted by the Partnership Filers, the short duration of their existence and the nature of the investment of the Limited Partners, the preparation and distribution of an AIF by each Partnership Filer will not be of any benefit to the Limited Partners and may impose a material financial burden on the Partnership Filers. Upon the occurrence of any material change to any of the Partnership Filers, Limited Partners would receive all relevant information from the material change reports the Partnership Filers are required to file with the Decision Makers.
13. As a result of the implementation of NI 81-106, investors purchasing Units of the Partnership Filers were provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Partnership Filers are voted (the “Proxy Voting Policies”), and had the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.
14. The Proxy Voting Policies require that the Partnership Filers exercise its voting rights in respect of securities of Resource Companies in a manner consistent with the best interests of the Partnership Filer and its Limited Partners.
15. Given the short lifespan of the Partnership Filers, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which a Partnership Filer exercised or failed to exercise its proxy voting rights, as such Partnership Filer would likely be dissolved by the time any potential change could materialize.
16. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the Partnership Filers.

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### **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.

Rhonda Goldberg  
Assistant Manager, Investment Funds Branch  
Ontario Securities Commission