

# **2004 BCSECCOM 454**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Issuer exempted from interim financial reporting requirements for first and third quarter of each financial year - exemption terminates upon the occurrence of a material change in the business affairs of the Issuer unless the Decision Makers is satisfied that the exemption should continue

## **Applicable British Columbia Provisions**

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

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, AND NOVA SCOTIA**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF STONE 2004 FLOW-THROUGH LIMITED PARTNERSHIP**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Ontario, and Nova Scotia (the Jurisdictions) has received an application from Stone 2004 Flow-Through Limited Partnership (the Partnership) for:

1. a decision pursuant to the securities legislation of each of the Jurisdictions (the Legislation) that the requirements contained in the Legislation that the Partnership file with the Decision Makers and send to its security holders (the Limited Partners) the Partnership's interim financial statements for each of the first and third quarters of each financial year of the Partnership (the First & Third Quarter Interim Financials), shall not apply to the Partnership; and

## 2004 BCSECCOM 454

2. a decision in Ontario and Saskatchewan only, under the securities legislation of Ontario and Saskatchewan that the requirements to file and send to the Limited Partners, its:

- (a) annual information form (the AIF);
- (b) annual management discussion and analysis of financial condition and results of operations (the Annual MD&A); and
- (c) interim management discussion and analysis of financial condition and results of operations (the Interim MD&A),

shall not apply to the Partnership.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (the System), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

AND WHEREAS the Partnership has represented to the Decision Makers that:

1. The Partnership is a limited partnership formed pursuant to the *Limited Partnership Act* (Ontario) on February 18, 2004.
2. The Partnership has a general partner (the General Partner) that is responsible for the management of the Partnership in accordance with the terms and conditions of an amended and restated limited partnership agreement dated May 19, 2004 (the Partnership Agreement).
3. The Partnership was formed to invest in certain common shares (Flow-Through Shares) of companies engaged primarily in oil and gas and mineral exploration in Canada (Resource Companies).
4. The Partnership will enter into agreements (Flow-Through Agreements) with Resource Companies and under the terms of each Flow-Through Agreement, the Partnership will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will incur and renounce to the Partnership, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development which qualify as Canadian Exploration Expense (as such term is defined in the *Income Tax Act* (Canada)).

## 2004 BCSECCOM 454

5. On May 21, 2004, the Decision Makers, together with the securities regulatory authority or regulator for Manitoba, New Brunswick, and the Northwest Territories (jurisdictions in which no legislative requirement exists to file first and third quarter interim financial statements), issued a final receipt under the System for the (final) prospectus of the Partnership dated May 19, 2004 (the Prospectus) relating to a maximum offering of up to 1,200,000 units of the Partnership (the Partnership Units).
6. The Prospectus contained disclosure that the Partnership intends to apply for an order from the Decision Makers exempting it from the requirements to file and distribute financial statements and management discussion and analysis of the Partnership in respect of the first and third quarters of each fiscal year of the Partnership.
7. The Partnership Units will not be listed or quoted for trading on any stock exchange or market.
8. At the time of purchase or transfer of Partnership Units, each purchaser or transferee consents to the application by the Partnership for an order from the Decision Makers exempting the Partnership from the requirements to file and distribute financial statements and management discussion and analysis of the Partnership in respect of the first and third quarters of each fiscal year of the Partnership.
9. On or about May 31, 2006, the Partnership will be liquidated and the Limited Partners will receive their *pro rata* share of the net assets of the Partnership. It is the current intention of the General Partner to propose prior to the dissolution that the Partnership exchange its assets for securities of a mutual fund corporation, and distribute such securities to the Limited Partners and General Partner.
10. Since its formation on February 18, 2004, the Partnership's activities primarily included or will include (i) collecting the subscriptions from the Limited Partners, (ii) investing the available Partnership funds in Flow-Through Shares of Resource Companies, and (iii) incurring expenses to maintain the fund.
11. Unless a material change takes place in the business and affairs of the Partnership, the Limited Partners will obtain adequate financial information concerning the Partnership from the semi-annual financial statements and the annual report containing audited financial statements of the Partnership together with the auditors' report thereon distributed to the Limited Partners and that the Prospectus and the semi-annual and annual financial statements

## **2004 BCSECCOM 454**

provide sufficient background materials and the explanations necessary for a Limited Partner to understand the Partnership's business, its financial position and its future plans, including dissolution on or about May 31, 2006.

12. Given the limited range of business activities to be conducted by the Partnership and the nature of the investment of the Limited Partners in the Partnership, the provision by the Partnership of the First & Third Quarter Interim Financials, the AIF, the Annual MD&A and the Interim MD&A will not be of significant benefit to the Limited Partners and may impose a material financial burden on the Partnership.
13. Each of the Limited Partners has, by subscribing for the Partnership Units in accordance with the Prospectus, agreed to the irrevocable power of attorney contained in Article XIX of the Partnership Agreement scheduled to the Prospectus and has thereby, in effect, consented to the making of this application for the exemption requested herein.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the Decision);

AND WHEREAS each Decision Maker is of the opinion 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 requirements contained in the Legislation to file and send to the Limited Partners its First & Third Quarter Interim Financials shall not apply to the Partnership provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Partnership unless the Partnership satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

Dated July 26, 2004

Susan Wolburgh Jenah

Paul Bates

THE FURTHER DECISION of the securities regulatory authority or securities regulator in each of Ontario and Saskatchewan is that the requirements contained in the legislation of Ontario and Saskatchewan to file and send to its Limited Partners its AIF, Annual MD&A and Interim MD&A shall not apply to the Partnership provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Partnership unless the Partnership satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be

## **2004 BCSECCOM 454**

evidenced in writing, or upon National Instrument 81-106 – Investment Fund Continuous Disclosure coming into force.

Dated July 26, 2004

Susan Silma