

Headnote

National Policy 11-203 – *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief granted from short form eligibility requirements contained in paragraph 2.2(d) of NI 44-101 – fund has not yet completed full financial year and unable to rely upon new issuer exemption in section 2.7 – fund will file and incorporate by reference audited financial statements – fund will include or incorporate by reference in any short form prospectus disclosure that would have been in an AIF.

Applicable Legislative Provisions

NI 44-101 – s. 2.2(d), 2.7 and 8.1

Citation: Re E Split Corp., 2018 ABASC 165

Date: 20181023

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

and

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

and

In the Matter of
Middlefield Limited (the **Filer**)

and

In the Matter of
E Split Corp. (the **Fund**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting an exemption to the Fund from paragraph 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) to permit the Fund to file a short form prospectus pursuant to NI 44-101 or a shelf prospectus pursuant to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) even though the Fund does not have current annual financial statements or a current AIF (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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each province of Canada, other than Ontario; 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*, National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**), MI 11-102 or NI 44-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Alberta) and its head office is located in Calgary, Alberta.
2. The Filer is registered as an investment fund manager in Alberta, is the manager and promoter of the Fund and will provide administrative services to the Fund.
3. The Filer is not in default of securities legislation in any jurisdiction of Canada.
4. The Fund is a corporation incorporated under the *Business Corporations Act* (Ontario) and is a “mutual fund” as defined in the Legislation.
5. The Fund was incorporated on May 17, 2018. The Fund’s year end is December 31 and, accordingly, the Fund has not had its first year end and has no audited financial statements in respect of a period ending on a year end.
6. The Fund is authorized to issue an unlimited number of class A shares (the **Class A Shares**), class M shares, and preferred shares (the **Preferred Shares**).
7. On June 14, 2018, the Fund filed a final long form prospectus with the securities regulatory authority in each of the provinces of Canada in connection with the initial public offering of the Class A Shares and Preferred Shares (the **IPO**). The Fund completed the IPO on June 29, 2018 and the Fund commenced operations on that date.
8. As at September 30, 2018, there were 3,200,000 Class A Shares and 3,200,000 Preferred Shares issued and outstanding.
9. The Class A Shares and the Preferred Shares are listed on the Toronto Stock Exchange under the symbols “ENS” and “ENS.PR.A”, respectively.
10. The Fund is a reporting issuer in each province of Canada and is not in default of securities legislation in any jurisdiction of Canada.

11. The Fund wishes to be in a position to file a short form prospectus in accordance with NI 44-101 or a shelf prospectus in accordance with NI 44-102 in order to expedite future offerings of additional Class A Shares and Preferred Shares to the public.
12. For the Fund, filing a short form prospectus in accordance with NI 44-101 or a shelf prospectus in accordance with NI 44-102 is an efficient, expedient and cost-effective alternative to filing a long form prospectus in accordance with National Instrument 41-101 *General Prospectus Requirements (NI 41-101)*.
13. Absent the Exemption Sought, the Fund would be required to file a long form prospectus in accordance with NI 41-101 and Form 41-101F2 as the Fund has yet to complete a financial year end and therefore does not have current annual financial statements.
14. The Fund intends to file, in accordance with NI 81-106, audited annual financial statements of the Fund for the year ended December 31, 2018 (the **2018 Annual Financial Statements**), which will include an opening statement of financial position prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises.
15. In the event that the Fund wishes to file a short form prospectus in accordance with NI 44-101 or a shelf prospectus in accordance with NI 44-102 prior to filing the 2018 Annual Financial Statements, the Fund proposes to prepare, file and incorporate by reference into such prospectus
 - (a) audited financial statements presenting the financial results of the Fund for the period from June 29, 2018 to September 30, 2018, prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises (the **Initial Financial Statements**); and
 - (b) a management report of fund performance for the period covered by the Initial Financial Statements.

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, provided that

- (a) prior to filing a preliminary short form prospectus or shelf prospectus,
 - (i) the Fund files the Initial Financial Statements; and
 - (ii) the Fund files a management report of fund performance for the period covered by the Initial Financial Statements;

- (b) in any short form prospectus or shelf prospectus filed by the Fund,
 - (i) the Fund includes or incorporates by reference the disclosure that would have been required in a current AIF, had the Fund been required to prepare a current AIF; and
 - (ii) the Fund includes disclosure regarding this decision in accordance with the requirements of section 19.1 of Form 44-101F1 *Short Form Prospectus*; and
- (c) the Exemption Sought will expire on the earlier of
 - (i) the date upon which the Fund files the 2018 Annual Financial Statements; and
 - (ii) April 1, 2019.

“original signed by”

Timothy Robson
Manager, Legal
Corporate Finance
Alberta Securities Commission