

2006 BCSECCOM 102

January 20, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Employees & Consultants - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution involving employees, consultants, past employees and similar persons - Trades by an issuer of its securities to employees, directors, officers, consultants, or similar persons, of another business that is related, but not technically a “related entity”, of the issuer - The issuer was established by another business for purpose of providing services to the other business; the issuer does not carry on any other operations; the issuer’s operations are controlled by the other business and its related entities; the issuer will only issue securities to partners of the other business and its related entities; the issuer’s securityholders are only permitted to transfer their securities to other people that hold the same position with the business and its related entities, or to their permitted transferees, as defined in NI 45-106

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76 and 171

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, New Brunswick,
Prince Edward Island and Newfoundland & Labrador
(the Jurisdictions)

and

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

and

In the Matter of
CapServCo Limited Partnership (the Filer)

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 Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) to amend the decision document issued by the Decision Makers in the Matter of CapServCo

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Limited Partnership dated February 29, 2000 (the 2000 Decision), as amended by the decision document issued by the Decision Makers in the Matter of CapServCo Limited Partnership dated December 29, 2005 (the Amending Decision and, together with the 2000 Decision, the Original Decision) to reflect certain changes that are ancillary to, and substantively consistent with, the amendments made to the 2000 Decision under the Amending Decision.

Under the Mutual Reliance Review Systems 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 defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. All representations contained in the Original Decision remain true and complete except for Paragraphs 20 and 22;
2. The amendments to the Original Decision will clarify that all Eligible Beneficiaries (as that term is defined in Paragraph 12 of the Original Decision) are permitted to be involved in the decisions of a Family Trust (as that term is defined in Paragraph 11 of the Original Decision) to acquire limited partnership units and promissory notes of the Filer, and assist Family Trusts or permitted individuals in financing such acquisitions, including the persons contemplated in the Amending Decision; and
3. The amendments contemplated under this decision are supplementary to, and do not substantively vary, the exemption from the prospectus and dealer registration requirements granted under the Original Decision and do not provide for any substantive difference in the persons to whom the Filer is permitted to issue limited partnership units or promissory notes pursuant to such exemption.

Decision

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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 pursuant to the Legislation is that:

1. Paragraph 20 of the Original Decision is deleted and replaced with the following:

“No Eligible Beneficiary of a Family Trust other than a GT Partner, a GTC Partner, a GT Individual, a GTC Individual or a Spouse will directly or indirectly contribute money or other assets to such Family Trust, GT Individual or GTC Individual, as the case may be, in order to finance the subscription for Units or LP Notes, or will be liable for any loan or other forms of financing obtained by the Family Trust, GT Individual or GTC Individual, as the case may be, for that purpose. No Eligible Beneficiary of a Family Trust other than the GT Partner, the GTC Partner, the GT Individual or the GTC Individual, as the case may be, who is a trustee of such Family Trust will be involved in the decision to purchase Units or LP Notes.”

2. Paragraph 22 of the Original Decision is deleted and replaced with the following:

“Each holder of a Unit or an LP Note shall give to the Applicant an acknowledgment of receipt of a copy of this Decision Document and an acknowledgment that the protections of the applicable Legislation, including statutory rights of rescission and damages and continuous disclosure will not be available in respect of the Units and the LP Notes. Where the holder of a Unit or an LP Note is a Family Trust, such Family Trust shall provide an acknowledgment to the Applicant that no Eligible Beneficiary of such Family Trust, other than the GT Partner, the GTC Partner, the GT Individual or the GTC Individual, as the case may be, who is a trustee of such Family Trust or the Spouse of such GT Partner, GTC Partner, GT Individual or GTC Individual, as the case may be, has directly or indirectly contributed any money or other assets to such Family Trust in order to finance the subscription for Units or LP Notes and that no Eligible Beneficiary of such Family Trust other than the GT Partner, the GTC Partner, the GT Individual or the GTC Individual, as the case may be, who is a trustee of such Family Trust was involved in the decision to purchase Units or LP Notes.”

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