

# 2006 BCSECCOM 210

March 23, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Information circular - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 117 and 119

National Instrument 51-102, ss. 9.1 and 13.1

Form 51-102F5, Item 14.2

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  
Strongco Income Fund (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) that the Filer be exempt from the requirements of item 14.2 of Form 51-102F5 – *Information Circular* of National Instrument 51-102 – *Continuous Disclosure Obligations* to include the following financial statements in respect of Newco (as defined below) and Amalco (as defined below) in the Filer's management information circular (the Circular) prepared in connection with the annual and special meeting (the

## 2006 BCSECCOM 210

Meeting) of the Filer's unitholders (Unitholders) to consider and approve, among other things, the Reorganization (as defined below):

- (a) audited financial statements of Newco, and
- (b) audited financial statements in respect of a probable significant acquisition of the Business (as defined below) by Newco and a significant disposition by Amalco

(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) the 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 an unincorporated open-ended limited purpose trust established under the laws of Ontario pursuant to a declaration of trust dated March 21, 2005, as amended and restated on April 28, 2005. The Filer's head and principal office is located at 1640 Enterprise Road, Mississauga, Ontario L4W 4L4.
2. The Filer is a reporting issuer in each of the Jurisdictions and is not on any list of defaulting reporting issuers maintained under the Legislation in the Jurisdictions.
3. The Filer is authorized to issue an unlimited number of units (Units). As at December 31, 2005, 10,043,185 Units were issued and outstanding. The Units are listed on the Toronto Stock Exchange (the TSX).
4. Strongco Inc. (Strongco) is a corporation amalgamated and subsisting pursuant to the provisions of the *Business Corporations Act* (Ontario) (the OBCA). Strongco's head and registered office is located at 1640 Enterprise Road,

## 2006 BCSECCOM 210

Mississauga, Ontario L4W 4L4. Strongco carries on the business of multi-line equipment distribution in Canada (the Business).

5. Pursuant to a plan of arrangement (the Arrangement) under section 182 of the OBCA effective May 6, 2005, the Filer acquired all of the issued and outstanding securities of Strongco in exchange for Units issued to former public shareholders of Strongco, resulting in the creation of the Filer as a publicly-traded income trust and Strongco becoming a wholly-owned subsidiary of the Filer.
6. It is proposed that the Filer's present organizational structure undergo an internal reorganization (the Reorganization) to replace Strongco with a new operating limited partnership (Strongco LP) to carry on the Business. Strongco LP will be directly owned by the Filer.
7. After giving effect to the Reorganization, the direct and indirect interests of the Filer in the assets of Strongco LP and its general partner and in the Business will be the same as the interests that the Filer held in Strongco and the Business immediately prior to the Reorganization.
8. As part of the Reorganization:
  - (a) substantially all of the operating assets of Strongco will be transferred to Strongco LP for consideration that includes limited partnership units of Strongco LP;
  - (b) the Filer will incorporate a wholly-owned subsidiary corporation (Newco) in connection with, and for the purpose of effecting, the Reorganization and will subscribe for a number of redeemable Class A shares (the Class A Shares) of Newco equal to the number of Units then outstanding;
  - (c) the Filer will distribute to Unitholders the Class A Shares on a *pro rata* basis, as a return of capital on the date of the Reorganization;
  - (d) the Filer and Newco will enter into an agreement of purchase and sale under which the Filer will transfer to Newco the securities of Strongco then outstanding for a purchase price equal to their fair market value. Newco will satisfy the purchase price by issuing to the Filer a number of class B shares (the Class B Shares) of Newco with an aggregate fair market value equal to the fair market value of the assets so acquired;
  - (e) Newco will amalgamate with Strongco to form an amalgamated corporation (Amalco);

## 2006 BCSECCOM 210

- (f) Amalco and the Filer will enter into an agreement of purchase and sale under which Amalco will transfer all of its assets to the Filer for a purchase price equal to their fair market value. The Filer will satisfy the purchase price by issuing to Amalco a number of Units with an aggregate fair market value equal to the fair market value of the assets so acquired;
  - (g) the outstanding Class A Shares and Class B Shares will be redeemed by Amalco in exchange for Units on a *pro rata* basis. After such redemption of Class A Shares and Class B Shares by Amalco, Amalco will have ceased to own any Units of the Filer. Because the Filer cannot, at law, hold an interest in itself, the Units distributed to the Filer by Amalco on the redemption of the Class B Shares will be cancelled upon receipt. The Filer will subsequently take steps to dissolve Amalco;
  - (h) the outstanding Units (including additional Units distributed to Unitholders upon the redemption of the Class A Shares in the preceding step) will be automatically consolidated on the same date as the Reorganization.
- 9. Neither the number of issued and outstanding Units nor the relative holdings of Units by any Unitholder will be altered as a result of the completion of the Reorganization.
  - 10. The Class A Shares and additional Units distributed to Unitholders will be outstanding for an instant in time on the date of the Reorganization prior to their automatic redemption and consolidation, respectively. The Class A Shares will be listed on the TSX for the period of time that they are outstanding.
  - 11. The Reorganization is being undertaken as the Fund has determined that the proposed trust on partnership structure would better accommodate the Fund's future expansion objectives and would be well perceived by the capital markets making the Units more attractive as consideration in any merger or acquisition transaction. The rights of Unitholders in respect of the Filer, and their relative indirect interests in and to the revenues of the Business will not be affected by the Reorganization.
  - 12. The Reorganization is to be effected in such a manner as to ensure that Unitholders, the Filer and the Filer's subsidiaries will be able to make use of the available rollovers under applicable tax legislation.

## 2006 BCSECCOM 210

13. The Reorganization requires the approval of the Unitholders at the Meeting and in that regard, the Filer will prepare and send the Circular to its Unitholders.
14. Item 14.2 of Form 51-102F5 requires that the Circular include information sufficient to enable a reasonable securityholder to form a reasoned judgment concerning the nature and effect of the Reorganization, including the disclosure (including financial statement disclosure) for the Fund and Newco and Amalco prescribed by the form of prospectus that each entity would be eligible to use for a distribution of securities in the jurisdiction.
15. As Newco proposes to issue Class A Shares in connection with the Reorganization, the Legislation requires that the Circular contain annual financial statements of Newco.
16. As Newco's proposed acquisition of the securities of Strongco on the Reorganization date constitutes a significant probable acquisition (as defined in the Legislation) of the Business and Amalco's proposed transfer of all of its assets to the Filer on the Reorganization date constitutes a significant disposition (as defined in the Legislation), the Legislation requires that the Circular include audited financial statements in respect of such significant probable acquisition by Newco and significant disposition by Amalco.
17. The Circular will include, or incorporate by reference, the audited consolidated annual financial statements of the Filer for the financial year ended December 31, 2005 and the unaudited pro forma consolidated financial statements of the Filer for the financial year ended December 31, 2004 (collectively, the Fund Financial Statements) and the audited annual financial statements of Strongco for the financial years ended December 31, 2002, 2003 and 2004 (collectively, the Strongco Financial Statements). The Circular will not include, or incorporate by reference, any other financial statement disclosure in respect of the Filer, Strongco, Newco and Amalco.

### **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:

- (a) the Filer complies with all other requirements of the Legislation applicable to the Circular; and

## **2006 BCSECCOM 210**

(b) the Fund Financial Statements and Strongco Financial Statements are incorporated by reference into the Circular.

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