

# 2007 BCSECCOM 273

April 18, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106, s.17.1 Continuous Disclosure Requirements for Investment Funds - A fund wants relief from subsection 9.2 of NI 81-106 which requires that a fund that does not have a current prospectus as at its financial year end 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

## Applicable British Columbia Provisions

National Instrument 81-106, ss. 9.1 and 17.1

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New  
Brunswick, Nova Scotia, Newfoundland and Labrador  
(the Jurisdictions)

and

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

and

In the Matter of  
Catapult Energy Small Cap FTS Limited Partnership  
(the Filer)

## MRRS Decision Document

## Background

1. 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 under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in section 9.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) to file an annual information form (the Requested Relief).

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2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
  - (a) the Alberta Securities Commission is the principal regulator for this application; and
  - (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - (a) The Filer was formed by a preliminary limited partnership agreement made as of September 8, 2006 between Catapult Energy 2006 Inc. as general partner (the General Partner) and Overlord Financial Inc. (Overlord) as the initial limited partner, and was established as a limited partnership pursuant to the provisions of the Partnership Act (Alberta). The definitive form of partnership agreement governing the Filer is the amended and restated limited partnership agreement dated as of October 19, 2006 (the Partnership Agreement). On October 23, 2006, Overlord transferred its initial limited partnership interest in the Filer and the units representing such interest to OFI Fund Management (2004) Inc. (OFI), an affiliate of Overlord. OFI's initial limited partnership interest was redeemed by the Filer on October 31, 2006.
  - (b) The Filer was formed with the investment objectives of (a) achieving capital appreciation through investment in a diversified portfolio of equity securities of selected small cap resource issuers identified by Catapult Financial Management Inc., the Filer's investment advisor, and (b) maximizing tax benefits for investors by purchasing flow-through shares (Flow-Through Shares) of resource issuers.
  - (c) The Filer was granted a decision document, dated October 19, 2006, by the Alberta Securities Commission in its capacity as principal regulator under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* on behalf of the securities regulatory authority or regulator for each of the other provinces of Canada, which decision document evidences the issue of final receipts for the Filer's

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prospectus (the Prospectus) dated October 19, 2006 relating to an offering of up to 800,000 limited partnership units. As a result, the Filer is a reporting issuer or the equivalent thereof in each province of Canada.

- (d) On November 30, 2006, the Filer completed the issue of all the units offered under the Prospectus. No additional units have been or may be issued by the Filer. The units have not been and will not be listed or quoted for trading on any stock exchange or market.
- (e) The Partnership Agreement provides the General Partner with the ability to propose to the limited partners, at a special meeting of limited partners to be held no later than October 31, 2008, an alternative (the Liquidity Alternative) to the termination of the Filer. Such Liquidity Alternative may include, without limitation, a proposal that the Filer exchange its assets for securities of a mutual fund corporation or other appropriate investment vehicle established by Overlord that, in either case deals at arm's length with each resource issuer of which the Filer owns securities. Upon such exchange, the Filer will be dissolved and the securities of the mutual fund corporation or other investment vehicle, as the case may be, will be distributed pro rata to the limited partners upon such dissolution. In the event that the Liquidity Alternative is not proposed to the limited partners on or before October 31, 2008, the Filer will dissolve and its net assets will be distributed *pro rata* to the limited partners on or before December 31, 2008.
- (f) Since its formation, the Filer's activities have been limited to (i) completing the issue of the units under the Prospectus, (ii) investing its available funds in accordance with its investment objectives, and (iii) incurring expenses as described in the Prospectus.
- (g) Unless a material change takes place in the business and affairs of the Filer (which the Filer would in any event be obligated to disclose pursuant to its continuous disclosure obligations), the limited partners will obtain adequate financial information from the Filer's annual and interim financial statements and management report of fund performance thereon. The Prospectus, the financial statements and management reports of fund performance provide sufficient information necessary for a limited partner to understand the Filer's business, financial position and future plans. In addition, if a Liquidity Alternative is proposed, limited partners will receive an information circular which describes the proposed alternative and will be given an opportunity to vote in respect of such proposed alternative at a special meeting of the limited partners.

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- (h) In light of the limited range of business activities to be conducted by the Filer, the nature of the investment of the limited partners in the Filer and the fact that the Filer intends to dissolve within 2.5 years after its formation, the requirement to file an annual information form may impose a material financial burden on the Filer without producing a corresponding benefit to its limited partners.

### **Decision**

5. 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.
6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that this exemption shall terminate in respect of the Filer upon the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers in writing that the exemption should continue, which satisfaction shall be evidenced in writing.

Patricia Leeson  
Associate Director, Corporate Finance  
Alberta Securities Commission