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April 10, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The securities that are being issued will only be outstanding for a short period of time before they are redeemed for other securities; the original securities are being issued for tax reasons only, not so the shareholders continue to have an interest in the issuer; the securityholders will not retain any securities of the issuer following the arrangement or reorganization

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

Form 51-102F5, s. 14.2

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec,
Northwest Territories, Yukon Territory, Nunavut, 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
Cargojet Income Fund
(the “Applicant”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application of the Applicant for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements of the Legislation to include prospectus level financial statement disclosure in respect of a subsidiary, Cargojet Operating Trust (the

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“Trust”), and a newly created subsidiary, Amalco-MFC (hereinafter defined), of the Applicant in its management information circular (“Circular”) in connection with the special meeting of the Applicant's unitholders to consider and approve, among other things, an internal Reorganization (as defined below) shall not apply to the Applicant (the “Requested Relief”).

Under the Mutual Reliance Review System (“MRRS”) 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 otherwise defined herein.

Representations

1. The Applicant is a limited purpose trust established under the laws of Ontario pursuant to an amended and restated declaration of trust dated as of June 1, 2005. The Applicant is authorized to issue an unlimited number of units (“Units”). As of the date hereof, 6,698,863 Units and 2,232,955 special voting units were issued and outstanding.
2. The Applicant holds all of the trust units and series 1 trust notes of the Trust, a trust established in Ontario, which in turn holds all of the ordinary limited partnership units of Cargojet Holdings Limited Partnership (the “Partnership”). The Partnership in turn holds all of the common shares of Cargojet Holdings Ltd. (“Holdings Ltd.”). Holdings Ltd. is a corporation amalgamated under the laws of the Province of Ontario on June 9, 2005 and holds Class A units in Cargojet Partnership (the “Operating Partnership”). Together, the Operating Partnership and Holdings Ltd. carry on the business of providing time sensitive overnight air cargo service (the “Business”).
3. The Applicant completed its initial public offering pursuant to a long form prospectus dated June 9, 2005.
4. The Applicant is not in default of any of its obligations under the Legislation.

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5. It is proposed that the Applicant's present organizational structure undergo an internal reorganization (the "Reorganization") to eliminate the Trust and carry on the Business through the Operating Partnership.
6. It is intended that the effect of the Reorganization will be that the distributions received by the Applicant from the Partnership and Operating Partnership are effectively taxed at the level of unitholders ("Unitholders") of the Applicant, resulting in a more efficient flow-through structure.
7. The Reorganization will occur on a tax-deferred basis for the Applicant and its Unitholders resident in Canada. After giving effect to the Reorganization, the direct and indirect interests of the Applicant in the assets of the Partnership and Operating Partnership and its general partner and in the Business will be the same as the interests that the Applicant held in the Trust, Holdings Ltd. and the Business immediately prior to the Reorganization. The Business will also be the same as it was immediately prior to the Reorganization.
8. As part of the Reorganization:
 - i. Holdings Ltd. will issue new common shares to the Partnership in satisfaction of the promissory note issued by Holdings Ltd. to the Partnership.
 - ii. The Trust will issue units of the Trust (the "Trust Units") to the Applicant in satisfaction of the series 1 trust notes of the Trust which will be settled and extinguished.
 - iii. The Trust will amend its declaration of trust to allow for the creation of a second class of units (the "Class A Trust Units") having similar terms as the Trust Units. The Class A Trust Units will be issued with a nominal redemption amount per unit.
 - iv. The Operating Partnership will amend its partnership agreement to allow for the creation of a fourth class of units (the "Class D Partnership Units"). The terms of the Class D Partnership Units will generally be as follows:
 1. The Class D Partnership Units may be issued in one or more series, with such rights and conditions as may be determined from time to time;

