

2007 BCSECCOM 234

April 30, 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 and Nova Scotia
(the Jurisdictions)

and

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

and

In the Matter of

2007 BCSECCOM 234

Canadian Small Cap Resource Fund 2006 No. 1 Limited Partnership
(CSCRF 2006 No. 1 LP)
Canadian Small Cap Resource Fund 2006 No. 2 Limited Partnership
(CSCRF 2006 No. 2 LP)
Canadian Small Cap Resource Fund 2007 No. 1 Limited Partnership
(CSCRF 2007 No. 1 LP)
(each an Applicant Fund and collectively, the Applicant Funds)

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 Applicant Funds for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from:
- (a) 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);
 - (b) the requirement in Section 10.3 of NI 81-106 to maintain a proxy voting record (Proxy Voting Record); and
 - (c) 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 the Applicant Fund's website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of the respective Applicant Fund upon request
- ((a), (b) and (c) are collectively, the Requested Relief).

For the purposes of this decision, the term "Applicant Funds" includes other partnerships that are established from time to time that:

- (a) have a general partner with the same parent as the general partner of an Applicant Fund; and
- (b) are identical to the Applicant Funds in all other respects that are material to this MRRS decision document.

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

2007 BCSECCOM 234

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by each respective Applicant Fund:
1. the head office of each of the Applicant Funds is currently 570 Granville Street, Suite 1400, Vancouver, British Columbia, V6C 3P1;
 2. each Applicant Fund is a non-redeemable investment fund;
 3. the general partner of each Applicant Fund is a wholly-owned subsidiary of Western Resource Funds Ltd. (Western) and it is anticipated that Western will complete the sale of each general partner to NovaDx Ventures Corp.; the process for making investment decisions (as described in each Applicant Funds respective prospectus) will remain unchanged if such sale is completed;
 4. each Applicant Fund was formed to achieve capital appreciation through investments in a diversified portfolio of equity securities, comprised principally of investments in flow-through common shares of companies engaged primarily in mineral or oil and gas exploration in Canada (Resource Issuers) pursuant to agreements (Resource Agreements) between each respective Applicant Fund and the investee Resource Issuer;
 5. under the terms of each Resource Agreement, the relevant Applicant Fund subscribes for flow-through shares of the Resource Issuer and the Resource Issuer agrees to incur and renounce to the Applicant Fund, in amounts equal to the subscription price of the flow-through shares, 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 the Fund;
 6. the limited partnership units of each Applicant Fund are not and will not be listed or quoted for trading on any stock exchange or market; none of the

2007 BCSECCOM 234

limited partnership units of any of the Applicant Funds are redeemable by the limited partners; generally, limited partnership units are not transferred since limited partners must be holders of units on the last day of each fiscal year of the partnership in order to obtain the desired tax deduction; in addition, other than the issuance of the initial limited partnership unit to the initial limited partner and other than as described in this order, no Applicant Fund has issued any limited partnership units; CSCRF 2007 No. 1 LP, expects to file a final prospectus and close the initial sale of limited partnership units in due course;

7. unless a material change takes place in the business and affairs of an Applicant Fund, the limited partners of each respective Applicant Fund will obtain adequate financial information concerning the Applicant Fund from the interim financial statements and annual audited financial statements of the respective Applicant Fund together with the auditor's report distributed to the limited partners; the final prospectus for each of the Applicant Funds and the interim financial statements provide, and in the case of CSCRF 2007 No. 1 LP will provide, sufficient background materials and the explanations necessary for a limited partner to understand the respective business, financial position and future plans of each respective Applicant Fund; if a material change takes place in the business and affairs of any Applicant Fund, such Applicant Fund will ensure that a timely material change report is filed with the securities regulatory authority in each of the Jurisdictions in compliance with applicable securities laws;
8. CSCRF 2006 No. 1 LP is a limited partnership formed pursuant to the *Partnership Act* (British Columbia) on March 2, 2006;
9. CSCRF 2006 No. 1 LP received a final receipt dated May 17, 2006 on behalf of each of the Decision Makers for CSCRF 2006 No. 1 LP's final prospectus dated May 16, 2005 (the CSCRF 2006 No.1 Prospectus) relating to an offering of up to 5,000,000 limited partnership units in the Jurisdictions; on June 13, 2006, CSCRF 2006 No. 1 LP completed the issue and sale of 477,885 limited partnership units under the CSCRF 2006 No. 1 Prospectus; on July 24, 2006, CSCRF 2006 No. 1 LP completed the issue and sale 286,386 limited partnership units under the CSCRF 2006 No. 1 Prospectus; CSCRF 2006 No. 1 LP became a reporting issuer or the equivalent in each of the Jurisdictions;
10. in accordance with the 2006 No. 1 Partnership Agreement 2006 No. 1 LP, CSCRF 2006 No. 1 LP will be dissolved June 30, 2008, unless the partners approve an alternative to the simple dissolution by extraordinary resolution prior to March 31, 2008;

2007 BCSECCOM 234

11. CSCRf 2006 No. 2 LP is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) on August 8, 2006;
12. CSCRf 2006 No. 2 LP received a final receipt dated November 29, 2006 on behalf of each of the Decision Makers for CSCRf 2006 No. 2 LP's final prospectus dated November 28, 2006 (the CSCRf 2006 No. 2 Prospectus) relating to an offering of up to 1,500,000 limited partnership units in the Jurisdictions; CSCRf 2006 No. 2 LP became a reporting issuer or the equivalent in each of the Jurisdictions; on December 12, 2006, CSCRf 2006 No. 2 LP completed the issue and sale of 450,373 limited partnership units under the CSCRf 2006 No. 2 Prospectus;
13. in accordance with the 2006 No. 2 Partnership Agreement, the partnership will be dissolved June 30, 2008 unless the partners approve an alternative to the simple dissolution by extraordinary resolution prior to March 31, 2008;
14. CSCRf 2007 No. 1 LP is a limited partnership formed pursuant to the *Limited Partnership Act* (Ontario) on December 17, 2006;
15. CSCRf 2007 No.1 LP received a receipt dated March 2, 2007 on behalf of each of the Decision Makers for CSCRf 2007 No. 1 LP's preliminary prospectus dated February 28, 2007 (the CSCRf 2007 No. 1 Prospectus) relating to an offering of up to 2,500,000 limited partnership units in the Jurisdictions; CSCRf 2007 No. 1 LP became a reporting issuer or the equivalent in each of the Jurisdictions; CSCRf 2007 No. 1 LP intends to file a final prospectus in each of the Jurisdictions relating to the offering in due course, and thereafter to complete the issue and sale of a minimum of 500,000 and a maximum of 2,500,000 limited partnership units sold under the CSCRf 2007 No. 1 Prospectus;
16. in accordance with the applicable partnership agreement of the Applicant Funds, it is the current intention of the general partners of the Applicant Funds to cause the limited partners to vote on a liquidity alternative to the simple dissolution of each of the Applicant Funds prior to the dissolution; in the event that it is not possible to complete a liquidity alternative described above, the general partner will, in accordance with the applicable partnership agreement, dissolve and distribute the assets of the applicable Applicant Fund to its partners on the dissolution date;
17. each Applicant Fund's range of business activities is limited to (i) completing the issue and sale of limited partnership units under the applicable prospectus, (ii) investing its available funds in flow-through shares of the Resource Issuers and (iii) incurring expenses as described in the applicable prospectus;

2007 BCSECCOM 234

18. given the limited range of business activities to be conducted by each respective Applicant Fund, the short duration of their existence and the nature of the investments of the limited partners, the preparation and distribution of an Annual Information Form by each respective Applicant Fund will not be of benefit to the limited partners and may impose a material financial burden on each of the respective Applicant Funds; upon occurrence of any material change to any Applicant Fund, limited partners would receive all relevant information from the material change reports such Applicant Fund is required to file in accordance with applicable securities laws;
19. as a result of the implementation of NI 81-106, investors purchasing units of CSCRf 2006 No. 1 LP and CSCRf 2006 No. 2 LP were provided with, and in the case of and CSCRf 2007 No. 1 LP will be provided with, a prospectus containing written policies on how the flow-through shares or other securities held by the respective Applicant Fund are to be voted (the Proxy Voting Policies) and had or will have, as the case may be, the opportunity to review the Proxy Voting Policies before deciding whether to purchase limited partnership units;
20. the Proxy Voting Policies give the general partner broad discretion whether or not to exercise the partnership's voting rights in respect of securities of an issuer; generally, the general partner of each respective partnership does not intend to exercise such partnership's voting rights on routine matters, but may, in its sole discretion, decide to vote in any circumstance;
21. given the short lifespan of the Applicant Funds, the production of a Proxy Voting Record would provide limited partners very little opportunity for recourse if they disagreed with the manner in which the general partner exercised or failed to exercise any respective partnership's proxy voting rights, as the Applicant Fund would likely be dissolved by the time any potential change could materialize; and
22. preparing and making available the Proxy Voting Record to limited partners will not be of any benefit to limited partners and may impose a material financial burden on the Applicant Funds.

Decision

- ¶ 4 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.

2007 BCSECCOM 234

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that this exemption shall terminate, only with respect to an affected Applicant Fund, upon the occurrence of a material change in the affairs of that Applicant Fund unless the Applicant Fund satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission