

# 2005 BCSECCOM 265

April 22, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - MI 45-102 *Resale of Securities*, s. 3.1 - Seasoning period - An issuer wants relief from the requirement to have been a reporting issuer for 12 months contained in s. 2.6(4) - The issuer is a capital pool company carrying out its qualifying transaction; the issuer will acquire limited partnership units, file articles of dissolution and distribute the units to its shareholders as part of the dissolution; the issuer will rely on the exemption in s. 74(2)(11)(ii) of the Securities Act to distribute the units to its shareholders; the transaction will require approval of a majority of the minority of the issuer's shareholders at a special meeting; the information circular will provide prospectus-level disclosure about the transaction

## Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities*, ss. 2.6 and 3.1

In the Matter of  
the Securities Legislation of  
Alberta and British Columbia (the Jurisdictions)

and

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

and

In the Matter of Affirm Capital Inc. (Affirm)

## 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 Affirm for a decision under the securities legislation of the Jurisdictions (the Legislation) that the first trade of limited partnership units of Canadian Equipment Rental Fund Limited Partnership proposed to be distributed by Affirm in connection with the dissolution of Affirm is not a distribution provided that certain conditions are satisfied.
2. Under the Mutual Reliance Review System (MRRS) for Exemptive Relief Applications:

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- 2.1 the Alberta Securities Commission is the principal regulator for this application; and
- 2.2 the MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

- 4. The decision is based on the following facts represented by Affirm:
  - 4.1 Affirm was incorporated under the Business Corporations Act (Alberta) on October 10, 2001.
  - 4.2 The authorized capital of Affirm consists of an unlimited number of common shares (the Common Shares), of which there are currently 5,720,000 issued and outstanding, and an unlimited number of preferred shares issuable in series of which none are outstanding.
  - 4.3 The Common Shares were distributed under a prospectus dated January 16, 2004 that was filed and receipted under the Legislation.
  - 4.4 The Common Shares are listed and posted for trading on the TSX Venture Exchange (the Exchange).
  - 4.5 Affirm is a capital pool company, subject to the policies of the Exchange, that owns no assets other than cash and has not carried on any business other than to identify and evaluate opportunities for the acquisition of an interest in assets or businesses and subsequently to negotiate an acquisition or participation, subject to acceptance for filing by the Exchange.
  - 4.6 Canadian Equipment Rental Fund Limited Partnership (the Partnership) is a limited partnership established pursuant to the laws of Alberta on January 21, 2005 with CERF GP Corp. being the general partner of the Partnership.
  - 4.7 The authorized capital of the Partnership consists of an unlimited number of limited partnership units (Units) of which one Unit is currently issued and outstanding.

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- 4.8 The Partnership is not a reporting issuer under the Legislation.
- 4.9 Affirm and the Partnership have agreed to engage in a series of transactions (collectively the Transaction) whereby:
  - 4.9.1 Affirm will subscribe for and purchase from the Partnership the maximum number of Units of the Partnership that may be purchased with the funds available to Affirm at a price of \$2.00 per Unit; and
  - 4.9.2 Affirm will dissolve and distribute its assets, consisting of the Units purchased from the Partnership, to the shareholders of Affirm on a pro rata basis (the Dissolution);
- 4.10 As a result of the Dissolution, the Affirm shareholders will become limited partners of the Partnership.
- 4.11 The Transaction is subject to the approval of a majority of the minority shareholders of Affirm at a special meeting of Affirm shareholders to be held prior to the closing of the Transaction (the Meeting).
- 4.12 The Transaction will be the “qualifying transaction” of Affirm pursuant to the policies of the Exchange and, accordingly, the Transaction is subject to the approval of the Exchange.
- 4.13 Application has been made to the Exchange for conditional approval of the listing of the Units, such listing to take place on or about the close of business on the effective date of the Dissolution.
- 4.14 The Partnership will become a reporting issuer upon the listing and posting of its Units for trading on the Exchange.
- 4.15 A management information circular containing prospectus level disclosure concerning the Units and the Transaction prepared in accordance with the Legislation will be delivered to Affirm shareholders in advance of the Meeting and will be filed electronically via SEDAR in the Jurisdictions.
- 4.16 The Units issued in connection with the Dissolution will, in the absence of the decision below, be subject to the resale provisions of the Legislation which includes the requirement that the Partnership must have been a reporting issuer under the Legislation for at least

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four months prior to the first trade of the Units or such first trade will be a distribution pursuant to the Legislation.

### **Decision**

5. 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;
6. The decision of the Decision Makers under the Legislation is that the first trade of the Units distributed by Affirm in connection with the Dissolution is a distribution unless:
  - 6.1 the Partnership is a reporting issuer;
  - 6.2 the trade is not a control distribution;
  - 6.3 no unusual effort is made to prepare the market or to create a demand for the Units;
  - 6.4 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
  - 6.5 if the selling securityholder is an insider or officer of the issuer, the selling securityholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

Glenda A. Campbell, Q.C., Vice-Chair  
Alberta Securities Commission

Stephen R. Murison, Vice-Chair  
Alberta Securities Commission