

## 2007 BCSECCOM 168

April 2, 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, 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

# 2007 BCSECCOM 168

AGS Energy 2005-1 Limited Partnership,  
AGS Energy 2006-1 Limited Partnership,  
AGS Energy 2006-2 Limited Partnership and  
AGS Energy 2007-1 Limited Partnership  
(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 Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) exempting the Filers from the following requirements (the “Requested Relief”):

- (a) to file an annual information form (the “AIF”) pursuant to Section 9.2 of National Instrument 81-106 (“NI 81-106”);
- (b) to maintain a proxy voting record (a “Proxy Voting Record”) pursuant to Section 10.3 of NI 81-106;
- (c) 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 upon request pursuant to Section 10.4 of NI-81-106;

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 70 York Street, Suite 1500, Toronto, Ontario, M5J 1S9.

## 2007 BCSECCOM 168

2. Each Filer was formed (a) to achieve capital appreciation through investment in a diversified portfolio of equity securities, comprised principally of flow-through shares (“Flow-Through Shares”) of companies engaged in oil and gas or mining exploration and development in Canada or that invest in securities of entities engaged in such activities (collectively, “Resource Issuers”), and (b) to maximize tax benefits for investors by purchasing Flow-Through Shares of Resource Issuers.
3. Each Filer has been granted a decision document evidencing the issue of receipt for a prospectus relating to an offering of limited partnership units (“Units”) by the OSC in its capacity as principal regulator under National Policy 43-201 Mutual Reliance Review System for Prospectuses and Annual Information Forms (“NI 43-201”) on behalf of the CSA. As a result, each Filer is a reporting issuer or the equivalent thereof in each province of Canada.
4. Each Filer has completed the issue of Units under a prospectus. No additional Units have been or may be issued by any of such Filers.
5. It is the current intention of each Filer, as described in its respective prospectus, to transfer its assets to AGS Lawrence Resource Fund Ltd., an open-ended mutual fund corporation, (the Mutual Fund), on or before the second anniversary of the Filer’s formation on a tax deferred basis in exchange for redeemable resource class shares of the Mutual Fund (the Transfer). Upon the dissolution of each Filer, which will occur immediately following the Transfer by such Filer, such shares of the Mutual Fund will be distributed to the partners of the Filer *pro rata* on a tax-deferred basis. The Transfer is subject, *inter alia*, to any necessary regulatory approvals and in the event that it is not possible to complete the Transfer, it is the current intention of each Filer to dissolve and distribute its net assets *pro rata* to its partners no later than the second anniversary of its formation.
6. Each Filer’s activities has been or will be limited to (i) issuing Units under a prospectus, (ii) investing available funds in Flow-Through Shares of Resource Issuers and (iii) incurring expenses as described in its prospectus. It is the intention of each Filer to continue to restrict its activities to such activities throughout its life until the Transfer.
7. Each Filer is a short-term special purpose vehicle which is typically dissolved within approximately two years of its formation. Investors generally purchase Units primarily 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.

## 2007 BCSECCOM 168

8. Units are not, and will not be, listed or posted on any stock exchange or market or actively traded. Generally, Units are not transferred by limited partners since limited partners must be holders of Units on the last day of each fiscal year of the Filer in order to obtain the desired tax deduction. Limited partners may be required to transfer their Units in limited situations where, for example, the limited partner is no longer a resident of Canada or upon the death of the limited partner.
9. The financial year-end of each Filer is December 31.
10. 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, Limited Partners would receive all relevant information from the material change reports the Filer is required to file with the Decision Makers.
11. Investors who purchased Units in AGS 2005 did so with no expectation of receiving AGS 2005's Proxy Voting Record on an annual basis as Proxy Voting Policies were not included in the prospectus related to AGS 2005 as NI 81-106 was not yet in force at the time that prospectus was prepared. It is intended that AGS 2005 will be dissolved within the next year, as disclosed in its prospectus.
12. As a result of the implementation of NI 81-106, investors purchasing Units of the Filer (except AGS Energy 2005-1 Limited Partnership) 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.
13. The Proxy Voting Policies state that the manager will exercise voting rights in respect of securities held by the Partnership on a case-by-case basis, but in the best interests of the limited partners. When exercising voting rights, the manager will generally vote with management of the issuer on matters that are routine in nature, and for non-routine matters will vote with a view to the vote's potential impact on the value of the Partnership investment.
14. The Proxy Voting Policies give the manager discretion on whether or not to vote on routine or non-routine matters. In cases where the Manager determines

## **2007 BCSECCOM 168**

that it is not in the best interests of the holders of the Units to cast a vote, or in cases where no value is added by voting, there is no requirement to vote.

15. Given the short lifespan of the Filers, 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.
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 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 business and affairs of the Filers unless the Filers satisfy the Decision Makers that the exemption should continue, which satisfaction shall be evidenced in writing.

Leslie Byberg  
Manager, Investment Funds Branch  
Ontario Securities Commission