

2008 BCSECCOM 209

March 31, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Investment Fund Continuous Disclosure - *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
Blumont Augen General Partner 2007-1 Inc. (the 2007 General Partner)

and

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Blumont Augen General Partner 2008 Inc. (the 2008 General Partner)
(together, the General Partners)

and

Blumont Augen Limited Partnership 2007-1 (the 2007 Partnership)

and

Blumont Augen Limited Partnership 2008 (the 2008 Partnership)

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 General Partners on behalf of the 2007 Partnership, the 2008 Partnership (the 2007 Partnership and 2008 Partnership are referred to as the Partnerships) and each future limited partnership that is established from time to time in a similar manner by a General Partner or an affiliate of a General Partner acting as general partner and that is identical to the Partnerships in all respects which are material to this decision (the Future Partnerships, and together with the Partnerships, the Partnership Filers), for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from:

- (a) the requirement in section 9.2 of National Instrument 81-106 – *Investment Fund Continuous Disclosure* (NI 81-106) to file an annual information form (AIF);
- (b) the requirement in section 10.3 of NI 81-106 to maintain a proxy voting record (Proxy Voting Record); and
- (c) the requirements in section 10.4 of NI 81-106 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 relevant Partnership Filer's website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of the relevant Partnership Filer (the Limited Partners) upon request

((a), (b) and (c) are collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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- (a) the Ontario Securities Commission (the OSC) 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 General Partners:

1. The 2007 General Partner is the manager of the 2007 Partnership and the 2008 General Partner is the manager of the 2008 Partnership.
2. The principal office of the General Partners is located in Toronto, Ontario.
3. Each Partnership is a limited partnership formed pursuant to the provisions of the *Limited Partnerships Act* (Ontario). Each Partnership is a reporting issuer (or the equivalent) in each of the Jurisdictions and is not in default of its obligations as a reporting issuer under the Legislation.
4. The Partnerships were formed to invest in a diversified portfolio of equity securities comprised primarily of flow-through shares (Flow-Through Shares) of reporting issuers that are engaged in mineral exploration and oil and gas exploration in Canada or that invest in securities of entities engaged in such activities (Resource Companies), pursuant to share purchase agreements (Share Purchase Agreements) between each Partnership and the Resource Companies. Under the terms of each Share Purchase Agreement, each Partnership subscribes for Flow-Through Shares (and warrants, if applicable) of a Resource Company, and the Resource Company agrees to incur Canadian exploration expenses (in respect of the Flow-Through Shares) after the date of such agreement, to renounce the Canadian exploration expenses to the Partnership, and to issue Flow-Through Shares and warrants, if any, of the Resource Company to the Partnership. Any Future Partnership will have similar investment objectives as the Partnerships.
5. The 2007 Partnership and the 2008 Partnership received a receipt dated October 11, 2007 and February 8, 2008, respectively, issued under the MRRS by the OSC on behalf of each of the Jurisdictions and Prince Edward Island with respect to their prospectuses (each prospectus is a Prospectus) dated October 11, 2007 and February 7, 2008, respectively, offering for sale limited

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partnership units. Any Future Partnerships will be reporting issuers, or the equivalent, in each of the Jurisdictions.

6. On October 30, 2007, the 2007 Partnership completed the issue of 1,609,570 limited partnership units under its prospectus. On February 27, 2008, the 2008 Partnership completed the issue of 804,355 limited partnership units under its prospectus. No additional limited partnership units have been issued by the Partnerships.
7. As disclosed in its Prospectus, it is the current intention of the 2007 Partnership to transfer its assets on or before April 30, 2009 to BluMont Augen Resource Strategy Fund Inc. (the RS Fund), a mutual fund corporation incorporated under the laws of Ontario, on a tax deferred basis in exchange for redeemable mutual fund shares of the RS Fund or shares of any other “mutual fund corporation” within the meaning of the *Income Tax Act* (Canada) that is party to the mutual fund rollover transaction (the Mutual Fund Shares). Upon the dissolution of the 2007 Partnership, which will occur immediately following such transfer, the Mutual Fund Shares will be distributed *pro rata* to its Limited Partners within 60 days. Such transaction is subject to any necessary regulatory approvals and in the event that it is not possible to complete the transaction, it is the current intention of the 2007 Partnership to dissolve and distribute its net assets *pro rata* to its Limited Partners no later than December 31, 2009, or such later date as may be approved by the Limited Partners. The 2008 Partnership and any Future Partnerships will be terminated approximately two years after their formation on the same basis as the 2007 Partnership, which termination is, or will be, described in the prospectus of the relevant Partnership.
8. The Partnership Filers are not, and will not be, operating businesses. Rather, each Partnership is, and each Future Partnership will be, a short-term special purpose vehicle that will be dissolved within approximately two years of its formation. The primary investment purpose of the Partnership Filers is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the Limited Partners the tax benefits that accrue when Resource Companies renounce resource exploration and development expenditures to the Partnership Filers through Flow-Through Shares.
9. The limited partnership units of the Partnership Filers (the Units) are not and will not be listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units issued by the Partnership Filers are not and will not be transferred by Limited Partners, since Limited Partners must be holders of the Units on the last day of each fiscal year of the Partnership Filer in order to obtain the desired tax benefits.

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10. Since their formation, the activities of the Partnerships have primarily been limited to: (i) completing the issue of Units under their respective prospectuses, (ii) investing available funds in Flow-Through Shares of Resource Companies, and (iii) incurring expenses as described in their respective prospectuses. The activities of any Future Partnership will be similarly limited.
11. The prospectus, financial statements and management reports of fund performance provide, or will provide, sufficient information necessary for a Limited Partner to understand the business, financial position and future plans, including dissolution and the rollover transaction with the RS Fund (or another mutual fund corporation), for each Partnership Filer. Upon the occurrence of any material change to a Partnership Filer, Limited Partners would receive all relevant information from the material change report the Partnership Filer is required to file under the Legislation. Given the foregoing, the limited range of business activities carried on by the Partnership Filers, the short duration of the existence of the Partnership Filers and the nature of the investment of the Limited Partners, the preparation and distribution of an AIF by the Partnership Filers may impose a material financial burden on the Partnership Filers.
12. Under NI 81-106, investors purchasing Units of a Partnership Filer were, or will be, provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Partnership Filer are voted (the Proxy Voting Policies) and had, or will have, the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.
13. Given the short lifespan of a Partnership Filer, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which the Partnership Filer exercised or failed to exercise its proxy voting rights, as the Partnership Filer would likely be dissolved by the time any potential change could materialize.
14. Preparing and making available to Limited Partners the Proxy Voting Records will not be of any benefit to the Limited Partners and may impose a material financial burden on the Partnership Filers.

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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

Rhonda Goldberg
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ONTARIO SECURITIES COMMISSION