

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements granted in connection with an arrangement where exemptions not available for technical reasons. First trade of securities acquired deemed a distribution unless certain conditions in Multilateral Instrument 45-102 *Resale of Securities* are satisfied;

Applicable Alberta Provisions

Securities Act, R.S.A., 2000, c.S-4, s.144

IN THE MATTER OF THE SECURITIES LEGISLATION
OF ALBERTA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR,
THE NORTHWEST TERRITORIES, NOVA SCOTIA, NUNAVUT, ONTARIO, PRINCE
EDWARD ISLAND, QUÈBEC, SASKATCHEWAN AND THE YUKON TERRITORY

AND

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

AND

IN THE MATTER OF
PARKLAND INCOME FUND, PARKLAND INVESTMENT TRUST AND PARKLAND
HOLDINGS LIMITED PARTNERSHIP

MRRS DECISION DOCUMENT

1. WHEREAS the Canadian securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory (the “Jurisdictions”) has received an application from Parkland Income Fund (the “Fund”), Parkland Investment Trust (the “Trust”) and Parkland Holdings Limited Partnership (“Holdings LP”) for a decision under the securities legislation (the “Legislation”) of the Jurisdictions that the requirements under the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”), shall not apply in respect of certain trades and distributions of securities to be made in connection with a plan of arrangement (the “Arrangement”) under section 193 of the *Business Corporations Act* (Alberta) (the “Business Corporations Act”) involving Parkland Industries Ltd. (“Parkland”) and the shareholders (the “Shareholders”) of Parkland and certain trades relating to securities issued in connection therewith;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (the “System”), the Alberta Securities Commission is the principal regulator for the application;
3. AND WHEREAS the Fund, the Trust and Holdings LP have represented to the Decision Makers that:

- 3.1 Parkland is a corporation incorporated under the Business Corporations Act. It is engaged in the transportation fuels marketing business, including retail and wholesale sale of gasoline, and the operation of convenience stores in western Canada;
- 3.2 the authorized capital of Parkland consists of an unlimited number of common shares (“Parkland Shares”) in the capital of Parkland and preferred shares. As of May 9, 2002 there was an aggregate of 5,042,488 Parkland Shares issued and outstanding or reserved for issuance on the exercise of stock options. It is anticipated that all options to acquire Parkland Shares will be exercised on or before the effective date (the “Effective Date”) of the Arrangement;
- 3.3 the Parkland Shares are presently listed on the Toronto Stock Exchange (the “TSX”) and Parkland is a reporting issuer (or the equivalent) in each of British Columbia, Alberta, Saskatchewan and Ontario. Following the Effective Date, the Parkland Shares will be delisted from the TSX and Parkland will apply to cease to be a reporting issuer, where applicable;
- 3.4 the Fund is an open-ended, limited purpose trust formed under the laws of the Province of Alberta pursuant to a declaration of trust (the “Fund Declaration of Trust”) dated April 30, 2002. The Fund was formed in order to hold the securities of the Trust;
- 3.5 the Fund was established with nominal capitalization and currently has only nominal assets (including its interest in the Trust, the trustee of the Trust and the general partner of Holdings LP) and no liabilities. The only activity currently anticipated to be carried on by the Fund will be the holding of securities of the Trust, the trustee of the Trust and the general partner of Holdings LP;
- 3.6 the Fund is authorized to issue an unlimited number of units (“Units”);
- 3.7 Units are redeemable at any time on demand by the holders thereof. In certain instances such a redemption may be paid and satisfied by way of, at the option of the Fund, the issuance of notes (“Fund Notes”) of the Fund or a distribution in specie of a number of securities of the Trust held by the Fund and any other assets of the Fund;
- 3.8 the Fund has received conditional approval from the TSX for the listing on the TSX of the Units issuable in connection with the Arrangement and the Exchange (as defined below);
- 3.9 the Trust is an open-ended, limited purpose trust formed under the laws of the Province of Alberta pursuant to a declaration of trust (the “Trust Declaration of Trust”) dated April 30, 2002. The Trust was formed in order to hold securities of Holdings LP;
- 3.10 the Trust was established with nominal capitalization and currently has only nominal assets (including its interest in Holdings LP) and no liabilities. The only activity currently anticipated to be carried on by the Trust will be the holding of securities of Holdings LP;

