

2007 BCSECCOM 462

May 28, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106 - Investment Fund Continuous Disclosure

AIF requirement – A fund wants relief from subsection 9.2 of NI 81-106 that requires a fund that does not have a current prospectus as at its financial year end to prepare an annual information form – The issuer is a short-term vehicle formed solely to invest its available funds in flow-through shares of resource issuers; the issuer's securities are not redeemable and there is no secondary trading in the issuer's securities; the issuer's other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuer's business, financial position and future plans

Proxy Voting record – A fund wants relief from subsections 10.3 and 10.4 of NI 81-106 that requires a fund to maintain a proxy voting record, annually to post the proxy voting record on its website, and sent the proxy voting record to securityholders upon request - The issuer is a short-term vehicle formed solely to invest its available funds in flow-through shares of resource issuers; the issuer's securities are not redeemable and there is no secondary trading in the issuer's securities; the issuer's other continuous disclosure documents will provide all relevant information necessary for investors to understand the issuer's business, financial position and future plans

Applicable British Columbia Provisions

National Instrument 81-106, ss. 9.2, 10.3, and 10.4

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia and Newfoundland and Labrador

and

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

and

In the Matter of
Augen Capital Corp. ("Augen")

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Augen Limited Partnership 2006 (“ALP 2006”)
Augen Limited Partnership 2007
 (“ALP 2007” and together with ALP 2006, the “Partnerships”)
 (together, the “Filers”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador and Québec (collectively, the “Jurisdictions”), has received an application from the Filers on behalf of the Partnerships and each limited partnership that is established from time to time in a similar manner (a “Future Partnership”) by Augen, the investment consultant of the Partnerships, which is identical to the Partnerships in all respects which are material to this decision (the Future Partnerships together with the Partnerships, the “Partnership Filers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”).

- (a) from each of the Decision Makers in the Jurisdictions other than Québec granting exemptive relief to ALP 2006, and
- (b) from the Decision Makers in all Jurisdictions granting exemptive relief to the Partnership Filers other than ALP 2006,

in each case, from:

- (i) the requirement in section 9.2 of National Instrument 81-106 - Investment Fund Continuous Disclosure (“NI 81-106”) to file an annual information form (“AIF”);
 - (ii) the requirement in section 10.3 of NI 81-106 to maintain a proxy voting record (“Proxy Voting Record”); and
 - (iii) the requirements in section 10.4 of NI 81-106 to prepare a Proxy Voting Record on an annual basis for the period ending June 30 of each year, to post the Proxy Voting Record on each Filer’s website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of such Filer (the “Limited Partners”) upon request;
- ((i), (ii) and (iii) are collectively, the “Requested Relief”).

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Under the Mutual Reliance Review System for Exemptive Relief Applications (“MRRS”):

- (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, as applicable to each Filer.

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 Filers:

1. The principal offices of the Filers are located at 120 Adelaide Street West, Suite 905, Toronto, Ontario M5H 1T1.
2. The Partnerships were formed to invest in certain common shares (“Flow-Through Shares”) of companies involved primarily in oil and gas, mining or renewable energy exploration and development (“Resource Companies”) pursuant to agreements (“Resource Agreements”) between each Partnership and the relevant Resource Company. Under the terms of each Resource Agreement, each Partnership subscribed for Flow-Through Shares of the Resource Company and the Resource Company agreed to incur and renounce to such 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 expenses or as Canadian development expenses which may be renounced as Canadian exploration expenses to such Partnership Filer.
3. Caldwell Investment Management Ltd. (“Caldwell”) is the manager of the Partnerships. On behalf of the Partnerships, Caldwell selects Flow-Through Shares and other investments in accordance with the investment objectives of the Partnerships and manages the Partnerships’ investment portfolio. Caldwell is registered under the Securities Act (Ontario) as an advisor in the categories of investment counsel and portfolio manager, and is also registered under the legislation of British Columbia, Alberta and Saskatchewan in the equivalent categories.

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4. Augen, the investment consultant of the Partnerships, provides technical expertise, advice and due diligence services to assist the Partnerships and Caldwell with the review and selection of investment opportunities in respect of Resource Companies.
5. ALP 2006 is a limited partnership formed pursuant to the Limited Partnerships Act (Ontario) (the “Act”) on January 25, 2006. On June 19, 2006, it became a reporting issuer in each of the Jurisdictions, other than Québec. On or about December 31, 2008, it will be dissolved and its Limited Partners will receive their pro rata share of its net assets.
6. ALP 2007 is a limited partnership formed pursuant to the Act on January 11, 2007. On March 21, 2007, it became a reporting issuer in each of the Jurisdictions. On or about July 1, 2009, it will be dissolved and its Limited Partners will receive their pro rata share of its net assets.
7. It is the current intention of the general partners of the Partnership Filers that each Partnership Filer will enter into an agreement and complete an exchange transaction (the “Rollover Transaction”) with Augen Resource Strategy Fund Inc. (the “Mutual Fund”), an open-ended mutual fund corporation, pursuant to which such Partnership Filer will transfer its assets, on a tax-deferred basis, to the Mutual Fund. In exchange for such Filer’s assets, the Mutual Fund will issue redeemable shares of the Mutual Fund to the Partnership Filer. Upon completion of the Rollover Transaction, the Partnership Filer will be dissolved and the shares of the Mutual Fund will be distributed pro rata to the Limited Partners of such Partnership Filer.
8. The Partnership Filers are short-term special purpose vehicles which are dissolved within approximately 2 years of their respective formation. The primary investment purpose of the Partnership Filers is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the Limited Partners the significant tax benefits that accrue when Resource Companies renounce resource exploration and development expenditures to the Partnership Filers through the Flow-Through Shares.
9. The limited partnership units of the Partnership Filers (the “Units”) are not and will not be listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units are not transferred by Limited Partners since Limited Partners must be holders of the Units on the last day of each fiscal year of such Partnership Filer in order to obtain the desired tax deduction.

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10. Since their formation, each of the Partnerships' activities have been limited to (i) completing the issue of their Units under their respective prospectuses, (ii) investing their available funds in Flow-Through Shares of Resource Companies, and (iii) incurring expenses as described in their respective prospectuses.
11. The Limited Partners of the Partnership Filers will obtain adequate financial information from the Partnership Filers' annual and interim financial statements and management report of fund performance. If a material change takes place in the business and affairs of a Partnership Filer, such Partnership Filer will ensure that a timely material change report is filed with the securities regulatory authority or regulator in each of the Jurisdictions.
12. Given the limited range of business activities to be conducted by the Partnership Filers, the short duration of their existence and the nature of the investment of the Limited Partners, the preparation and distribution of an AIF by the Partnership Filers will not be of any benefit to the Limited Partners and may impose a material financial burden on the Partnership Filers. Upon the occurrence of any material change to any of the Partnership Filers, Limited Partners would receive all relevant information from the material change reports the Partnership Filers are required to file with the Decision Makers.
13. As a result of the implementation of NI 81-106, investors purchasing Units of the Partnership Filers were, and in the future will be, provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Partnership Filers voted (the "Proxy Voting Policies"), and had the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.
14. The Proxy Voting Policies require that the Partnership Filers exercise their voting rights in respect of securities of Resource Companies in a manner consistent with the best interests of the Partnership Filers and their Limited Partners.
15. Given the short lifespan of the Partnership Filers, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which a Partnership Filer exercised or failed to exercise its proxy voting rights, as such Partnership Filer would likely be dissolved by the time any potential change could materialize.

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16. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the Partnership Filers.

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.

Leslie Byberg
Manager, Investment Funds Branch
Ontario Securities Commission