

2006 BCSECCOM 691

Headnote

Securities Act, s. 3.1, 3.2 - Designation Orders - An issuer wants an order that it is not a mutual fund - The issuer is a mutual fund for technical reasons only and will not operate as a conventional mutual fund

Securities Act, s. 169 - Confidentiality - An applicant wants to keep an application and an offering memorandum confidential for an indefinite time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information would be detrimental to the person affected by having it disclosed; the information would be of limited value to any investment decision by the public

Exemption Order

Keele Services Inc. and Keele Investment Fund

Sections 3.1(1)(b) and 169(4) of the *Securities Act*, RSBC 1996, c. 418

Background

- ¶ 1 Keele Services Inc. (the Manager) applied for an order under section 3.1(1)(b) of the *Securities Act* (the Act) that Keele Investment Fund (the Fund), is not a mutual fund for the purposes of the Act and the regulations and for an order under section 169(4) of the Act that the Commission hold the application for this order (the application) and an offering memorandum to be prepared and filed by the Fund in confidence.

Representations

- ¶ 2 The Manager represents that:
1. it is incorporated under the laws of British Columbia and is not and does not intend to be a reporting issuer in British Columbia or any other province or territory of Canada;
 2. its head office is in British Columbia;
 3. 100% of its outstanding voting securities are beneficially owned by one individual (the Shareholder);
 4. it established the Fund under a trust deed under the laws of British Columbia;

2006 BCSECCOM 691

5. it is the manager and trustee of the Fund;
6. it is entitled to be reimbursed for expenses reasonably incurred on behalf of the Fund but will not receive a management or trustee fee for acting as manager and trustee of the Fund;
7. the Fund is not and does not intend to be a reporting issuer in British Columbia or any other province or territory of Canada;
8. units of the Fund (the Fund Units) are redeemable on demand; a holder of Fund Units that requests a redemption will be entitled to receive within 5 business days of the request a pro rata share of the net asset value of the Fund for each Fund Unit redeemed; the redemption feature attached to the Fund Units is required to meet the requirements under the *Income Tax Act* (Canada) (the Tax Act) to qualify as a mutual fund trust;
9. because of the redemption feature, the Fund is a mutual fund under the *Securities Act* (British Columbia);
10. the investment objective of the Fund is to generate income on its investment;
11. the Fund intends to offer Fund Units for sale to investors resident in British Columbia under exemptions from the registration and prospectus requirements; it will prepare an offering memorandum (the offering memorandum) to provide to investors purchasing under the offering memorandum exemption;
12. over 90% of the Fund Units will be indirectly beneficially owned by the Shareholder and members of his immediate family (collectively the Family);
13. as required by the trust deed, upon the closing of the offering of Fund Units, the Manager will invest all of the proceeds of the offering, less sufficient funds to pay the Fund's expenses and, if required, fund redemptions, in purchasing all the issued and outstanding limited partnership units (the LP Units) of North Point Capital Mezzanine Limited Partnership (Mezzanine LP);
14. Mezzanine LP is a limited partnership established under the laws of British Columbia and its general partner is North Point Capital (CMF) Corp. (Mezzanine GP);

2006 BCSECCOM 691

15. Mezzanine LP and Mezzanine GP are not and do not intend to be reporting issuers in British Columbia or any other province or territory of Canada;
16. after the initial closing of the offering of the Fund Units and the purchase by the Fund of the LP Units, the Fund will hold 100% of the issued and outstanding LP Units of Mezzanine LP;
17. it is expected that Mezzanine LP will commence a mezzanine lending business, and in addition Mezzanine LP will hold 100% of the issued and outstanding limited partnership units of North Point Capital Income Limited Partnership (Capital LP), a limited partnership established under the laws of British Columbia;
18. Capital LP is registered as a mortgage broker under the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313, and carries on a mortgage lending business in Canada;
19. following the closing of the offering of the Fund Units and the purchase by the Fund of the LP Units, the Fund will passively hold substantially all of its assets in one issuer, Mezzanine LP, and the trust deed will restrict the Fund to holding LP Units in Mezzanine LP; as a result, the Fund will not operate as a conventional mutual fund with diversified investments;
20. no sales charges or redemption fees will apply to an investment in Fund Units;
21. the Fund will provide audited annual financial statements of the Fund to all holders of Fund Units not later than 120 days after the end of each financial year; and
22. the application discloses, and the offering memorandum will disclose, intimate financial, personal or other information about the Shareholder and related persons.

Order

- ¶ 3 Because the Commission considers that it would not be prejudicial to the public interest, the Commission orders under section 3.1(1)(b) of the Act, that the Fund is not a mutual fund for the purposes of the Act and the regulations.

2006 BCSECCOM 691

Because the desirability of avoiding disclosure of the information, in the interests of the Shareholder and related persons who are affected, outweighs the desirability of adhering to the principle of public disclosure, the Commission has decided under subsection 169(4) of the Act to hold the application for this order and the offering memorandum, when filed, in confidence.

¶ 4 March 6, 2006

Robin E. Ford
Commissioner
British Columbia Securities Commission