

# 2007 BCSECCOM 80

January 24, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106, s.17.1 – Continuous Disclosure Requirements for Investment Funds - 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 listed on a stock exchange and unitholders can buy or sell units of the fund through the 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 17.1

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

In the Matter of  
Commerce Split Corp.  
(the “Fund”)

## **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 Fund for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from the requirement contained in section 14.2(3)(b) of National Instrument 81-106 – Investment Fund Continuous Disclosure (“NI 81-106”) to calculate net asset value at least once every business day (the “Requested Relief”).

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Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (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 Fund:

1. The Fund is a mutual fund corporation established under the laws of the Province of Ontario. Quadravest Inc. will be the manager of the Fund (the “Manager”) and Quadravest Capital Management Inc. (the “Portfolio Advisor”) will provide investment advisory and portfolio management services to the Fund.
2. The Fund will make an offering (the “Offering”) to the public, on a best efforts basis, of class A shares (the “Class A Shares”) and of Priority Equity Shares (the “Priority Equity Shares”) in each of the provinces of Canada. A unit will consist of one Class A Share and one Priority Equity Share (a “Unit”). The Fund has filed a preliminary prospectus and will file a final prospectus in connection with the Offering.
3. The Priority Equity Shares and the Class A Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the “TSX”).
4. The Fund will invest the net proceeds of the Offering in common shares of Canadian Imperial Bank of Commerce (the “Bank”). To supplement the dividends received on the common shares of the Bank held by the Fund and to reduce risk, the Fund will from time to time write covered call options in respect of some or all of such common shares.
5. The Priority Equity Shares and Class A Shares may be surrendered for retraction at any time and will be retracted on a monthly basis on the last business day of each month (a “Retraction Date”), provided such shares are surrendered for retraction not less than 20 business days prior to the Retraction

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Date. The Fund will make payment for any shares retracted within 15 business days of the Retraction Date.

6. The retraction price for a Priority Equity Share surrendered for retraction on a monthly basis will be equal to the lesser of (i)\$10.00; and (ii) 96% of the net asset value per Unit determined as of the Retraction Date less the cost to the Fund of the purchase of a Class A Share in the market for cancellation.
7. The retraction price for a Class A Share surrendered on a monthly basis will be equal to 96% of the net asset value per Unit determined as of the Retraction Date less the cost to the Fund of the purchase of a Priority Equity Share in the market for cancellation.
8. Shareholders also have an annual retraction right under which they may concurrently retract an equal number of Priority Equity Shares and Class A Shares on the October Retraction Date in each year. The price paid by the Fund for such a concurrent retraction will be equal to the net asset value per Unit calculated as of such date.
9. Under clause 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer is generally required to calculate the net asset value per security of the fund on at least a weekly basis. Furthermore, an investment fund that uses or holds specified derivatives, such as the Fund intends to do, must calculate its net asset value per security on a daily basis.
10. The Fund proposes to calculate its net asset value per Unit, on each Retraction Date and the 15<sup>th</sup> day of each month, or if the 15<sup>th</sup> is not a business day, the preceding business day (each a "Valuation Date"). Net asset value will be calculated as at the close of business on each Valuation Date by subtracting the aggregate amount of the Fund's liabilities from the aggregate value of the Fund's assets.
11. The preliminary prospectus discloses and the final prospectus will disclose that the net asset value per Unit will be provided by the Portfolio Advisor to the public on request. The public will also be able to access the net asset value per Unit on the Fund's website at [www.commercesplit.com](http://www.commercesplit.com).

### **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 for so long as:

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(a) the Priority Equity Shares and the Class A Shares are listed on the TSX;  
and

(b) the Fund calculates its net asset value at least twice a month.

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