

2005 BCSECCOM 236

March 31, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, s. 91 - Requirements in the Securities Rules for the filing and delivery of annual financial statements

NI 51-102 *Continuous Disclosure Obligations*, s. 13.1 - Requirements for the filing and delivery of annual financial statements and MD&A - An issuer wants relief from the requirements under NI 51-102 to file and deliver a comparative income statement, statement of retained earnings, a cash flow statement and MD&A for a particular year - The issuer is an income trust - It filed a final prospectus with audited financials dated prior to its year end - The issuer had limited operations from the date of the prospectus to its year end - The income statements and MD&A for the stub period would not disclose any material information that is not already in the public domain - The issuer will provide an audited balance sheet as at its most recent year end, and comparative financial statements for the first quarter of the following year that include results of operations for the stub period, and related MD&A

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 91

Securities Rules, B.C. Regulation 194/97, ss. 144 and 149

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 4.1(1)(a), 4.2, 4.6, 5.1, 5.6 and 13.1

In the Matter of
the Securities Legislation
of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, 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 The Data Group Income Fund (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 for: (i) a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement that certain financial statements for the Stub Period (as defined below) prescribed by section 4.1(a) of National Instrument 51-102 (NI 51-102) and related management's discussion and analysis of results of operations and financial condition (MD&A) be filed and sent to the Filer's securityholders, and (ii) in Quebec, for a revision of the general order that will provide the same result as an exemption order (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) the 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 Filer is a trust established and governed pursuant to a declaration of trust dated November 15, 2004, as amended and restated on December 14, 2004.
2. The Filer's head office is located at 9195 Torbram Road, Brampton, Ontario, L6S 6H2.
3. An Application is not being made with the securities regulatory authorities in Prince Edward Island, Yukon, the Northwest Territories or Nunavut (together with the Decision Makers, the Regulators) as NI 51-102 has not been adopted in these jurisdictions.
4. The Filer is a reporting issuer, or the equivalent, in all the provinces and territories of Canada and the trust units of the Filer (Units) are listed on the Toronto Stock Exchange.
5. To the best of its knowledge, the Filer is not in default of any material applicable requirement of the *Securities Act* (Ontario) (the Act) or equivalent legislation of the other Jurisdictions and is not on the list of defaulting

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reporting issuers maintained pursuant to subsection 72(9) of the Act or equivalent provisions of the other Jurisdictions.

6. On November 15, 2004, the Filer filed a preliminary prospectus (the Preliminary Prospectus) for its initial public offering of Units (the IPO) which disclosed, among other things, that the Filer has been established to acquire and hold all of the common shares of Data Business Forms Limited (DBFL). A mutual reliance review system decision document evidencing the issue of preliminary receipts for the Preliminary Prospectus by the Regulators was issued by the OSC on November 15, 2004.
7. On November 26, 2004, the Filer filed an amended and restated preliminary prospectus for the IPO, which contained substantially the same disclosure as the Preliminary Prospectus. A mutual reliance review system decision document evidencing the issue of receipts for the amended and restated preliminary prospectus by the Regulators was issued by the OSC on November 29, 2004.
8. On December 14, 2004, the Filer filed a final prospectus (the Prospectus) for the IPO, which contained substantially the same disclosure as the Preliminary Prospectus. A mutual reliance review system decision document, evidencing the issue of final receipts for the Prospectus by the Regulators, was issued by the OSC on December 15, 2004.
9. The Prospectus contained full, true and plain disclosure with respect to the Filer, the Filer's proposed acquisition of DBFL (the Acquisition), DBFL and the prescribed financial statement disclosure, including the following financial statement disclosure for "significant probable acquisitions" pursuant to section 6.4 of OSC Rule 41-501 in respect of the Acquisition: (the Prospectus Financial Statements)
 - (i) audited financial statements of DBFL for the years ended April 30, 2004, 2003 and 2002 (with balance sheets as at April 30, 2004 and 2003), together with an auditors' report thereon;
 - (ii) unaudited financial statements of DBFL for the three months ended July 31, 2004 and 2003 (with a balance sheet as at July 31, 2004); and
 - (iii) pro forma consolidated financial statements of the Filer, including (a) a consolidated balance sheet as at July 31, 2004, and (b) consolidated statements of operations for the year ended April 30,

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2004 and for the period from May 1, 2004 to July 31, 2004, together with a compilation report.

10. On December 21, 2004, the IPO was completed and the Filer used the proceeds of the IPO to complete the Acquisition as contemplated by the Prospectus.
11. The Filer filed a business acquisition report with respect to the Acquisition pursuant to NI 51-102 and will file unaudited comparative financial statements of DBFL for the six months ended October 31, 2004 by March 31, 2005, as provided for in an MRRS decision document dated March 7, 2005.
12. Other than the offering described in the Prospectus, there were no material acquisitions or dispositions of units of the Filer during the period from December 14, 2004 to December 31, 2004 (the Stub Period).
13. The only operations of the Filer prior to the end of its fiscal year ended December 31, 2004 involved the issuance of 13,327,377 units, the purchase of the common shares of DBFL, and certain related transactions, as described in the Prospectus.
14. The Filer will prepare, file and send to those of its unitholders that request such financial statement, a balance sheet of the Filer as at December 31, 2004, together with an auditor's report thereon (the 2004 Audited Balance Sheet).
15. The Filer will prepare, file and send to those of its unitholders that request such financial statements, unaudited consolidated financial statements of the Filer as at and for the period from December 21, 2004 to March 31, 2005 (the Q1 Unaudited Financial Statements) within the applicable time period, which financial statements will include the Filer's results of operations for the Stub Period, together with MD&A in respect of such financial statements and certain comparative financial information for the same period in 2004.
16. The MD&A filed by the Filer in respect of the financial statements of the Filer in respect of the six and nine month periods ended June 30, 2005 and September 30, 2005, respectively, will be prepared on a comparative basis.

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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that (i) the 2004 Audited Balance Sheet is filed by the Filer on or prior to March 31, 2005, and (ii) the Q1 2005 Unaudited Financial Statements and related MD&A are filed on or prior to May 15, 2005.

John Hughes
Manager, Corporate Finance
Ontario Securities Commission