

2005 BCSECCOM 384

April 25, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An exchangeable share issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer; the parent issuer is a Canadian reporting issuer that will send copies of all of its documents to the security holders of the exchangeable share issuer and explain the reasons the information sent to them relates to the parent, rather than the exchangeable share issuer; the exchangeable share issuer will remain a subsidiary of the parent issuer, and will not issue any securities other than exchangeable shares or debt instruments to certain parties

Securities Act s. 48,76 Other - Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants - Trades by a non-mutual fund in connection with its distribution reinvestment plan - The issuer has established a DRIP for the benefit of its security holders; the issuer's subsidiary has outstanding securities that are the economic and voting equivalent of the issuer's securities; the issuer has agreed to put the subsidiary's security holders who wish to reinvest their distributions in the same position as the issuer's security holders that participate in the DRIP

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 85, 91, 117 and 119

Securities Rules, B.C. Reg. 194/97, ss. 144, 145 and 149

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

In the Matter of
the Securities Legislation of
Alberta and British Columbia (the "Jurisdictions")

and

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

2005 BCSECCOM 384

and

In the Matter of Eveready Income Fund (the “Fund”) and
Eveready Holdings Limited Partnership (“Holdings LP” and collectively, the
“Filers”)

MRRS Decision Document

Background

1. 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”) that:
 - 1.1 the requirements contained in the Legislation for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change (the “Material Change Reporting Requirements”), file and deliver interim and annual financial statements and management’s discussion and analysis of financial conditions and results of operations, file and deliver information circulars, file annual information forms and otherwise comply with the provisions of National Instrument 51-102 (“NI 51-102”) (collectively, the “Continuous Disclosure Requirements”) shall not apply in Alberta and British Columbia to Holdings LP (the “Continuous Disclosure Requested Relief”);
 - 1.2 the requirements contained in the Legislation for a reporting issuer to prepare and file a certification of annual filings and interim filings pursuant to Multilateral Instrument 52-109 (the “Certification Requirement”) shall not apply in Alberta to Holdings LP (the “Certification Requested Relief”); and
 - 1.3 the requirement contained in the Legislation to be registered to trade in a security and to file a preliminary prospectus and a final prospectus and obtain receipts therefor (the “Registration and Prospectus Requirement”) shall not apply in Alberta and British Columbia to certain trades in Units of the Fund from time to time to holders of Class B limited partnership units of Holdings LP on terms equivalent to the distribution reinvestment plan of the Fund (the “Registration and Prospectus Requested Relief”).

2005 BCSECCOM 384

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
 - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filers:
 - 4.1 The Fund is an unincorporated open-ended mutual fund trust governed by the laws of the Province of Alberta and created pursuant to a declaration of trust dated August 18, 2004, as amended and restated as of March 31, 2005 (the “Fund Declaration of Trust”). However, the Fund is not a “mutual fund” as defined in the Legislation.
 - 4.2 The Fund is a reporting issuer in each of Alberta and British Columbia and the Fund is not in default of any requirements of the Legislation.
 - 4.3 The beneficial interests of the Fund are divided into interests in two classes of units designated as units (“Units”) and special voting units (“Special Voting Units”).
 - 4.4 An unlimited number of Units may be created and issued pursuant to the Fund Declaration of Trust. Each Unit represents an equal fractional undivided beneficial interest in any distributions from the Fund, and in any net assets of the Fund in the event of termination or winding-up of the Fund. Each Unit is transferable and entitles the holder thereof (“Unitholder”) to one vote at all meetings of Unitholders for each Unit held.
 - 4.5 As of March 31, 2005, the Fund had 12,094,669 Units, no Special Voting Units and 18,077,169 rights (“Rights”) issued and outstanding. Each Right entitles the holder thereof to acquire one

2005 BCSECCOM 384

Unit at an exercise price of \$1.77 per Unit at any time prior to or on March 31, 2010.

- 4.6 The Units are listed and posted for trading on the TSX Venture Exchange (the “Exchange”) under the symbol “EIS.UN”.
- 4.7 On December 3, 2004, the Fund entered into an arrangement agreement (the “Arrangement Agreement”) involving the Fund and each of its subsidiaries including Holdings LP, Eveready Industrial Group Ltd. (“ER Group”) and each of its subsidiaries, and the holders (“Shareholders”) of all of the outstanding shares (“ER Shares”) of ER Group. The Arrangement Agreement contemplated the parties completing a proposed transaction by way of a plan of arrangement (the “Arrangement”) under the Business Corporations Act (Alberta). The Arrangement was completed with an effective date of March 31, 2005.
- 4.8 Holdings LP is a limited partnership formed under the laws of the Province of Alberta pursuant to a limited partnership agreement dated August 18, 2004, as amended and restated as of March 31, 2005 (the “Holdings LP Agreement”).
- 4.9 Holdings LP is an indirect subsidiary of the Fund. Holdings LP conducts no business other than its ownership, directly and indirectly, of all of the securities of the four operating limited partnerships which are indirect subsidiaries of the Fund engaged in the industrial cleaning, environmental and oilfield services industries in western Canada.
- 4.10 Due to its participation in the Arrangement, and due to the participation of the Fund in the Arrangement, Holdings LP became a reporting issuer in the Provinces of Alberta and British Columbia on March 31, 2005, the effective date of the Arrangement. Holdings LP is not in default of any of the requirements of the Legislation.
- 4.11 No class of limited partnership units of Holdings LP are listed or posted for trading on a stock exchange or other market place.
- 4.12 Holdings LP is entitled to issue various classes of partnership interests including the currently authorized Class A limited partnership units (“Class A Units”) and Class B limited partnership units (“Class B Units”).

