

2005 BCSECCOM 270

April 22, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 Financial Statements & Report - Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports - An issuer wants relief from the requirements to file and deliver interim financial statements for all first and third quarters - The issuer's securities will not be publicly traded; the issuer is an investment fund; the purchasers do not expect to receive first and third quarter financial statements; relief is for a limited time

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 91;

Securities Rules, B.C. Regulation 194/97, s. 149

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Ontario, and Nova Scotia
(the Jurisdictions)

and

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

and

In the Matter of Mavrix Resource Fund 2004 Limited Partnership (the Filer)

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 Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation"):

1. that the requirements contained in the Legislation that the Filer file with the Decision Makers and send to its securityholders (the "Limited Partners") its interim financial statements for each of the first and third quarters of each of the Filer's fiscal years (the "First and Third Quarter Interim Financials") shall not apply to the Filer; and

2005 BCSECCOM 270

2. in Ontario only, a decision pursuant to the securities legislation of Ontario that the requirements to file and send to the Limited Partners:
 - (a) an annual information form (an “AIF”);
 - (b) annual management’s discussion and analysis of the financial condition and results of operation of the Filer (“Annual MD&A”); and
 - (c) interim management’s discussion and analysis of the financial condition and results of operation of the Filer (“Interim MD&A”),shall not apply to the Filer.

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 Filer:

1. The Filer is a limited partnership formed pursuant to the *Limited Partnership Act* (Ontario) on October 10, 2003.
2. The principal place of business and registered office of the Filer is located at Suite 400, 36 Lombard Street, Toronto, Ontario M5C 2X3.
3. Mavrix Resource Fund 2004 Management Limited is the general partner (the “General Partner”) of the Filer, and is responsible for the management of the Filer in accordance with the terms and conditions of an amended and restated limited partnership agreement dated March 19, 2004 (the “Partnership Agreement”).
4. The Filer was formed for the purpose of raising funds to invest in certain common shares (“Flow-Through Shares”) of Canadian resource issuers engaged primarily in oil and gas and mineral exploration in Canada (“Resource Issuers”) pursuant to flow-through agreements (“Flow-Through Agreements”) between the Filer and the relevant Resource Issuer.

2005 BCSECCOM 270

5. Under the terms of each Flow-Through Agreement, the Filer subscribes for Flow-Through Shares of the Resource Issuer and the Resource Issuer 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 are qualified Canadian Exploration Expenses (as such term is defined in the *Income Tax Act* (Canada)).
6. On March 22, 2004, the Decision Makers together with the securities regulatory authority or regulator for Quebec, Manitoba and the Yukon (in which jurisdictions the relief sought in this Application is not required), issued a final receipt under the Mutual Reliance Review System for the final prospectus of the Filer dated March 19, 2004 (the "Prospectus") relating to a maximum offering of up to 5,000,000 Units. The Filer issued a total of 2,468,422 units of the Filer ("Units") pursuant to three closings, the last of which occurred on May 20, 2004, of its initial public offering.
7. The purchasers of the Units are the limited partners of the Filer (the "Limited Partners").
8. The Prospectus contained disclosure that the Filer intends to apply for an order from the Decision Makers exempting it from the requirements to file and distribute financial statements of the Filer in respect of the first and third quarters of each fiscal year of the Filer.
9. The Units are not and will not be listed or quoted for trading on any stock exchange or market.
10. On or about March 31, 2006, the Filer will be liquidated and the Limited Partners will receive their *pro rata* share of the net assets of the Filer, unless the General Partner proposes one or more liquidation alternatives prior to that time or 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 a mutual fund corporation and distribute such securities to the Limited Partners on a *pro rata* basis.
11. Since its formation on October 10, 2003, the Filer's activities primarily included or will include (i) collecting the subscriptions from the Limited Partners, (ii) investing the available Filer funds in Flow-Through Shares of Resource Issuers, and (iii) incurring expenses to maintain the fund.
12. Unless a material change takes place in the business and affairs of the Filer, the Limited Partners will obtain adequate financial information concerning the

2005 BCSECCOM 270

Filer from the semi-annual financial statements and the annual report containing audited financial statements of the Filer together with the auditors' report thereon distributed to the Limited Partners. The Prospectus and the semi-annual financial statements provide 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.

13. In light of the limited range of business activities carried on by the Filer and in light of the fact that the Filer intends to dissolve on or about March 31, 2006, or effect a rollover transaction sooner than that, the provision by the Filer of the First and Third Quarter Interim Financials, the AIF, the Annual MD&A and the Interim MD&A will not be of significant benefit to the Limited Partners and may impose a material financial burden on the Filer.
14. It is disclosed in the Prospectus that the General Partner would apply on behalf of the Filer for relief from the requirements to prepare and deliver interim financial statements for the first and third quarters of each financial year of the Filer.
15. Each of the Limited Partners has, by subscribing for the 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 thereby, in effect, consented to the making of this application for the exemption requested herein.

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.

The decision of the Decision Makers under the Legislation is that the requirements contained in the Legislation to file and send to the Limited Partners its First & Third Quarter Interim Financials shall not apply to the Filer provided that this exemption shall terminate upon:

- (i) 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; or
- (ii) National Instrument 81-106 - *Investment Fund Continuous Disclosure* coming into force and the requirements relating to the filing and delivery

2005 BCSECCOM 270

of interim financial statements contained in National Instrument 81-106 becoming applicable to the Filer.

Wendell S. Wigle

Commissioner

Ontario Securities Commission

Suresh Thakrar

Commissioner

Ontario Securities Commission

The further decision of the securities regulatory authority or securities regulator in Ontario is that the requirements contained in the legislation of Ontario to file and send to its Limited Partners an AIF, Annual MD&A and Interim MD&A shall not apply to the Filer provided that these exemptions shall terminate upon:

- (i) 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; or
- (ii) National Instrument 81-106 - *Investment Fund Continuous Disclosure* coming into force and the requirements relating to the filing and delivery of an AIF, Annual MD&A and Interim MD&A contained in National Instrument 81-106 becoming applicable to the Filer.

Leslie Byberg

Manager, Investment Funds Branch