

2005 BCSECCOM 202

February 25, 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 requirement to deliver audited annual financial statements for a particular year - The issuer filed a final prospectus with audited financials dated prior to its year end; the issuer had limited operations since the date of such audited financial statements and its year end; the issuer's audited annual financials will not disclose any material information that is not already disclosed in the audited financial statements in the prospectus

Applicable British Columbia Provisions

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

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

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

and

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

and

In the Matter of
Energy Split Corp. II Inc. (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") that the requirement contained in the Legislation to deliver to its shareholders annual financial statements and, where applicable, an annual report, shall not apply to the Filer for the period from September 29, 2004 to December 16, 2004 (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications

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- (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. In this decision:

“Initial Financial Statements” means the audited financial statements of the Filer and, where applicable, the annual report of the Filer, for the period from September 29, 2004 to December 16, 2004.

Representations

This decision is based on the following facts represented by the Filer:

1. On November 29, 2004, the Filer filed a final prospectus (the “Prospectus”) relating to the offering of ROC Preferred Shares (the “ROC Preferred Shares”) and Capital Yield Shares (the “Capital Yield Shares”) with all of the provincial and territorial securities regulatory authorities. A receipt for this prospectus was issued on November 30, 2004. The Filer issued 1,285,000 ROC Preferred Shares and 2,570,000 Capital Yield Shares pursuant to the Offering on December 15, 2004 and an additional 13,750 ROC Preferred Shares and 27,500 Capital Yield Shares pursuant to an over-allotment offering on December 21, 2004.
2. The Filer was incorporated under the laws of the Province of Quebec on September 29, 2004. The fiscal year end of the Filer is December 16, with the first fiscal year end occurring on December 16, 2004. Pursuant to the Legislation, and subject to any relief obtained pursuant to this application, the Filer would be required to prepare and file in the Jurisdictions and deliver to the shareholders the Initial Financial Statements.
3. The authorized capital of the Filer consists of an unlimited number of Capital Yield Shares, of which 2,597,500 are issued and outstanding, an unlimited number of ROC Preferred Shares, of which 1,298,750 are issued and outstanding, an unlimited number of Class B, Class C, Class D and Class E capital shares issuable in series, none of which are issued and outstanding, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, none of which are issued and outstanding, and an unlimited

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number of Class F Shares issuable in series, of which one is issued and outstanding.

4. The Class F Shares are the only class of voting securities of the Filer. ESC II Holdings Limited (the “Trustee”) owns the only issued and outstanding Class F Share.
5. The Filer has been created in order to generate fixed cumulative preferential tax efficient distributions for the holders of the ROC Preferred Shares and to enable the holders of the Capital Yield Shares to receive leveraged tax efficient distributions from a fixed portfolio (the “Royalty Trust Portfolio”) consisting of 27 oil and gas royalty trusts listed on the Toronto Stock Exchange. The Capital Yield Shares will also have a leveraged exposure to any changes in the value of the Royalty Trust Portfolio. The Filer will use the net proceeds of the Offering to acquire a portfolio consisting primarily of common shares of Canadian public companies (the “Common Share Portfolio”) and will enter into a forward purchase and sale agreement (the “Forward Agreement”) on this portfolio with a Canadian chartered bank (the “Counterparty”) pursuant to which the Counterparty will agree to pay to the Filer on December 16, 2007 (the “Redemption Date”), the economic return provided by the Royalty Trust Portfolio which will be held by the Royalty Fund II (the “Fund”).
6. In order to achieve its investment objectives, the Filer will enter into the Forward Agreement, which will provide holders of ROC Preferred Shares and Capital Yield Shares (collectively, “Holders”) with exposure to the returns of the Royalty Trust Portfolio which will be held by the Fund.
7. The Fund is a newly created investment trust that was established prior to the closing of the Offering under the laws of Ontario pursuant to a declaration of trust. The Fund is authorized to issue an unlimited number of redeemable, transferable units (the “Units”), each of which represents an equal undivided beneficial interest in the net assets of the Fund. The Trustee will act as the trustee of the Fund and Scotia Capital will act as administrator. The holder of units of the Fund will be the Counterparty. The Fund will be established for the purpose of acquiring the Royalty Trust Portfolio.
8. The Prospectus included an audited balance sheet of the Filer as at November 29, 2004.
9. The Filer is an inactive company, the sole purpose of which is to provide a vehicle through which different investment objectives with respect to participation in the Royalty Trust Portfolio may be satisfied.

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10. The benefit derived from the security holders of the Filer from receiving the Initial Financial Statements would be minimal in view of: (i) the short operating period (i.e. 17 days) from the date of the Prospectus to December 16, 2004; (ii) the minimal nature of business carried on by the Filer; and (iii) the fact that such financial statements will be filed and available on SEDAR.
11. The expense to the Filer of sending to its security holders the Initial Financial Statements would not be justified in view of the benefit derived by the security holders from receiving such statements.
12. It would not be prejudicial to the public interest for the Decision Makers to grant the Relief Requested.

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 Requested Relief is granted provided that:

- (i) the Filer issue, and file on SEDAR, a press release informing its shareholders of their right to receive the Initial Financial Statements upon request; and
- (ii) the Filer send a copy of the Initial Financial Statements to any shareholder of the Filer who so requests.

Paul M. Moore
Vice Chair

David L. Knight
Commissioner