2005 BCSECCOM 384

- 4.13 Holders of Class A Units are entitled to notice of, and to attend and vote at, all meetings of holders of partnership units of Holdings LP. Holders of Class A Units are entitled to distributions in such amounts as the general partner of Holdings LP, a wholly owned subsidiary of the Fund, may, in its discretion, declare from time to time. Eveready Income Trust (the "Trust"), a wholly owned subsidiary of the Fund, owns all of the outstanding Class A Units of Holdings LP.
- 4.14 Class B Units are intended to be, to the greatest extent practicable, the economic and voting equivalent of Units of the Fund. Holders of Class B Units are entitled to receive, subject to applicable law, distributions:
- 4.14.1 in the case of a cash distribution declared on the Units of the Fund, an amount in cash for each Class B Unit equal to the cash distribution declared on each Unit of the Fund; or
- 4.14.2 in the case of a distribution declared on the Units of the Fund in property other than cash, in such type and amount of property as is the same as, or economically equivalent to (as determined by the general partner of Holdings LP in good faith and in its sole discretion) the type and amount of property declared as a distribution on each Unit of the Fund.
- 4.15 Except as required by law, the holders of Class B Units will not be entitled as such to receive notice of or attend any meeting of the partners of Holdings LP or to vote at any such meeting, except in respect of any amendment or alteration to the rights, privileges, restrictions and conditions attaching to the Class B Units which are unique to the holders of Class B Units, in which case the holders of Class B Units shall have one vote in respect of each Class B Unit held on the extraordinary resolution required thereby.
- 4.16 Pursuant to the Fund Declaration of Trust holders of Class B Units are entitled to receive notice of and to attend any meeting of Unitholders of the Fund and to one vote at any such meeting in respect of each Class B Unit held.
- 4.17 Class B Units may only be transferred in accordance with the Holdings LP Agreement and applicable provincial securities laws.

2005 BCSECCOM 384

Any transfer of Class B Units shall require the written consent of the general partner of Holdings LP and the general partner may, in its sole discretion acting reasonably or not, refuse to provide such consent. Notwithstanding the foregoing, a holder of a Class B Unit may transfer Class B Units to that holder's permitted assigns, as defined in the Holdings LP Agreement, without the written consent of the general partner.

- 4.18 Holdings LP has the right to redeem all or any portion of the outstanding Class B Units at any time. In the case of a partial redemption, Class B Units shall be redeemed from each holder thereof on a pro rata basis in proportion to such holder's total holdings of such Class B Units. Holdings LP has an obligation to redeem all outstanding Class B Units on or before March 31, 2010. Notwithstanding the foregoing, Holdings LP may, has undertaken to, and will redeem from any one holder of Class B Units, to the exclusion of any other holder of Class B Units, a number of Class B Units from such holder or such holder's permitted assigns equal to the number of Units acquired by that holder or such holder's permitted assigns upon the exercise of any Rights by such person. Any such redemption of Class B Units will be at \$1.77 per Class B Unit which is the equivalent of the exercise of one Right.
- 4.19 Pursuant to the Arrangement, Shareholders, indirectly, exchanged their ER Shares for either Units of the Fund or Class B Units of Holdings LP.
- 4.20 Pursuant to the Arrangement:
 - 4.20.1 there were an aggregate of 4,384,706 Units issued to an aggregate of 37 Shareholders of ER Group; and
 - 4.20.2 there were an aggregate of 18,077,169 Class B Units and 18,077,169 Rights issued to an aggregate of 63 Shareholders of ER Group;
- 4.21 As such, as of March 31, 2005 and upon completion of the Arrangement, there were a total of 12,094,669 Units of the Fund, 18,077,169 Class B Units of Holdings LP, and 18,077,169 Rights of the Fund outstanding.