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2. The Class D Partnership Units will have no voting rights attached to them;
 3. The Class D Partnership Units will be entitled to receive any distributions declared by the Operating Partnership on the Class D Partnership Units; and
 4. the Class D Partnership Units will be entitled to receive the remaining property of the Operating Partnership upon dissolution, liquidation or winding up of the Operating Partnership subject to the rights, privileges, restrictions and conditions attaching to any other class of units of the Operating Partnership.
- v. The Applicant will subscribe for a number of Class A Trust Units equal in number to the number of Units then outstanding for a cash payment of \$0.10 per Class A Trust Unit.
- vi. The Applicant will distribute, as a distribution of capital on its Units, the Class A Trust Units acquired by the Applicant in paragraph v to holders of Units. Each holder will receive such number of Class A Trust Units as is equal to the number of Units owned by such holder immediately before this distribution.
- vii. The Trust will transfer all of its assets and liabilities (including the shares of the GP and the Class A limited partnership units (the “Ordinary LP Units”) of the Partnership to the Applicant in exchange for Units.
- viii. The Class A Trust Units, distributed by the Applicant to holder of Units as described in paragraph vi hereof, will be redeemed by the Trust. As consideration for the redemption, the Trust will distribute a portion of Units acquired from the Applicant pursuant to the transactions described in section vii hereof to holders of Units.
- ix. The Trust will renounce, release and surrender all of its interest in the Applicant (income, capital and otherwise). Accordingly, all Units held by the Trust will be cancelled. The Trust will be liquidated.
- x. Holdings Ltd. will transfer its shares in Cargojet Airways Ltd. (“Airways”) to the Operating Partnership. As consideration for the transfer, Holdings Ltd. will receive Class D Partnership Units with a

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fair market value equal to the fair market value of the shares transferred.

- xi. The Applicant will incorporate a corporation (“MFC”) under the Business Corporations Act (Ontario).
- xii. The authorized share capital of MFC will consist of an unlimited number of common shares (the “MFC Common Shares”) and class A shares (the “MFC Class A Shares”). Each MFC Common Share will entitle the holder to one vote, dividends as and when declared by the board of directors, and, on the dissolution of MFC, will entitle the holder to share pro rata in any remaining assets of MFC. The terms of each MFC Class A Share will generally be as follows:
 - 1. Each MFC Class A Share will be non-voting;
 - 2. Each MFC Class A Share will entitle the holder to dividends as and when declared by the board of directors of MFC;
 - 3. Each MFC Class A Share will be redeemable at the demand of the holder and retractable at a redemption price equal to the fair market value of any consideration paid to acquire such share on issuance, which redemption price will be payable in cash, or satisfied by the transfer of Units;
 - 4. Each MFC Class A Share will entitle the holder to receive the Class A Share redemption price upon the receipt of a MFC Class A Share by MFC;
 - 5. Under no circumstances may MFC suspend the redemption of the MFC Class A Shares; and
 - 6. On dissolution of MFC, each MFC Class A Share will entitle the holder to the redemption price in preference to any participation on the MFC Common Shares.
- xiii. The Applicant will subscribe for 100 MFC Common Shares for \$100.
- xiv. The Applicant will subscribe for a number of MFC Class A Shares equal in number to the number of Units then outstanding for a nominal amount (\$0.001 per MFC Class A Share).

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- xv. The Applicant will distribute, as a distribution of capital on its Units, the MFC Class A Shares acquired by the Applicant as described in paragraph xiv to the holders of Units. Each holder will receive such number of MFC Class A Shares as equals the number of Units owned by such holder immediately before this distribution.
- xvi. MFC and Holdings Ltd. (each of which is referred to in this paragraph as a “predecessor corporation”) will undertake a long-form amalgamation under the provisions of the Business Corporations Act (Ontario) to form an amalgamated entity (“Amalco-MFC”) in such a manner that:
 - 1. All of the property (except any amounts receivable from any predecessor corporation or shares of the capital stock of any predecessor corporation) of the predecessor corporations held immediately before the amalgamation will become property of Amalco-MFC by virtue of the amalgamation;
 - 2. All of the liabilities (except any amounts payable to any predecessor corporation) of the predecessor corporations immediately before the amalgamation will become liabilities of Amalco-MFC by virtue of the amalgamation; and
 - 3. All the shareholders (except any predecessor corporation) who owned shares in the capital stock of any predecessor corporation immediately before the amalgamation will receive shares of the capital stock of Amalco-MFC pursuant to the amalgamation.
- xvii. The Partnership will incorporate a corporation (“Cargojet Operating GP”) under the Business Corporations Act (Ontario) which will be the new general partner of the Operating Partnership. The authorized share capital of Cargojet Operating GP will consist of an unlimited number of common shares. Each common share will entitle the holder to one vote, dividends as and when declared by the board of directors, and, on the dissolution of Cargojet Operating GP, will entitle the holder to share pro rata in any remaining assets of Cargojet Operating GP.

