

## 2008 BCSECCOM 253

April 8, 2008

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds

AIF requirement - A fund wants relief from subsection 9.2 of NI 81-106 that requires a fund that does not have a current prospectus as at its financial year end to prepare an annual information form - The issuers are short-term vehicles formed solely to invest their available funds in flow-through shares of resource issuers; the issuers' securities are not redeemable and there is no secondary trading in the issuers' securities; the issuers' other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuers' business, financial position and future plans

Proxy voting record - A fund wants relief from subsections 10.3 and 10.4 of NI 81-106 that requires a fund to maintain a proxy voting record and annually to post the proxy voting record on its website - The issuers are short-term vehicles formed solely to invest their available funds in flow-through shares of resource issuers; the issuers' securities are not redeemable and there is no secondary trading in the issuers' securities; the issuers' other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuers' business, financial position and future plans

### **Applicable British Columbia Provisions**

National Instrument 81-106, ss. 9.2, 10.3, 10.4 and 17.1

In the Matter of  
the Securities Legislation of  
Ontario, British Columbia, Alberta, Saskatchewan,  
Manitoba, Quebec, New Brunswick, Nova Scotia,  
Newfoundland and Labrador  
(the "Jurisdictions")

and

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

and

In the Matter of

## 2008 BCSECCOM 253

Connor, Clark & Lunn 2007 Flow-Through  
Limited Partnership (“2007 Partnership”)

and

Connor, Clark & Lunn 2008 Flow-Through  
Limited Partnership (“2008 Partnership”)

and

Connor, Clark & Lunn Capital Markets (“Manager”)

### MRRS Decision Document

#### **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the 2007 Partnership and the 2008 Partnership (the “Partnerships”) and from the Manager, on behalf of any future limited partnership managed by the Manager that is identical to the Partnerships in all material respects (the “Future Partnerships”) and that invests in Flow-Through Shares (as hereinafter defined) (together with the Partnerships, the “Partnership Filers”) (the Partnership Filers and the Manager are, collectively, the “Filers”), for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from:

- (i) The requirement in section 9.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (“NI 81-106”) to prepare and file an annual information form (the “AIF”);
- (ii) The requirement in section 10.3 of NI 81-106 to maintain a proxy voting record (the “Proxy Voting Record”); and
- (iii) The requirements in section 10.4 of NI 81-106 to prepare a Proxy Voting Record on an annual basis for the period ending June 30 of each year, to post the Proxy Voting Record on the Partnership Filers’ website no later than August 31 of each year and to send the Proxy Voting Record to the limited partners of the Partnership Filers (the “Limited Partners”) upon request.

((i), (ii) and (iii) are collectively the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications

## 2008 BCSECCOM 253

- (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:

1. The 2007 Partnership was formed pursuant to the provisions of the Limited Partnership Act (Ontario) on August 16, 2007. The 2008 Partnership was formed pursuant to the provisions of the Limited Partnerships Act (Ontario) on December 11, 2007.
2. The principal office addresses and the registered office addresses of the Filers is, or will be, in Toronto, Ontario.
3. The 2007 Partnership is a reporting issuer in each of the provinces of Canada by virtue of a final prospectus dated September 24, 2007. The 2008 Partnership is a reporting issuer in each of the provinces of Canada by virtue of a final prospectus dated January 30, 2008. Any Future Partnership will also be a reporting issuer in each province of Canada.
4. The Partnerships are, and the Future Partnerships will be, limited partnerships formed to invest primarily in certain common shares ("Flow-Through Shares") of companies involved primarily in oil and gas, mining or renewable energy exploration and development (each a "Resource Issuer") pursuant to agreements ("Investment Agreements") between the Partnership and the relevant Resource Issuer. Under the terms of each Investment Agreement, the Partnership Filers will subscribe for Flow-Through Shares of the Resource Issuer and the Resource Issuer will agree to incur and renounce to the Partnership Filers expenditures in respect of resource exploration and development which qualify as Canadian exploration expense or as Canadian development expense.
5. The Manager is the manager of the Partnerships and will be the manager of the Future Partnerships. As manager, the Manager provides all of the administrative services required by the Partnership Filers.

6. It is the current intention of the general partners of the Partnerships that the Partnerships will transfer their assets to a mutual fund corporation managed by the Manager in exchange for shares of a class of shares of a mutual fund corporation managed by the Manager that is an open-end mutual fund. Thereafter, the Partnerships will be dissolved and the Limited Partners of each Partnership would receive their pro rata share of the shares of that mutual fund. These events are expected to occur approximately two years after the Partnerships become reporting issuers: on or before September 30, 2009 in the case of the 2007 Partnership, and on or before June 30, 2010 in the case of the 2008 Partnership. The Manager expects that any Future Partnership will also be terminated approximately two years after it becomes a reporting issuer on the same basis as the Partnerships.
7. The Partnerships are not, and will not be, operating businesses. Rather, each Partnership is, or will be, a short-term special purpose vehicle that will be dissolved within approximately two years of its formation. A primary purpose of the Partnerships is to obtain for the Limited Partners the significant tax benefits that accrue when Resource Issuers renounce resource exploration and development expenditures to the Limited Partners through Flow-Through Shares.
8. The units of the Partnerships (the “Units”) are not, and will not be, listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units are not transferred by Limited Partners, since Limited Partners must be holders of the Units on the last day of each fiscal year of the Partnerships in order to obtain the desired tax deduction.
9. Since their formation, the Partnerships’ activities have been limited to (i) completing the issue of the Units under its prospectus, (ii) investing its available funds in accordance with its respective investment objectives, and (iii) incurring expenses as described in its prospectus. Any Future Partnerships will be structured in a similar fashion.
10. Given the limited range of business activities to be conducted by the Partnership Filers, the short duration of their existence and the nature of the investment of the Limited Partners, the preparation and distribution of an AIF by the Partnership Filers would not be of any benefit to the Limited Partners and may impose a material financial burden on the Partnership Filers. Upon the occurrence of any material change to the Partnership Filers, Limited Partners would receive all relevant information from the material change reports that Partnership Filers are required to file under applicable securities legislation.

## 2008 BCSECCOM 253

11. As a result of the implementation of N1 81-106, investors purchasing Units of the Partnership Filers were, or will be, provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Partnership Filers are voted (the “Proxy Voting Policies”), and had, or will have, the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.
12. Generally, the Proxy Voting Policies require that the securities of companies held by the Partnership be voted in a manner most consistent with the economic interests of the Limited Partners of the Partnerships.
13. Given the Partnership Filers’ short lifespan, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which the Partnerships exercised or failed to exercise its proxy voting rights, as the Partnerships would likely be dissolved by the time any potential change could materialize.
14. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the Partnerships.

### **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.

“Vera Nunes”

Assistant Manager, Investment Funds  
Ontario Securities Commission