2007 BCSECCOM 604

October 1, 2007

Headnote
Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - Issuer wants relief from self-dealing requirements and conflict of interest reporting requirements in connection with mutual fund mergers - One of the funds that is merging is a non-redeemable investment fund or non-reporting issuer; if both funds were conventional mutual funds to which NI 81-102 applies, they would be able to rely on the exemption provided in NI 81-102; the self-dealing provisions only apply for a moment in time; the merger is required to be approved by unitholders of the terminating fund; unitholders of the terminating fund received an information circular for the unitholders meeting to approve the merger; the simplified prospectus and annual information form of the continuing fund was incorporated by reference in the information circular

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 127(1) and 130

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
First Asset Energy & Resource Fund
and First Asset Energy & Resource Income & Growth Fund
(collectively, the "Funds")
and First Asset Investment Management Inc.
(the "Filer")

MRRS Decision Document

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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 Funds for a decision under the securities legislation of the Jurisdictions (the "Legislation") granting relief from the restriction in the Legislation which prohibits a portfolio manager, or in British Columbia, a mutual fund or a responsible person, from purchasing or selling the securities of any issuer from or to the account of a responsible person or any associate of a responsible person in connection with a proposed merger (the "Proposed Merger") between First Asset Energy & Resource Fund (the "First Fund") and First Asset Energy & Resource Income & Growth Fund (the "Second Fund") (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:

Funds

1. Each Fund is a closed-end limited partnership established pursuant to a limited partnership agreement under the laws of the Province of Ontario and the Filer is the portfolio manager of the Funds.

2. The First Fund offered its units in all of the Provinces of Canada pursuant to a final prospectus dated September 30, 1996 and closed its initial public offering on October 29, 1996.

3. The Second Fund offered its units in all of the Provinces of Canada pursuant to a final prospectus dated December 11, 1997 and closed its initial public offering on December 22, 1997.

4. The Funds have substantially similar investment objectives, fee structures and valuation procedures.

Proposed Merger

5. The Filer intends to merge the First Fund and the Second Fund (the "Proposed Merger"), which will involve the transfer of the assets and liabilities of the Second Fund in exchange for units of the First Fund (the "First Fund Units").

6. At the time the Proposed Merger is effected, the Filer will be the "portfolio manager", or in British Columbia, a "responsible person", for both Funds for purposes of the Legislation.

7. The transfer of the investment portfolio of the Second Fund to the First Fund in exchange for First Fund Units by operation of the Proposed Merger may be considered a sale of securities caused by the Filer from the First Fund to the account of the Second Fund for which the Filer is also portfolio manager, contrary to the Legislation.

8. The Proposed Merger will be completed in accordance with the special resolutions passed by the unitholders of the First Fund and unitholders of the Second Fund (the "Merger Criteria") at a meeting of the unitholders of each of the Funds held on July 20, 2007 (the "Meeting"). At the Meeting, the unitholders of the First Fund passed a special resolution authorizing First Asset (I) General Partner Inc. ("GPI"), the general partner of the First Fund and an affiliate of the Filer, to amend the limited partnership agreement of the First Fund and implement the Proposed Merger and reorganization of the First Fund without seeking further unitholder approval. At the Meeting, the unitholders of the Second Fund passed a special resolution authorizing First Asset (II) General Partner Inc. ("GPII"), the general partner of the Second Fund and an affiliate of the Filer, to amend the limited partnership agreement of the Second Fund and implement the Proposed Merger and dissolve and wind up the Second Fund without seeking further unitholder approval. The Proposed Merger is expected to occur forthwith following receipt of all regulatory approvals (the "Effective Date").

9. GPI intends to implement the special resolutions approved by unitholders of the First Fund to make all such amendments to the Limited Partnership Agreement of the First Fund as are in the opinion of GPI necessary or desirable to:

   (a) approve the acquisition of all or substantially all of the assets and liabilities of the Second Fund in exchange for First Fund Units issued from treasury;

(b) reinstate a redemption feature to permit limited partners to redeem First Fund Units on an annual basis at the net asset value per First Fund Unit less a 2% redemption fee, commencing in January, 2008;

(c) permit First Fund Units to be consolidated or divided, from time to time, in the discretion of GPI; and

(d) to reset the Performance Bonus in the manner described in the information circular for the Meeting,

all in connection with the reorganization of the First Fund pursuant to which the portfolio management fee payable to FAIMI would be permanently reduced to an annual fee of 0.85% of the net asset value of the First Fund.

10. GPII intends to implement the special resolutions approved by unitholders of the Second Fund to make all such amendments to the Limited Partnership Agreement of the Second Fund as are in the opinion of GPII necessary or desirable to:

    (a) implement the sale of all or substantially all of the assets and liabilities of the Second Fund in exchange for First Fund Units issued from treasury;

    (b) distribute to the limited partners of the Second Fund all of the assets of the Second Fund, including the First Fund Units received upon the sale of all or substantially all of the assets of the Second Fund; and

    (c) dissolve and wind up the Second Fund after the implementation of the transactions described immediately above.

11. The exchange ratio pursuant to which all or substantially all of the assets of the Second Fund will be exchanged for First Fund Units (the "Exchange Ratio") will be calculated based on the relative net asset value of the units of the Funds as at the close of trading on the TSX on the day prior to the Effective Date. GPI and GPII will publicly announce the Exchange Ratio in a press release following the close of trading that day.

12. Once the Proposed Merger has been implemented, GPI and GPII will file a press release and material change report to announce the completion of the Proposed Merger.

13. The Proposed Merger cannot be effected on a tax-deferred "rollover basis". Unitholders of each of the Funds were provided with tax disclosure about the

ramifications of the Proposed Merger in the information circular delivered to them in connection with the Meeting, which ramifications are not anticipated by GPI or GPII to be material given the history of each of the Funds.

14. The Proposed Merger will increase the market capitalization of the First Fund and result in greater liquidity for the First Fund Units on the TSX. The liquidity available to all unitholders will also be improved through the implementation of the redemption feature described above, which is being offered in connection with the Proposed Merger.

15. The Proposed Merger will result in a reduction of the operating costs of the First Fund on a per unit basis for all unitholders of the Funds.

16. In the opinion of the Filer, the Proposed Merger is in the best interest of the First Fund, the Second Fund and their respective unitholders.

17. In the absence of this order, the Filer would be prohibited from purchasing and selling the securities of the First Fund in connection with the Proposed Merger.

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, provided that (a) the Proposed Merger is completed in accordance with the Merger Criteria and (b) the Filer and the Funds comply with paragraphs 8, 9, 10, 11 and 12 above.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

Suresh Thakrar
Commissioner
Ontario Securities Commission