

# 2008 BCSECCOM 16

September 24, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 81-106 *Continuous Disclosure Requirements for Investment Funds*, s.17.1 – requirements to deliver audited annual financial statements and file MRFP - A fund wants relief from the requirement in s. 4.2 of NI 81-106 to prepare and file an annual management report of fund performance (MRFP) for a particular year - The filer filed a final prospectus with audited financial statements dated before its year end; the filer had limited operations between the date of the audited financial statements and its year end; because of its limited operations, the filer cannot discuss changes in risk, the result of operations, or economic trends and market conditions that affect the filer in the annual MRFP for its first financial year

## Applicable British Columbia Provisions

National Instrument 81-106, s. 4.2

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec,  
New Brunswick, Nova Scotia, Newfoundland and Labrador,  
the Northwest Territories, Yukon and Nunavut  
(the Jurisdictions)

and

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

and

In the Matter of  
Mackenzie Financial Corporation  
(Mackenzie or the Manager)

and

Mackenzie Universal Global Infrastructure Fund &  
Mackenzie Universal Global Property Income Fund  
(the Funds)

(the Manager and the Funds, collectively, the Filer)

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## 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 (the Legislation) of the Jurisdictions for an exemption, pursuant to section 17.1 of National Instrument 81-106 *Investment Funds Continuous Disclosure* (NI 81-106), from the requirement in subsection 4.2 of NI 81-106 to file a management report of fund performance (MRFP) for each Fund for the period ended June 30<sup>th</sup> 2007 (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:

1. Mackenzie is a corporation operating under the laws of the Province of Ontario with its head office in Toronto, Ontario.
2. Mackenzie is the manager for several families of mutual funds (the Mackenzie Funds) most of which are sold in every Jurisdiction through independent financial advisors. Mackenzie prepares and files annual and interim MRFPs for all Mackenzie Funds as required by NI 81-106.
3. The Funds became reporting issuers on June 27, 2007, the date on which a receipt for the final simplified prospectus in respect of the Funds was issued by the Decision Makers.
4. The fiscal year end of each Fund is June 30. Pursuant to section 4.2 of NI 81-106, the Funds must prepare an annual MRFP for the period ended June 30, 2007.

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5. The Funds were only offered for sale to public as of July 9, 2007. No securities, other than for seed capital purposes, were issued between June 27 and June 30, 2007. Accordingly, there are no measures of performance to report on in the management discussion portion of the MRFP for the reporting period.
6. The limited activities of the Funds for the period from June 27, 2007 to June 30, 2007 do not provide any meaningful information in the financial highlights for the purposes of the preparation of an MRFP.
7. Form 81-106F1 requires that an MRFP contain a discussion of how changes to the investment fund over the financial year affected the overall level of risk associated with an investment in the investment fund, a summary of the results of operations of the investment fund for the financial year in which the management discussion of fund performance pertains, a discussion of the recent developments affecting the investment fund, a discussion of any transactions involving related parties to the investment fund, disclosure of selected financial highlights for the investment fund and a summary of the investment fund's portfolio as at the end of the financial year of the investment fund to which the MRFP pertains. Given the minimal business carried on by the Funds and the fact that the Funds filed their final simplified prospectus four days prior to their fiscal year end, no disclosure on these items can be meaningfully provided in the MRFP.
8. The expense to the Funds of preparing and filing MRFPs would not be justified in view of the benefit to be derived from receiving the MFRPs.
9. The Filer will prepare and file annual audited financial statements for the Funds as required by NI 81-106.

### **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.

Leslie Byberg  
Manager, Investment Funds Branch  
Ontario Securities Commission