

2006 BCSECCOM 672

October 13, 2006

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 17.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, New Brunswick, Newfoundland and Labrador and Yukon
(the “Jurisdictions”)

and

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

and

In the Matter of
HORIZON Total Return Fund
(the “Trust”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from Middlefield HORIZON TR Management Limited (the “Manager”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from the following requirement contained in section 14.2(3)(b) of National Instrument 81-106 – *Investment Fund Continuous Disclosure* (“NI 81-106”):

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- (a) that an investment fund that uses specified derivatives (as that term is defined in National Instrument 81-102 – *Mutual Funds*) must calculate its net asset value (“NAV”) at least once every business day,

to permit the Trust to calculate its NAV once per week (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 Trust:

1. The Manager is a corporation incorporated under the laws of Ontario. It intends to establish the Trust pursuant to a declaration of trust in October 2006. The head office of the Trust will be located in Toronto, Ontario.
2. The Trust’s investment objectives will be to: (i) enhance the initial value of the units offered under the prospectus (the “Units”) through capital appreciation driven by the Portfolio (as defined below); and (ii) provide holders of Units (“Unitholders”) with the benefits of compound investment returns.
3. The Trust will make an offering of Units in the Jurisdictions and has filed a preliminary prospectus dated August 31, 2006 in such jurisdictions (the “Prospectus”). The Trust does not intend to continuously offer Units once the Trust is out of primary distribution.
4. The Trust will invest virtually all of the net proceeds of its proposed offering (and any funds borrowed pursuant to a loan facility) for the pre-payment of its purchase obligations under a forward purchase and sale agreement which the Trust will enter into with a Canadian chartered bank, pursuant to which the Trust will gain economic exposure to an actively-managed, broadly diversified investment portfolio of income producing equity securities (the “Portfolio”) comprised primarily of income trust securities and supplemented

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by common shares held by HTR Fund, a new trust to be formed under the laws of the Province of Ontario.

5. The Manager will be the trustee and manager of the Trust and will be responsible for providing or arranging for the provision of administrative services to the Trust. The Manager will also be the manager and trustee of HTR Fund.
6. Guardian Capital LP and Middlefield Capital Corporation will act as investment advisors to HTR Fund.
7. A bank, trust company or other custodian will act as custodian of the assets of the Trust.
8. The Units will be redeemable monthly, commencing in November 2006, on a date that is at least 20 business days prior to the last day of the month (the "Valuation Date"). The redemption price per Unit is equal to the lesser of (A) 94% of the weighted average trading price of the Units on the TSX during the last 15 trading days preceding the applicable Valuation Date, and (B) the "closing market price" of the Units on the principal market on which the Units are quoted for trading on the applicable Valuation date. The "closing market price" is equal to (i) the closing price of the Units if there was a trade on the applicable Valuation Date and the market provides a closing price; (ii) the average of the highest and lowest prices of the Units if there was trading on the applicable Valuation Date and the market provides only the highest and lowest prices of the Units traded on a particular day; or (iii) the average of the last bid and last asking prices of the Units if there was no trading on the applicable Valuation Date.
9. The Units will also be redeemable annually on a Valuation Date of April in any year commencing in 2008. The redemption price per Unit is calculated as the NAV per Unit of the Fund less any costs associated with the redemption.
10. The Trust is not considered to be a "mutual fund" because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust as contemplated in the definition of "mutual fund" in the securities legislation of the Jurisdictions. Accordingly, the Trust will be a "non-redeemable investment fund" as defined in NI 81-106.
11. The Trust intends to calculate the NAV per Unit on a weekly basis on Thursday of each week (or if Thursday is not a business day, then on the

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immediately preceding business day), on each Valuation Date and on any other date on which the Manager elects in its discretion to calculate the NAV per Unit.

12. The Prospectus of the Trust will disclose that the NAV per Unit of the Trust will be made available to the public by the Manager through publication in the financial press and on the internet at www.middlefield.com.
13. The Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the "TSX") and the Manager has applied to the TSX to so list the Units. Since the Units will be listed for trading on the TSX, Unitholders 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.

1. The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the Prospectus of the Trust discloses that:
 - (i) the NAV calculation is available to the public upon request; and
 - (ii) a toll-free telephone number or website which the public can access for the purpose of obtaining the NAV calculation;for so long as:
 - (iii) the Units are listed on the TSX; and
 - (iv) the Trust calculates its NAV at least weekly.

Leslie Byberg
Manager, Investment Funds
Ontario Securities Commission