

## Headnote

NP 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief from the illiquid investment restriction in 2.4(1) of NI 81-102 – the mutual fund is a fund established to hold assets rolled over from flow through LPs. The LPs were not restricted from holding illiquid assets. The LPS held more than 10% of their assets in illiquid assets.

## Applicable Legislative Provisions

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*  
National Instrument 81-102 *Mutual Funds*, s. 2.4(1) and 19.1

**Citation: EnerVest Natural Resource Fund Ltd., Re, 2009 ABASC 300      Date: 20090625**

In the Matter of  
the Securities Legislation of  
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Application in Multiple Jurisdictions

and

In the Matter of  
EnerVest Funds Management Inc. (the **Filer**)

## Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the restriction contained in section 2.4(1) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) with respect to the purchase of illiquid assets by EnerVest Natural Resource Fund Ltd. (the **Fund**) from EnerVest FTS Limited Partnership 2007 (**FTS 2007 LP**) and EnerVest FTS Limited Partnership 2007 II (**FTS 2007 II LP**) (collectively, the **2007 FTS LPs**) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward

Island, Newfoundland and Labrador, Yukon, Nunavut and Northwest Territories,  
and

- (c) the Decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this Decision, unless they are otherwise defined.

### **Representations**

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

1. The Filer is a corporation incorporated under the laws of the Province of Alberta. The Fund is a mutual fund corporation incorporated under the laws of Alberta. The Filer is the manager of the Fund.
2. The securities of the Fund are sold pursuant to a prospectus filed in each of the provinces and territories of Canada. The Fund is a reporting issuer in each of the Jurisdictions where such status exists and is not in default of its obligations as a reporting issuer.
3. The Filer is the manager of the Fund and holds all of the issued common shares of the Fund. The head office of the Filer is located in Alberta.
4. The investment objective of the Fund is to provide superior capital appreciation by investing primarily in equity securities of Canadian companies engaged in exploration, development or production of natural resources or companies which support those industries or activities.
5. The Filer is a wholly-owned subsidiary of EnerVest Management Ltd. (**EML**). EML is the promoter of certain flow-through limited partnerships, including the 2007 FTS LPs and EnerVest FTS Limited Partnership 2008 (collectively, the **Current EnerVest LPs**), and may be the promoter of future limited partnerships established by the Filer or its affiliates (together with the Current EnerVest LPs, the **EnerVest LPs**) the securities of which have been and will be sold to investors resident in various Canadian jurisdictions pursuant to a prospectus filed with applicable securities regulatory authorities in the applicable jurisdiction(s). The EnerVest LPs are established for a fixed term. There is no market for the securities of the EnerVest LPs.
6. In general, the investment objective of each EnerVest LP is or will be to provide limited partners with a tax-assisted investment in a diversified portfolio of common shares and warrants convertible into common shares of resources companies involved in oil and gas or mineral exploration, development and/or production in Canada or certain energy production that may incur Canadian renewable and conservation expense with a view to achieving capital appreciation for limited partners.

7. The Fund participates in transactions which involve a transfer of the investment portfolio of the EnerVest LPs to the Fund on a tax-deferred basis in exchange for redeemable mutual fund shares of the Fund (a **Rollover Transaction**). Upon completion of a Rollover Transaction and the subsequent dissolution of the EnerVest LP, the redeemable mutual fund shares of the Fund received by the EnerVest LP in exchange for the investment portfolio of the EnerVest LP are distributed to limited partners of the EnerVest LP on a pro rata basis and the limited partners become shareholders of the Fund. The Rollover Transactions are intended to provide investors in the EnerVest LPs with enhanced liquidity and the potential for long-term growth of capital.
8. The respective Rollover Transactions involving the 2007 FTS LPs are each anticipated to occur on or about June 30, 2009 (the **Pending Rollover Transactions**).
9. Certain of the investments made by the EnerVest LPs will, by their nature, be “illiquid assets”, as defined by NI 81-102, because the EnerVest LPs are permitted to invest up to 20% of their net assets in private companies and other illiquid investments. As a result, upon the completion of a Rollover Transaction by an EnerVest LP to the Fund, the Fund will hold the illiquid assets formerly held by such EnerVest LP.
10. In the absence of the requested relief, the Fund would be prohibited from purchasing the illiquid assets from the 2007 FTS LPs in connection with the Pending Rollover Transactions because after the purchase more than 10% of the net assets of the Fund, taken at market value at the time of the purchase, would consist of illiquid assets.
11. The 2007 EnerVest LPs intend to transfer all of their illiquid assets to the Fund as there is no reasonable probability of selling these securities at full market value immediately prior to the Pending Rollover Transactions, and due to market conditions they have been unable to do so as intended prior to the date of this Decision.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted to the Fund, provided that not more than 15% of the net assets of the Fund, taken at market value at the time of the purchase, would consist of illiquid assets.

*“original signed by”*

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 Agnes Lau, CA  
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