- 3.11 the Trust is authorized to issue an unlimited number of units (the "Trust Units"). As of the date hereof, there was one Trust Unit issued and outstanding and that Trust Unit is owned by the Fund;
- 3.12 Trust Units are redeemable at any time on demand by the holders thereof. In certain instances such a redemption may be paid and satisfied by way of, at the option of the Trust, the issuance of notes ("Trust Notes") of the Trust or a distribution in specie of a number of securities of Holdings LP held by the Trust and any other assets of the Trust;
- 3.13 the Trust is not a reporting issuer (or equivalent) in any of the Jurisdictions;
- 3.14 Holdings LP is a limited partnership formed under the laws of the Province of Alberta by a limited partnership agreement (the "Limited Partnership Agreement") dated as of April 30, 2002;
- 3.15 Holdings LP was formed with nominal capitalization and currently has only nominal assets and no liabilities. The only activity currently anticipated to be carried on by Holdings LP will be the holding of Parkland Shares, directly or indirectly, and securities of a limited partnership that is currently a subsidiary of Parkland;
- 3.16 Holdings LP is authorized to issue an unlimited number of each of two classes of limited partnership units: "Holdings LP Units" and "Rollover LP Units". The Trust holds all of the Holdings LP Units;
- 3.17 "Holdings Notes" are promissory notes to be issued by Holdings LP to certain Shareholders in connection with the Arrangement;
- 3.18 Holdings LP is not a reporting issuer (or equivalent) in any of the Jurisdictions.
- 3.19 the Arrangement will require the prior approval of (i) two-thirds of the votes cast by Shareholders present in person or by proxy at the Meeting on a resolution to approve the Arrangement and (ii) the Alberta Court of Queen's Bench;
- 3.20 a notice of special meeting and management information circular has been prepared in conformity with the provisions of Business Corporations Act and applicable securities laws and an interim order granted by the Alberta Court of Queen's Bench and contains prospectus-level disclosure of the business and affairs of Parkland and the Fund and a detailed description of the particulars of the Arrangement and the securities to be issued in connection therewith;
- 3.21 on the Arrangement becoming effective and in accordance with the terms of the Arrangement:
 - 3.21.1 the outstanding Parkland Shares (except those held by Holding Companies (as defined below)) and the shares of certain holding corporations ("Holding Companies") which will be transferred to Holdings LP as part of the Arrangement in lieu of the transfer of Parkland Shares will be transferred to Holdings LP in exchange for Holdings Notes or Rollover LP Units;

- 3.21.2 all such Holdings Notes will be exchanged with the Trust for Trust Units and Trust Notes;
 - 3.21.3 all such Trust Units and Trust Notes will be exchanged with the Fund for Units;
 - 3.21.4 all of the Parkland Shares and shares of Holding Companies will be transferred by Holdings LP to 988386 Alberta Ltd. (“Acquisitionco”), a wholly-owned subsidiary of Holdings LP, in exchange for notes and shares of Acquisitionco;
 - 3.21.5 Holdings LP will issue Holdings LP Units to the Trust in exchange for the issuance to Holdings LP by the Trust of Trust Notes; and
 - 3.21.6 the Trust will redeem the Holdings Notes and Holdings LP will redeem the Trust Notes.
- 3.22 upon the completion of the Arrangement, all of the issued and outstanding Parkland Shares will be held, indirectly, by Holdings LP;
- 3.23 the Rollover LP Units are intended to be, to the greatest extent practicable, the economic equivalent of Units of the Fund and are exchangeable pursuant to the Exchange Agreement (as hereinafter defined) at any time at the option of the holder until June 30, 2008 for Trust Units and Trust Notes in a specified ratio, which Trust Units and Trust Notes will be immediately and automatically exchanged for Units with the result that each Rollover LP Unit is indirectly exchangeable for one Unit. Holdings LP may compel such exchange in certain circumstances, including at any time after June 30, 2008. In certain other circumstances, the Rollover LP Units are to be automatically exchanged on the same basis;
- 3.24 the Limited Partnership Agreement provides that the Rollover LP Units will generally not be (except as required by the Limited Partnership Agreement or by applicable law) entitled to receive notice of or attend any meeting of the partners of Holdings LP, but pursuant to the Fund Declaration of Trust will be entitled to receive notice of and attend any meeting of holders of Units and to one vote at such meeting in respect of each Unit for which such Rollover LP Units are exchangeable. Each Rollover LP Unit will entitle the holder to distributions from Holdings LP payable at the same time as, and equivalent to, each distribution paid by the Fund on a Unit. On the liquidation, dissolution or winding-up of Holdings LP, a holder of Rollover LP Units will be entitled to receive from Holdings LP an amount equal to all declared and unpaid distributions on each such Rollover LP Unit held by the holder on any distribution record date prior to the date of liquidation, dissolution or winding-up but will not otherwise be entitled to participate in a distribution of the assets of Holdings LP. Rollover LP Units may only be transferred in certain limited circumstances. The Limited Partnership Agreement has certain standard anti-dilution provisions;
- 3.25 concurrently with the effective time of the Arrangement, the Fund, the Trust, Holdings LP and all of the holders of which will enter into an agreement (the “Exchange Agreement”) pursuant to which:

- 3.25.1 the Fund and the Trust will grant to each holder of Rollover LP Units the right (the "Exchange Right") to exchange all or any portion of the Rollover LP Units held by them for Units on the basis of one Unit for each one Rollover LP Unit exchanged, subject to adjustment, at any time until June 30, 2008;
 - 3.25.2 each Unitholder will grant to the Fund and the Trust the right (the "Call Right") to exchange all, but not less than all, of the Rollover LP Units held by them for Units on the basis of one Unit for each one Rollover LP Unit exchanged, subject to adjustment, at any time after June 30, 2008 and in certain other stated events; and
 - 3.25.3 the parties will agree that in certain stated events, the Rollover LP Units will be automatically exchanged (the "Automatic Exchange") for Units on the basis of one Unit for each one Rollover LP Unit exchanged, subject to adjustment;
- 3.26 the Exchange Agreement provides that (i) on exercise of the Exchange Right by a holder of Rollover LP Units, (ii) on exercise of the Call Right by the Fund and the Trust, and (iii) on an Automatic Exchange, the following shall occur, and be deemed to occur, automatically in the following order without any further act or formality:
- 3.26.1 all of outstanding Rollover LP Units shall be transferred to the Trust;
 - 3.26.2 in exchange therefor, Trust Units and Trust Notes shall be issued by the Trust to the holders of Rollover LP Units on the basis of one Trust Unit and one Trust Note for each one Rollover LP Unit;
 - 3.26.3 such Trust Units and Trust Notes shall be transferred to the Fund; and
 - 3.26.4 in exchange therefor, Units shall be issued by the Fund to the holders of Rollover LP Units in such amount as the holders of Rollover LP Units are entitled on exercise of the Exchange Right or the Call Right or on an Automatic Exchange, as the case may be.
- 3.27 the steps under the Arrangement, the exercise of the Exchange Right and the Call Right, an Automatic Exchange pursuant to the Exchange Agreement, and the redemption of Units pursuant to the Fund Declaration of Trust or Trust Units pursuant to the Trust Declaration of Trust involve a number of trades ("Trades"), each of which will or may occur;
- 3.28 there may be no exemptions from the Registration Requirement and the Prospectus Requirement available under the Legislation for certain of the Trades;
4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");
 5. 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;

6. THE DECISION of the Decision Makers under the Legislation is that:

6.1 the Registration Requirement and the Prospectus Requirement shall not apply to the Trades; and

6.2 the first trade in Rollover LP Units, the first trade of Units acquired under the Decision, on the exercise of the Exchange Right or the Call Right or on the Automatic Exchange and the first trade in securities issued or transferred by the Fund or the Trust on the redemption of, respectively, Units or Trust Units shall be deemed to be a distribution or a primary distribution to the public, unless:

6.2.1 except in Quèbec, the conditions is subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 Resale of Securities (“MI 45-102”) are satisfied, except that for the purposes of determining the period of time that the Fund has been a reporting issuer under section 2.6 of MI 45-102 the period of time that Parkland was a reporting issuer immediately before the Arrangement may be included; and

6.2.1.1 in Quèbec,

6.2.1.1.1 the alienation of such Rollover LP Units or Units is made on an organized market outside of Québec or upon the Fund becoming a reporting issuer in Québec and having, or being deemed to have, complied with the appropriate requirements for more than 12 months immediately preceding the trade;

6.2.1.1.2 no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

6.2.1.1.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

6.2.1.1.4 if the selling shareholder is an insider or officer of the issuer, the selling shareholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

Dated this 4th day of July, 2002

“original signed by”

Glenda A. Campbell, Q.C., Vice-Chair

“original signed by”

Eric T. Spink, Vice-Chair