

# 2003 BCSECCOM 14

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements for issuances by MT Services Limited Partnership of limited partnership units to partnership trusts, subject to certain conditions - partnership trusts are trusts settled by active partners, who are lawyers, patent agents, trademark agents, or senior officers employed by or who provide services directly or through corporations to the law partnership

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA AND ALBERTA**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF MT SERVICES LIMITED PARTNERSHIP**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta and Ontario (collectively, the “Jurisdictions”) has received an application from MT Services Limited Partnership (the “Applicant”) for a decision under the securities legislation of each of the Jurisdictions (the “Legislation”) that the issuance by the Applicant of limited partnership interests (the “Units”) to certain trusts (“Partnership Trusts”) settled under the laws of the Jurisdictions by Active Partners (as such term is defined below) shall not be subject to the dealer registration and prospectus requirements contained in the Legislation (the “Registration and Prospectus Requirements”), subject to certain conditions;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions*;

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AND WHEREAS the Applicant has represented to the Decision Makers that:

1. Each of the Applicant, the London McTét Services Limited Partnership, the Ottawa McTét Services Limited Partnership, the Hallmark Management Services Limited Partnership and the Calgary MT Services Limited Partnership (each, a “Service Partnership” and, together, the “Services Partnerships”) is a limited partnership established under the laws of Ontario, British Columbia or Alberta, respectively, in 1997 for the primary purpose of providing secretarial, accounting, administrative, financial and other services for the Toronto, London, Ottawa, Vancouver, and Calgary offices of McCarthy Tétrault LLP (the “Law Partnership”). These services are provided pursuant to services agreements entered into between each of the Service Partnerships with the Law Partnership.
2. The Law Partnership is a limited liability partnership of lawyers established under the laws of Ontario with offices in London (Ontario), Ottawa, Toronto, Vancouver, Calgary, Montreal, Québec City, London (England), and New York.
3. “Active Partners” are lawyers, patent agents, trademark agents, or senior officers who are employed by or who provide services directly or through corporations to the Law Partnership. All Active Partners devote over 75% of their time to the Law Partnership.
4. Partnership Trusts are trusts settled under the laws of the Jurisdictions by Active Partners. Partnership Trusts are settled for the benefit, directly or indirectly, of persons, including members of the family of the Active Partner and, in certain circumstances, for the benefit of the Active Partner.
5. Partnership Trusts were created in 1997 so that Active Partners could benefit from certain tax advantages by flowing the income earned through to the Partnership Trusts. Each Partnership Trust has been or will be settled by an Active Partner for the purpose of acquiring Units.
6. The minimum amount that an Active Partner may contribute to a Partnership Trust is \$1,000, and the maximum amount is \$10,000.
7. Effective January 1, 2003 the Applicant will acquire the other Services Partnerships to form the “National Services Partnership”. The National Services Partnership will provide secretarial, accounting, administrative, financial and other services for all offices of the Law Partnership, and not solely for the Toronto office as is presently the case.

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8. The limited partnership interest of each Partnership Trust in each of the Services Partnerships (and, beginning on January 1, 2003, the National Services Partnership) is a "Unit". Each of the Services Partnerships issues Units to Partnership Trusts settled by Active Partners.
9. Partnership Trusts hold the Units for the benefit of the beneficiaries of the trust. For some Active Partners, a beneficiary of a Partnership Trust may be another trust or trusts (the "Family Trust"), of which the beneficiaries include or may include such family members of the Active Partner or the Active Partner him or herself.
10. No beneficiary of a Family Trust, other than the Active Partner, will directly or indirectly contribute money or other assets to the Family Trust in order to finance the acquisition of Units, or will be liable for any loan or other financing obtained by the Family Trust for that purpose. No beneficiary of a Family Trust, other than the Active Partner and any other beneficiary who is also a trustee, will be involved in the making of any investment decision of the Family Trust.
11. Active Partners have not been and will not be induced to settle Partnership Trusts for the purpose of acquiring and holding Units by expectation of partnership or continued partnership or employment or continued employment of the Active Partner by the Law Partnership. Each Active Partner has made an individual choice to settle a Partnership Trust.
12. Under the terms of the National Services Partnership limited partnership agreement, Units of the National Services Partnership will be automatically redeemed by the National Services Partnership if the Active Partner who has settled the Partnership Trust ceases to be an Active Partner of the Law Partnership resident in Canada, at a redemption price equal to the contributed capital thereof. In addition, the holder of a redeemed Unit will be entitled to receive the amount of any distributions owing or accrued in respect of such Unit as of the date of such redemption.
13. Units are not transferable except that Units may be charged or pledged as security for any obligation incurred by the Partnership Trust in order to finance or refinance any capital contribution required to be made to the National Services Partnership. If the pledgee of a Unit realizes on such security, under the terms of the limited partnership agreement, the Unit will be automatically redeemed by the National Services Partnership at the redemption price referred to in paragraph 12, together with the amount of any distributions owing or accrued in respect of such Unit as of the date of such redemption.

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14. Each Partnership Trust is or will be a discretionary trust with three trustees, one of whom is or will be the Active Partner who settled the Partnership Trust.
15. None of the Services Partnerships is a reporting issuer in any province or territory of Canada and none of the Services Partnerships has any present intention of becoming a reporting issuer in any province or territory of Canada.
16. The general partner of each Services Partnership is a corporation incorporated under the laws of Ontario, British Columbia or Alberta, respectively, and the interest of each general partner in its related Services Partnership is nominal.
17. The National Services Partnership will provide annual financial statements of the National Services Partnership to each Partnership Trust.
18. The Active Partners are provided with monthly financial information and with annual financial statements (which are the subject of a review engagement report) with respect to the Services Partnership in which they are limited partners (beginning January 1, 2003, this will be the National Services Partnership). Each Active Partner is also provided with detailed memoranda regarding the Partnership Trusts, particularly the tax risks associated with the use of such structures. All Active Partners are and will continue to be provided with the same amount and quality of information relating to the Partnership Trusts.
19. Prior to the issuance of Units to a Partnership Trust, the Applicant will obtain a written statement (a "Statement") from the Partnership Trust acknowledging receipt of a copy of the Decision Document and further acknowledging the subscriber's understanding that certain protections under the Legislation, including the right of rescission, the right to make claims for damages and to receive continuous disclosure, are not available to the Partnership Trust in respect of the Units.
20. As the Units are not transferable, no market has developed or will develop for the Units.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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;

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The Decision of the Decision Makers under the Legislation is that the distribution by the Applicant of Units to each of the Partnership Trusts shall not be subject to the Registration and Prospectus Requirements, provided that:

- (a) the first trade in a Unit, other than a redemption of a Unit by the Applicant in accordance with its terms, shall be a distribution; and
- (b) prior to the issuance of Units to a Partnership Trust, the Applicant:
  - (i) delivers a copy of this Decision Document to the Partnership Trust, and
  - (ii) obtain a Statement from the Partnership Trust.

DATED December 31<sup>st</sup>, 2002.

Mary Theresa McLeod

Harold P. Hands