

2006 BCSECCOM 30

December 27, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 76 - Exemption from s. 61 requirement to file a prospectus in connection with a distribution - On behalf of its securityholders, an issuer wants relief from the prospectus requirements for first trades of securities the issuer issued in a reorganization - The issuer will become a reporting issuer in certain jurisdictions by exchanging securities with another issuer or its securityholders as part of a reorganization; securityholders will have the same interest in the same underlying assets as before the reorganization; as a result, the disclosure previously filed by the other party to the reorganization is still relevant

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61 and 76

In the Matter of the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Ontario, Québec, Nova Scotia, New
Brunswick, Prince Edward Island, Newfoundland & Labrador, the 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 Foremost Industries Income Fund (the Filer or Old Fund),
Foremost Holdings Trust, Foremost Ventures Trust, Foremost Universal Limited
Partnership, Foremost Industries Limited Partnership, Foremost Income Fund (the
New Fund), Foremost Commercial Trust, Foremost Industries LP and Foremost
Universal LP

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) that the requirement to file a preliminary prospectus and a prospectus (the Prospectus Requirement) does not apply to the first trade in units of New

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Fund issued pursuant to a reorganization under which New Fund will acquire all of the existing assets and business of Old Fund and unitholders of Old Fund will receive one trust unit of New Fund (the New Unit) for each common trust unit of Old Fund (the Unit) (the Reorganization) provided that certain conditions are met.

2. Under the Mutual Reliance Review System for Exemptive Relief Applications
 - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
 - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*.

Representations

4. The Filer has represented to the Decision Makers that:
 - 4.1 Old Fund is an unincorporated open-end mutual fund trust established under the laws of the Province of Alberta by an Amended Restated Declaration of Trust, dated June 8, 2005.
 - 4.2 Old Fund is authorized to issue an unlimited number of Units and 30,000 preferred trust units. As of November 29, 2005, there were 18,916,438 Units issued and outstanding and no preferred trust units issued and outstanding. Options to acquire 975,000 Units were also outstanding as of November 29, 2005.
 - 4.3 The Units are listed and posted for trading on the TSX. Old Fund has applied to have the Units delisted from the TSX and to have the New Units listed in substitution for the Units, and the TSX has granted conditional listing approval for such substitutional listing.
 - 4.4 Old Fund is a reporting issuer in Alberta, Ontario, Québec and Nova Scotia (the Reporting Issuer Jurisdictions) and has been for more than 12 months.
 - 4.5 Old Fund has filed all of the information that it has been required to file as a reporting issuer in the Reporting Issuer Jurisdictions and is not in default of any of the requirements of the Legislation in the Reporting Issuer Jurisdictions.

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- 4.6 New Fund is a trust established under the laws of the Province of Alberta by a Declaration of Trust, made as of November 12, 2005.
- 4.7 New Fund is authorized to issue an unlimited number New Units.
- 4.8 The Reorganization will consist of numerous trades in securities to be made in reliance on the exemption in section 2.11 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) for trades of a security in connection with an amalgamation, merger, reorganization or arrangement that is described in an information circular made pursuant to National Instrument 51-102 *Continuous Disclosure Requirements* and approved by securityholders.
- 4.9 Upon completion of the Reorganization, Old Fund will be wound up.
- 4.10 New Fund will become a reporting issuer in the Reporting Issuer Jurisdictions by virtue of the definition of "reporting issuer" in the legislation of the Reporting Issuer Jurisdictions.
- 4.11 The first trade of a New Unit acquired in reliance on the exemption in section 2.11 of NI 45-106 is a distribution unless the conditions in section 2.6(3) of National Instrument 45-102 *Resale of Securities* (NI 45-102) are satisfied.
- 4.12 Section 2.6(3) 1 of NI 45-102 requires the issuer to have been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the first trade.
- 4.13 Section 2.9(1) of NI 45-102 provides that for determining the period of time that an issuer was a reporting issuer for the purpose of section 2.6 of NI 45-102, an issuer can include the period of time that any other issuer that participates with the first issuer in an amalgamation, merger, continuation or arrangement was a reporting issuer.
- 4.14 Section 2.9(1) of NI 45-102 does not apply to reorganizations.
- 4.15 New Fund would be permitted to include the reporting issuer status of the Filer in determining the length of time for which New Fund has been a reporting issuer pursuant to section 2.9(1) of NI 45-102 if the Reorganization had been effected by way of an amalgamation, merger, continuation or arrangement.

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Decision

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met.
6. The Decision of the Decision Makers under the Legislation is that the Prospectus Requirement does not apply to the first trade in units of New Fund issued under the Reorganization provided that the following conditions are satisfied:
 - 6.1 New Fund is a reporting issuer in a jurisdiction of Canada at the time of the first trade;
 - 6.2 The trade is not a control distribution;
 - 6.3 No unusual effort is made to prepare the market or create a demand for the security that is the subject of the trade;
 - 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 security holder is an insider or officer of New Fund, the selling security holder has no reasonable grounds to believe that New Fund is in default of securities legislation.

William S. Rice, Chair
Alberta Securities Commission

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