

2005 BCSECCOM 490

July 19, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Trades by a non-mutual fund in connection with its distribution reinvestment plan - Issuer is a limited partnership; under its plan, income of the partnership can be distributed to its investors through the automatic issuance of additional partnership units to the investors; investors can elect to receive cash in lieu of additional units; no fee is paid by investors to participate in the plan

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation
of British Columbia, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia,
Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories
and Nunavut (the Jurisdictions)

and

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

and

In the Matter of Amalgamated Income Limited Partnership (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration and prospectus requirements of the Legislation in connection with the distribution of limited partnership units of the Filer (the Units) issued under a DRIP (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

2005 BCSECCOM 490

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences that decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a limited partnership formed under a limited partnership agreement dated November 18, 1994 (and amended on March 1, 1995 and February 29, 1996), and replaced by the amended limited partnership agreement dated February 21, 2005 (the Partnership Agreement); on November 24, 1994, the Filer was registered as a limited partnership under the laws of British Columbia; the business and affairs of the Filer have been managed by 479660 B.C. Ltd. (the General Partner) in accordance with the Partnership Agreement, since November 18, 1994; the General Partner does not conduct any business or operations other than those that are in direct connection with the Filer; the General Partner has no significant assets or financial resources;
 2. the head and principal office of the General Partner and of the Filer is located in Victoria, BC;
 3. the Filer is not a mutual fund as defined in the Legislation because the holders of Units (Unitholders) are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer;
 4. the Filer is a reporting issuer or the equivalent in each of the provinces and territories of Canada; as of June 3, 2005, it is not in default of any requirements of the Legislation;
 5. the Partnership Agreement provides that the interest of the limited partners in the Filer (the Limited Partners) are divided into and represented by a single class of voting Units; the Filer is authorized under the Partnership Agreement to issue an unlimited number of Units;
 6. the Partnership Agreement provides that no Units can be held or beneficially owned, directly or indirectly, by any person who is a non-resident of Canada

2005 BCSECCOM 490

or a partnership which is not a Canadian partnership for the purposes of the *Income Tax Act* (Canada);

7. the Units were listed on the Montreal Exchange (the ME) from October 2, 1995 until December 6, 1999; on December 6, 1999 the Units stopped trading on the ME and were, and continue to be, listed on the Toronto Stock Exchange (the TSX);
8. at a special meeting of the Limited Partners of the Filer, held February 21, 2005 (the Meeting), the Limited Partners approved the consolidation of Units on the basis of one new Unit for each ten Units issued and outstanding, or such lesser consolidation as may be required to comply with the policies of the TSX; the Filer has not yet implemented the consolidation;
9. in accordance with the terms of the Partnership Agreement, the business of the Filer consists of: (i) investing in and acquiring, directly or indirectly, income generating securities, assets or businesses; and (ii) the holding, management, reorganization and disposition of those securities, assets or businesses, with a view to making a profit; the Filer may also engage in such other necessary or related activities as the General Partner deems advisable or desirable in order to carry on its business;
10. to date, the business of the Filer has consisted of acquiring, holding, and, where appropriate, trading units of mutual fund limited partnerships (Mutual Fund LPs);
11. the revenue of the Filer is composed of distributions received from its holdings of publicly and non-publicly traded units of Mutual Fund LPs (Mutual Fund LP Units); since its inception, the Filer has made five unit exchange offers and various cash offers to holders of various Mutual Fund LP Units; the revenues of each Mutual Fund LP is dependent on its individual level of distribution and redemption fee income earned by that Mutual Fund LPs' underlying mutual fund administration limited partnerships in a particular year;
12. the Partnership Agreement provides that the General Partner is to make mandatory cash distributions to the Limited Partners and the General Partner, at least annually, of a minimum of 50% of the Filer's net income before amortization and after debt service, with the General Partner authorized to make additional cash distributions in excess of that amount, to a maximum of 100% of the Filer's net income before amortization and after debt service (the Cash Distributions); it is the General Partner's intention to make the minimum Cash Distributions so long as it is able to effectively invest the balance of the net income to expand the Filer's business;

