

2006 BCSECCOM 671

November 14, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds

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 and annually to post the proxy voting record on its website - 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, 10.4 and 17.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Yukon and Newfoundland and Labrador
(the Jurisdictions)

and

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

and

In the Matter of
MRF 2006 II Resource Limited Partnership (the Filer)

2006 BCSECCOM 671

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) for an exemption from:

- (i) the requirement in section 9.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) to prepare and file an annual information form (the 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 the Filer's website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of the Filer (the Limited Partners) upon request.

((i), (ii) and (iii) are collectively, the Requested Relief).

Under the Mutual Reliance Review System 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. The principal office of the Filer is located at 1 First Canadian Place, 58th Floor, P.O. Box 192, Toronto, Ontario, M5X 1A6.
2. The Filer was formed to invest in certain common shares (Flow-Through Shares) of companies involved primarily in oil and gas, mining or renewable

2006 BCSECCOM 671

energy exploration and development (Resource Companies) pursuant to agreements (Resource Agreements) between the Filer and the relevant Resource Company. Under the terms of each Resource Agreement, the Filer will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will agree to incur and renounce to the Filer, 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 or as Canadian development expense which may be renounced as Canadian exploration expense to the Filer.

3. The Filer is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) (the Act) on August 18, 2006. On September 21, 2006, the Filer became a reporting issuer in each of the Jurisdictions and in Prince Edward Island. On or about February 2, 2009, the Filer will be dissolved and the Limited Partners of the Filer will receive their pro rata share of the net assets of the Filer.
4. It is the current intention of the general partner of the Filer that the Filer enter into an agreement with Middlefield Mutual Funds Limited (the Mutual Fund), an open-ended mutual fund, whereby assets of the Filer would be exchanged for redeemable shares of the Growth Class of the Mutual Fund. Upon dissolution of the Filer, the Limited Partners of the Filer would then receive their pro rata share of the shares of the Growth Class of the Mutual Fund.
5. The Filer is a short-term special purpose vehicle which is dissolved within approximately 2 years of its formation. The primary investment purpose of the Filer 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 Filer through the Flow-Through Shares.
6. The limited partnership units of the Filer (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 the Filer in order to obtain the desired tax deduction.
7. Given the limited range of business activities to be conducted by the Filer, the short duration of its existence and the nature of the investment of the Limited Partners, the preparation and distribution of an AIF by the Filer will not be of any benefit to the Limited Partners and may impose a material financial burden on the Filer. Upon the occurrence of any material change to the Filer,

2006 BCSECCOM 671

Limited Partners would receive all relevant information from the material change reports the Filer is required to file with the Decision Makers.

8. As a result of the implementation of NI 81-106, investors purchasing Units of the Filer were provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Filer are voted (the Proxy Voting Policies), and had the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.
9. The Proxy Voting Policies require that the Filer exercise its voting rights in respect of securities of an issuer if more than 4% of the Filer's net assets are invested in that issuer. The Filer does not intend to exercise its voting rights where less than 4% of its net assets are invested in an issuer, but may, in its sole discretion, decide to vote in such circumstances.
10. Pursuant to its Proxy Voting Policies and because the Filer invests in a number of issuers which generally do not represent more than 4% of the Filer's net assets, the Filer is not usually required to exercise its voting rights.
11. Given the short lifespan of the Filer, the production of a Proxy Voting Record would provide Limited Partners very little opportunity for recourse if they disagreed with the manner in which the Filer exercised or failed to exercise its proxy voting rights, as the Filer would likely be dissolved by the time any potential change could materialize.
12. 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 Filer.

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 provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

Leslie Byberg
Manager, Investment Funds Branch
Ontario Securities Commission