

2007 BCSECCOM 177

March 29, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106, s.17.1 Continuous Disclosure Requirements for Investment Funds – A fund wants relief from subsection 9.2 of NI 81-106 that requires a fund that does not have a current prospectus as at its financial year end to prepare an annual information form – The Funds have filed a current simplified prospectus and annual information form in a jurisdiction of Canada; Units of the Funds are distributed in the other Canadian jurisdictions in reliance upon exemptions from the prospectus and registration requirements; as a result of not having a current simplified prospectus in these other jurisdictions, the Funds are required to file an annual information form no later than ninety days after the end of their most recently completed financial year; the Funds are not required to file a simplified prospectus and an annual information form in the jurisdiction in which they have a current simplified prospectus and annual information form until after ninety days after the end of their most recently completed financial year; the Funds will post a notice on SEDAR about the exemption

Applicable British Columbia Provisions

National Instrument 81-106, ss. 9.2 and 17.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick,
Nova Scotia and Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Burgundy Asset Management Ltd.
(the Manager)

and

2007 BCSECCOM 177

Burgundy American Equity Fund, Burgundy Balanced Income Fund, Burgundy Bond Fund, Burgundy Canadian Equity Fund, Burgundy European Equity Fund, Burgundy European Foundation Fund, Burgundy Focus Canadian Equity Fund, Burgundy Foundation Trust Fund, Burgundy Money Market Fund, Burgundy Partners' Balanced RSP Fund, Burgundy Partners' Equity RSP Fund, Burgundy Partners' Global Fund and Burgundy U.S. Money Market Fund
(the Funds)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Manager, on behalf of the Funds, for a decision pursuant to section 17.1 of National Instrument 81-106 (NI 81-106 or the Legislation) for a decision, exempting each of the Funds from the requirement contained in section 9.2 of NI 81-106 to prepare and file an annual information form no later than 90 days after the financial year end of each Fund (the Requested Relief).

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Manager and the Funds:
1. the Manager was incorporated under the laws of Ontario with its head office in Toronto;
 2. the Manager is registered under the securities legislation of the Jurisdictions as an adviser in the categories of investment counsel and portfolio manager (or equivalent);
 3. each Fund is a mutual fund trust, created pursuant to a Declaration of Trust under the laws of Ontario;
 4. each Fund is a reporting issuer in Ontario pursuant to a current simplified prospectus and annual information form dated July 26, 2006;
 5. each Fund is also a reporting issuer in the Jurisdictions by virtue of the fact that units of the Funds were offered in each Jurisdiction pursuant to a

2007 BCSECCOM 177

simplified prospectus for which a receipt was obtained pursuant to the legislation of the Jurisdictions;

6. the Funds are not in default of any of the requirements of the securities legislation of the Jurisdictions;
7. the Funds do not have a current simplified prospectus in the Jurisdictions, as the Manager determined that it would only offer the Funds to investors in the Jurisdictions pursuant to exemptions from the prospectus and registration requirements; accordingly, the simplified prospectus of the Funds was not renewed in the Jurisdictions in 2004;
8. the Manager provides discretionary management services to clients in the Jurisdictions pursuant to an Investment Counsel Agreement, whereby the clients provide the Manager with full discretion to manage their assets; the Manager manages such assets by investing them in securities, which may include units of one or more Funds, all as appropriate for each client's investment objectives and risk tolerance;
9. currently, units of the Funds are distributed in the Jurisdictions solely in reliance upon exemptions from the prospectus and registration requirements; however, as a result of not having a current simplified prospectus in the Jurisdictions, the Funds are obligated as reporting issuers, pursuant to Part 9 of NI 81-106, to file an annual information form by the end of March of each year; currently, the Funds are also required to file an annual information form in Ontario no later than 10 days after July 26, 2007;
10. the expense of preparing and filing an annual information form for each Fund in the Jurisdictions in March of each year and in Ontario later in each year outweighs the benefits of doing so;
11. the Manager provides clients no less frequently than quarterly with a report of their managed accounts including, *inter alia*, reconciliation, portfolio valuation and commentary and, if applicable, a description of the holding of the Funds in which they have investments; and
12. the Manager delivers the interim and annual financial statements of each Fund to clients who are securityholders of the Fund, in compliance with its obligations under NI 81-106.

2007 BCSECCOM 177

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers is that the Requested Relief is granted, provided that:

- (a) each Fund files no later than April 2, 2007, and on an annual basis thereafter, on SEDAR a notice which includes the following:
 - (i) a statement that the Funds have received exemptive relief from the requirement to file an annual information form within 90 days of the year end of each Fund; and
 - (ii) a direction to the holders of units of the Funds that the annual information form for each Fund will be filed no later than the date the annual information form is required to be filed in Ontario; and
- (b) each Fund files an annual information form in the Jurisdictions in each year no later than the date that the annual information form is required to be filed in Ontario.

Martin Eady, CA
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British Columbia Securities Commission