

2011 BCSECCOM 515

Headnote

National Instrument 45-106, s.7.1 Prospectus and Registration Exemptions - A person wants an exemption from the exempt distribution reporting requirements in NI 45-106 - The issuer is a private equity fund distributing securities to institutional investors; complying with the requirement to provide insider information in the Form 45-106F6 would be an administrative burden for the issuer and its insiders, which are all non-individuals; the issuer is distributing securities to institutional investors who are able to request insider information if they want it; issuer will file Form 45-106F1 instead of Form 45-106F6.

Applicable British Columbia Provisions

National Instrument 45-106 *Prospectus and Registration Exemptions*, ss. 6.3, 7.1

Exemption Order

Macquarie European Infrastructure Fund 4 LP (the Filer)

Section 7.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*

Background

- ¶ 1 Macquarie European Infrastructure Fund 4 LP (the Fund) has applied for an exemption from the requirement in section 6.3(1)(b) of National Instrument 45-106 *Prospectus and Registration Exemptions* to file a Form 45-106F6 *British Columbia Report of Exempt Distribution* in connection with the sale of securities of the Fund to two purchasers resident in British Columbia (the Transaction) expected to occur on or about November 8, 2011.

Representations

- ¶ 2 The Fund represents that:
1. the Fund is a limited partnership formed under the laws of England and Wales;
 2. the general partner of the Fund is MEIF 4 Guernsey GP Limited (the General Partner), a company formed under the laws of Guernsey;
 3. the General Partner is licensed by the Guernsey Financial Services Commission in connection with its functions as a general partner of the Fund;
 4. the General Partner has overall responsibility for the management of the Fund and has delegated its investment management responsibilities to Macquarie Infrastructure and Real Assets (Europe) Limited (the Manager);

2011 BCSECCOM 515

5. the Manager is authorized and regulated by the UK Financial Services Authority;
6. the Fund is not a reporting issuer in any jurisdiction in Canada; except for the payment of certain filing fees in respect of a previously filed Form 45-106F1, the Fund is not in default of the securities legislation in any jurisdiction;
7. interests in the Fund (Commitments) comprise a 0.001% capital contribution and a 99.999% loan commitment; the loan commitment may be drawn down by the Fund at any time during a “commitment period” of four years (subject to certain exceptions) to make investments or for other purpose permitted by the Fund;
8. subject to certain exceptions, the minimum investment amount for each subscriber of Commitments is €10 million;
9. the first Commitments from third party investors were received on September 28, 2011 and the fundraising period during which additional investors may be admitted to the Fund will last for up to 18 months from that date; the term of the Fund consists of an initial period of 10 years, with possible extensions for further periods up to a maximum of 14 years; investors do not have any right to redeem their interests in the Fund;
10. the purchasers under the Transaction are accredited investors within the meaning of section 1.1(t) of National Instrument 45-106; all of the owners of interests in the purchasers are accredited investors within the meaning of sections 1.1(f) or 1.1(i) of National Instrument 45-106;
11. the Fund’s investment objective includes making investments to obtain control of investee companies and the Manager seeks to actively participate in the management of the Fund’s investments; as a result, the Fund is not an investment fund within the meaning of the *Securities Act* (British Columbia) and therefore cannot rely upon the exception to the requirement to file form NI 45-106F6 that is available to investment funds under BCI 45-533 *Exemption from Form 45-106F6 requirements for investment funds and foreign issuers*;
12. upon the closing of the Transaction the Fund will have a number of 10% holders, including the purchasers under the Transaction; all such 10% holders are “non-individuals”; and

2011 BCSECCOM 515

13. it is anticipated that none of the 10% holders on the closing of the Transaction will be insiders of the Fund when the Fund completes its capital raising in 2012/2013.

Order

- ¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders that the Fund is not required to file Form 45-106F6 in connection with the Transaction provided the Fund files Form 45-106F1.

November 8, 2011

Brent W. Aitken
Vice Chair
British Columbia Securities Commission