2005 BCSECCOM 490

13. the Partnership Agreement provides that the General Partner is entitled to a fee equal to 3.25% of the Cash Distributions to the Limited Partners calculated on an annual basis;
14. the Filer proposes to establish a distribution reinvestment and optional unit purchase plan (the DRIP) whereby eligible Limited Partners who choose to participate in the DRIP (the Participants) may direct that Cash Distributions paid by the Filer in respect of their existing Units be applied to purchase new Units from treasury of the Filer (DRIP Units) and direct that the DRIP Units be held for their account (the Reinvestment Component of the DRIP);
15. as the number of DRIP Units issuable under the DRIP within a one year period may exceed by 10% the number of issued and outstanding Units of the Filer, the Filer sought, and received, approval for the DRIP at the Meeting in accordance with the rules and policies of the TSX; the TSX has also conditionally accepted the DRIP, subject to filing final materials;
16. participants will also have the option to purchase DRIP Units from treasury by making optional cash payments (Optional Cash Payments) within certain established limits (the Optional Cash Payment Component of the DRIP); the Filer has the right to determine from time to time whether the Optional Cash Payment Component will be available;
17. an eligible registered Unitholder may elect to become a Participant by completing and delivering to the Plan Agent a duly completed Authorization Form; beneficial owners of Units who wish to participate in the DRIP must contact their broker, investment dealer, financial institution or other nominee that is a participant in the Canadian Depository Service (the CDS Participants) to enroll in the DRIP on their behalf;
18. all Units purchased under the DRIP, whether through the Reinvestment Component or the Optional Cash Payment Component, will be purchased by a trust company, appointed as plan agent under the DRIP (the Plan Agent), directly from the Filer on the relevant distribution payment date at a 5% discount to the Average Market Price (defined in the DRIP as the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for the trading days in a defined period not exceeding 10 successive trading days preceding the second business day before the distribution payment date, on which at least a board lot of Units is traded, appropriately adjusted for certain capital changes);

2005 BCSECCOM 490

19. under the Reinvestment Component, Cash Distributions will be paid to the Plan Agent on each distribution payment date in respect of Units registered in the name of Participants enrolled in the DRIP; these Cash Distributions will be applied by the Plan Agent, on behalf of the Participants, to purchase DRIP Units from treasury on the applicable distribution payment date; DRIP Units purchased under the Reinvestment Component will be credited to the applicable accounts of the Participants;
20. under the Optional Cash Payment Component, a Participant may, through the Plan Agent, purchase DRIP Units up to an aggregate maximum dollar amount per quarter of \$25,000 and subject to a minimum amount per remittance of \$2,500 with respect to each beneficial owner of Units; the aggregate number of DRIP Units that may be purchased under the Cash Payment Component by all Participants in any financial year of the Filer is limited to a maximum of 2% of the number of Units issued and outstanding at the start of the financial year; Optional Cash Payments will be applied by the Plan Agent, on behalf of the Participants, to purchase DRIP Units from treasury on the applicable distribution payment date; DRIP Units purchased under the Optional Cash Payment Component will be credited to the applicable accounts of the Participants;
21. Cash Distributions in respect of DRIP Units purchased for the account of a Participant (other than a CDS Participant) under the Reinvestment Component or the Optional Cash Payment Component and held by the Plan Agent will automatically be reinvested in DRIP Units in accordance with the terms of the DRIP; DRIP Units purchased under the Reinvestment Component by CDS Participants will not be held under the DRIP by the Plan Agent but will instead be credited to the accounts of the CDS Participants through CDS, and Cash Distributions in respect of those DRIP Units will not be reinvested under the Reinvestment Component of the DRIP unless those DRIP Units are enrolled in the DRIP by the applicable CDS Participant in respect of the applicable subsequent distribution payment date;
22. no commissions, service charges or brokerage fees will be payable by Participants in connection with the purchase of DRIP Units from treasury under the Reinvestment Component or the Optional Cash Payment Component of the DRIP;
23. the DRIP will only be available to Unitholders who are residents of Canada and who are otherwise permitted by the Partnership Agreement to hold Units;
24. the DRIP permits full investment of reinvested Cash Distributions and Optional Cash Payments because fractions of DRIP Units, as well as whole

