

2009 BCSECCOM 127

March 3, 2009

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - NAV calculation - An investment fund wants relief from the requirement to calculate its net asset value at least once every business day - The fund is a non-redeemable investment fund, but does not qualify as a mutual fund; units of the fund are either: (a) listed or to be listed on a stock exchange and unitholders can buy or sell units 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

Applicable British Columbia Provisions

National Instrument 81-106, s. 14.2(3)(b) and 17

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
Deans Knight Income Corporation
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from Section 14.2(3)(b) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106), which requires the net asset value of an investment fund that uses specified derivatives (as such term is defined in National Instrument 81-

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102 *Mutual Funds*) to be calculated at least once every business day (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for the application;
- (b) 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 Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut; 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

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. the Filer is a closed-end, non-redeemable investment company continued under the federal laws of Canada; the principal and registered office of the Filer is located in Vancouver, British Columbia; to its knowledge, the Filer is not in default of securities legislation in any jurisdiction of Canada;
2. the Filer will retain Deans Knight Capital Management Ltd. (the Investment Advisor) as its investment advisor; following the closing of the Offering (as defined below), the Filer will have the same principal office as the Investment Advisor and certain officers and portfolio managers of the Investment Advisor will serve as the officers and a director of the Filer; a majority of the board of directors of the Filer will be independent of the Investment Advisor;

The Offering

3. the Filer is authorized to issue an unlimited number of voting common shares and an unlimited number of non-voting common shares;

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4. the Filer intends to make an offering to the public, on a best efforts basis, of voting common shares (the Shares) at a price of \$10.00 per Share in each of the Jurisdictions (the Offering);
5. a preliminary prospectus for the Filer dated February 9, 2009 (the Preliminary Prospectus) has been filed with the securities regulatory authority in each of the Jurisdictions under SEDAR Project No. 1373168;
6. the Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the TSX); the Filer has made an application for conditional listing approval to the TSX;
7. the Offering is a one-time offering and the Filer will not continuously offer Shares once the Filer is out of primary distribution;

The Shares

8. the Shares will not be redeemable by the holders, but will be redeemable by the Filer for a cash amount equal to 100% of the net asset value per Share on April 30, 2014; the Shares may be redeemed by the Filer prior to April 30, 2014 if in the opinion of the board of directors of the Filer, and with the prior approval of the shareholders of the Filer, it is no longer commercially viable to continue the Filer and/or it would be in the best interests of the Filer's shareholders;
9. the net proceeds of the Offering will be invested by the Filer in a portfolio (the Portfolio) actively managed by the Investment Advisor, consisting primarily of corporate debt securities rated BBB or below by Standard & Poor's Rating Services or an equivalent rating by another nationally recognized statistical rating organization; the Filer may also invest in investment grade debt securities rated above BBB and non-rated debt securities from time to time;
10. the Filer's investment objectives are to: (i) maximize the total return for shareholders, consisting of dividend income and capital appreciation; and (ii) provide shareholders with monthly dividends targeted to payout a minimum of 75% of the Filer's net earnings annually;
11. the Filer may borrow funds to make investments or maintain liquidity and may pledge its assets to secure the borrowings, all in accordance with its investment objectives, investment strategy and investment restrictions as set forth in the Preliminary Prospectus;

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12. the Filer expects to hedge substantially all of the value of the Filer's non-Canadian dollar securities in its Portfolio back to the Canadian dollar through the use of forward currency contracts; a forward currency contract is a "specified derivative" as defined in NI 81-106; additionally, the Investment Advisor may use derivative instruments to: (i) hedge against losses from movements in stock markets or interest rates; (ii) gain indirect exposure to individual securities or markets instead of buying the securities directly; (iii) seek to generate additional income; or (iv) profit from declines in financial markets;

Calculation of Net Asset Value

13. following the issuance of a receipt for a final prospectus, the Filer will become a reporting issuer (or its equivalent thereof) in each of the Jurisdictions; pursuant to subsection 14.2(3)(b) of NI 81-106, an investment fund that uses specified derivatives, such as the Filer intends to do, must calculate its net asset value at least once every business day;
14. the Filer is not a mutual fund trust for the purposes of the *Income Tax Act* (Canada); it will not be a mutual fund for the purposes of securities legislation and will differ from a conventional mutual fund as follows:
- (a) the Filer does not intend to continuously offer Shares once the Filer is out of primary distribution; and
 - (b) the Shares are expected to be listed and posted for trading on the TSX and as a result, shareholders will be able to trade their Shares and will not have to rely on the redemption of the Shares by the Filer to provide liquidity for their investment;
15. the Preliminary Prospectus discloses, and the final prospectus will disclose, that the Filer's net asset value will be:
- (a) calculated weekly;
 - (b) made available to the public through a website established for such purpose; and
 - (c) available to the public upon request.

Decision

- ¶ 4 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.

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The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) the net asset value calculation is available to the public upon request; and
- (b) the public has access to a website for this purpose;

for so long as:

- (c) the Shares are listed on the TSX; and
- (d) the Filer calculates its net asset value at least weekly.

Martin Eady, CA
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British Columbia Securities Commission