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- xviii. Cargojet Operating GP will subscribe for 1 Class B Unit of the Operating Partnership for \$1.
- xix. Amalco-MFC and the Partnership will enter into an agreement of purchase and sale under which Amalco-MFC will transfer all of its property (being primarily the Class C and D Units of the Operating Partnership) to the Partnership. The Partnership will satisfy the purchase price by issuing to Amalco-MFC such number of Ordinary LP Units equal in value to the net property transferred.
- xx. Amalco-MFC and the Applicant will enter into an agreement of purchase and sale under which Amalco-MFC will transfer all of its property (being primarily the Ordinary LP Units) to the Applicant. The Applicant will satisfy the purchase price by issuing to Amalco-MFC such number of Units equal in value to the net property transferred.
- xxi. Amalco-MFC will redeem all of its issued and outstanding Class A Shares. As consideration for the redemption, Amalco-MFC will distribute a portion of Units acquired from the Applicant pursuant to the transactions described in paragraph xx hereof to the holders of Units.
- xxii. Amalco-MFC will renounce, release and surrender all of its interest in the Applicant (income, capital and otherwise). Accordingly, all Units held by Amalco-MFC will be cancelled.
- xxiii. The Partnership and the Applicant will, by special resolution, resolve to liquidate and dissolve Amalco-MFC under the applicable provisions of the Business Corporations Act (Ontario). The outstanding common shares of Amalco-MFC owned by the Partnership and the Applicant will be cancelled.
- xxiv. The outstanding Units will be consolidated on a basis such that the number of Units outstanding following such consolidation will be equal to the number of Units outstanding prior to the proposed reorganization. No Units will be cancelled or redeemed as a consequence of the consolidation and holders of Units will not receive, and shall not be entitled to receive, any proceeds of disposition in respect thereof.

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9. The Applicant intends to seek the approval of the Unitholders for the Reorganization at its annual and special meeting of Unitholders currently scheduled for June 18, 2008.
10. The Applicant's audited financial statements for the year ended December 31, 2007 and related management's discussion and analysis of financial condition and results of operations ("MD&A"), any interim financial statements of the Applicant for periods subsequent to the end of the Applicant's last fiscal year and the related MD&A, the Applicant's annual information form (the "AIF"), any material change reports filed since the end of the financial year in respect of which the Applicant's current AIF is filed, and any applicable business acquisition report of the Applicant (collectively, the "Cargojet Documents") will be incorporated by reference in the Circular.
11. The Circular will contain information sufficient to enable a reasonable Unitholder to form a reasoned judgment concerning the nature and effect of the Reorganization. To that end, prospectus level disclosure for the Applicant as prescribed by National Instrument 44-101 -- *Short Form Prospectus Distributions*, including the applicable Cargojet Documents, will be included or incorporated by reference in the Circular.
12. Prospectus level disclosure for the Cargojet entities as prescribed by National Instrument 41-101 -- *General Prospectus Requirements* ("NI 41-101") will also be included in the Circular (or incorporated by reference therein), other than the financial statement disclosure.
13. The Reorganization is being undertaken in order to structure the flow of revenues created by the Business and distributed to the Applicant by its operating subsidiaries on an efficient basis. The Reorganization is not being proposed in contemplation of the acquisition of any additional operating assets or the disposition of any of the Applicant's existing operating assets. The rights of Unitholders in respect of the Applicant, and their relative indirect interests in and to the revenues of the Business will not be affected by the Reorganization. Following completion of the Reorganization, Unitholders will continue to hold Units of the Applicant and the Applicant will continue to own all of its existing operating assets. The Applicant's financial position will be largely the same as is reflected in the Applicant's audited financial statements for the financial year ended December 31, 2007.
14. Amalco-MFC will not exist at the time of the mailing of the Circular, and consequently there would not be any existing financial information regarding Amalco-MFC itself.

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15. The Applicant's audited financial statements for the year ended December 31, 2007, any interim financial statements of the Applicant for periods subsequent to the end of the Applicant's last fiscal year, and the related MD&A for the respective periods include the financial results for the Trust on a consolidated basis for the same period and provide sufficient disclosure in respect of the Trust and the Business.
16. To the extent that Amalco-MFC's proposed acquisition of the property and liabilities of MFC and Holdings Ltd. may be considered to constitute a significant probable acquisition requiring the acquired business financial disclosure prescribed by NI 41-101, the relevant financial information of MFC and Holdings Ltd. and the Business will be part of the information contained in the Cargojet Documents for the respective periods already incorporated by reference into the Circular.
17. Neither the number of issued and outstanding Units nor the relative holdings of Units by any Unitholder will be altered as a result of the completion of the Reorganization.
18. The MFC Class A Shares and additional Units distributed to Unitholders will be outstanding for an instant in time on the date of the Reorganization prior to their automatic redemption and consolidation, respectively.
19. The Reorganization is being undertaken in order to structure the flow of revenues created by the Business and distributed to the Applicant by its operating subsidiaries on an efficient basis. The rights of Unitholders in respect of the Applicant, and their relative indirect interests in and to the revenues of the Business will not be affected by the Reorganization.
20. The distribution of the MFC Class A Shares, Class A Trust Units and additional Units are, in each case, done solely to allow the Reorganization to be effected in such a manner as to ensure that Unitholders, the Applicant and the Applicant's subsidiaries will be able to make use of available roll-overs under applicable tax legislation, thus preserving the tax-deferred status of the Reorganization.
21. The distribution of the MFC Class A Shares, Class A Trust Units and additional Units pursuant to the Reorganization may, in each case, constitute a distribution of securities under National Instrument 51-102 -- *Continuous Disclosure Obligations* ("NI 51-102"). As a result, section 14.2 of Form 51-102F5 -- *Information Circular* ("Form 51-102F5") may require that the Circular include, among other things, the financial statement disclosure

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prescribed by the form of prospectus applicable for each of the Applicant, the Trust and Amalco-MFC. As a result, the Applicant requests that a decision be made by the Decision Makers pursuant to section 13.1 of NI 51-102 exempting the Applicant from the requirement to include the prescribed financial statement disclosure in respect of Amalco-MFC and the Trust (the “Financial Disclosure Requirement”).

22. Amalco-MFC will not exist at the time of the mailing of the Circular or as of the date of the Meeting, and consequently there would not be any existing financial information regarding Amalco-MFC itself. However, it appears that section 14.2 of Form 51-102F5 would technically result in the Financial Disclosure Requirement with respect to Amalco-MFC. The inclusion of “nil” financial statements for Amalco-MFC would not provide any meaningful information for Unitholders in respect of their decision regarding the approval of the Reorganization.
23. As the Circular will otherwise include or incorporate by reference the disclosure required by Form 51-102F5 in respect of the Reorganization, including the Cargojet Documents, the Applicant has submitted that the Circular will provide sufficient information to enable Unitholders to form a reasoned judgement concerning the nature and effect of the Reorganization and the resulting entities.

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 Applicant complies with all other requirements of Legislation applicable to the Circular; and
- (b) the Cargojet Documents are incorporated by reference into the Circular.

Erez Blumberger
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Ontario Securities Commission