

# 2006 BCSECCOM 29

December 23, 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) and 17  
*Securities Act*, R.S.B.C. 1996, c. 418, s. 171

In the Matter of  
the Securities Legislation  
of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, 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 YEARS Financial Trust (formerly YEARS Trust) (the Filer)

## **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 of the Jurisdictions (the “Legislation”) revoking the decision previously granted to YEARS Trust (YEARS) pursuant to National Instrument 81-102 – Mutual Funds (NI 81-102) and issuing a decision in the name of YEARS Financial Trust (as the Filer has been renamed) for exemptive relief from section 14.2(3)(b) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) (the Requested Relief).

## 2006 BCSECCOM 29

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. The Filer is a mutual fund trust governed by the laws of Ontario.
2. The Filer completed its initial public offering on February 13, 2001 pursuant to a final prospectus dated January 29, 2001.
3. A proposal was submitted to the unitholders of the Filer and of YEARS U.S. Trust (YEARS US) to merge the two funds and make changes to the continuing fund, including changes to its investment objectives, in order to provide unitholders of both funds with the opportunity to continue their investment in a single fund that should be better positioned to provide a higher level of distributions and the opportunity for growth in net asset value (NAV) per unit.
4. Special meetings of the unitholders of each of the Filer and YEARS US were held on December 12, 2005 for the purposes of voting on the proposal, including without limitation the merger and changes to the manager, investment objectives, investment strategy, investment restrictions, redemption provisions and record date of the Filer, as the continuing fund.
5. A notice of special meetings and joint management information circular (the Circular) of YEARS and YEARS US relating to the proposal and the special meetings was mailed to unitholders and subsequently filed on SEDAR on November 11, 2005.
6. The merger was implemented on December 16, 2005.
7. Pursuant to the merger, the Filer acquired substantially all of the net assets of YEARS US, and the Filer issued to YEARS US additional units of the Filer in consideration for those assets. YEARS US then automatically redeemed all of its outstanding units, other than one unit held by Highstreet Asset

## 2006 BCSECCOM 29

Management Inc. (Highstreet), and transferred units of the Filer to unitholders of YEARS US in payment of the redemption price. As of December 16, 2005, former unitholders of YEARS US are unitholders of the Filer.

8. As of December 16, 2005, as part of the changes to the Filer, Brompton YTU Management Limited (Brompton) replaced Highstreet as the manager of the Filer. Highstreet continues to act as the investment manager of the Filer.
9. Units of the Filer are redeemable at a price computed by reference to the value of a proportionate interest in the NAV of the Filer. As a result, the Filer will continue to be a “mutual fund” under applicable securities legislation, but will not have certain of the features of conventional mutual funds.
10. Units of the Filer are currently listed and traded on the Toronto Stock Exchange (TSX). Therefore, unitholders of the Filer have an additional source of liquidity for their investment and are not dependent on redemptions alone.
11. The investment objectives of the Filer are to provide unitholders (i) with a stable stream of monthly cash distributions initially targeted to be \$1.60 per unit per annum, which would represent a yield of approximately 7.5% per annum on the initial NAV of the Filer; and (ii) the opportunity for growth in NAV per unit. The target distributions for the Filer will be determined on an annual basis by the manager of the fund.
12. The Filer’s investment strategy is to invest in a portfolio (the Portfolio) consisting of common shares and income trust units of issuers listed on the TSX and classified as falling within the “Financials Sector”, within the meaning of the Global Industry Classification Standard or “GICS” maintained by Standard & Poor’s and Morgan Stanley Capital International.
13. The Filer may, from time to time, hold a portion of its assets in cash equivalents, write call options and put options, utilize derivatives and engage in securities lending activities as permitted by NI 81-102 and the provisions of its trust agreement.
14. Effective January 1, 2006, (i) the redemption rights of units of the Filer will be changed so that redeeming unitholders of the Filer will be required to surrender their units for redemption at least 10 business days prior to the valuation date in order for their units to be redeemed the following month, (ii) the valuation date for each month will be the second last business day of the month instead of the last business day and (iii) in determining the redemption price, the costs associated with the redemption, including brokerage costs, will be deducted.

## 2006 BCSECCOM 29

15. Other amendments to the trust agreement that governs the Filer were made in order to make certain provisions of the trust agreement consistent with the terms of the agreements relating to other funds managed by the Brompton Group of Companies. The amendments include changes to the record and payment dates for distributions of the Filer.
16. The Filer currently calculates its NAV on a weekly basis.

On January 31, 2001, the Filer was granted relief by the local securities regulatory authority or regulator in each of the provinces of Canada, except for Quebec and Manitoba, from the requirement to calculate NAV daily in then section 13.1 of NI 81-102, so as to permit the Filer to calculate its NAV on a weekly basis. This relief was subject to the condition that the prospectus disclose that the weekly NAV calculation and the NAV calculation performed upon the last day of each month be available to the public upon request, and that the prospectus also disclose a toll-free telephone number and website (if any) which the public can access for this purpose.

If the Requested Relief is granted, the Filer will calculate its NAV on a weekly basis and will ensure that its weekly NAV is available to the public upon request, and that its weekly NAV be made available on a website accessible to the public.

17. The Filer will only offer additional units pursuant to a non-simplified long-form or short-form prospectus or pursuant to an exemption from the prospectus requirements of securities legislation. For so long as the Filer is TSX-listed and calculates its NAV at least weekly, any future prospectus of the Filer will disclose:

- (a) that its weekly NAV is available to the public upon request; and
- (b) that its weekly NAV is made available on a website accessible to the public.

### **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 that:

<b>2006 BCSECCOM 29</b>
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- a) the weekly NAV is available to the public upon request; and
- b) the weekly NAV be made available on a website accessible to the public.

for so long as:

- c) the units are listed on the TSX; and
- d) the Filer calculates its NAV at least weekly.

Leslie Byberg  
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Ontario Securities Commission