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October 30, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – information circular requirements - Information circular - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c.418, ss. 117 and 119

National Instrument 51-102, ss. 9.1 and 13.1

Form 51-102F5, Item 14.2

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec,
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
Big Rock Brewery Income Trust (the Filer)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application of the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempt from the requirements of item 14.2 of Form 51-102F5 *Information Circular* of National Instrument 51-102 C *Continuous Disclosure Obligations* to include the following financial statements (the Financial Statement Requirement) in the Filer's management information circular (the Circular) prepared in connection

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with the special meeting of the Filer's unitholders (Unitholders) to consider and approve, among other things, the Reorganization (as defined below):

- 1.1 audited financial statements of GPCo (as defined below);
- 1.2 audited financial statements of MFC (as defined below);
- 1.3 audited financial statements of MFC Amalco (as defined below);
and
- 1.4 audited financial statements of the Limited Partnership (as defined below).

(the Requested Relief).

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. Defined terms contained in National Instrument 14-101 *C Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filer:
- 4.1 The Filer is an open-ended trust established under the laws of Alberta pursuant to a trust indenture (as supplemented and amended) dated November 18, 2002 (the Trust Indenture). The Filer is authorized to issue an unlimited number of units (Trust Units). The Trust Units are listed for trading on the Toronto Stock Exchange under the symbol "BR.UN". As of October 16, 2006, 6,034,174 Trust Units were issued and outstanding.
 - 4.2 The Filer indirectly holds all of the interest in Big Rock Brewery Partnership (the Partnership), an Alberta partnership, which carries on the Big Rock Brewery business (the Business).

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- 4.3 The Filer is a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba and Ontario and is not in default of any of its obligations as a reporting issuer.
- 4.4 It is proposed that the Filer's present organizational structure undergo an internal reorganization (the Reorganization) to replace a partnership structure with a new operating limited partnership (the Limited Partnership) to carry on the Business and to remove the corporate entities from the structure. The Limited Partnership will be owned by the Filer.
- 4.5 The Reorganization will occur on a tax-deferred basis for the Filer and its Unitholders resident in Canada.
- 4.6 After giving effect to the Reorganization, the direct and indirect interests of the Filer in the property of the Limited Partnership and its general partner and in the Business will be materially the same as the interests that the Filer held in the Partnership and the Business immediately prior to the Reorganization.
- 4.7 As part of the Reorganization:
 - 4.7.1 A new corporation (GPCo) will be incorporated to ultimately act as general partner of the Limited Partnership. The Filer will be the sole shareholder of GPCo.
 - 4.7.2 Big Rock Brewery Ltd. (Big Rock) will transfer all business assets it holds to the Partnership in exchange for additional Partnership Units.
 - 4.7.3 The Limited Partnership will be created and initially organized so that the Partnership is the limited partner and GPCo is the general partner.
 - 4.7.4 The Partnership will transfer all of its assets (the Assets) to the Limited Partnership in exchange for units of the Limited Partnership (LP Units). All of the employees of the Partnership will become employees of the Limited Partnership.
 - 4.7.5 The Partnership will be dissolved as it will no longer be required within the structure and all of the Assets will be

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the Asset of the Limited Partnership. As Big Rock and Pine Creek are the only partners of the Partnership, they will receive the interest in the Limited Partnership previously held by the Partnership.

- 4.7.6 A new corporation (MFC) will be incorporated under the provisions of the ABCA as a restricted purpose entity. MFC's share capital will include the Common Shares, Class A Shares and Class B Shares. The Filer will initially be the sole shareholder of MFC.
- 4.7.7 Subject to receiving approval from the Toronto Stock Exchange (TSX), the Class A Shares of MFC will be temporarily listed on the TSX and, upon listing, Class A Shares of MFC will be issued to the Filer for nominal cash consideration.
- 4.7.8 The Filer will distribute to the Unitholders the Class A Shares of MFC as a return of capital. Each Unitholder will receive a number of Class A Shares of MFC equal to the number of Trust Units owned by such holder at the Record Date. No certificates will be issued to Unitholders for Class A Shares of MFC as they are to be redeemed pursuant to the Reorganization. Following this distribution, MFC will qualify as a mutual fund corporation for tax purposes.
- 4.7.9 The Filer will enter into a purchase and sale agreement with MFC whereby the Filer will sell to MFC the Big Rock securities held by the Filer for fair market value on a tax-deferred basis in exchange for Class B Shares of MFC.
- 4.7.10 The Amalgamation of Big Rock, Pine Creek and MFC will occur such that all of the property and liabilities of Big Rock, Pine Creek Brewing Company Ltd. (Pine Creek) and MFC will be held by MFC Amalco, Big Rock, Pine Creek and MFC will cease to exist as separate entities and a new corporate entity (MFC Amalco) will be created. All of the Big Rock securities and Pine Creek securities will be cancelled by operation of the Amalgamation. The securities of MFC held by the Filer will be exchanged for identical securities of MFC Amalco. Upon completion of the Amalgamation, MFC Amalco will be the sole limited partner of the Limited Partnership.