2005 BCSECCOM 384

- 4.22 The Fund has adopted a distribution reinvestment plan (“DRIP”) that permits eligible Unitholders to reinvest monthly distributions (each a “Distribution”) in additional Units.
- 4.23 The price of Units issued under the DRIP is based on the volume weighted average price for the sale of Units on the Exchange during the ten days preceding the relevant Distribution Date on which there was trading in the Units of the Fund (the “Market Price”). The purchase price of Units purchased with distributions under the Plan is 95% of the Market Price.
- 4.24 In satisfaction of one of the terms and conditions of the Arrangement Agreement, certain of the principal holders of Class B Units (the “Principal Unitholders”) entered into an agreement with the Fund and the other Principal Unitholders whereby each of such Principal Unitholders agreed, among other matters and subject to compliance with applicable securities legislation and all required regulatory approvals, to immediately reinvest on the distribution date for which a cash distribution is made by Holdings LP to such Principal Unitholder on that Principal Unitholder’s Class B Units, via a private placement purchase of Units at a price per Unit equal to the price per Unit at which holders of Units are entitled to acquire Units on that distribution date pursuant to the DRIP, an amount equal to 100% of any and all such cash distributions received by such Principal Unitholder on that Principal Unitholder’s Class B Units before March 31, 2010, and the Fund agreed to take reasonable steps to obtain any required regulatory approvals to allow for such reinvestment pursuant to an exemption from the registration and prospectus requirements of applicable securities legislation.
- 4.25 Given that the Class B Units are intended to be, to the greatest extent practicable, the economic and voting equivalent of Units of the Fund, at the meeting of Unitholders of the Fund held on March 29, 2005 to approve, among other matters, the Arrangement, the Unitholders of the Fund provided approval to the private placement of Units of the Fund to any holder of Class B Units who may choose to reinvest their distributions in Units of the Fund from time to time on the foregoing terms (a “DRIP Equivalent Private Placement”).

Decision

2005 BCSECCOM 384

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.
6. The decision of the Decision Makers under the Legislation is that the Continuous Disclosure Requested Relief and, in Alberta, the Certification Requested Relief is granted provided that:
 - 6.1 The Fund is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) and is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR);
 - 6.2 The Fund sends concurrently to all holders of Class B Units all disclosure material furnished to all holders of the Units in compliance with the Continuous Disclosure Requirements and, for the purposes of Parts 4 and 5 of NI 51-102, treats all holders of such securities as if they were holders of Units;
 - 6.3 The Fund files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;
 - 6.4 The Fund complies with the requirements of the market or exchange on which the Units may be quoted or listed from time to time in respect of making public disclosure of material information on a timely basis;
 - 6.5 Prior to relying on this decision, Holdings LP files a notice in electronic format under the SEDAR profile of Holdings LP indicating that (i) pursuant to a decision of the Jurisdictions, Holdings LP is exempt from the Continuous Disclosure Requirements and the Certification Requirements, (ii) pursuant to that decision, Holdings LP is relying on the documents of the Fund filed pursuant to the Continuous Disclosure Requirements applicable to the Fund, and (iii) the documents of the Fund filed pursuant to the Continuous Disclosure Requirements applicable to the Fund may be obtained at under the SEDAR profile of the Fund.
 - 6.6 Holdings LP complies with the Material Change Reporting Requirements in respect of material changes in the affairs of Holdings LP that would not also be material changes in the affairs of the Fund;

2005 BCSECCOM 384

- 6.7 The Fund includes in all future mailings of proxy solicitation materials to holders of Class B Units a clear and concise statement explaining the reason for the mailed material being solely in relation to the Fund and not in relation to Holdings LP, such statement to include a reference to the economic relationship between the Class B Units and Units and any rights to vote at meetings of the Unitholders;
 - 6.8 The Fund remains the direct or indirect beneficial owner of all of the Class A Units of Holdings LP outstanding from time to time; and
 - 6.9 Holdings LP does not issue any further securities other than to the Fund or a subsidiary entity of the Fund, or debt obligations other than debt obligations issued to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.
7. Further, the decision of the Decision Makers under the Legislation is that the Registration and Prospectus Requested Relief is granted provided that:
- 7.1 at the time of the trade, the Fund is a reporting issuer and is not in default of any requirements of the legislation;
 - 7.2 no sales charge is payable in respect of the trade;
 - 7.3 the Fund has caused to be sent to the person or company to whom the Units are traded, not more than 12 months before the trade, a statement describing:
 - 7.3.1 their right to participate in DRIP Equivalent Private Placements from time to time and the terms thereof;
 - 7.3.2 their right to withdraw from their participation in DRIP Equivalent Private Placements from time to time and to make an election to receive cash instead of Units for distributions from Holdings LP; and
 - 7.3.3 instructions on how to exercise the rights referred to in 7.3.1 and 7.3.2 above; and

2005 BCSECCOM 384

- 7.4 the first trade in Units acquired under a DRIP Equivalent Private Placement will be a distribution to the public unless the conditions of subsection 2.6(3) of MI 45-102 are satisfied.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission