

2005 BCSECCOM 694

November 22, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An exchangeable share issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer; the parent issuer is a Canadian reporting issuer that will send copies of all of its documents to the securityholders of the exchangeable share issuer and explain the reasons the information sent to them relates to the parent, rather than the exchangeable share issuer; the exchangeable share issuer will remain a subsidiary of the parent issuer, and will not issue any securities other than exchangeable shares or debt instruments to certain parties

Multi-Lateral Instrument 52-109, s. 4.5 – Certification Requirements - An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

Applicable British Columbia Provisions

National Instrument 51-102, Parts 4-12, s. 13.1

Multi-Lateral Instrument 52-109, Parts 2 and 3, s. 4.5

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, 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 Griffiths McBurney L.P. (the Filer)

MRRS Decision Document

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Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that,
 - (a) in the Jurisdictions, where applicable, the requirements contained in Parts 4, 5, 6, 7, 8 and 9 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements) will not apply to the Filer (the Continuous Disclosure Relief); and
 - (b) the requirements in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) will not apply to the Filer (the MI 52-109 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

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

Representations

3. This decision is based on the following facts represented by the Filer:
 - (a) GMP Capital Trust (the Fund) is an unincorporated, open-ended, limited purpose trust established under the laws of Ontario under a declaration of trust dated September 20, 2005;
 - (b) the Fund's head office is in Toronto, Ontario;
 - (c) the Fund is authorized to issue an unlimited number of fund units (Fund Units) and an unlimited number of special voting units (Special Voting Units);
 - (d) as of November 11, 2005, there were twelve Fund Units outstanding and no Special Voting Units outstanding;

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- (e) the Fund is not currently a reporting issuer in any of the Jurisdictions, but will become a reporting issuer in each of the Jurisdictions upon the closing of an arrangement involving the Fund, the Filer and GMP Capital Corp. (GMP), among others (the Arrangement);
- (f) the Fund has applied to the Toronto Stock Exchange (the TSX) for the listing on the TSX of the Fund Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement;
- (g) the Filer is a limited partnership established under the laws of Manitoba to directly or indirectly acquire the outstanding common shares of GMP (GMP Shares) under the Arrangement;
- (h) the Filer's head office is in Toronto, Ontario;
- (i) the Filer is authorized to issue an unlimited number of Class A limited partner units (Class A Limited Partner Units) and an unlimited number of Class B exchangeable partnership units (Exchangeable L.P. Units);
- (j) as of November 11, 2005, ten Class A Limited Partner Units were outstanding, which is indirectly owned by the Fund, and no Exchangeable L.P. Units were outstanding;
- (k) upon completion of the Arrangement, the Filer will become a reporting issuer in each of the Jurisdictions that the concept exists;
- (l) under the Arrangement, holders of GMP Shares will exchange their GMP Shares for either Fund Units and cash consideration or a combination of Fund Units, Exchangeable L.P. Units and cash consideration;
- (m) the Exchangeable L.P. 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;
- (n) in particular, each Exchangeable L.P. Unit will be:
 - (i) exchangeable at the option of the holder for a Fund Unit, subject to customary anti-dilution adjustments; and

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- (ii) issued together with a Special Voting Unit of the Fund entitling the holder to voting rights equivalent to the voting rights attached to the Fund Units;
- (o) holders of Exchangeable L.P. Units will not have the right to exercise any votes in respect of any matters relating to the business, affairs, rights, privileges, entitlements or obligations of the Filer or any partner of the Filer, except as required by applicable law;
- (p) the Fund will concurrently send to holders of Exchangeable L.P. Units all disclosure material it sends to holders of Fund Units; and
- (q) following the Arrangement, the Fund will be the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer, other than the Exchangeable L.P. Units, the financial results of the Fund will wholly reflect the financial performance of the Filer and the Fund will comply with all the requirements of MI 52-109.

Decision

- 4. Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.
- 5. The decision of the Decision Makers is that the Continuous Disclosure Relief is granted, for so long as,
 - (a) the Fund is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 Resale of Securities and is an electronic filer under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);
 - (b) the Fund concurrently sends to all holders of Exchangeable L.P. Units all disclosure material furnished to holders of Fund Units under NI 51-102;
 - (c) the Fund files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;
 - (d) the Fund complies with the requirements of the Legislation and the TSX, or such market or exchange on which the Fund Units may be quoted or listed, in respect of making public disclosure of material

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information on a timely basis and immediately issues and files a news release that discloses any material change in its affairs;

- (e) the Filer complies with the requirements of the Legislation in each of the Jurisdictions to issue a press release and file a report with the Jurisdictions upon the occurrence of a material change in respect of the affairs of the Filer that is not also a material change in the affairs of the Fund;
 - (f) the Fund includes in all future mailings of proxy solicitation materials to holders of Exchangeable L.P. Units a clear and concise statement that
 - (i) explains the reason the mailed material relates solely to the Fund and not to the Filer,
 - (ii) indicates that the Exchangeable L.P. Units are the economic equivalent to the Fund Units, and
 - (iii) describes the voting rights associated with the Exchangeable L.P. Units;
 - (g) the Fund remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer, other than the Exchangeable L.P. Units;
 - (h) the Filer does not issue any securities other than Exchangeable L.P. Units or debt obligations issued to the Fund or its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions; and
 - (i) the Filer files a notice under its SEDAR profile stating that it is relying on the continuous disclosure documents filed by the Fund and referring to the Fund's SEDAR profile.
6. The decision of the Decision Makers is that the MI 52-109 Relief is granted for so long as,
- (a) the Filer is not required to, and does not, file its own interim and annual filings (as those terms are defined under MI 52-109);
 - (b) the Fund files in electronic format under the SEDAR profile of the Filer the:

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- (i) interim filings,
- (ii) annual filings,
- (iii) interim certificates, and
- (iv) annual certificates

of the Fund, at the same time as such documents are required to be filed under the Legislation by the Fund; and

- (c) the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

Iva Vranic
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Ontario Securities Commission