

# 2007 BCSECCOM 160

March 23, 2007

## **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, Québec, New  
Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories,  
Nunavut Territory and Yukon Territory  
(the "Jurisdictions")

and

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

and

In the Matter of

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MSP 2006 Resource Limited Partnership and MSP 2007 Resource Limited Partnership (collectively, the “Partnerships”) and Mackenzie Financial Corporation (“Mackenzie”) (collectively, the “Filers”)

## 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 Partnerships and from Mackenzie, on behalf of any future limited partnership managed by Mackenzie that invests in Flow-Through Shares (as hereinafter defined) (together with the Partnerships, the “LPs”) (the Partnerships and Mackenzie are, collectively, the “Filers”), for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from:

- 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”);
- the requirement in section 10.3 of NI 81-106 to maintain a proxy voting record (the “Proxy Voting Record”);
- 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 Filers’ website no later than August 31 of each year and to send the Proxy Voting Record to the limited partners of the LPs (the “Limited Partners”) upon request; and
- for MSP 2006 Resource Limited Partnership (“MSP 2006”), an extension of the filing deadline for its annual management report of fund performance (“MRFP”) for the period ended on December 31, 2006 to April 30, 2007,

(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

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(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 Filers:

1. The Partnerships were formed, and any future LPs will be formed, to invest in certain common shares (“Flow-Through Shares”) of companies, limited partnerships or other issuers whose principal business is oil and gas or mining exploration and development or other energy production, including those involved in providing equipment, services or other infrastructure to these entities (“Resource Issuers”) pursuant to agreements (“Investment Agreements”) between the LP and the Resource Issuer. Under the terms of each Investment Agreement, the LP will subscribe for Flow-Through Shares of the Resource Issuer and the Resource Issuer will agree to incur and renounce to the LP, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development that qualify as Canadian exploration expense or as Canadian development expense and that may be renounced as Canadian exploration expense to the LP.
2. MSP 2006 and MSP 2007 Resource Limited Partnership (“MSP 2007”) were formed on September 21, 2006 and December 8, 2006, respectively. On October 18, 2006 and January 18, 2007, respectively, MSP 2006 and MSP 2007 became reporting issuers in each Jurisdiction and in Prince Edward Island. No later than June 30, 2008, in the case of MSP 2006, and June 30, 2009, in the case of MSP 2007, each Partnership will be dissolved and the Limited Partners of each Partnership will receive their pro rata share of the net assets of the Partnership. Any future LP will be a reporting issuer in each Jurisdiction.
3. It is the current intention of the general partner of each Partnership that the Partnership will transfer its assets to a mutual fund corporation managed by Mackenzie in exchange for shares of a class of shares of a mutual fund corporation managed by Mackenzie that is an open-end mutual fund. Upon dissolution, the Limited Partners would receive their pro rata share of the shares of that mutual fund. Any future LP will be terminated approximately two years after it is formed on the same basis as the Partnerships.

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4. The LPs are not, and will not be, operating businesses. Rather, each LP is, or will be, a short-term special purpose vehicle that will be dissolved within approximately two years of its formation. The primary investment purpose of the LPs 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 Issuers renounce resource exploration and development expenditures to the LPs through Flow-Through Shares.
5. The units of the LPs (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 LP in order to obtain the desired tax deduction.
6. Given the limited range of business activities to be conducted by the LPs, 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 LPs would not be of any benefit to the Limited Partners and may impose a material financial burden on the LPs. Upon the occurrence of any material change to an LP, Limited Partners would receive all relevant information from the material change reports the LP is required to file with the Decision Makers.
7. As a result of the implementation of NI 81-106, investors purchasing Units of the LPs were, or will be, provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the LP are voted (the “Proxy Voting Policies”), and had, or will have, the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.
8. Generally, the Proxy Voting Policies require that the securities of companies held by an LP be voted in a manner most consistent with the economic interests of the Limited Partners of the LP.
9. Given an LP’s short lifespan, 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 the LP exercised or failed to exercise its proxy voting rights, as the LP would likely be dissolved by the time any potential change could materialize.
10. 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 LPs.

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11. The Filers have also applied to each Decision Maker for exemptive relief from the requirements of sections 4.2 and 4.3 of NI 81-106 (the “MRFP Relief”), which provisions require the LPs to prepare and file annual and interim MRFPs. In accordance with the requirements of NI 81-106, MSP 2006 is required to prepare and file by March 31, 2007 (the “Filing Deadline”) an annual MRFP for the financial period ended December 31, 2006. As the MRFP Relief may not be granted prior to the Filing Deadline, the Filers have requested an extension of the Filing Deadline to April 30, 2007.
12. The Filers are of the view that the Requested Relief is not against the public interest, is in the best interests of the LPs and their Limited Partners and represents the business judgment of responsible persons uninfluenced by considerations other than the best interest of the LPs and their Limited Partners.

### **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.

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Ontario Securities Commission