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April 13, 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, Quebec, New  
Brunswick, Nova Scotia and Newfoundland and Labrador  
(the Jurisdictions)

and

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

and

In the Matter of  
MRF 2006 Resource Limited Partnership (MRF 2006),  
MRF 2005 Resource Limited Partnership (MRF 2005),  
Explorer III Resource Limited Partnership (Explorer III) and  
Explorer II Resource Limited Partnership (Explorer II)  
(collectively, 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

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exemption from the annual information form filing requirement in section 9.2 of National Instrument 81-106 – Investment Funds Continuous Disclosure (NI 81-106) pursuant to section 17.1 thereof (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 Filers:

1. The Filers were formed to invest in certain common shares (Flow-Through Shares) of companies involved primarily in oil and gas, mining or renewable energy exploration and development (Resource Companies) pursuant to agreements (Resource Agreements) between each Filer and the relevant Resource Company. Under the terms of each Resource Agreement, the relevant Filer will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will agree to incur and renounce to the Filer, 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 Filer.
2. MRF 2006 is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) (the Act) on January 10, 2006. On February 16, 2006, MRF 2006 received a receipt dated February 16, 2006, issued under MRRS by the OSC on behalf of each of the Decision Makers and on behalf of the securities regulatory authority for Prince Edward Island and the Yukon Territory with respect to a (final) prospectus dated February 15, 2006, offering for sale up to 5,000,000 limited partnership units of MRF 2006 at a price of \$25 per unit. On or about May 28, 2008, MRF 2006 will be dissolved and the Limited Partners of MRF 2006 will receive their pro rata share of the net assets of MRF 2006. It is the current intention of the general partner of MRF 2006 that MRF 2006 enter into an agreement with Middlefield Mutual Funds Limited (the Mutual Fund), whereby assets of MRF 2006 would be exchanged for redeemable shares of the Growth Class of the Mutual Fund. Upon

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dissolution, the Limited Partners of MRF 2006 would then receive their pro rata share of the shares of the Growth Class of the Mutual Fund.

3. MRF 2005 is a limited partnership formed pursuant to the Act on January 18, 2005. On February 28, 2005, MRF 2005 received a receipt dated February 28, 2005, issued under MRRS by the OSC on behalf of each of the Decision Makers and on behalf of the securities regulatory authority for Prince Edward Island and the Yukon Territory with respect to a (final) prospectus dated February 28, 2005, offering for sale up to 4,000,000 limited partnership units of MRF 2005 at a price of \$25 per unit. On or about May 31, 2007, MRF 2005 will be dissolved and the Limited Partners of MRF 2005 will receive their pro rata share of the net assets of MRF 2005. It is the current intention of the general partner of MRF 2005 that MRF 2005 enter into an agreement with the Mutual Fund, whereby assets of MRF 2005 would be exchanged for redeemable shares of the Growth Class of the Mutual Fund. Upon dissolution, the Limited Partners of MRF 2005 would then receive their pro rata share of the shares of the Growth Class of the Mutual Fund.
4. Explorer III is a limited partnership formed pursuant to the Act on January 18, 2005. On September 28, 2005, Explorer III received a receipt dated September 28, 2005, issued under MRRS by the OSC on behalf of each of the Decision Makers, other than Quebec, and on behalf of the securities regulatory authority for Prince Edward Island and the Yukon Territory with respect to a (final) prospectus dated September 28, 2005, offering for sale up to 2,000,000 limited partnership units of Explorer III at a price of \$25 per unit. On or about March 18, 2008, Explorer III will be dissolved and the Limited Partners of Explorer III will receive their pro rata share of the net assets of Explorer III. It is the current intention of the general partner of Explorer III that Explorer III enter into an agreement with the Mutual Fund whereby assets of Explorer III would be exchanged for redeemable shares of the Resource Class of the Mutual Fund. Upon dissolution, the Limited Partners of Explorer III would then receive their pro rata share of the shares of the Resource Class of the Mutual Fund.
5. Explorer II is a limited partnership formed pursuant to the Act on January 16, 2004. On November 25, 2004, Explorer II received a receipt dated November 25, 2004, issued under MRRS by the OSC on behalf of each of the Decision Makers and on behalf of the securities regulatory authority for Prince Edward Island and the Yukon Territory with respect to a (final) prospectus dated November 25, 2004, offering for sale up to 1,200,000 limited partnership units of Explorer II at a price of \$25 per unit. On or about March 30, 2007, Explorer II will be dissolved and the Limited Partners of Explorer II will receive their pro rata share of the net assets of Explorer II. It is the current

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intention of the general partner of Explorer II that Explorer II enter into an agreement with the Mutual Fund whereby assets of Explorer II would be exchanged for redeemable shares of the Resource Class of the Mutual Fund. Upon dissolution, the Limited Partners of Explorer II would then receive their pro rata share of the shares of the Resource Class of the Mutual Fund.

6. The limited partnership units of each Filer (the Units) are not and will not be listed or quoted for trading on any stock exchange or market. The Units are also not redeemable by the Limited Partners.
7. Each Filer is a reporting issuer of certain of the Jurisdictions.
8. The principal office of the Filers is located at 1 First Canadian Place, 58<sup>th</sup> Floor, P.O. Box 192, Toronto, Ontario, M5X 1A6.
9. Given the limited range of business activities to be conducted by the 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 the Filers will not be of any benefit to the Limited Partners and may impose a material financial burden on the Filers. Upon the occurrence of any material change to the Filers, Limited Partners would receive all relevant information from the material change reports the Filers are required to file with the Decision Makers.

### **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 this exemption shall terminate upon the occurrence of a material change in the affairs of the Filers unless the Filers satisfy the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

Leslie Byberg  
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Ontario Securities Commission