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April 27, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106 *Continuous Disclosure Requirements for Investment Funds*, s. 17.1 – 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

Applicable British Columbia Provisions

National Instrument 81-106, ss. 9.2 and 17.1

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Ontario, New
Brunswick, Nova Scotia, Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Norrep Performance 2004 Flow-Through Limited Partnership
(the Filer)

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 general partner, Norrep 2004 Management Inc. (the General Partner) on behalf of the Filer under the securities legislation of the Jurisdictions (the Legislation) for a decision under section 17.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106), that the Filer be exempt from the

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requirement in section 9.2 of NI 81-106 to prepare and file annual information forms (AIF) for the Filer's Limited Partnership Units (LP Units) (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
 - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Unless otherwise defined, the terms herein have their meanings set out in National Instrument 14-101 – *Definitions* and NI 81-106.

Representations

4. This decision is based on the following facts represented by the Filer:
 - 4.1 The Filer is a limited partnership duly formed under the laws of the Province of Ontario on April 23, 2004.
 - 4.2 The principal place of business of the Filer is located at Suite 1500, 510-5th Street S.W., Calgary, Alberta T2P 3S2 and its registered office is located at 1400, 350 - 7th Avenue S.W. Calgary, Alberta, T2P 3N9.
 - 4.3 Norrep 2004 Management Inc. is the General Partner of the Filer, and is responsible for the management of the Filer in accordance with the terms and conditions of a limited partnership agreement dated April 23, 2004 (the Partnership Agreement).
 - 4.4 Hesperian Capital Management Inc. is the investment manager for the Filer.
 - 4.5 The Filer was formed for the purpose of raising funds to invest in flow-through shares (Flow-Through Shares) of issuers whose principle business is oil and gas exploration, development and production or mineral exploration, development and production (Resource Companies). The Filer also participates in the exploration development and production of oil and gas by investing in Flow-Through Shares of one or more Resource Companies which are wholly-owned subsidiary companies of the Filer (Subsidiary Companies). These Subsidiary

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Companies were formed to enter into one or more oil and gas drilling joint ventures.

- 4.6 The investment in Flow-Through Shares is made pursuant to flow-through investment agreements (Flow-Through Agreements) between the Filer and the relevant Resource Company or Subsidiary Company.
- 4.7 Under the terms of each Flow-Through Agreement, the Filer subscribes for Flow-Through Shares of the Resource Company or the Subsidiary Company and the Resource Company or Subsidiary Company agrees to incur and renounce to the Filer, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development which shall be Canadian Exploration Expenses or Canadian Development Expenses which may be renounced as Canadian Exploration Expenses to the Filer and the balance will be Canadian Development Expenses which cannot be renounced as Canadian Exploration Expenses to the Filer (as such terms are defined in the *Income Tax Act* (Canada)).
- 4.8 The Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions.
- 4.9 To its knowledge, the Filer is not in default of any of the requirements of the applicable securities legislation in any of the Jurisdictions.
- 4.10 The Filer is an investment fund in the Jurisdictions for the purpose of NI 81-106.
- 4.11 On May 31, 2004, the Decision Makers issued a final receipt under the Mutual Reliance Review System for the final prospectus of the Filer dated May 31, 2004 (the Prospectus) relating to a maximum offering of up to 6,000,000 LP Units of the Filer.
- 4.12 Pursuant to its initial public offering (the IPO), at the first closing on June 8, 2004, the Filer issued 5,103,840 LP Units at \$10 per LP Unit for gross proceeds of \$51,038,400. At the final closing on June 22, 2004, the Filer issued 751,510 LP Units at \$10 per LP Unit for gross proceeds of \$7,515,100.
- 4.13 The LP Units are not and will not be listed or quoted for trading on any stock exchange or market. In addition, the Filer has not and shall not issue further LP Units pursuant to the Prospectus following completion

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of the IPO. The LP Units are not redeemable by the limited partners of the Filer (Limited Partners).

- 4.14 At a date no later than December 31, 2007, the Filer will be liquidated and the Limited Partners will receive their pro rata share of the net assets of the Filer, unless the Filer completes a rollover transaction before that time. It is the current intention of the General Partner prior to such time that the Filer exchange its assets for securities of Norrep Opportunities (a mutual fund corporation) or any open-end mutual fund corporation managed by Norrep Inc. and distribute such securities to the Limited Partners on a pro rata basis.
- 4.15 Since its formation on April 23, 2004, the Filer's activities have primarily included (i) collecting subscriptions from the limited partners, (ii) investing the available funds in Flow-Through Shares of Resource Companies and Subsidiary Companies, (iii) participating in joint ventures, and (iv) incurring expenses to maintain the fund.
- 4.16 Unless a material change takes place the Prospectus provides sufficient background materials and the explanations necessary for a Limited Partner to understand the Filer's business, its financial position and its future plans, including dissolution or completion of a rollover transaction.
- 4.17 The Prospectus together with the annual financial statements of the Filer and the MRFP (which shall be sent to holders of LP Units in compliance with section 18.3 of NI 81-106) contain substantially the same disclosure concerning the LP Units as would be required by NI 81-106 to be included in the AIF with respect to the Filer for the 2005 fiscal year.
- 4.18 In light of the limited range of business activities carried on by the Filer following completion of its IPO, the occurrence of the Liquidity Alternative and receipt by limited partners of audited annual financial statements of the Filer together with the MRFP, Management of the Filer is of the view the preparation and distribution by the Filer of the AIF will not be of benefit to Limited Partners and may impose a material financial burden on the Filers. Upon the occurrence of any material change (as defined in NI 81-106) to the Filers, Limited Partners would receive all relevant information from the material change reports the Filers are required to file with the Decision Makers.

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- 4.19 Each of the Limited Partners has, by subscribing for the LP Units offered by the Filer in accordance with the Prospectus, agreed to the irrevocable power of attorney contained in the Partnership Agreement filed with the Prospectus and has effectively consented to the application for the Requested Relief.

Decision

5. 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 requirement in Section 9.2 of NI 81-106 to file an AIF shall not apply to the Filer, provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

Agnes Lau, CA
Associate Director, Corporate Finance
Alberta Securities Commission