

2007 BCSECCOM 774

December 18, 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 issuers are a short-term vehicles formed solely to invest their available funds in flow-through shares of resource issuers; the issuers' securities are not redeemable and there is no secondary trading in the issuers' securities; the issuers' other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuers' 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 issuers are short-term vehicles formed solely to invest their available funds in flow-through shares of resource issuers; the issuers' securities are not redeemable and there is no secondary trading in the issuers' securities; the issuers' other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuers' 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,
Quebec, New Brunswick, Nova Scotia, Yukon 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 2007 II Resource Limited Partnership (the Partnership) and
Middlefield Fund Management Limited
(the Filer)

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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 on behalf of the Partnership and each future limited partnership that is established from time to time in a similar manner by the Filer or an affiliate of the Filer acting as general partner and that is identical to the Partnership in all respects which are material to this decision (the Future Partnerships, and together with the Partnership, the Partnership Filers), for an exemption under the securities legislation of the Jurisdictions (the Legislation) from:

- (i) the requirement in section 9.2 of National Instrument 81-106 – *Investment Fund Continuous Disclosure* (NI 81-106) to file an annual information form (AIF),
 - (ii) the requirement in section 10.3 of NI 81-106 to maintain a proxy voting record (Proxy Voting Record), and
 - (iii) 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 Partnership Filers' website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of the Partnership Filers (the Limited Partners) upon request
- ((i), (ii) and (iii) are collectively, 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 Filer:

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1. The principal office of the Partnership is located at 1 First Canadian Place, 58th Floor, P.O. Box 192, Toronto, Ontario, M5X 1A6.
2. The Partnership was 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 the Partnership and the relevant Resource Company. Under the terms of each Resource Agreement, the Partnership will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will agree to incur and renounce to the Partnership, 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 Partnership. Any Future Partnership will have similar investment objectives as the Partnership.
3. The Partnership is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) on February 5, 2007. On September 10, 2007, the Partnership became a reporting issuer in each of the Jurisdictions and in Prince Edward Island and received a receipt dated September 10, 2007 issued under MRRS with respect to a final prospectus (the Prospectus) dated September 7, 2007, offering for sale up to 2,000,000 limited partnership units of the Partnership at a price of \$25 per unit. No additional limited partnership units of the Partnership have been or will be issued.
4. On or about February 2, 2010, the Partnership will be dissolved and the Limited Partners will receive their pro rata share of its net assets.
5. The Filer is the general partner of the Partnership. As general partner, the Filer has exclusive authority to manage the operations and affairs of the Partnership, to make all decisions regarding the business of the Partnership and to bind the Partnership. The Future Partnerships will be structured in a similar fashion.
6. It is the current intention of the Filer that the Partnership enter into an agreement with Middlefield Mutual Funds Limited (the Mutual Fund), an open-ended mutual fund, whereby assets of the Partnership would be exchanged for redeemable shares of the Growth Class of the Mutual Fund. Upon dissolution of the Partnership, the Limited Partners of the Partnership would then receive their pro rata share of the shares of the Growth Class of the Mutual Fund.

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7. Each Partnership Filer is, or will be, a short-term special purpose vehicle which will be dissolved within approximately 2 years of its formation. The primary investment purpose of each Partnership Filer is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the Limited Partners the significant tax benefits that accrue when Resource Companies renounce resource exploration and development expenditures to the Partnership Filer through the Flow-Through Shares.
8. Since its formation, the Partnership's activities have been limited to (i) completing the issue of the securities described in the Prospectus, (ii) investing available funds in Flow-Through Shares of Resource Companies as disclosed in the Prospectus, and (iii) incurring expenses as described in the Prospectus. The activities of any Future Partnerships will be limited similarly.
9. The limited partnership units of each Partnership Filer (the Units) are not and will not be listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units are not transferred by Limited Partners since Limited Partners must be holders of the Units on the last day of each fiscal year of the Partnership Filer in order to obtain the desired tax deduction.
10. Given the limited range of business activities to be conducted by the Partnership 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 Partnership Filers will not be of any benefit to the Limited Partners and may impose a material financial burden on the Partnership Filers. The prospectus, the financial statements and management report of fund performance of a Partnership Filer provide, or will provide, sufficient information necessary for a Limited Partner to understand the relevant Partnership Filer's business, its financial position and its future plans, including the mutual fund rollover transaction. Upon the occurrence of any material change to a Partnership Filer, Limited Partners would receive all relevant information from the material change reports the Partnership Filer is required to file with the Decision Makers.
11. As a result of the implementation of NI 81-106, investors purchasing Units of a Partnership Filer were, or will be, provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by a Partnership Filer are voted (the Proxy Voting Policies), and had, or will have, the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.

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12. The Proxy Voting Policies require that the Partnership exercise its voting rights in respect of securities of an issuer if more than 4% of the Partnership's net assets are invested in that issuer. The Partnership does not intend to exercise its voting rights where less than 4% of its net assets are invested in an issuer, but may, in its sole discretion, decide to vote in such circumstances.
13. Pursuant to its Proxy Voting Policies and because the Partnership invests in a number of issuers which generally do not represent more than 4% of the Partnership's net assets, the Partnership is not usually required to exercise its voting rights. Each Future Partnership expects to have similar proxy voting policies.
14. Given the short lifespan of a Partnership Filer, 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 Partnership Filer exercised or failed to exercise its proxy voting rights, as the Partnership Filer would likely be dissolved by the time any potential change could materialize.
15. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the Partnership Filers.

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.

Vera Nunes
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Ontario Securities Commission