2005 BCSECCOM 490

DRIP Units, may be credited to Participants' accounts (although, in the case of beneficial Unitholders, the crediting of fractional Units may depend on the policies of a Participant's broker, investment dealer, financial institution or other nominee through which the Participant holds Units);

25. the Filer will determine on or before each distribution record date the number of DRIP Units, if any, that will be made available under the DRIP on the distribution payment date to which that record date relates;
26. in respect of any distribution payment date, if the issuance of DRIP Units would result in the Filer exceeding the limit of the number of DRIP Units set by the Filer under the DRIP, then participation and purchases of DRIP Units on the applicable distribution payment date will be prorated among all Participants according to the number of their Units participating in the DRIP;
27. if the Filer determines that no DRIP Units will be available for purchase under the Reinvestment Component of the DRIP for a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Filer for that distribution payment date;
28. a Participant may voluntarily terminate participation in the DRIP by delivering to the Plan Agent, or by having that Participant's CDS Participant deliver to the Plan Agent (through CDS, if applicable) on its behalf, a written notice signed by the Participant (or by that Participant's CDS Participant, as applicable) stating that the Participant wishes to withdraw its participation in the DRIP;
29. the Filer reserves the right to amend, suspend or terminate the DRIP at any time, provided that the action does not have a retroactive effect which would prejudice the interests of Participants; where required, amendments to the Plan will be subject to the prior approval of the TSX; the Filer will notify Unitholders of any such amendment, suspension or termination in accordance with the DRIP and applicable securities law requirements;
30. Legislation in the Jurisdictions provides exemptions from the dealer registration and prospectus requirements for reinvestment plans; those exemptions are not available to the Filer in the Jurisdictions (other than New Brunswick), however, because they are generally limited to plans that provide for the reinvestment of one or more of (i) dividends; (ii) interest; (iii) capital gains; or (iv) earnings or surplus; in contrast, the distributions that are paid to the Unitholders are distributions of cash which may not fall within those categories;

2005 BCSECCOM 490

31. in addition, Legislation in certain of the Jurisdictions provides exemptions from the dealer registration and prospectus requirements for reinvestment plans of mutual funds; those exemptions are unavailable because the Filer does not fall within the definition of mutual fund in the Legislation;
32. the Filer has an exemption from the dealer registration and prospectus requirements under the Legislation of New Brunswick;

Decision

- ¶ 4 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) at the time of the trade, the Filer is a reporting issuer or the equivalent under the Legislation and is not in default of any requirement of the Legislation;
- (b) no sales charge is payable in respect of the distribution of DRIP Units from treasury;
- (c) the Filer has caused to be sent to the person or company to whom the DRIP Units are traded, not more than 12 months before the trade, a statement describing:
 - (i) their right to withdraw from the DRIP and to make an election to receive Cash Distributions instead of DRIP Units on the applicable distribution payment date; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) the aggregate number of DRIP Units issued under the Optional Cash Payment Component of the DRIP in any financial year of the Filer does not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
- (e) in British Columbia, Manitoba, Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador, Northwest Territories and Nunavut, the first trade or resale of DRIP Units acquired under the DRIP in a Jurisdiction will be deemed a distribution or primary distribution to the public under

2005 BCSECCOM 490

the Legislation, unless the conditions set out in subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied; and

- (f) in Quebec, the first trade (alienation) of DRIP Units acquired under the DRIP in a Jurisdiction will be deemed to be a distribution or primary distribution to the public unless:
 - (i) at the time of the first trade (alienation), the Filer is a reporting issuer in Quebec and is not in default of any of the requirements of the Legislation in Quebec;
 - (ii) no unusual effort is made to prepare the market or to create a demand for DRIP Units;
 - (iii) no extraordinary commission or other consideration is paid to a person or company other than the vendor of DRIP Units in respect of the first trade (alienation); and
 - (iv) the vendor of the DRIP Units, if in a special relationship with the Filer, has no reasonable grounds to believe that the Filer is in default of any requirement of the Legislation of Quebec.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission