

2005 BCSECCOM 287

April 8, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - 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 securities that are being issued will only be outstanding for a short period of time before they are redeemed for other securities; the original securities are being issued for tax reasons only, not so the shareholders continue to have an interest in the issuer; the securityholders will not retain any securities of the issuer following the arrangement or reorganization

Applicable British Columbia Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1
Form 51-102F5, s. 14.2

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 Osprey Media Income Fund (the Filer)

MRRS Decision Document

Background

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 - *Continuous Disclosure Obligations* to include the following financial statements in the Filer's management information circular (the Circular) prepared in connection with the annual general and special meeting (the Meeting) of the Filer's unitholders (Unitholders) to consider and approve, among other things, the Reorganization (as defined below):

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- (a) audited financial statements of Newco (as defined below), and
- (b) audited financial statements in respect of a probable significant acquisition of the Business (as defined below) by Newco

(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
- (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 Filer is a limited purpose trust established under the laws of Ontario pursuant to an amended and restated declaration of trust dated as of April 15, 2004. The Filer is authorized to issue an unlimited number of units (Units). As of December 31, 2004, 49,037,788 Units were issued and outstanding.
2. The Filer holds all of the voting common shares and the notes issued by Osprey Media Group Inc. (Osprey Opco), an Ontario corporation, which carries on the Osprey Media newspaper business (the Business).
3. The Filer completed its initial public offering on April 15, 2004 pursuant to a long form prospectus dated April 6, 2004 (the Prospectus).
4. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of its obligations under the Legislation.
5. It is proposed that the Filer's present organizational structure undergo an internal reorganization (the Reorganization) to replace Osprey Opco with a new operating limited partnership (Osprey LP) to carry on the Business. Osprey LP will be indirectly owned by the Fund through a subsidiary trust (the Trust). Depending on whether or not certain federal budget proposals are enacted prior to the date of the Reorganization, the Reorganization may be amended so that Osprey LP would be directly owned by the Fund.

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6. The Filer has scheduled the Meeting for May 10, 2005 to, among other things, approve the Reorganization.
7. The Reorganization will occur on a tax-deferred basis for the Filer and its Unitholders resident in Canada.
8. After giving effect to the Reorganization, the direct and indirect interests of the Filer in the assets of Osprey LP and its general partner and in the Business will be the same as the interests that the Fund held in Osprey and the Business immediately prior to the Reorganization.
9. As part of the Reorganization:
 - (a) all of the assets of Osprey Opco will be transferred to Osprey LP for consideration that includes limited partnership units of Osprey LP;
 - (b) the Filer will incorporate a wholly-owned subsidiary corporation (Newco) in connection with, and for the purpose of effecting, the Reorganization;
 - (c) the Filer will distribute to Unitholders Class A shares (the Class A Shares) of Newco on a *pro rata* basis, as a return of capital on the date of the Reorganization;
 - (d) the Filer will transfer its securities and notes of Osprey Opco to Newco;
 - (e) Newco will amalgamate with Osprey Opco, and the Filer will acquire the assets of the amalgamated entity (hereinafter referred to as Amalco), including the limited partnership Units of Osprey LP, in exchange for Units;
 - (f) the Class A Shares distributed to Unitholders will be redeemed by Amalco on the date of the Reorganization in exchange for the Units it received in the preceding step;
 - (g) the Units received by Unitholders upon the redemption of the Class A Shares in the preceding step will be automatically consolidated on the same date as the Reorganization; and
 - (h) in the event that certain federal budget proposals are not enacted prior to the date of the Reorganization, the Filer will transfer the assets acquired from Amalco, including the limited partnership units of Osprey LP, to the Trust in exchange for units and notes of the Trust.

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10. Neither the number of issued and outstanding Units nor the relative holdings of Units by any Unitholder will be altered as a result of the completion of the Reorganization.
11. The Class A Shares and additional 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.
12. 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.
13. The distribution of the Class A Shares and additional 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 roll-overs under applicable tax legislation, thus preserving the tax-deferred status of the Reorganization.
14. The audited consolidated annual financial statements of the Filer for the financial year ended December 31, 2004 (the Fund Financial Statements) (which include the financial results for Osprey Opco on a consolidated basis for the period of April 15, 2004 to December 31, 2004) have been filed on SEDAR and will be incorporated by reference into the Circular.
15. In connection with the initial public offering of the Filer, Osprey Opco prepared and included in the Prospectus audited annual financial statements for the financial years ended December 31, 2002 and 2003 and the five-month period ended December 31, 2001 (collectively, the Osprey Financial Statements). The Osprey Financial Statements were included in the Prospectus and filed on SEDAR, and will be incorporated by reference into the Circular.

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:

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- (a) the Filer complies with all other requirements of the Legislation applicable to the Circular; and
- (b) the Fund Financial Statements and Osprey Financial Statements are incorporated by reference into the Circular.

Erez Blumberger
Assistant Manager, Corporate Finance
Ontario Securities Commission