

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, MANITOBA AND ONTARIO**

AND

**IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR
EXEMPTIVE RELIEF APPLICATIONS**

AND

**IN THE MATTER OF
BANFIELD CAPITAL MANAGEMENT INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba and Ontario (the "Jurisdictions") has received an application from Banfield Capital Management Inc. (the "Filer"), the investment manager of BCM Arbitrage Fund (the "Partnership"):

A. for a decision under the securities legislation and securities directions of the Jurisdictions (the "Legislation") that:

(i) certain trades in Additional Units (as defined below) of the Partnership, or of other limited partnerships or pooled fund trusts to be established and managed by the Filer (the "Other Funds"), to existing holders of units ("Units") in the Partnership and Other Funds are not subject to the dealer registration requirement and prospectus requirement; and

(ii) trades in Units of the Partnership or Other Funds, except in Manitoba, are not subject to certain of the reporting requirements in the applicable Legislation, subject to certain conditions; and

B. for an order of the Ontario Securities Commission under to section 233 of the Regulation made under the *Securities Act* (Ontario), R.R.O. 1990, Regulation 1015, as amended (the "Regulation") exempting the Filer from clause 224(1)(a) and sections 223, 226, 227 and 228 of the Regulation in respect of distributions of the units of the Partnership or Other Funds, subject to certain conditions;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. The Filer is a corporation incorporated under the laws of the Province of Ontario for the purpose of engaging in the business of advising others as to the investing in or buying or selling of securities.
2. The Filer's head office is located in Ontario.
3. The Filer has been engaged to provide investment advisory services to the Partnership and is responsible for the investment management of the Partnership's assets.
4. The Partnership was formed under the laws of Ontario by filing a Declaration of Limited Partnership under the *Limited Partnerships Act* (Ontario) on May 8, 1997.
5. BCM General Partner Ltd., a corporation incorporated under the laws of the Province of Ontario, is the general partner of the Partnership and is responsible for the administrative management of the Partnership on a day-to-day basis. BCM General Partner Ltd. is an affiliate of the Filer.
6. Other than in Ontario, where the Filer is registered as an adviser in the categories of "investment counsel" and "portfolio manager" and as a dealer in the category of "limited market dealer", the Filer is not registered as an adviser or dealer in any of the Jurisdictions.
7. In order to service its discretionary account clients, the Filer makes available Units of the Partnership and may make available from time to time, Units of Other Funds. The Filer will be responsible for the investment management of the assets of the Other Funds.
8. The Filer coordinates the distribution of Units of the Partnership and will co-ordinate the distribution of Units of the Other Funds. Units of the Partnership and the Other Funds will be distributed on a continuous basis and will be offered to residents in the Jurisdictions.
9. None of the Partnership or the Other Funds is or expects to become a "reporting issuer" (or equivalent) as such term is defined in the applicable Legislation.
10. The Partnership is, and each of the Other Funds will be, required by its constating document to deliver to holders of its Units ("Unitholders") annual audited financial statements.
11. Units of the Partnership and the Other Funds will not be offered by a prospectus. However, an offering memorandum containing rights of action and rescission as required under the applicable Legislation will be delivered to prospective investors in respect of the Partnership and the Other Funds.
12. The assets in the Partnership or Other Funds will be invested from time to time based on objectives, policies, and restrictions of each of the Partnership or Other Funds as described in the offering memorandum delivered to prospective investors in respect of the Partnership and Other Funds.

13. Units of the Partnership are not, and Units of the Other Funds may not be, redeemable upon demand by a Unitholder but, if a redemption request is made and is approved by BCM General Partner Ltd. (or in the case of the Other Funds, by the manager or general partner, as may be the case), Units would be redeemed at their net asset value on a valuation date determined in accordance with the limited partnership agreement or the trust agreement, as the case may be, of each of the Partnership and the Other Funds. The Partnership has and the Other Funds may have, additional restrictions on the right to redeem.

14. The minimum initial investment (the "Initial Investment") in Units of the Partnership or Other Funds by an investor will not be less than \$150,000 in Ontario and \$97,000 in Alberta, British Columbia and Manitoba (the "Prescribed Amount").

15. The Initial Investment will be made in reliance upon the registration and prospectus exemptions contained in the applicable Legislation.

16. Following an Initial Investment in the Partnership or Other Funds by an investor, it is proposed that Unitholders be permitted to acquire additional Units (the "Additional Units") of the Partnership or Other Funds with an aggregate acquisition cost that is less than the Prescribed Amount by subscribing and paying for Additional Units.

17. The Partnership and each of the Other Funds is subject to the reporting requirements contained in the applicable Legislation (the "Report Filing Requirements") pursuant to which it must file a report of an Initial Investment within 10 days of each such trade.

18. The Filer acts in a similar capacity with respect to the Units and Additional Units as does a mutual fund dealer or fully registered dealer with respect to associated mutual fund securities.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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:

A. The prospectus requirement and dealer registration requirement do not apply to the purchase of Additional Units provided that:

(a) this Decision, as it relates to the jurisdiction of a Decision Maker, shall terminate 90 days after the publication in final form of any legislation or rule of that Decision Maker regarding trades in securities of pooled funds;

(b) at the time of the acquisition of Additional Units of the Partnership or such Other Fund, the Unitholder who made the Initial Investment in the Partnership or such Other Fund of at least the Prescribed Amount then owns Units of the

Partnership or such Other Fund, as the case may be, having an aggregate purchase price or net asset value of not less than the Prescribed Amount;

(c) at the time of the acquisition of Additional Units of the Partnership or such Other Fund, the Filer or any party assisting the Filer in selling the Units, where required under the applicable Legislation, is registered under the applicable Legislation as a dealer in the appropriate category and such registration is in good standing; and

(d) the first trade in Additional Units acquired pursuant to this Decision Document shall be a distribution under the Legislation of the Jurisdiction in which the trade takes place (the "Local Jurisdiction"), unless otherwise exempt from the Legislation of the Local Jurisdiction or unless such first trade is made in the following circumstances.

(i) the Partnership or such Other Fund, as the case may be, is a reporting issuer or its equivalent under the Local Jurisdiction;

(ii) if the seller of the Additional Units is in a special relationship (where such expression is defined in the Legislation of the Local Jurisdiction) with the Partnership or such Other Fund, the seller has reasonable grounds to believe that the Partnership or such Other Fund is not in default under the Legislation of the Local Jurisdiction;

(iii) no unusual effort is made to prepare the market or to create a demand for the Additional Units and no extraordinary commission or consideration is paid in respect of such first trade; and

(iv) the Additional Units have been held for period of at least eighteen months from the date they were acquired by the seller of the Additional Units or the date the Partnership or Other Fund, as the case may be, became a reporting issuer, whichever is later;

then such first trade is a distribution only if it is a trade made from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of the Partnership or such Other Fund to affect materially the control of the Partnership or such Other Fund, but any holding of any person, company or combination of persons or companies holding more than 20 per cent of the outstanding voting securities of the Partnership or such Other Fund shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the Partnership or such Other Fund.

B. The Report Filing Requirement under the Legislation of each of Alberta, British Columbia and Ontario does not apply to trades in Units of the Partnership or the Other Funds, provided that within 30 days after each financial year end of the Partnership and the Other Funds, as the case may be;

(a) the Filer files a report of trade in accordance with the form requirements prescribed by the respective Decision Maker in respect of trades in Units or Additional Units of the Partnership or the Other Funds, as the case may be, during such financial year, and

(b) the Filer remits the applicable fee on behalf of the Partnership or such Other Funds, as the case may be;

AND WHEREAS the Ontario Securities Commission is satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 233 of the Regulation, that the Filer is exempt from the requirements of clause 224(1)(a) and sections 223, 226 and 228 of the Regulation in respect of distributions of Units and Additional Units of the Funds, provided that the Order shall terminate 90 days after the publication in final form of a rule regarding underwriting conflicts.

AND IT IS FURTHER ORDERED pursuant to section 233 of the Regulation that the Filer is exempt from the requirements of section 227 of the Regulation in respect of distributions of Units and Additional Units of the Funds, provided that the Filer, before acquiring discretionary authority, secures the specific and informed written consent of the client to the exercise of the discretionary authority in respect of the Units of the Funds.

DATED at Toronto, this 19th day of June, 2000.

"Howard I. Wetson"
Howard I. Wetson

"Stephen N. Adams"
Stephen N. Adams

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - trades by pooled funds of additional units to existing Unitholders exempted from the dealer registration and prospectus requirements - trades in units of pooled funds exempt from requirement to file a report of such trade within 10 days of the trade provided that reports be filed and fees paid yearly - relief granted from certain conflict of interest provisions, subject to certain conditions.

Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 1(1), 25, 35(1), 53, 72(1)(d), 72(3), 74(1), and 147.

Applicable Ontario Regulations

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 223, 224(1)(a), 226, 227, 228 and 233.

Applicable Ontario Rules

Ontario Securities Commission Rule 45-501 Exempt Distributions (1998), 22 OSCB 127.