

# 2008 BCSECCOM 157

February 22, 2008

## **Headnote**

### **Mutual Reliance Review System for Exemptive Relief Applications**

National Instrument 81-106, s.17.1 -Investment Fund Continuous Disclosure - NAV calculation - An investment fund wants relief from the requirement in s. 14.2(3)(b) of National Instrument 81-106 to calculate its net asset value at least once every business day - The fund is a closed-end investment fund that allows redemptions or retractions no more frequently than once per month; units of the fund are either: (a) listed or to be listed on a stock exchange and unitholders can buy or sell shares of the fund through the exchange, or (b) convertible into units listed or to be listed on a stock exchange; the fund calculates its net asset value on a regular basis and makes that calculation available to the public on request

Securities Act s. 171 - Revoke or Vary Decision - An issuer wants to vary or repeal and replace a previous decision it received to revise the conditions to the relief granted - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but certain of the conditions to the relief are no longer appropriate because of a change in the issuer's circumstances; the previous relief would no longer be available to the applicant; alternative conditions can be structured that address the issuer's new circumstances

## **Applicable British Columbia Provisions**

National Instrument 81-106, s. 14.2(3)(b) and 17.1

*Securities Act*, R.S.B.C. 1996, c. 418, s. 171

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

and

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

and

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In the Matter of  
Trident Performance Corp.  
(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 (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

1. revokes a previous decision document (the Prior Decision) granted to the Filer on January 31, 2008 (the Revocation Order); and
2. exempts the Filer from the requirement contained in section 14.2(3)(b) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) to calculate the Filer's net asset value (NAV) at least once every business day (the NAV Relief, and together with the Revocation Order, the Requested Relief).

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:

The Filer

1. The Filer is a corporation established under the laws of Ontario. The Filer's manager is CI Investments Inc. (the Manager). The head office of the Manager is located in Toronto, Ontario.

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### The Offering

2. The Filer is making an offering (the Offering) to the public, on a best efforts basis, of Class A shares (Class A Shares), Class A share purchase warrants (Class A Warrants), Class F shares (Class F Shares) and Class F share purchase warrants (Class F Warrants) in each of the provinces of Canada.
3. The Class A Shares and Class A Warrants are expected to be listed and posted for trading on the Toronto Stock Exchange (the TSX). Conditional listing approval has been granted by the TSX to the Filer.
4. Each Class A Warrant entitles the holder to purchase one Class A Share at the subscription price of \$10.25 (the Subscription Price) per Class A Share on or before 4:00 p.m. (Toronto time) on a Monthly Redemption Date (as defined below) on or before February 28, 2011 (the Expiry Time). Each Class F Warrant entitles the holder to purchase one Class F Share at the Subscription Price on or before 4:00 p.m. on a Monthly Redemption Date on or before the Expiry Time.
5. The Filer's investment objective is to provide tax efficient risk adjusted long term rates of return by obtaining exposure to an investment portfolio which may consist of equity and fixed income securities, commodities and currencies, and derivative instruments which provide exposure to any or all of the foregoing or to general or specific market indices (the Global Macroeconomic Portfolio).
6. The Global Macroeconomic Portfolio will be acquired and held by Trident Performance Trust (the Trust). The Trust is an investment trust established under the laws of Ontario by CI Investments Inc. as trustee (the Trustee).
7. The net proceeds of the Offering will be invested in a portfolio of common shares of Canadian public companies (the Common Share Portfolio). The Filer also will enter into one or more forward purchase and sale agreements (collectively, the Forward Agreement) with one or more Canadian chartered banks or affiliates thereof (collectively, the Counterparty) which will provide the Filer with exposure to the returns of the Global Macroeconomic Portfolio.
8. Under the Forward Agreement, the Counterparty will agree to pay to the Filer on or about February 28, 2018 (the Forward Date), as the purchase price for the Common Share Portfolio, an amount equal to 100% of the redemption proceeds that would be paid by the Trust to holders of a reference number of units of the Trust.

