

2005 BCSECCOM 137

February 21, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 Financial Statements & Report - Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports - An issuer wants relief from the requirements to file and deliver interim financial statements for all first and third quarters - The issuer's securities will not be publicly traded; the purchasers do not expect to receive first and third quarter financial statements; relief is for a limited time

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418. s. 91;

Securities Rules, B.C. Regulation 194/97, s. 149

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Ontario, 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 Explorer II Resource 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"):

1. that the requirements contained in the Legislation that the Filer file with the Decision Makers and send to its securityholders (the "Limited Partners") its interim financial statements for each of the first and third quarters of each of the Filer's fiscal years (the "First & Third Quarter Interim Financials"), shall not apply to the Filer; and
2. in Ontario only, a decision pursuant to the securities legislation of Ontario that the requirements to file and send to the Limited Partners, its:

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- (a) annual information form (the “AIF”);
- (b) annual management discussion and analysis of financial condition and results of operations (the “Annual MD&A”); and
- (c) interim management discussion and analysis of financial condition and results of operations (the “Interim MD&A”),

shall not apply to the Filer.

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 *Limited Partnerships Act* (Ontario) on January 16, 2004.
2. The principal office of the Filer is located at 1 First Canadian Place, 58th Floor, P.O. Box 192, Toronto, Ontario, M5X 1A6.
3. The Filer was formed to invest in certain common shares or warrants (“Flow-Through Shares”) of companies involved primarily in oil and gas or mining exploration and development (“Resource Companies”) pursuant to agreements between the Filer and the relevant Resource Company or to otherwise invest in or purchase Flow-Through Shares, including via a trade made through the facilities of a stock exchange or other market (“Resource Agreement”).
4. Under the terms of each Resource Agreement, the Filer will subscribe for Flow-Through Shares of the Resource Company or otherwise invest in or purchase a combination of Flow-Through and non-Flow-Through Shares when they are offered at the same time by the same Resource Company and, under the terms of each Resource Agreement for the purchase of Flow-Through

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Shares, the Resource Company will 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.

5. On November 25, 2004, the Decision Makers, together with the securities regulatory authority or regulator for Manitoba, Quebec, Prince Edward Island and the Yukon Territory (in which jurisdictions no legislative requirement exists to file first and third quarter interim financial statements), issued a receipt under the Mutual Reliance Review System for Exemptive Relief Application for the prospectus of the Filer dated November 25, 2004 (the "Prospectus") relating to an offering of up to 1,200,000 units of the Filer (the "Partnership Units").
6. The Prospectus contained disclosure that the Filer intends to apply for an order from the Decision Makers exempting it from the requirements to file and distribute financial statements of the Filer in respect of the first and third quarters of each fiscal year of the Filer and from the requirements to prepare an annual information form and interim and annual management discussion and analysis.
7. The Partnership Units will not be listed or quoted for trading on any stock exchange or market.
8. At the time of purchase or transfer of Partnership Units, each purchaser or transferee consents to the application by the Filer for an order from the Decision Makers exempting the Filer from the requirements to file and distribute financial statements of the Filer in respect of the first and third quarters of each fiscal year of the Filer, and from the requirements to prepare an annual information form and interim and annual management discussion analysis.
9. On or about March 30, 2007, the Filer will be liquidated and the Limited Partners will receive their pro rata share of the net assets of the Filer; and it is the current intention of the general partner of the Filer that the Filer enter into an agreement with Middlefield Mutual Funds Limited (the "Mutual Fund"), an open end mutual fund, whereby assets of the Filer would be exchanged for shares of the Resource Class of the Mutual Fund; and upon dissolution, Limited Partners would then receive their pro rata share of the shares of the Resource Class of the Mutual Fund.

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10. Since its formation on January 16, 2004, the Filer's activities primarily included (i) collecting the subscriptions from the Limited Partners, (ii) investing the available funds in Flow-Through Shares of Resource Companies, and (iii) incurring expenses to maintain the fund.
11. Unless a material change takes place in the business and affairs of the Filer, the Limited Partners will obtain adequate financial information concerning the Filer from the semi-annual financial statements and the annual report containing audited financial statements of the Filer together with the auditors' report thereon distributed to the Limited Partners and that the Prospectus and the semi-annual financial statements provide sufficient background materials and the explanations necessary for a Limited Partner to understand the Filer's business, its financial position and its future plans, including dissolution on March 30, 2007.
12. Given the limited range of business activities to be conducted by the Filer and the nature of the investment of the Limited Partners in the Filer, the provision by the Filer of the First and Third Quarter Interim Financials, the AIF, the Annual MD&A and the Interim MD&A will not be of significant benefit to the Limited Partners and may impose a material financial burden on the Filer.
13. It is disclosed in the Prospectus that the General Partner will apply on behalf of the Filer for relief from the requirements to send to Limited Partners the First and Third Quarter Interim Financials and from the requirements to prepare the AIF, the Annual MD&A and the Interim MD&A.
14. Each of the Limited Partners has, by subscribing for the units offered by the Filer in accordance with the Prospectus, agreed to the irrevocable power of attorney contained in Article XIX of the Amended and Restated Limited Partnership Agreement scheduled to the Prospectus and has thereby consented to the making of this application for the exemption requested herein.

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 requirements contained in the Legislation to file and send to the Limited Partners its First & Third Quarter Interim Financials shall not apply to the Partnership provided that this exemption shall terminate upon:

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- (i) the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing; or
- (ii) National Instrument 81-106 – Investment Fund Continuous Disclosure coming into force.

Paul Moore
Vice-Chair
Ontario Securities Commission

David L. Knight
Commissioner
Ontario Securities Commission

The further decision of the securities regulatory authority or securities regulator in Ontario is that the requirements contained in the legislation of Ontario to file and send to its Limited Partners its AIF, Annual MD&A and Interim MD&A shall not apply to the Filer provided that this exemption shall terminate upon:

- (i) the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing; or
- (ii) National Instrument 81-106 – Investment Fund Continuous Disclosure coming into force.

Leslie Byberg
Manager, Investment Funds Branch