

2006 BCSECCOM 415

June 27, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A mutual fund wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person or company which is a substantial security holder of the mutual fund - A portfolio manager, mutual fund or “responsible person” wants relief from s. 127(1)(a) of the Act so that it can invest in an issuer which has a “responsible person” as an officer or director of the issuer - An independent review committee will review the mutual fund’s purchases, sales, and continued holdings of securities of the issuers, and will determine whether the investments are in the best interests of the investors of the mutual funds

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(c), 127(1)(a), 130 and 171

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Ontario, Québec,
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
CI Investments Inc.
and
United Financial Corporation
(the Filers)

and

the Funds Listed in Schedule “A”
(the Existing Funds)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision (the Relief) under the securities legislation of the Jurisdictions (the Legislation) that the provisions of the Legislation prohibiting:

- (a) a mutual fund from knowingly making or holding an investment in any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company; and
- (b) a portfolio manager from causing any investment portfolio managed by it to invest in any issuer in which a responsible person is an officer or director,

shall not apply to investments made by the Funds (as hereinafter defined) in securities (CIX Fund Securities) of CI Financial Income Fund (CIX Fund).

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 Filers:

1. A Filer is the manager and a principal distributor of each of the Existing Funds and also may become the manager and a principal distributor of other existing or future-created mutual funds (together with the Existing Funds, the Funds).
2. Each Fund is or will be a mutual fund subject to the requirements of National Instrument 81-102 (NI 81-102) and is or will be a reporting issuer under the Legislation. None of the Existing Funds are in default under the Legislation.
3. A Filer is, or will be the “portfolio manager” and a “responsible person” of each Fund for purposes of the Legislation.

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4. As a Filer is or will be the trustee of each Fund that exists as a trust, each such Fund is or will be an “associate” of its Filer for purposes of the Legislation.
5. Each Fund which consists of one or more classes of shares of CI Corporate Class Limited is or will be an associate of CI Investments Inc. by reason of CI Investments Inc. owning more than 10% of the voting securities of CI Corporate Class Limited.
6. Both Filers currently are direct or indirect wholly-owned subsidiaries of CIX Financial Inc. (CIX). The common shares (the CIX Shares) of CIX are listed and posted for trading on the Toronto Stock Exchange (the TSX).
7. On May 3, 2005, the Filers and the Funds obtained relief (the Existing Relief) from the Decision Makers to permit the Funds to invest in CIX Shares. CIX has since announced its intention to submit to its shareholders a proposal to change the corporate structure of CIX to a trust, namely CIX Fund (the Conversion).
8. Following the Conversion:
 - (a) CIX Fund will be a reporting issuer under the securities legislation in all the provinces of Canada;
 - (b) the CIX Fund Securities will be listed and posted for trading on the TSX; and
 - (c) CIX Fund will be a substantial security holder of each Filer and CI Corporate Class Limited because CIX Fund will own, directly or indirectly, more than 20% of the outstanding voting shares of each Filer and CI Corporate Class Limited.
9. Certain Existing Funds currently hold CIX Shares and, as a result of the Conversion, will become holders of CIX Fund Securities. In addition, the Funds may wish to purchase CIX Fund Securities following the Conversion.
10. Although CIX Fund continues the business of CIX, it is a different issuer and therefore the Funds will not be able to rely on the Existing Relief.
11. Each Filer believes that it would be in the best interests of investors if the Funds are permitted to invest in CIX Fund Securities, in keeping with the investment objectives of the Funds, up to the limit allowed by applicable Legislation.

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12. The Legislation prohibits a Fund from knowingly making an investment in a company which is a substantial security holder of the Fund, its management company or distribution company (a Related Company).
13. The definition of “responsible person” in the Legislation includes every partner, director or officer of each Filer who participates in the formulation of, or has access prior to the implementation of, investment decisions made on behalf of a client.
14. The Legislation prohibits a portfolio manager from causing any investment portfolio managed by it to invest in any issuer in which a responsible person is an officer or director.
15. Certain directors and/or senior officers of the Filers also will be senior officers of CIX Fund and, while these individuals will not assist in formulating, nor have any influence over, investment decisions made for the Funds, these individuals may be considered to have access to investment decisions prior to their implementation.
16. Each Filer has established an independent review committee (the IRC), comprised entirely of individuals who are wholly independent of the Filers, CIX and CIX Fund, to oversee the holdings, purchases or sales of CIX Shares and CIX Fund Securities for the Funds.
17. The IRC takes into consideration the best interests of securityholders of the Funds and no other factors.
18. For greater certainty, a member of the IRC is considered to have met his or her responsibility to act in the best interests of a Fund if the member makes his or her recommendations with a view to what is fair and reasonable for the Fund’s securityholders without regard to the interests of the Filers or any Related Company.
19. Members of the IRC are paid by the Filers a fixed amount per annum in consideration for the services they provide as members of the IRC and as members of the board of governors or as independent directors of the Funds and other investment funds managed by the Filers or their affiliates.

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 Relief is granted provided that:

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1. Each Filer maintains an IRC to review each Fund's purchases, sales and continued holdings of CIX Fund Securities.
2. The IRC has at least three members, each of whom is independent. A member of the IRC is not independent if the member has a direct or indirect material relationship with a Filer, a Fund, or any entity related to a Filer. A material relationship is any relationship that a reasonable person would consider might interfere with the exercise of the member's independent judgment regarding conflicts of interest facing the Filers.
3. The IRC has a written mandate describing its duties and standard of care which, at a minimum, sets out the conditions of this decision.
4. The members of the IRC exercise their powers and discharge their duties honestly, in good faith and in the best interests of the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
5. None of the Funds relieves the members of the IRC from any liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph 4 above.
6. None of the Funds indemnifies the members of the IRC against legal fees, judgments and amounts paid in settlement as a result of a breach of the standard of care set out in paragraph 4 above.
7. None of the Funds incurs the cost of any portion of liability insurance that insures a member of the IRC for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph 4 above.
8. The cost of any indemnification or insurance coverage paid for by the Filers, any portfolio advisor of the Funds, or any associate or affiliate of the Filers or the portfolio advisors of the Funds to indemnify or insure the members of the IRC in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph 4 above is not paid either directly or indirectly by the Funds.
9. The Filers have in place written policies and procedures to ensure that there is compliance with the conditions of this decision.

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10. The IRC reviews each Fund's purchases, sales and continued holdings of CIX Fund Securities on a regular basis, but not less frequently than once every calendar quarter.
11. The IRC forms the opinion, after reasonable inquiry, that the decisions made on behalf of each Fund by a Filer or the Fund's portfolio advisor to purchase, sell or continue to hold CIX Fund Securities were and continue to be in the best interests of the Fund without regard to the interests of the Filer or any entity related to the Filer, and:
 - (a) represent the business judgment of the Filer or the Fund's portfolio advisor, uninfluenced by considerations other than the best interests of the Fund;
 - (b) have been made free from any influence by CIX Fund and without taking into account any consideration relevant to CIX Fund; and
 - (c) do not exceed the limitations of the applicable legislation.
12. The determination made by the IRC under paragraph 11 above is included in detailed written minutes provided to the Filers not less frequently than every calendar quarter.
13. In respect of the each Fund, within 30 days after the end of each month in which the Filers or the portfolio advisors to the Funds purchases or sells CIX Fund Securities on behalf of one or more Funds, the Filers file on SEDAR:
 - (a) reports disclosing:
 - (i) the name of each Fund that purchased or sold CIX Fund Securities during the month;
 - (ii) the date of each purchase;
 - (iii) the volume weighted average price paid or received for the CIX Fund Securities by each Fund; and
 - (iv) whether a purchase, sale or equity position was determined by the IRC to not comply with paragraph 11 above and, if so, why the purchase, sale or equity position was completed, continued or not liquidated notwithstanding the IRC's determination. Such report will be filed for each Fund and the report will show the trades of all Funds;

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- (b) a certificate of the Filers or the Funds' portfolio advisors certifying that:
 - (i) the trades represented the business judgment of the Filer or the portfolio advisor of the Fund uninfluenced by considerations other than the best interests of the Fund and were, in fact, in the best interests of the Fund;
 - (ii) the trades were made free from any influence by CIX Fund or any affiliate or associate thereof, other than the Filer, and without taking any consideration relevant to CIX Fund or any associate or affiliate thereof; and
 - (iii) the trades were not part of a series of transactions aiming to support or otherwise influence the price of the CIX Fund Securities or related to another form of misconduct; and
- (c) a certificate by each IRC member certifying that after reasonable inquiry the member formed the opinion that the policies and procedures referred to in paragraph 9 above are adequate and effective to ensure compliance with this decision and that the decision made on behalf of each Fund by the Filer or its portfolio advisor to purchase CIX Fund Securities and the purchase by the Fund:
 - (i) was made in compliance with the conditions of this decision;
 - (ii) represented the business judgment of the Filer or the Fund's portfolio advisor uninfluenced by considerations other than the best interests of the Fund; and
 - (iii) was, in fact, in the best interests of the Fund.

14. The IRC advises the Decision Makers in writing of:

- (a) any determination by it at any time that the condition set out in paragraph 11 has not been satisfied with respect to any purchase, sale or holding of CIX Fund Securities;
- (b) any determination by it at any time that any other condition of this decision has not been satisfied;
- (c) any action it has taken or proposes to take following the determinations referred to above; and

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(d) any action taken, or proposed to be taken, by the Filers or a portfolio advisor of the Funds in response to the determinations referred to above.

15. The existence, purpose, duties and obligations of the IRC, the names of its members, whether and how they are compensated, and the fact that they meet the requirements of the condition set out in paragraph 2 are disclosed:

(a) in item 12 of Part A of the simplified prospectus of the Funds; and

(b) on each Filer's internet website.

16. This decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with mutual fund governance in a manner that conflicts with or makes inapplicable any provisions of this decision.

It is the further decision of the Decision Makers that the Existing Relief is revoked effective immediately following completion of the Conversion.

Paul Moore
Vice Chair

Suresh Thakrar
Commissioner