

2007 BCSECCOM 143

March 21, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 76 - prospectus requirement - An issuer wants to resell its own securities that it purchased in the secondary market - The securities will be sold through an exchange; the issuer will comply with the insider continuous disclosure requirements

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61 and 76

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia,
New Brunswick, Prince Edward Island,
Newfoundland and Labrador and Yukon
(the “Jurisdictions”)

and

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

and

In the Matter of
HTR Total Return Fund (Formerly Horizon Total Return Fund)
(the “Filer”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”), that the requirement contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Prospectus Requirements”) shall not apply to the distribution of units of the Filer (the “Units”) which have been repurchased by the Filer pursuant to the mandatory market purchase program, the discretionary market purchase program, or by way of redemption of Units at the request of holders thereof (the “Requested Relief”).

2007 BCSECCOM 143

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

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

1. The Filer is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust dated as of October 11, 2006 (the “Declaration of Trust”).
2. The Filer is not considered to be a “mutual fund” as defined in the Legislation because the holders of Units (“Unitholders”) are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer as contemplated in the definition of “mutual fund” in the Legislation.
3. The Filer became a reporting issuer or the equivalent thereof in the Jurisdictions on October 12, 2006 upon obtaining a receipt for its final prospectus dated October 11, 2006 (the “Prospectus”). As of the date hereof, the Filer is not in default of any requirements under the Legislation.
4. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the trading symbol “HTR.UN”. As at February 7, 2007, 3,793,900 Units were issued and outstanding.
5. Each Unit represents an equal, undivided beneficial interest in the net assets of the Filer and is redeemable (as described below) at the option of the holder thereof.
6. Each whole Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Filer.

2007 BCSECCOM 143

7. Middlefield TR Management Limited (the “Manager”), which was incorporated pursuant to the *Business Corporations Act* (Ontario), is the manager and the trustee of the Filer.
8. In order to enhance liquidity and to provide market support for the Units, pursuant to the Declaration of Trust and the terms and conditions that attach to the Units, the Filer shall, subject to compliance with any applicable regulatory requirements, be obligated to purchase (the “Mandatory Purchase Program”) any Units offered in the market at the then prevailing market price if, at any time after the closing of the Filer’s initial public offering, the price at which Units are then offered for sale is less than 95% of the net asset value of the Filer (“Net Asset Value”) per Unit as at the close of business in Toronto, Ontario on the immediately preceding business day, provided that:
 - (a) the maximum number of Units that the Filer shall purchase pursuant to the Mandatory Purchase Program in any calendar quarter will be 1.25% of the number of Units outstanding at the beginning of each such period; and
 - (b) the Filer shall not be required to purchase Units pursuant to the Mandatory Purchase Program if:
 - (i) the Manager reasonably believes that the Filer would be required to make an additional distribution in respect of the year to Unitholders of record on December 31 of such year in order that the Filer will generally not be liable to pay income tax after the making of such purchase;
 - (ii) in the opinion of the Manager, the Filer lacks the cash, debt capacity or other resources to make such purchases; or
 - (iii) in the opinion of the Manager, such purchases would adversely affect the ongoing activities of the Filer or the remaining Unitholders.
9. In addition, the Declaration of Trust provides that the Filer, subject to applicable regulatory requirements and limitations, shall have the right, but not the obligation, exercisable in its sole discretion, at any time, to purchase outstanding Units in the market at prevailing market prices (the “Discretionary Purchase Program”).
10. Pursuant to the Declaration of Trust and subject to the Trust’s right to suspend redemptions, Units may be surrendered for redemption (the “Redemption Program” and, together with the Mandatory Purchase Program, Discretionary Purchase Program and Additional Redemptions (as defined below), the

2007 BCSECCOM 143

“Programs”) by a Unitholder in any month commencing in November, 2006 on any date that is at least 20 business days prior to the last day of a month (a “Valuation Date”) by giving notice thereof to the Trust’s registrar and transfer agent. Units surrendered for redemption by a Unitholder by 5:00 p.m. (Toronto time) on the 20th business day prior to a Valuation Date will, subject to an investment dealer finding purchasers for Units properly surrendered for redemption at the direction of the Trust and subject to the Trust’s right to suspend redemptions in certain circumstances, be redeemed on the Valuation Date and the Unitholder will receive payment therefor on or before the 15th business day following such Valuation Date.

11. A Unitholder who properly surrenders a Unit for redemption on the Valuation Date of April of any year commencing in 2008 will receive the amount, if any, equal to the “Redemption Price per Unit” (as described in the Prospectus) less any costs associated with the redemption, including, without limitation, if the Manager determines that it is not practicable or necessary for the Trust to sell securities to fund such redemption, the aggregate of all brokerage fees, commissions and other transaction costs that the Manager estimates would have resulted from such a sale. A Unitholder who properly surrenders a Unit for redemption on any Valuation Date, other than the Valuation Date of April of a year commencing in 2008, will receive the amount, if any, equal to the lesser of (A) 94% of the weighted average trading price of the Units on the TSX during the 15 trading days preceding the applicable Valuation Date, and (B) the “closing market price” of the Units on the principal market on which the Units are quoted for trading on the applicable Valuation Date. The “closing market price” shall be an amount equal to (i) the closing price of the Units if there was a trade on the applicable Valuation Date and the market provides a closing price; (ii) the average of the highest and lowest prices of the Units if there was trading on the applicable Valuation Date and the market provides only the highest and lowest prices of the Units traded on a particular day; or (iii) the average of the last bid and last asking prices of the Units if there was no trading on the applicable Valuation Date.
12. In addition, the Manager may, at its sole discretion and subject to receipt of any necessary regulatory approvals, allow additional redemptions from time to time of Units (“Additional Redemptions”), for an amount equal to the Redemption Price per Unit less any costs associated with the redemption; provided that the holder thereof shall be required to use the full amount received on such redemption to purchase treasury securities of a new or existing fund promoted by Middlefield Group then being offered to the public by prospectus.

2007 BCSECCOM 143

13. Purchases of Units made by the Filer under the Programs are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.
14. The Filer desires to, and the Declaration of Trust provides that the Filer shall have the ability to, sell through one or more securities dealers Units that have been repurchased by the Trust pursuant to the Programs (“Repurchased Units”), in lieu of cancelling such Repurchased Units and subject to obtaining all necessary regulatory approvals.
15. The Prospectus disclosed that the Filer may repurchase and redeem, as the case may be, Units under the Programs and that, subject to receiving all necessary regulatory approvals, the Filer may arrange for one or more securities dealers to find purchasers for any Repurchased Units.
16. In order to effect sales of Repurchased Units by the Filer, the Filer intends to sell, in its sole discretion and at its option, any Repurchased Units purchased by it under the Programs primarily through one or more securities dealers and through the facilities of the TSX (or such other exchange on which the Units are then listed).
17. All Repurchased Units will be held by the Filer for a period of 4 months after the repurchase thereof by the Filer (the “Holding Period”), prior to the resale thereof.
18. Repurchased Units that the Filer does not resell within 12 months after the Holding Period (or 16 months after the date of repurchase) will be cancelled by the Filer.
19. Prospective Purchasers who subsequently acquire Repurchased Units will have equal access to all of the continuous disclosure documents of the Filer, which will be filed on SEDAR, commencing with the Prospectus.
20. The Legislation provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution subject to the Prospectus Requirements. Consequently, in the absence of the Requested Relief, the sale by the Filer of the Repurchased Units is a distribution that is subject to the Prospectus Requirements.

Decision

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.

2007 BCSECCOM 143

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

- (a) the Repurchased Units are sold by the Filer through the facilities of and in accordance with the regulations and policies of the TSX or the market on which the Units are then listed;
- (b) the Filer complies with the insider trading restrictions imposed by securities legislation with respect to the trades of Repurchased Units; and
- (c) the Filer complies with the conditions of paragraphs 1 through 5 of subsection 2.8(2) of National Instrument 45-102 with respect to the sale of the Repurchased Units.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

David L. Knight
Commissioner
Ontario Securities Commission