

2006 BCSECCOM 540

August 31, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - 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, s. 10.3, 10.4 and 17.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Yukon 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
MRF 2006 Resource Limited Partnership (MRF 2006),
MRF 2005 Resource Limited Partnership (MRF 2005),
Explorer III Resource Limited Partnership (Explorer III) and
Explorer II Resource Limited Partnership (Explorer II)
(each a Filer and collectively the Filers)

MRRS Decision Document

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Background

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 National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) exempting each Filer from:

- (i) the requirement in section 10.3 of NI 81-106 to maintain a proxy voting record (the Proxy Voting Record), and
- (ii) the requirements in section 10.4 of NI 81-106 to prepare a Proxy Voting Record on an annual basis for the period ending on June 30 of each year, to post the Proxy Voting Record on the Filer's website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of each Filer (the Limited Partners) upon request ((i) and (ii) are herein referred to as the Requested 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

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 Filers:

1. The principal office of the Filers is located in Toronto, Ontario.
2. The Filers were formed to invest in certain common shares (Flow-Through Shares) of companies involved primarily in oil and gas, mining or renewable energy exploration and development (Resource Companies) pursuant to agreements (Resource Agreements) between each Filer and the relevant Resource Company. Under the terms of each Resource Agreement, the relevant Filer will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will agree 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

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qualify as Canadian exploration expense or as Canadian development expense which may be renounced as Canadian exploration expense to the Filer.

3. MRF 2006 is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) (the Act) on January 10, 2006. On February 16, 2006, MRF 2006 became a reporting issuer in each of the Jurisdictions and in Prince Edward Island. On or about May 28, 2008, MRF 2006 will be dissolved and the Limited Partners of MRF 2006 will receive their pro rata share of the net assets of MRF 2006.
4. MRF 2005 is a limited partnership formed pursuant to the Act on January 18, 2005. On February 28, 2005, MRF 2005 became a reporting issuer in each of the Jurisdictions and in Prince Edward Island. On or about May 31, 2007, MRF 2005 will be dissolved and the Limited Partners of MRF 2005 will receive their pro rata share of the net assets of MRF 2005.
5. Explorer III is a limited partnership formed pursuant to the Act on January 18, 2005. On September 28, 2005, Explorer III became a reporting issuer in each of the Jurisdictions, other than Quebec, and in Prince Edward Island. On or about March 18, 2008, Explorer III will be dissolved and the Limited Partners of Explorer III will receive their pro rata share of the net assets of Explorer III.
6. Explorer II is a limited partnership formed pursuant to the Act on January 16, 2004. On November 25, 2004, Explorer II became a reporting issuer in each of the Jurisdictions and in Prince Edward Island. On or about March 30, 2007, Explorer II will be dissolved and the Limited Partners of Explorer II will receive their pro rata share of the net assets of Explorer II.
7. It is the current intention of each of the general partners of the Filers that each Filer enter into an agreement with Middlefield Mutual Funds Limited (the Mutual Fund), an open-ended mutual fund, whereby assets of MRF 2006 and MRF 2005 would be exchanged for redeemable shares of the Growth Class of the Mutual Fund, and assets of Explorer III and Explorer II would be exchanged for redeemable shares of the Resource Class of the Mutual Fund. Upon dissolution of each of the Filers, the Limited Partners of each Filer would then receive their pro rata share of the shares of either the Growth Class or the Resource Class, as applicable, of the Mutual Fund.
8. The Filers are short-term special purpose vehicles which are dissolved within approximately 2 years of their formation. The primary investment purpose of the Filers is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for the Limited Partners the significant tax benefits

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that accrue when Resource Companies renounce resource exploration and development expenditures to the Filers through the Flow-Through Shares.

9. The limited partnership units of each Filer (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 are not transferred by Limited Partners since Limited Partners must be holders of the Units on the last day of each fiscal year of a Filer in order to obtain the desired tax deduction.
10. As a result of the implementation of NI 81-106, investors purchasing Units of MRF 2006 or Explorer III were provided with a prospectus containing written policies on how the Flow-Through Shares or other securities held by the Filers are voted (the Proxy Voting Policies), and had the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.
11. The Proxy Voting Policies (which also apply to MRF 2005 and Explorer II) require that a Filer exercise its voting rights in respect of securities of an issuer if more than 4% of the Filer's net assets are invested in that issuer. Each Filer does not intend to exercise its voting rights where less than 4% of its net assets are invested in an issuer, but may, in its sole discretion, decide to vote in such circumstances.
12. Pursuant to their Proxy Voting Policies and because each Filer invests in a number of issuers which generally do not represent more than 4% of the Filer's net assets, the Filers are not usually required to exercise their voting rights.
13. Given the short lifespan of each Filer, the production of a Proxy Voting Record would provide Limited Partners very little opportunity for recourse if they disagreed with the manner in which a Filer exercised or failed to exercise its proxy voting rights, as the Filer would likely be dissolved by the time any potential change could materialize.
14. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the 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.

Leslie Byberg
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Ontario Securities Commission