

# 2005 BCSECCOM 627

September 28, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - 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)

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 First Trust/Highland Capital Senior Loan Income Fund  
(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. FT (NSI) Floating Rate Management Co. (the “Manager”) is a corporation incorporated under the laws of Nova Scotia. It intends to establish the Fund pursuant to a declaration of trust of the Manager in August or September 2005.
2. The Fund’s investment objectives will be: (i) to provide Unitholders with monthly distributions which will fluctuate with changes in short-term interest rates and (ii) to preserve and enhance the net asset value per unit of the Fund (the “Unit”) in order to return the original subscription price of \$10.00 per Unit to unitholders (the “Unitholders”) on or about October 31, 2015.
3. The Fund will invest the net proceeds of the offering in a portfolio (and any funds borrowed pursuant to a leverage facility) in a portfolio consisting primarily of senior loans issued by U.S. issuers. The Fund may utilize derivatives from time to time including with respect to its foreign currency hedging strategy.
4. The Manager will be the trustee and manager of the Fund and will be responsible for providing or arranging for the provision of administrative services to the Fund.
5. The Manager will appoint First Trust Advisors L.P. (the “Investment Advisor”) as investment advisor to the Fund. It is expected that Highland Capital Management L.P. will be appointed the sub-advisor of the Trust.
6. A bank or other custodian meeting the criteria of section 6.2 of NI 81-102 will act as custodian of the assets of the Fund.
7. The Units will be redeemable at the option of the holder on an annual basis at a price computed by reference to the value of a proportionate interest in the net

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assets of the Fund. In addition, Units will be redeemable on a monthly basis at a price computed by reference to the market price of the Units. As a result, the Fund will not be a “mutual fund” and will be a non-redeemable investment fund under applicable securities legislation.

8. Unitholders that have redeemed their Units will receive payment on or before the 10th business day following the relevant redemption date.
9. The net asset value per Unit will be calculated weekly. The Manager will post the net asset value per Unit on its website.
10. The Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the “TSX”). This is unlike securities of a conventional mutual fund in which there is normally no such market and where, as a result, holders of such securities who wish to liquidate their holdings must cause the fund to redeem their securities. Since the Units will be listed for trading on the TSX, Unitholders of the Units will not have to rely solely on the redemption feature of the Units in order to provide liquidity for their investment.

### **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 the prospectus discloses:

- (a) that the Net Asset Value calculation is available to the public upon request, and
- (b) a toll-free telephone number or website that the public can access for this purpose;

for so long as:

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

Leslie Byberg  
Manager, Investment Funds  
Ontario Securities Commission