

ALBERTA SECURITIES COMMISSION

DECISION

Citation: EnerVest Diversified Income Trust, Re, 2011 ABASC 18

Date: 20110114

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
EnerVest Diversified Income Trust
and
Canoe Financial LP
(the **Filers**)

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting relief from the dealer registration requirement in the Legislation in respect of certain trades to be carried out by Canoe Financial LP (the **Manager**) on behalf of EnerVest Diversified Income Trust (**EDIT**), in connection with a proposed offering of warrants (the **Warrant Offering**) to acquire units of EDIT to be made pursuant to a short-form (final) prospectus (the **Warrant Prospectus**) (collectively, the **Exemption Sought**).

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

- (i) the Alberta Securities Commission is the principal regulator for this application;
- (ii) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in by the Filers in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territories, Northwest Territories and Nunavut (collectively, the **Passport Jurisdictions**); and

- (iii) 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 in this decision unless otherwise defined herein.

Representations

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

1. EDIT is a closed-end investment trust established under the laws of the Province of Alberta pursuant to a declaration of trust dated as of August 5, 1997, as amended and restated from time to time. EDIT is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction.
2. EDIT is not considered to be a mutual fund under the securities legislation of the provinces and territories of Canada. Consequently, EDIT is not subject to the various policies and regulations that apply to mutual funds under such legislation. EDIT is subject to certain other requirements and restrictions contained in applicable securities laws, including National Instrument 81-106 *Investment Fund Continuous Disclosure*.
3. The head office of EDIT is located in Calgary, Alberta.
4. The authorized capital of EDIT consists of an unlimited number of trust units (the **Units**). The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the ticker symbol EIT.UN. As at October 18, 2010, there were 95,093,667 Units outstanding.
5. Approximately 98% of the Units are issued through and are held in the book-entry only system of CDS Clearing and Depository Services Inc. The remainder of the Units are registered directly in the names of the holders by way of a certificate.
6. Canoe Financial LP is the Manager of EDIT. The Manager is a limited partnership established under the laws of the Province of Alberta on April 23, 2008. Under the terms of a management agreement dated as of July 24, 1997 (as amended and restated from time to time), and assigned to the Manager effective November 1, 2010, the Manager is responsible for providing, or causing to be provided, certain management and administrative services to EDIT. The head office of the Manager is located in Calgary, Alberta.
7. The Manager also provides portfolio management services to EDIT pursuant to an investment management agreement dated as of March 14, 2002 (as amended and restated from time to time) and assigned to the Manager effective November 23, 2010.
8. Haber Trilix Advisors, LP is an investment adviser of EDIT (the **Investment Adviser**). The Investment Adviser provides portfolio management services to EDIT pursuant to an

amended and restated sub-advisory agreement dated December 16, 2010. The principal office of the Investment Adviser is located in Needham, Massachusetts.

9. The investment objectives of EDIT are to maximize monthly distributions relative to risk and maximize net asset value, while maintaining and expanding a diversified investment portfolio, primarily through acquiring, investing, holding, transferring, disposing of or otherwise dealing with or in equity and debt securities of royalty and income trusts, corporations, partnerships, or other issuers and such other investments as the Manager may determine in its sole discretion from time to time.
10. EDIT's portfolio consists of investments in units of royalty trusts, income trusts, real estate investment trusts, limited partnership structures representing pools of income producing assets, as well as other investments in common shares, corporate debt, convertible debt and preferred shares.
11. EDIT is subject to certain investment restrictions that, among other things, limit the equity securities and other securities that EDIT may acquire for its portfolio. The investment restrictions may not be changed without the approval of the holders of the Units (the **Unitholders**) by a resolution passed by two-thirds of the votes cast at a meeting of Unitholders called for such purpose, except to the extent necessary to ensure compliance with applicable laws, regulations or other requirements imposed by applicable regulatory authorities from time to time.
12. Under the Warrant Offering, each Unitholder is entitled receive one-quarter of a warrant for each Unit held. Each whole warrant entitles the holder to subscribe for one Unit upon payment to EDIT of a subscription price at any time prior to the expiry of the warrants. The term of the warrant is expected to be nine months. The warrants are expected to be listed on the TSX. Holders of warrants in Canada are permitted to sell or transfer their warrants instead of exercising their warrants to subscribe for Units. Holders of warrants who exercise their warrants may subscribe pro rata for additional Units pursuant to an additional subscription privilege.
13. Given that the Filers will trade in securities of EDIT in connection with the Warrant Offering, the Filers are subject to the dealer registration requirement.
14. The Warrant Offering will consist of:
 - (a) the distribution of the Warrant Prospectus and the issuance of warrants to Unitholders after the Warrant Prospectus has been filed, and receipts obtained, under the securities legislation of the Jurisdictions; and
 - (b) the distribution of Units to holders of the warrants, upon the exercise of the warrants by the Unitholders, through a registered dealer that is registered in a category that permits the registered dealer to make the distribution.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Warrant Offering will consist of:

- (a) the distribution of the Warrant Prospectus and the issuance of warrants to Unitholders after the Warrant Prospectus has been filed, and receipts obtained, under the securities legislation of the Jurisdictions; and
- (b) the distribution of Units to holders of the warrants, upon the exercise of the warrants by the Unitholders, through a registered dealer that is registered in a category that permits the registered dealer to make the distribution.

For the Commission:

“original signed by”

Glenda Campbell, QC
Vice Chair

“original signed by”

Stephen Murison
Vice-Chair