

# 2007 BCSECCOM 125

February 21, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Disclosure - Issuer needs relief from certain disclosure requirements for the takeover bid circular required by Item 15 of BC Form 62-902F - The issuer is an exchangeable share issuer; the bid circular provides or incorporates by reference prospectus level disclosure for the parent on a consolidated basis, but not separately for the exchangeable share issuer - The issuer is making a share exchange takeover bid and wants to incorporate by reference into the bid circular certain required disclosure; the issuer satisfies the eligibility requirements in NI 44-101 but fewer than 10 business days have elapsed since it filed a notice of intention to be qualified to file a short form prospectus; the issuer is required by an agreement to mail the takeover bid circular before the 10 business day notice period expires

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 114(2)

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, 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  
CI Financial Income Fund (the “Fund”) and  
Canadian International LP (“CI Public Partnership” and,  
together with the Fund, the “Filers”)

## MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of each of the

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Jurisdictions (the “Legislation”) that the Filers be exempt from the requirement that a take-over bid circular contain information (the “TOB Circular Content Requirement”) prescribed by the form of prospectus appropriate for the offeror or other issuer whose securities are being offered in exchange for securities of the offeree issuer in a take-over bid (the “Requested Relief”).

2. 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**

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

### **Representation**

4. This decision is based on the following facts represented by the Filer:
  - (a) on February 12, 2007, the Fund announced an agreement (the “Support Agreement”) under which the Fund agreed to make, directly, through or with CI Public Partnership, a take-over bid (the “Offer”) for all of the issued and outstanding common shares (the “Rockwater Shares”) of Rockwater Capital Corporation (“Rockwater”) including any Rockwater Shares that may become issued and outstanding after the date of the Offer upon the conversion, exchange or exercise of any existing convertible securities, and Rockwater has agreed to support and facilitate the Offer;
  - (b) pursuant to the Offer and subject to certain limitations, holders of Rockwater Shares (“Rockwater Shareholders”) will be entitled to elect to receive in exchange for their Rockwater Shares either: (i) cash; (ii) units of the Fund (“Fund Units”), or subject to certain limits, Class B limited partner units of CI Public Partnership (“Exchangeable LP Units”); or (iii) a combination of the foregoing;
  - (c) pursuant to the obligations set out in the Support Agreement (in particular, the obligation to mail the Offer within eight business

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days), the Fund intends to file, and mail to Rockwater Shareholders, its take-over bid circular (the “Circular”) in connection with the Offer by no later than February 22, 2007;

- (d) since Rockwater Shareholders may elect to receive either Fund Units or Exchangeable LP Units in exchange for their Rockwater Shares under the Offer, the Filers are required to provide information prescribed by the form of prospectus appropriate for each in the Circular to satisfy the TOB Circular Content Requirement;
- (e) the Fund is an unincorporated, open-ended, limited purpose trust governed by the laws of the Province of Ontario and created pursuant to a declaration of trust dated May 18, 2006, as the same may be amended, supplemented or restated from time to time (the “Fund Declaration of Trust”);
- (f) the Fund’s head and registered office is located at 2 Queen Street East, Twentieth Floor in Toronto, Ontario, Canada M5C 3G7;
- (g) the Fund is authorized to issue an unlimited number of Fund Units and an unlimited number of Special Voting Units (which, as described more fully below, entitle holders of Exchangeable LP Units to vote at all meetings of holders of Fund Units);
- (h) as at December 31, 2006, 133,673,930 Fund Units and 146,458,757 Special Voting Units were issued and outstanding;
- (i) the Fund owns all of the issued and outstanding securities of CI Public Partnership, other than the Exchangeable LP Units;
- (j) the Fund Units are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “CIX.UN”;
- (k) the Fund is a reporting issuer in each of the Jurisdictions (except Manitoba, New Brunswick and Newfoundland and Labrador), and is not in default of any obligations under the Legislation;
- (l) CI Public Partnership is a limited partnership established under the laws of the Province of Manitoba pursuant to a limited partnership agreement dated May 19, 2006, as the same may be amended, supplemented or restated from time to time (the “CI Public Partnership Agreement”);

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- (m) the general partner of CI Public Partnership is CI Financial General Partner Corp. (“CI General Partner”), which is wholly-owned by the Fund;
- (n) CI General Partner has the exclusive authority to manage the business and affairs of CI Public Partnership; and the holders of Class A limited partner units (“Class A LP Units”) have the right to exercise 100% of the votes in respect of all matters to be decided by the limited partners of CI Public Partnership, and the holders of Exchangeable LP Units do not have the right to exercise any votes in respect of such matters, other than in certain limited circumstances as set forth in the CI Public Partnership Agreement;
- (o) CI Public Partnership’s head and registered office is located at 2 Queen Street East, Twentieth Floor in Toronto, Ontario, Canada M5C 3G7;
- (p) CI Public Partnership is authorized to issue various partnership interests for such consideration and on such terms and conditions as may be determined by CI General Partner; and CI Public Partnership issued a general partner interest to CI General Partner, Class A LP Units to the Fund and Exchangeable LP Units to former shareholders of CI Financial Inc. that elected to receive such units under the arrangement under Section 182 of the *Business Corporations Act* (Ontario) last year;
- (q) as at December 31, 2006, 133,673,930 Class A LP Units and 146,458,757 Exchangeable LP Units were issued and outstanding;
- (r) all of the Class A LP Units are held by the Fund and all of the Exchangeable LP Units are held by certain shareholders of CI Financial Inc. who elected to receive same under the Arrangement;
- (s) CI Public Partnership is a reporting issuer in each of the Jurisdictions (except Manitoba and Prince Edward Island);
- (t) pursuant to an MRRS decision document dated August 25, 2006 (the “2006 Decision”), CI Public Partnership is exempt, in each of the Jurisdictions in which it is a reporting issuer, from the continuous disclosure requirements under National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”) and any comparable continuous disclosure requirements under the

