

# 2006 BCSECCOM 413

June 1, 2006

## **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 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

## **Applicable British Columbia Provisions**

NI 81-106, ss. 9.1 and 17.1

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

and

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

and

In the Matter of  
Stone 2005 Flow-Through Limited Partnership  
(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 under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in Section 9.2 of National Instrument 81-106 (NI 81-106) to file an annual information form (the Requested Relief).

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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 partnership formed pursuant to the provisions of the *Limited Partnerships Act* (Ontario) on January 24, 2005.
2. The primary investment objective of the Filer is to invest in flow-through shares (Flow-Through Shares) of resource issuers (Resource Issuers) engaged primarily in oil and gas and mineral exploration in Canada with a view to maximizing the tax benefit of an investment in limited partnership units of the Filer (Units) and achieving capital appreciation for the limited partners of the Filer (the Limited Partners).
3. The Filer was granted a decision document, dated May 24, 2005, by the Ontario 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 itself and the other securities regulatory authorities or regulators for each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia and the Northwest Territories (collectively, the Applicable Jurisdictions), which decision document evidences the issue of final receipts for the Filer's final prospectus (the Prospectus) dated May 20, 2005 relating to an offering of up to 1,200,000 Units at \$25.00 per Unit. As a result, the Filer is a reporting issuer or the equivalent thereof in the Province of Ontario and each of the Applicable Jurisdictions.
4. On May 30, 2005 and September 27, 2005, the Partnership completed the issue of 165,968 Units and 975,000 Units respectively under the Prospectus. No additional Units have been issued by the Partnership. The Units have not

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been and will not be listed or quoted for trading on any stock exchange or market.

5. On or about June 30, 2007, unless the date is extended by extraordinary resolution of the Limited Partners, the Filer will be dissolved and the Limited Partners will receive their *pro rata* share of the net assets of the Filer. It is currently contemplated that the General Partner may propose at a special meeting of Limited Partners to be held on or before June, 2007 one or more alternatives (a Liquidity Alternative) to the simple dissolution of the Filer, including, without limitation, a proposal that the Filer exchange its assets for securities of a mutual fund corporation or other appropriate investment vehicle, and distribute such securities to the Limited Partners on a tax-effective basis, which alternatives may be proposed by the General Partner and must be accepted by extraordinary resolution of the Limited Partners.
6. It is disclosed in the Prospectus that the General Partner may apply on behalf of the Filer for relief from the requirements to send to the Limited Partners, among other things, the annual information form (AIF) of the Filer.
7. Each of the Limited Partners has, by subscribing for Units in accordance with the Prospectus, agreed to the irrevocable power of attorney contained in Article XIX of the limited partnership agreement of the Partnership dated January 24, 2005 scheduled to the Prospectus and has thereby, in effect, consented to the making of the application for the exemption requested.
8. Since its formation on January 24, 2005, the Filer's activities have been limited to (i) completing the issue of the Units under the Prospectus, (ii) investing its available funds in Flow-Through Shares of Resource Issuers and (iii) incurring expenses as described in the Prospectus.
9. Unless a material change takes place in the business and affairs of the Filer, 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 report of fund performance provide sufficient information necessary for a Limited Partner to understand the Filer's business, its financial position and its future plans, including the Liquidity Alternative.
10. 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 on or about June 30, 2007, unless extended by an extraordinary resolution of the Limited Partners in relation to a Liquidity Alternative or otherwise, the requirement to file an AIF may impose a material

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financial burden on the Filer without producing a corresponding benefit to the Limited Partners.

### **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 requirement in Section 9.2 of NI 81-106 to file an AIF shall not apply to the Filer.

Leslie Byberg, Manager  
Ontario Securities Commission