

# **2004 BCSECCOM 407**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief from continuous disclosure requirements for an exchangeable share issuer whose securities are exchangeable into units of an investment trust

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 85(1), 91, 117 and 119

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145, 149 and 184

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

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

**AND**

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

**AND**

## **IN THE MATTER OF TERRAVEST INCOME FUND, LANIUK INDUSTRIES INC. AND TERRAVEST ACQUISITIONCO INC.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta and British Columbia (the “Jurisdictions”) has received an application from TerraVest Income Fund (the “Fund”), Laniuk Industries Inc. (“Laniuk”) and TerraVest AcquisitionCo Inc. (“AcquisitionCo”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that AcquisitionCo (or its successor on amalgamation with Laniuk, “AmalgamationCo”), be granted an exemption from National Instrument 51-102 Continuous Disclosure Obligations (“NI 51-102”), in its entirety, and further be granted an exemption from any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that has not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (collectively, the “Continuous Disclosure Requirements”);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application;

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AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

AND WHEREAS the Fund, Laniuk and AcquisitionCo have represented to the Decision Makers that:

1. Laniuk is a corporation incorporated and subsisting pursuant to the provisions of the *Business Corporations Act* (Alberta) (the “ABCA”);
2. the head and principal office of Laniuk is located at 4901 Bruce Road, Vegreville, AB T9C 1C3 and its registered office is located at 5038 – 50<sup>th</sup> Avenue, Vegreville, Alberta T9C 1S1;
3. the authorized capital of Laniuk consists of an unlimited number of common shares (the “Common Shares”) and an unlimited number of preferred shares (“Preferred Shares”);
4. As at May 18, 2004, 38,013,396 Common Shares and 9,000,000 Preferred Shares were issued and outstanding. Laniuk has also reserved a total of 2,804,500 Common Shares for issuance pursuant to outstanding options to purchase Common Shares (“Options”);
5. the Common Shares are listed on the TSX Venture Exchange (the “TSXV”);
6. Laniuk is a reporting issuer in the Provinces of British Columbia and Alberta, and has been for more than 12 months in British Columbia and Alberta;
7. Laniuk has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia and Alberta, and is not in default of the securities legislation in any of these jurisdictions;
8. the Fund is an open-end unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a declaration of trust dated May 3, 2004 between Laniuk, as initial unitholder, and Dale H. Laniuk, as initial trustee;
9. The Fund has not conducted any business to date other than participating in a proposed plan of arrangement under section 193 of the ABCA (the “Arrangement”) and other matters contemplated by an arrangement agreement (the “Arrangement Agreement”) dated May 17, 2004 among Laniuk, the Fund, AcquisitionCo, TerraVest ExchangeCo Inc. (“ExchangeCo”), R.J.V. Gas Field Services Ltd. (“RJV”), Ezee-On Mfg. Ltd. (“Ezee-On”) and TerraVest Commercial Trust (“CT”). If the Arrangement becomes effective, the Fund

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will hold securities of subsidiaries of the Fund that will own, indirectly, all of the business assets of Laniuk's wholly-owned subsidiaries, RJV and Ezee-On;

10. The Fund has filed a preliminary prospectus in each of the provinces of Canada with respect to a public offering and secondary offering of Units (the "Offering"). Completion of the Offering is a condition to completion of the Arrangement;
11. the head and principal office of the Fund is located at 4901 Bruce Road, Vegreville, AB T9C 1C3;
12. the Fund is authorized to issue an unlimited number of trust units (the "Units") and an unlimited number of special voting units (the "Special Voting Units");
13. as of the date hereof, there is one (1) Unit issued and outstanding, which is owned by Laniuk, and no Special Voting Units are outstanding;
14. The Fund has applied to the Toronto Stock Exchange (the "TSX") for the listing on the TSX of the Units to be issued in connection with the Arrangement (as well as those to be issued under the Offering) subject to, among other things, completion of the Arrangement;
15. The Fund is not currently a reporting issuer in any of the Jurisdictions. Upon completion of the Offering, which is a condition to completion of the Arrangement, the Fund will become a reporting issuer in all of the Jurisdictions as well as the other provinces of Canada;
16. AcquisitionCo is a wholly-owned subsidiary of the Fund and was incorporated pursuant to the ABCA. AcquisitionCo was incorporated to participate in the Arrangement by acquiring the Common Shares and Preferred Shares of Laniuk (other than those held by dissenting holders of Common Shares ("Shareholders") and Preferred Shares ("Preferred Shareholders"));
17. the head and principal office of AcquisitionCo is located at 4901 Bruce Road, Vegreville, AB T9C 1C3 and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
18. the authorized capital of AcquisitionCo currently consists of an unlimited number of common shares. Prior to the Arrangement, the articles of AcquisitionCo will be amended to create exchangeable shares, series 1 ("Exchangeable Shares") and exchangeable shares, series 2 ("Subordinated Exchangeable Shares");

