

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the requirement to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus with respect to securities issued pursuant to a distribution reinvestment and optional trust unit purchase plan – Relief for first trades of additional trust units, subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S 5, as amended, ss. 25, 53, 74(1).

Instruments Cited

Multilateral Instrument 45-102 Resale of Securities, s.2.6.

April 29, 2005

In the Matter
of the Securities Legislation
of Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador and Prince Edward
Island (the Jurisdictions)

and

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

and

In The Matter of Eveready Income Fund (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) for an exemption from the dealer registration requirement and the prospectus requirements of the Legislation (the Requested Relief) with respect to certain trades in fund units of the Filer pursuant to a distribution reinvestment plan (the Plan);

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of the Decision Makers.

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 an unincorporated, open-ended, mutual fund trust established under the laws of the Province of Alberta pursuant to a declaration of trust dated August 18, 2004, as amended and restated as of March 31, 2005.
2. The beneficial interests in the Filer are divided into interests of one class, described and designated as "Fund Units". The Filer is authorized to issue an unlimited number of Fund Units, of which 12,130,616 are issued and outstanding as of April 20, 2005.
3. The Filer became a reporting issuer or the equivalent in Alberta and British Columbia on September 30, 2004 upon the completion of a plan of arrangement (the First Arrangement) involving, among others, River Valley Energy Services Ltd. (RV Corp.).
4. RV Corp. was a reporting issuer in Alberta and British Columbia at the time of the First Arrangement. RV Corp. has since ceased to be a reporting issuer in both Alberta and British Columbia.
5. The Filer completed a second plan of arrangement (the Second Arrangement) on March 31, 2005 involving, among others, Eveready Industrial Group Ltd. (Eveready). Pursuant to the Second Arrangement, the Filer acquired all of the outstanding shares of Eveready in exchange for Fund Units and limited partnership units of a subsidiary of the Filer. The transaction was effectively a reverse take-over of the Filer by Eveready. The information circular of the Filer dated February 24, 2005 provided to Unitholders and filed on SEDAR contained prospectus level disclosure on each of the Filer and Eveready. Pursuant to the Second Arrangement, the Filer changed its name from River Valley Income Fund to Eveready Income Fund.
6. To the best of the knowledge of the Filer, the Filer is current on all filings required to be made under the Legislation.
7. The Fund Units are currently listed and posted for trading on the TSX Venture Exchange under the symbol "EIS.UN". The Filer has submitted an application to list the Fund Units on the Toronto Stock Exchange.
8. The Filer anticipates making cash distributions of a proportionate share of its annual distributable cash flow (Distributions) periodically to the unitholders of record (Unitholders) on the last business day of each period as may be selected or determined by the trustees of the Filer from time to time (each, a Record Date) with such distributions being payable on or about the 15th of the month immediately following the expiry of the applicable period or such other date as may be determined from time to time by the trustees (each, a Distribution Date).

9. The Filer has adopted the Plan which, subject to obtaining all necessary regulatory approvals, will permit Unitholders who are not "non residents" within the meaning of the Income Tax Act (Canada) and the regulations thereunder, at their option, to reinvest Distributions by electing to purchase additional Fund Units (Plan Units) pursuant to the Plan and in accordance with a distribution reinvestment plan services agreement between the Filer and Computershare Trust Company of Canada in its capacity as agent under the Plan (the Plan Agent). Unitholders who cannot or do not elect to purchase Plan Units pursuant to the Plan will continue to receive cash Distributions.

10. A registered holder of Fund Units may elect to participate in the Plan by completing an authorization form and sending it to the Plan Agent. Beneficial owners of Fund Units may elect to participate in the Plan by notifying the Plan Agent via the applicable participant (CDS Participant) in the Canadian Depository for Securities Limited (CDS) depository service.

11. Distributions due to participants in the Plan (Plan Participants) will be paid to the Plan Agent and applied to purchase Plan Units directly from the Filer.

12. The price of Plan Units purchased with Distributions will be 95% of the volume weighted average price of all Fund Units traded on the exchange upon which the Fund Units are then listed for trading on the ten (10) days preceding such Distribution Date on which there was trading in the Fund Units of the Filer.

13. Plan Participants who beneficially own their Fund Units through a CDS Participant may terminate their participation in the Plan by written notice to their CDS Participant, who will in turn notify CDS. CDS will notify the Plan Agent each period of the number of Fund Units participating in the Plan through CDS. Registered Unitholders may terminate their participation in the Plan by written notice to the Plan Agent.

14. No commissions or brokerage fees will be payable on the purchase of Plan Units and administrative costs will be borne by the Filer.

15. The Filer reserves the right to suspend or terminate the Plan at any time, in its sole discretion, upon not less than 30 days' notice to (i) the Plan Participants who are registered Unitholders, (ii) CDS and (iii) the Plan Agent.

16. Subject to the approval of the exchange upon which the Fund Units are then listed, the Filer may amend the Plan at any time and may, in consultation with the Plan Agent, adopt additional rules and regulations to facilitate the administration of the Plan.

17. The distribution of the Plan Units by the Filer pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation for the reinvestment of dividends, interest or distributions of capital gains, earnings or surplus, as the Plan involves the reinvestment of Distributions of all distributable cash flow of the Filer which may not fall into any of these categories.

18. Additionally, the distribution of Plan Units by the Filer pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation for the reinvestment plans of mutual funds as the Filer is not a "mutual fund" within the definition in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the Filer.

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:

(a) at the time of the trade, the Filer is a reporting issuer (or the equivalent) not in default in a jurisdiction listed in Appendix B to Multilateral Instrument 45-102 Resale of Securities (MI 45-102);

(b) no sales charge is payable in respect of the distributions of Plan Units from treasury;

(c) the Filer has caused to be sent to the person or company to whom the Plan Units are traded, not more than twelve (12) months before the trade, a statement describing:

(i) their right to withdraw from the Plan and to make an election to receive cash instead of Plan Units on the making of a distribution by the Filer; and

(ii) instructions on how to exercise the right referred to in (i);

(d) except in Québec, the first trade in Plan Units acquired pursuant to this Decision will be a distribution or primary distribution to the public under the Legislation unless the conditions of subsection 2.6(3) of MI 45-102 are satisfied; and

(e) in Québec, the first trade (alienation) in Plan Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless:

(i) the Filer is and has been a reporting issuer in Québec for the four (4) months preceding the alienation;

(ii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation;

(iii) no extraordinary commission or other consideration is paid in respect of the alienation; and

(iv) if the seller of the securities is an insider of the Filer, the seller has no reasonable grounds to believe that the Filer is in default of any requirement of the Legislation.

Notwithstanding the foregoing, the first trade (alienation) of Plan Units can occur without a prospectus or an exemption from the prospectus requirements of the Legislation if such trade is made outside of Québec through an exchange or organized market, provided that the Filer is not a reporting issuer in Québec.

"Robert L. Shirriff", Q.C.
Commissioner
Ontario Securities Commission

"Robert W. Davis", FCA
Commissioner
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