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Legislation that have not yet been repealed or otherwise rendered ineffective as a result of adopting NI 51-102, subject to certain conditions; the Fund and CI Public Partnership are in compliance with the conditions set out in the 2006 Decision;

- (u) the Exchangeable LP Units are intended to be, to the greatest extent practicable, the equivalent of Fund Units and are exchangeable for Fund Units;
- (v) holders of Exchangeable LP Units are entitled to receive distributions or advances paid by CI Public Partnership, which distributions will be equal, to the greatest extent practicable, to distributions paid by the Fund to holders of Fund Units;
- (w) certificates representing each Exchangeable LP Unit are issued together with a special voting unit of the Fund (“Special Voting Unit”), entitling the holder to one vote at all meetings of holders of Fund Units for each Special Voting Unit held, subject to customary anti-dilution adjustments set out in the Fund Declaration of Trust;
- (x) pursuant to the exchange agreement dated June 30, 2006 among the Fund, CI Public Partnership, CI General Partner and the holders of Exchangeable LP Units:
  - (a) holders of Exchangeable LP Units are entitled to require CI Public Partnership to exchange at any time and from time to time each Exchangeable LP Unit for one Fund Unit, subject to customary anti-dilution adjustments set out in the Exchange Agreement;
  - (b) concurrent with the exchange of each Exchangeable LP Unit for one Fund Unit, the related Special Voting Unit is cancelled; and
  - (c) CI Public Partnership has the right to compel an exchange of all of the Exchangeable LP Units held by any particular holder of Exchangeable LP Units for the applicable number of Fund Units upon the occurrence of certain limited circumstances as set forth in the Exchange Agreement;
- (y) pursuant to the 2006 Decision, holders of Exchangeable LP Units receive all disclosure materials that the Fund is required to send to holders of Fund Units under NI 51-102;

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- (z) the Fund filed a notice of intention (pursuant to Section 2.8 of NI 44-101) on February 12, 2007; as such, the ten business day period prescribed by that section will not have lapsed at the date of mailing of the Offer, which, in satisfaction of the Fund's obligations under the Support Agreement, must occur on February 22, 2007, eight business days following the date of the Support Agreement;
- (aa) the Fund satisfies the basic qualification criteria as set out in Section 2.2 of National Instrument 44-101 – *Short Form Prospectus Distributions* – (“NI 44-101”) (in particular, the Fund filed on February 14, 2007 its annual information form for the year ended December 31, 2006, together with its annual financial statements and related management's discussion and analysis);
- (bb) the Fund is a successor entity of the reporting issuer, CI Financial Inc., which also satisfied the basic qualification criteria and was qualified to file a short form prospectus; and Unitholders of the Fund have the benefit of having access to the substantial historical continuous disclosure of CI Financial Inc., the predecessor to the Fund;
- (cc) pursuant to the Support Agreement, the Fund must mail the Offer two business days prior to the expiry of the notice provision; but for the relief requested herein the Circular would be required to include in it (rather than incorporate by reference) information that is readily available through SEDAR;
- (dd) the Exchangeable LP Units provide a holder with a security having economic and voting rights that are, as nearly as practicable, equivalent to those of the Fund Units; in particular, each Exchangeable LP Unit issued to a Shareholder pursuant to the Offer will be:
  - (a) issued together with a Special Voting Unit entitling the holder to voting rights equivalent to the voting rights attached to the Fund Units; and
  - (b) exchangeable at any time and from time to time for a Fund Unit, subject to customary anti-dilution adjustments;

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- (ee) the information relevant to a holder of Exchangeable LP Units, which is the appropriate information required to be included by CI Public Partnership in the Circular, consists of: (i) information regarding the Fund (on a consolidated basis), and (ii) information regarding the terms of the Exchangeable LP Units and the Special Voting Units.

### **Decision**

1. Each of the Decision Makers is satisfied that the tests contained in the Legislation that provide the Decision Maker with the jurisdiction to make the decision has been met.
2. The decision of the Decision Makers is that the Requested Relief is granted to the Filers, provided that the Circular (and the documents incorporated by reference) contain:
  - (a) information regarding the Fund (on a consolidated basis) required to be included or incorporated by reference in a short form prospectus, and
  - (b) detailed information regarding the terms of the Exchangeable LP Units and the Special Voting Units.

Robert L. Shirriff  
Commissioner  
Ontario Securities Commission

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission