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Headnote

Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Trades by a non-mutual fund in connection with its distribution reinvestment plan - Issuer is a limited partnership; under its plan, income of the limited partnership can be distributed to its investors through the automatic issuance of additional partnership units to the investors; investors can elect to receive cash in lieu of additional partnership units; no fee is paid by investors to participate in the plan

Exemption Order

Cervus LP

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Cervus LP applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for the distribution and resale of partnership units of Cervus LP under a dividend reinvestment plan (the plan).

Representations

- ¶ 2 Cervus LP represents that:
1. Cervus LP is a limited partnership established under the laws of Alberta under a limited partnership agreement dated March 14, 2003 and amended as of June 7, 2004;
 2. Cervus LP is authorized to issue three classes of partnership units designated as partnership units (the partnership units), fixed value units and preferred units;
 3. Cervus LP is authorized to issue an unlimited number of partnership units of which 3,916,509 are presently issued and outstanding;

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4. Cervus LP became a reporting issuer in British Columbia and Alberta upon completion of a plan of arrangement (the arrangement) with an effective date of May 7, 2003 involving, among others, Cervus Corporation;
5. Cervus Corporation was a reporting issuer in each of British Columbia and Alberta prior to the effective date of the arrangement and continues to be a reporting issuer in those jurisdictions;
6. Cervus Corporation is the general partner (general partner) of Cervus LP;
7. Cervus LP is not in default of any requirements of the Act or the *Securities Rules*, B.C. Reg. 194/97 (the legislation);
8. the partnership units are listed and posted for trading on the TSX Venture Exchange (the TSX-V) under the symbol "CVL.UN";
9. Cervus LP anticipates making cash distributions of a proportionate share of its annual distributable cash flow (distributions) periodically to the partnership unitholders of record (unitholders) on the last business day of each period as the directors of the general partner, on behalf of Cervus LP, may select or determine from time to time (each a record date);
10. the distributions are payable on or before the last business day of the second month after the applicable period or such other date as the directors of the general partner may determine from time to time on behalf of Cervus LP (each a distribution date);
11. Cervus LP has adopted the plan which, subject to obtaining all necessary regulatory approvals, will permit unitholders, at their option, to reinvest distributions by electing to purchase additional units (plan units) under the plan; unitholders who do not elect to purchase plan units under the plan will continue to receive distributions;
12. Cervus LP will enter into a distribution reinvestment plan services agreement with Computershare Trust Company of Canada (the plan agent);
13. participation in the plan will initially be restricted to unitholders and beneficial owners of partnership units who are residents of Alberta, British Columbia and Saskatchewan but may in the future be extended, subject to obtaining all necessary regulatory approvals, to unitholders and beneficial owners of partnership units who are residents of other provinces or territories in Canada;

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14. a registered unitholder may elect to participate in the plan by completing an authorization form and sending it to the plan agent; beneficial owners of partnership units may elect to participate in the plan by notifying the plan agent via the applicable participant (CDS participant) in the Canadian Depository for Securities Limited (CDS) depository service;
15. distributions due to participants in the plan (plan participants) will be paid to the plan agent and applied to purchase plan units directly from Cervus LP;
16. the price of plan units purchased with distributions will be 95% of the volume weighted average price of all partnership units traded on the TSX-V on the ten days preceding that distribution date on which there was trading in the partnership units (the average market price);
17. plan participants who beneficially own their partnership units through a CDS participant may terminate their participation in the plan by written notice to their CDS participant, who will in turn notify CDS; CDS will notify the plan agent each period of the number of partnership units participating in the plan through CDS; registered unitholders may terminate their participation in the plan by written notice to the plan agent;
18. no commissions or brokerage fees will be payable on the purchase of plan units and Cervus LP will bear all administrative costs associated with the plan;
19. Cervus LP reserves the right to suspend or terminate the plan at any time, in its sole discretion, on not less than 30 days' notice to (i) the plan participants who are registered unitholders, (ii) CDS and (iii) the plan agent;
20. subject to the approval of the TSX-V, Cervus LP may amend the plan at any time and may, in consultation with the plan agent, adopt additional rules and regulations to facilitate the administration of the plan;
21. the distribution of the plan units by Cervus LP under the plan cannot be made in reliance on registration and prospectus exemptions contained in the Act for the reinvestment of dividends, interest or distributions of capital gains, earnings or surplus, as the plan involves the reinvestment of distributions of distributable cash flow of Cervus LP which may not fall into any of these categories;
22. the distribution of plan units by Cervus LP under the plan cannot be made in reliance on registration and prospectus exemptions contained in the Act for the reinvestment plans of mutual funds as Cervus LP is not a "mutual fund" as defined in the Act because the unitholders are not entitled to receive on

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demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of Cervus LP.

Order

¶ 3 Because it is not prejudicial to the public interest, the decision maker orders, under sections 48 and 76 of the Act, that Cervus LP is granted an exemption from the registration and prospectus requirements for the distribution and resale of partnership units under the plan, provided that:

- (a) at the time of the trade Cervus LP is a reporting issuer and is not in default of any requirements of the legislation;
- (b) no sales charge is payable in respect of the trade;
- (c) Cervus LP has caused to be sent to the person or company to whom the plan units are traded, not more than 12 months before the trade, a statement describing:
 - (i) their right to withdraw from the plan and to make an election to receive cash instead of plan units for distributions; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) the first trade in plan units acquired under this decision will be a distribution to the public unless the conditions of subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 November 26, 2004

Martin Eady, CA
Director