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- 4.7.11 The Trust Indenture will be amended to provide for, among other things: (i) the automatic consolidation of Trust Units which is to occur as part of the Reorganization; (ii) a change regarding in specie redemption of Trust Units; (iii) a right of renunciation will be added with respect to special trust units held by a subsidiary of the Filer; and (iv) the special trust units (Special Units) will be created as a new class of units created solely for the purpose of the Reorganization.
- 4.7.12 The Filer will enter into a combination agreement with MFC Amalco whereby MFC Amalco will transfer its LP Units to the Filer in exchange for the Filer issuing Trust Units and Special Units to MFC Amalco. Upon issuance of the Special Units, the entitlement of other Unitholders of the Filer to receive distributions from the Filer will be temporarily subordinated such that they will not receive any distributions from the Filer until holders of the Special Units of the Filer have been paid the redemption price for such Special Units or until no Special Units remain outstanding. The Special Units will only be temporarily outstanding and will be cancelled as part of the Reorganization such that no distributions to Unitholders will be affected.
- 4.7.13 The Filer will transfer its Class B Shares of MFC Amalco to the Limited Partnership as an additional capital contribution to the Limited Partnership. Concurrently, the Filer will subscribe for additional shares of GPCo and GPCo will use the subscription funds to increase its interest in the Limited Partnership to maintain the 99.99% and 0.01% ownership ratio of the Limited Partnership.
- 4.7.14 MFC Amalco will then redeem all of the Class A Shares held by Unitholders and Class B Shares of MFC Amalco held by the Limited Partnership. The redemption price of these securities will be satisfied by the transfer of Special Units of the Filer to the Limited Partnership and the transfer of Trust Units to the Unitholders. The redemptions will be done on a tax neutral basis.

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- 4.7.15 The Limited Partnership will then exercise the right of renunciation on the Special Units of the Filer by delivering a written notice of renunciation immediately renouncing, releasing and surrendering all of its interest in the Special Units of the Filer.
- 4.7.16 The Special Units of the Filer held by the Limited Partnership will be cancelled and any subordination by the Unitholders to receive distributions will terminate as no Special Units will remain outstanding.
- 4.7.17 The Trust Units held by the Unitholders will be consolidated on a basis such that the number of Trust Units following the consolidation will be equal to the number of Trust Units outstanding immediately before the Reorganization. This consolidation will be capital and tax neutral.
- 4.7.18 Finally, the appropriate tax elections will be filed and once all of the elections have occurred the Filer will act to dissolve MFC Amalco under the ABCA.
- 4.8 Big Rock, Pine Creek, MFC, MFC Amalco and the Partnership will all cease to exist by operation of the Reorganization.
- 4.9 GPCo's sole purpose following the Reorganization will be to act as the general partner of the Limited Partnership and its sole asset will be a 0.01% interest in the Limited Partnership. GPCo will be wholly owned by the Filer.
- 4.10 The Limited Partnership will own all of the Assets following the Reorganization and will be owned by the Filer (99.99%) and GPCo (0.01%). The Limited Partnership will be managed by GPCo.
- 4.11 The Circular will include or incorporate by reference prospectus level disclosure of the Filer, including the Filer's audited annual consolidated financial statements for the year ended December 31, 2005 which will include financial results for the Business for the same period.
- 4.12 The Circular will include or incorporate by reference prospectus level disclosure of GPCo, MFC Amalco, MFC and the Limited

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Partnership other than the financial statement disclosure required pursuant to the Financial Statement Requirement.

- 4.13 Neither the number of issued and outstanding Trust Units nor the relative holdings of Trust Units by any Unitholder will be altered as a result of the completion of the Reorganization and the Filer will continue to indirectly own the same assets as it does currently. The rights of the Unitholders with respect to the Filer and their indirect interest in and to the revenues of the Filer's business will not be affected by the Reorganization.
- 4.14 The Class A Shares of MFC Amalco and additional Trust Units distributed to Unitholders will be outstanding for an instant in time on the date of the Reorganization prior to their automatic redemption and consolidation, respectively.
- 4.15 The Reorganization is being undertaken in order to structure the flow of revenues created by the Business and distributed to the Filer by its operating subsidiaries on an efficient basis. The rights of Unitholders in respect of the Filer and their relative indirect interests in and to the revenues of the Business will not be affected by the Reorganization. Accordingly, while changes to the financial statements of the Filer will likely be required to reflect the changes to the Filer's organizational structure, the financial position of the Filer will be substantially the same as reflected in the Filer's audited annual consolidated financial statements for the year ended December 31, 2005.
- 4.16 The distribution of the Class A Shares of MFC Amalco and additional Trust Units are, in each case, done solely to allow the Reorganization to be effected in such a manner as to ensure that Unitholders, the Filer and the Filer's subsidiaries will be able to make use of available rollovers under applicable tax legislation, thus preserving the tax-deferred status of the Reorganization.

Decision

- 5. 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.
- 6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the Filer complies with all other requirements of the Legislation applicable to the Circular, including but

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not limited to the requirement that the Circular include the audited annual consolidated financial statements of the Filer for the year ended December 31, 2005.

Patricia Leeson
Associate Director, Corporate Finance
Alberta Securities Commission