

# 2002 BCSECCOM 200

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements for trades in limited partnership units to accredited investors as defined in Ontario Securities Commission Rule 45-501 *Exempt Distributions*

## Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF 3890228 CANADA INC.

## MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in British Columbia and Alberta (the "Jurisdictions") has received an application from 3890228 Canada Inc. ("GP Holdco") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the registration requirement (the "Registration Requirement") and the prospectus requirement (the "Prospectus Requirement") of the Legislation shall not apply to certain trades in units of certain limited partnerships (the "Additional Affiliate Partnerships") established or to be established by GP Holdco or its directly or indirectly wholly-owned subsidiaries (GP Holdco, such subsidiaries and limited partnerships of which GP Holdco or such subsidiaries are the general partners being hereinafter sometimes collectively referred to as the "Group"), to Investors or their Holding Entities (as such terms are hereinafter defined);

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;

3. AND WHEREAS GP Holdco has represented to the Decision Makers that:

3.1. GP Holdco is a corporation incorporated under the Canada Business Corporations Act;

3.2. GP Holdco is owned indirectly as to 70% of the equity by 3890198 Canada Inc. ("EmployeeCo"), 20% of the equity by NB Capital Management Inc. (which is an indirect wholly-owned subsidiary of National Bank of Canada ("National Bank")) and 10% of the equity by an institutional investor;

3.3. EmployeeCo is owned by individuals who are involved in the management and operation of various limited partnerships, including the Additional Affiliate Partnerships, of which members of the Group are the general partners;

3.4. the following Ontario limited partnerships (the "Existing Core Partnerships"), of which wholly-owned subsidiaries of GP Holdco are the general partners, have been established:

## 2002 BCSECCOM 200

Edgestone Capital Equity Fund, L.P.  
Edgestone Capital Mezzanine Fund II, L.P.  
Edgestone Capital Venture Fund, L.P.

3.5. all investment decisions of each Existing Core Partnership are made by the general partner of such Existing Core Partnership;

3.6. in addition, the following Ontario limited partnerships (the "Existing Affiliate Partnerships"), of which wholly-owned subsidiaries of GP Holdco are also the general partners, have been established:

Edgestone Affiliate 2000 Fund, L.P.  
Edgestone Affiliate 2000-B Fund, L.P.  
Edgestone Affiliate 2001 Equity Fund, L.P.  
(the above have co-invested with Edgestone Capital Equity Fund, L.P.)

Edgestone Affiliate 2001 Mezzanine Fund, L.P.  
(the above has co-invested with Edgestone Capital Mezzanine Fund II, L.P.)

Edgestone Affiliate 2001 Venture Fund, L.P.  
(the above has co-invested with Edgestone Capital Venture Fund, L.P.)

3.7. all investment decisions of the Existing Affiliate Partnerships are made by the general partner of the Existing Core Partnership with which such Existing Affiliate Partnership co-invests;

3.8. GP Holdco intends to establish other private investment funds from time to time ("Additional Core Partnerships") that:

3.8.1. may have investment objectives which are different from the Existing Core Partnerships;  
and

3.8.2. may be established to succeed an Existing Core Partnership or an Additional Core Partnership whose capital has been invested or whose commitment period has ended;

3.9. a member of the Group will be the general partner of each Additional Core Partnership and all investment decisions of each Additional Core Partnership will be made by the general partner of such Additional Core Partnership;

3.10. the Existing Affiliate Partnerships and the Additional Affiliate Partnerships (the "Affiliate Partnerships") are limited partnerships which are established to co-invest with the Existing Core Partnerships and the Additional Core Partnerships (the "Core Partnerships") during their respective commitment periods (i.e., the periods during which the Core Partnerships make investments);

3.11. each Affiliate Partnership carries on no activities other than co-investing with the related Core Partnership;

3.12. it is proposed that:

3.12.1. a series of Additional Affiliate Partnerships will be established to co-invest with each Core Partnership, with a separate Additional Affiliate Partnership being established for each calendar year to co-invest with the Core Partnership in all investments made by the Core Partnership in that calendar year; and

## 2002 BCSECCOM 200

3.12.2. a series of such Additional Affiliate Partnerships, rather than one such Additional Affiliate Partnership, be created to facilitate changes in the investors in the Additional Affiliate Partnerships from year to year, and changes in the amounts such investors are permitted to invest in the Additional Affiliate Partnerships from year to year;

3.13. the general partner of each Additional Affiliate Partnership will be a member of the Group and all investment decisions with respect to investments of an Additional Affiliate Partnership will be made by the general partner of the Core Partnership with which such Additional Affiliate Partnership co-invests;

3.14. the opportunity to purchase, as principal, limited partnership interests in the Additional Affiliate Partnerships ("Affiliate Partnership Units") may be offered to:

3.14.1. individuals (the "Investors"); and

3.14.2. if permitted by the general partner, a personal holding corporation, partnership, limited partnership or trust controlled by an Investor (a "Holding Entity"),

if the Investor and Holding Entity, at the time of the trade, meet the definition of accredited investor (an "Accredited Investor") as found in Ontario Securities Commission Rule 45-501, *Exempt Distributions* ("Rule 45-501");

3.15. it is intended that the Affiliate Partnership Units will be offered to employees, directors, officers, and consultants of National Bank Financial Inc., a wholly-owned subsidiary of National Bank, and its affiliates;

3.16. an Investor's or Holding Entity's Affiliate Partnership Units may only be transferred (the "Permitted Transfers") to a person or company that, at the time of the trade, is an Accredited Investor;

3.17. each holder of Affiliate Partnership Units will become a party to a limited partnership agreement governing the Additional Affiliate Partnership that issues such Additional Partnership Units providing for the foregoing restrictions on transfer of Affiliate Partnership Units;

3.18. the Additional Affiliate Partnerships will not become reporting issuers in either of the Jurisdictions or in any other jurisdiction;

4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

5. AND WHEREAS 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;

6. THE DECISION of the Decision Makers under the Legislation is that:

6.1. trades by members of the Group, on behalf of the Additional Affiliate Partnerships, in Affiliate Partnership Units, to an Investor or Holding Entity are exempt from the Registration Requirement and the Prospectus Requirement;

6.2. each Permitted Transfer is exempt from the Registration Requirement and the Prospectus Requirement;

## 2002 BCSECCOM 200

6.3. the first trade of any securities distributed under this Decision is deemed to be a distribution unless the conditions found in subsection (2) or (3) of section 2.5 of Multilateral Instrument 45-102, *Resale of Securities* are satisfied; and

6.4. the Decision, as it relates to the jurisdiction of the Decision Maker, will terminate immediately on the publication in final form of proposed Multilateral Instrument 45-103, *Capital Raising Exemptions*.

DATED this 12<sup>th</sup> day of February, 2002.

Eric T. Spink, Vice-Chair

David W. Betts, Member