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9. The Filer will partially settle the Forward Agreement prior to the Forward Date in order to fund redemptions of Class A Shares and Class F Shares (collectively, Shares) and for the payment of expenses of the Filer. Prior to the Forward Date, the Filer also may increase its exposure under the Forward Agreement from time to time when proceeds from the exercise of Class A Warrants or Class F Warrants (collectively, Warrants) are used by the Filer to purchase additional securities for the Common Share Portfolio.
10. The Counterparty has, and will have at all times, an approved credit rating under National Instrument 81-102 *Mutual Funds*. In the event that the Counterparty ceases to have an approved credit rating, the terms of the Forward Agreement will permit the Filer to terminate the Forward Agreement.
11. Shares will be redeemable on the last day of each month (each a Monthly Redemption Date). A holder of Shares of the Filer (a Shareholder) who properly surrenders a Share for redemption at least 20 business days prior to a Monthly Redemption Date will receive on or before the 15<sup>th</sup> business day following such Monthly Redemption Date payment of the Monthly Redemption Price per Class A Share or Monthly Redemption Price per Class F Share (as applicable and defined below) for such Share calculated by reference to the price at which Class A Shares are trading on the TSX (subject to the Filer's right to suspend redemptions in certain circumstances).
12. The Monthly Redemption Price per Class A Share is the amount, if any, equal to the lesser of:
  - (a) 94% of the weighted average trading price of the Class A Shares on the TSX during the 15 trading days preceding the applicable Monthly Redemption Date, and
  - (b) the closing market price of the Class A Shares on the principal market on which the Class A Shares are quoted for trading on the applicable Monthly Redemption Date,less any costs associated with the redemption including, without limitation, if the Manager determines that it is not practicable or necessary for the Filer to partially settle the Forward Agreement 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 partial settlement (Redemption Costs).
13. The Monthly Redemption Price per Class F Share is the amount, if any, equal to the product of the Monthly Redemption Price per Class A Share and a

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fraction (i) the numerator of which is the most recently calculated net asset value per Class F Share and (ii) the denominator of which is the most recently calculated net asset value per Class A Share.

14. Commencing in 2009, Shares also may be surrendered for redemption on December 31 in each year (a December Redemption Date). A Shareholder who properly surrenders a Share for redemption at least 20 business days prior to a December Redemption Date will receive on or before the 15<sup>th</sup> business day following such December Redemption Date payment of the Redemption Price per Class A Share or Redemption Price per Class F Share (as applicable and defined below) for such Share calculated by reference to the net asset value of the Share (subject to the Filer's right to suspend redemptions in certain circumstances).

15. The Redemption Price per Class A Share is the amount which is equal to:

(a) the net asset value per Class A Share as at the December Redemption Date, less

(b) any applicable Redemption Costs,

provided that, at the sole option of the Manager for the purposes of calculating the Redemption Price per Class A Share, the Manager may value any security in the Common Share Portfolio and, for purposes of valuing the Forward Agreement, any security to which the Filer has direct or indirect exposure by reason of the Forward Agreement, in either case which is listed or traded on a stock exchange (or if more than one, on the stock exchange where the security primarily trades, as determined by the Manager) by taking the volume weighted average trading price of the security on such exchange during the three most recent trading days of such exchange ending on and including such December Redemption Date or, lacking any sales during such period or any record thereof, the simple average of the latest available offer price and the latest available bid price (unless in the opinion of the Manager such value does not reflect the value thereof and in which case the fair market value as determined by the Manager shall be used), all as reported by any means in common use. For the purposes of calculating the Redemption Price per Class A Share, the diluted net asset value per Class A Share will be used (calculated in the manner described below) if the diluted net asset value per Class A Share is calculated on such December Redemption Date.

16. The Redemption Price per Class F Share is the amount which is equal to:

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- (a) the net asset value per Class F Share as at the December Redemption Date, less
- (b) any costs associated with the redemption including, without limitation, if the Manager determines that it is not practicable or necessary for the Filer to partially settle the Forward Agreement 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 partial settlement,

provided that, at the sole option of the Manager for the purposes of calculating the Redemption Price per Class F Share, the Manager may value any security in the Common Share Portfolio and, for purposes of valuing the Forward Agreement, any security to which the Filer has direct or indirect exposure by reason of the Forward Agreement, in either case which is listed or traded on a stock exchange (or if more than one, on the stock exchange where the security primarily trades, as determined by the Manager) by taking the volume weighted average trading price of the security on such exchange during the three most recent trading days of such exchange ending on and including such December Redemption Date or, lacking any sales during such period or any record thereof, the simple average of the latest available offer price and the latest available bid price (unless in the opinion of the Manager such value does not reflect the value thereof and in which case the fair market value as determined by the Manager shall be used), all as reported by any means in common use. For the purposes of calculating the Redemption Price per Class F Share, the diluted net asset value per Class F Share will be used (calculated in the manner described below) if the diluted net asset value per Class F Share is calculated on such December Redemption Date.

- 17. Holders of Class A Shares will have the opportunity to trade their Class A Shares on a daily basis on the TSX. Similarly, holders of Class F Shares can convert their Class F Shares into Class A Shares at no charge to the investor and will therefore have the opportunity to trade their resulting Class A Shares on a daily basis on the TSX.

### NAV Calculation

- 18. Under clause 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer and that uses or holds permitted derivatives, such as the Filer intends to do, must calculate its net asset value per security on a daily basis.
- 19. The Filer intends to calculate its NAV, net asset value per Class A Share and net asset value per Class F Share twice per month, namely on each Valuation

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Date. A Valuation Date is the second Friday of each month and each Monthly Redemption Date and December Redemption Date.

20. If such calculation results in a net asset value per Class A Share that is greater than \$10.00 on any Valuation Date that Class A Warrants are outstanding, the Filer also will calculate a diluted net asset value per Class A Share by:

- (a) adding the total number of Class A Warrants then outstanding to the total number of Class A Shares then outstanding, and
- (b) adding to the net asset value attributable to the Class A Shares the product of such number of outstanding Class A Warrants and \$10.00.

Similarly, if the Filer's net asset value calculation results in a net asset value per Class F Share that is greater than \$10.15 on any Valuation Date that Class F Warrants are outstanding, the Filer also will calculate a diluted net asset value per Class F Share by:

- (c) adding the total number of Class F Warrants then outstanding to the total number of Class F Shares then outstanding, and
- (d) adding to the net asset value attributable to the Class F Shares the product of such number of outstanding Class F Warrants and \$10.15.

21. The (final) prospectus of the Filer discloses that, when calculated, the diluted net asset value per Class A Share and diluted net asset value per Class F Share will be accessible to the public through the internet at [www.ci.com](http://www.ci.com), together with an explanation of the difference between the net asset value per Share and diluted net asset value per Share calculations.

### **Prior Decision**

22. The Decision Makers granted to the Filer relief substantially similar to the NAV Relief in the Prior Decision.

23. It was a condition of the Prior Decision that certain disclosure be made in the final prospectus of the Filer which, through inadvertence, was not made.

24. As an alternative, the Filer will include the missing disclosure in the first interim management report of fund performance (the Interim MRFP) and the first annual management report of fund performance (the Annual MRFP) of the Filer required under NI 81-106. The Annual MRFP will be sent to each securityholder by the filing deadline set out in NI 81-106.

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### **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.

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

- (a) the final prospectus of the Filer discloses that, when calculated, the diluted net asset value per Share, together with an explanation of the difference between the net asset value per Share and diluted net asset value per Share calculations, is accessible to the public on the internet at [www.ci.com](http://www.ci.com);
- (b) the net asset value per Class A Share and net asset value per Class F Share are accessible to the public on the internet at [www.ci.com](http://www.ci.com);
- (c) the Manager provides the net asset value per Class A Share and net asset value per Class F Share and, when calculated, the diluted net asset value per Class A Share and diluted net asset value per Class F Share, to the public on request;
- (d) the first Interim MRFP and the Annual MRFP of the Filer under NI 81-106 discloses that the net asset value per Share and, when calculated, the diluted net asset value per Share, will be provided by the Manager to the public on request and further discloses that the net asset value per Share and, when calculated, the diluted net asset value per Share, together with an explanation of the difference between the net asset value per Share and diluted net asset value per Share calculations, is accessible to the public on the internet at [www.ci.com](http://www.ci.com);
- (e) the Class A Shares remain listed on the TSX; and
- (f) the Filer calculates its net asset value per Class A Share and net asset value per Class F Share at least twice a month.

Leslie Byberg  
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Ontario Securities Commission