

# 2006 BCSECCOM 560

August 31, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The securities that are being issued will only be outstanding for a short period of time before they are redeemed for other securities; the original securities are being issued for tax reasons only, not so the shareholders continue to have an interest in the issuer; the securityholders will not retain any securities of the issuer following the arrangement or reorganization

## Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

Form 51-102F5, s. 14.2

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

and

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

and

In the Matter of  
the Data Group Income Fund

## MRRS Decision Document

## Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application of The Data Group Income Fund (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Filer be exempt from the requirements of Section 14.2 of Form 51-102F5 – Information Circular of National Instrument 51-102 – Continuous Disclosure Obligations to include the following financial statements in the Filer’s management information circular (the “Circular”)

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prepared in connection with the special meeting (the “Meeting”) of the Filer’s unitholders (the “Unitholders”) to consider and approve the Arrangement (as defined below):

- (a) financial statements of Newco, DBFL, Data Partnership, Amalco, GPCo and Amalco-DBFL (all as defined below and referred to herein collectively as the “Data Entities”), and
  - (b) financial statements in respect of a probable significant acquisition of the Business (as defined below) by Data Partnership and Newco
- (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 Filer:

1. The Filer is a limited purpose trust established under the laws of Ontario pursuant to a declaration of trust dated November 15, 2004, as amended and restated on December 14, 2004. The Filer is authorized to issue an unlimited number of units (the “Units”). As of August 28, 2006, 14,861,333 Units were issued and outstanding.
2. The Filer completed its initial public offering on December 21, 2004 pursuant to a long form prospectus dated December 14, 2004.
3. The Filer is a reporting issuer in each of the Jurisdictions and in the Province of Prince Edward Island and is not in default of any of its obligations under the Legislation.
4. The Filer holds all of the voting common shares and the subordinated notes issued by Data Business Forms Limited (“DBFL”), an Ontario corporation,

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which carries on the business of providing document management solutions and printing products (the “Business”) in Canada.

5. On March 31, 2005, the Filer obtained exemptive relief from the Decision Makers in the Province of Prince Edward Island and in the Jurisdictions other than Nunavut and Yukon Territory from the requirement to file and send to Unitholders annual audited financial statements for the stub period from December 14, 2004 to December 31, 2004 on the condition that the Filer file in those Jurisdictions a balance sheet for the Filer as at December 31, 2004, together with an auditor’s report thereon, and unaudited consolidated financial statements of the Filer as at and for the period from December 21, 2004 to March 31, 2005.
6. It is proposed that the Filer’s present organizational structure undergo an internal reorganization by way of plan of arrangement (the “Arrangement”) to replace DBFL with a new operating limited partnership (the “Data Partnership”) to carry on the Business. The limited partnership interest in the Data Partnership will be directly owned by the Filer. The general partnership interest in the Data Partnership will be owned by a corporation, all the shares of which are owned by the Filer.
7. The Filer has scheduled the Meeting to approve the Arrangement for September 27, 2006.
8. The Arrangement will occur on a tax-deferred basis for the Filer and its Unitholders. After giving effect to the Arrangement, the interests of the Filer in the assets of the Data Partnership and its general partner and in the Business will be the same as the interests that the Filer held in DBFL and the Business immediately prior to the Arrangement.
9. Prior to the Arrangement, the Filer and DBFL will undertake a number of pre-Arrangement steps:
  - (a) the Filer will incorporate a wholly-owned subsidiary corporation (“GPCo”) under the *Business Corporations Act* (Ontario) and subscribe for one common share of GPCo;
  - (b) DBFL and GPCo will form the Data Partnership with GPCo as the sole general partner and DBFL as the sole limited partner of the Data Partnership; and
  - (c) the Filer will incorporate an additional wholly-owned subsidiary corporation under the OBCA (“Newco”) and subscribe for one common

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share of Newco. Newco will be authorized to issue an unlimited number of common shares, an unlimited number of non-voting, redeemable, retractable Class A shares ("Class A Shares") and an unlimited number of non-voting, redeemable, retractable Class B shares ("Class B Shares").

10. The following steps will occur as part of the Arrangement:

- (a) the Filer will subscribe for that number of Class A Shares equal to the total number of Units outstanding at 5:00 p.m. (Toronto time) on the last business day prior to the effective date of the Arrangement. The Filer will then distribute to its Unitholders those Class A Shares on a *pro rata* basis, as a return of capital;
- (b) all of the operating assets of DBFL will be transferred to the Data Partnership for consideration of limited partnership units of Data Partnership (the "LP Units") and the assumption by Data Partnership of all of the liabilities of DBFL other than the outstanding subordinated notes of DBFL (the "DBFL Notes");
- (c) the Filer will transfer all of the common shares of DBFL (the "DBFL Shares") and the DBFL Notes to Newco in exchange for Class B Shares;
- (d) the stated capital of DBFL will be reduced to \$1;
- (e) Newco will amalgamate with DBFL to form "Amalco";
- (f) the Filer will acquire from Amalco the LP Units in exchange for that number of Units having a fair market value equal to the value of the LP Units;
- (g) Amalco will subscribe for Units with the Class A Share subscription proceeds received in step (a);
- (h) the Class A Shares distributed to Unitholders and the Class B Shares held by the Filer will be redeemed by Amalco in exchange for that number of Units of the Filer having a fair market value equal to the respective redemption amounts;
- (i) the Units received by the Filer upon the redemption of the Class B Shares in the preceding step will be cancelled by the Filer upon receipt and the Units received by Unitholders upon the redemption of the Class A Shares in the preceding step and will be automatically consolidated such that the total number of outstanding Units upon completion of the Arrangement

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will be equal to the total number of Units outstanding immediately prior to the Arrangement; and

- (j) Amalco and GPCo will amalgamate to form “Amalco-DBFL”.
- 11. Neither the number of issued and outstanding Units nor the relative holdings of Units by any Unitholder will be altered as a result of the completion of the Arrangement.
- 12. The Class A Shares and additional Units distributed to Unitholders will be outstanding for an instant in time on the date of the Arrangement prior to their automatic redemption and consolidation, respectively.
- 13. The Filer’s audited financial statements for the year ended December 31, 2005 and related management’s discussion and analysis of financial condition and results of operations (“MD&A”), interim unaudited financial statements for the six months ended June 30, 2006 and related MD&A, annual information form (“AIF”) and any material change reports since the date of the AIF, and any applicable business acquisition report of the Filer (collectively, the “CD Documents”) will be incorporated by reference in the Circular.
- 14. The Circular will contain information sufficient to enable a reasonable securityholder to form a reasoned judgment concerning the nature and effect of the Arrangement. To that end, prospectus level disclosure for the Filer as prescribed by National Instrument 44-101 – Short Form Prospectus Distributions, including the applicable CD Documents, will be included or incorporated by reference in the Circular.
- 15. Prospectus level disclosure for the Data Entities as prescribed by OSC Rule 41-501 – General Prospectus Requirements (“Rule 41-501”) will also be included in the Circular, other than the financial statement disclosure.
- 16. The Arrangement is being undertaken in order to structure the flow of revenues created by the Business and distributed to the Filer by its operating subsidiary on an efficient basis. The Arrangement does not contemplate the acquisition of any additional operating assets or the disposition of any of the Filer’s existing operating assets. The rights of Unitholders in respect of the Filer, and their relative indirect interests in and to the revenues of the Business will not be affected by the Arrangement. Following completion of the Arrangement, Unitholders will continue to hold Units of the Filer and the Filer will continue to directly own all of its existing operating assets. While changes to the Filer’s financial statements will likely be required to reflect the Filer’s organizational structure following the Arrangement, the Filer’s

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financial position will be largely the same as is reflected in the Filer's interim financial statements for the six months ended June 30, 2006, other than the elimination of future income tax liabilities.

17. The distribution of the securities of the Filer and the Data Entities will, in each case, be done solely to enable the Arrangement to be effected in such a manner as to ensure that Unitholders, the Filer and any Filer subsidiaries will be able to make use of available roll-overs under applicable tax legislation, thus preserving the tax-deferred status of the Arrangement.
18. Newco, Amalco, GPCo and Amalco-DBFL will not exist at the time of the mailing of the Circular, and consequently there would not be any existing financial information regarding such entities.
19. The Filer's audited financial statements as at and for the period from December 21, 2004 to December 31, 2005, its unaudited interim financial statements as at and for the six months ended June 30, 2006 and its MD&A for the respective periods include the financial results for DBFL on a consolidated basis for the same period and provide sufficient disclosure in respect of DBFL and the Business.
20. The Class A Shares distributed to Unitholders will only be outstanding for a moment in time during the course of the Arrangement. Since additional Units will be transferred to Unitholders as part of the Arrangement (and later consolidated), the relevant financial information for Unitholders will be that of the Filer and not of Newco or any of the other Data Entities.
21. To the extent Data Partnership's proposed acquisition of the operating assets of DBFL may be considered to constitute a significant probable acquisition requiring the acquired business financial disclosure prescribed by Rule 41-501, the relevant financial information of DBFL and the Business will be part of the information contained in the Filer's audited financial statements as at and for the period from December 21, 2004 to December 31, 2005, its unaudited interim financial statements as at and for the six months ended June 30, 2006 and its MD&A for the respective periods already incorporated by reference into the Circular.

### **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 provided that:

- (a) the Filer complies with all other requirements of the Legislation applicable to the Circular; and
- (b) the CD Documents are incorporated by reference into the Circular.

Iva Vranic  
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Ontario Securities Commission