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19. as of the date hereof there is one (1) common share of AcquisitionCo issued and outstanding, which is owned by the Fund. All common shares of AmalgamationCo will be owned beneficially (directly or indirectly) by the Fund, for as long as any outstanding Exchangeable Shares and Subordinated Exchangeable Shares are owned by any person other than the Fund or any of the Fund's subsidiaries and other affiliates;
20. AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
21. the Arrangement will be effected by way of a plan of arrangement (the "Plan") pursuant to section 193 of the ABCA. The Arrangement will require: (i) approval by not less than 2/3 of the votes cast by Shareholders and holders of options ("Optionholders"), voting together as a single class, either in person or by proxy, at the meeting of Shareholders and Optionholders to be held on June 21, 2004; (ii) approval by not less than 1/2 of the votes cast by Shareholders and Optionholders, excluding the votes of Dale H. Laniuk and his associates and affiliates (the "Minority Shareholders and Optionholders"), voting together as a single class, either in person or by proxy at the meeting of Shareholders and Optionholders; (iii) approval by not less than 2/3 of the votes cast by the Preferred Shareholders, either in person or by proxy, at the meeting of Preferred Shareholders to be held on June 21, 2004, and thereafter; (iv) approval of the Court of Queen's Bench of Alberta (the "Court");
22. following closing of the Arrangement, which is expected to occur on or about July 9, 2004 (the "Effective Date"), the Fund will own all of the issued and outstanding securities of AmalgamationCo, other than the Exchangeable Shares and Subordinated Exchangeable Shares, and the Shareholders will own all of the issued and outstanding Units of the Fund and the Exchangeable Shares and Subordinated Exchangeable Shares of AmalgamationCo;
23. AmalgamationCo will become a reporting issuer under the Legislation of British Columbia and Alberta, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
24. the Fund will become a reporting issuer under the Legislation of British Columbia and Alberta, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
25. the Exchangeable Shares and Subordinated Exchangeable Shares provide a holder with a security having economic and voting rights which are, as nearly as practicable, equivalent to those of the Units;

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26. under the terms of the Exchangeable Shares and Subordinated Exchangeable Shares and certain rights to be granted in connection with the Arrangement, holders of Exchangeable Shares and Subordinated Exchangeable Shares will be able to exchange them at their option for Units;
27. under the terms of the Exchangeable Shares and Subordinated Exchangeable Shares and certain rights to be granted in connection with the Arrangement, the Fund, ExchangeCo or AmalgamationCo will redeem, retract or otherwise acquire Exchangeable Shares and Subordinated Exchangeable Shares in exchange for Units in certain circumstances;
28. in order to ensure that the Exchangeable Shares and Subordinated Exchangeable Shares remain the voting and economic equivalent of the Units prior to their exchange, the Arrangement provides for:
  - (a) a voting and exchange trust agreement to be entered into among the Fund, AcquisitionCo, ExchangeCo and CIBC Mellon Trust Company (the "Voting and Exchange Agreement Trustee") which will, among other things, (i) grant to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares and Subordinated Exchangeable Shares, the right to require the Fund or ExchangeCo to exchange the Exchangeable Shares and Subordinated Exchangeable Shares for Units, and (ii) trigger automatically the exchange of the Exchangeable Shares and Subordinated Exchangeable Shares for Units upon the occurrence of certain specified events;
  - (b) the deposit by the Fund of a Special Voting Unit with the Voting and Exchange Agreement Trustee which will effectively provide the holders of Exchangeable Shares and Subordinated Exchangeable Shares with voting rights equivalent to those attached to the Units; and
  - (c) a support agreement to be entered into among the Fund, AcquisitionCo, ExchangeCo and the Voting and Exchange Agreement Trustee which will, among other things, restrict the Fund from issuing or distributing to the holders of all or substantially all of the outstanding Units:
    - (i) additional Units or securities convertible into Units;
    - (ii) rights, options or warrants for the purchase of Units; or
    - (iii) units or securities of the Fund other than Units, evidences of indebtedness of the Fund or other assets of the Fund;

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unless the same or an equivalent distribution is made to holders of Exchangeable Shares and Subordinated Exchangeable Shares, an equivalent change is made to the Exchangeable Shares and Subordinated Exchangeable Shares, or the approval of holders of Exchangeable Shares and Subordinated Exchangeable Shares has been obtained;

29. the Information Circular discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements;
30. the Fund will concurrently send to holders of Exchangeable Shares and Subordinated Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Units pursuant to the Legislation; and
31. AmalgamationCo and its insiders will comply with the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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;

THE DECISION of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements of the Jurisdictions shall not apply to AmalgamationCo for so long as:

- (a) the Fund is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 and is an electronic filer under National Instrument 13-101;
- (b) the Fund sends to all holders of Exchangeable Shares and Subordinated Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Units under the Continuous Disclosure Requirements;
- (c) the Fund complies with the requirements of the Legislation and of any marketplace on which the securities of the Fund are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues and files any news release that discloses a material change in its affairs;

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- (d) AmalgamationCo issues a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of AmalgamationCo that are not also material changes in the affairs of the Fund;
- (e) the Fund includes in all mailings of proxy solicitation materials to holders of Exchangeable Shares and Subordinated Exchangeable Shares a clear and concise statement that explains the reason the mailed material relates solely to the Fund, indicates that the Exchangeable Shares and Subordinated Exchangeable Shares are the economic equivalent to the Units, and describes the voting rights associated with the Exchangeable Shares and Subordinated Exchangeable Shares;
- (f) the Fund remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and
- (g) AmalgamationCo does not issue any securities, other than the Exchangeable Shares and Subordinated Exchangeable Shares, securities issued to the Fund or its affiliates, or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

DATED this 29th day of June, 2004

Mavis Legg, C.A.  
Manager, Securities Analysis