

# 2007 BCSECCOM 741

November 28, 2007

## 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 *Continuous Disclosure Requirements for Investment Funds* (NI 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 either: (a) listed or to be listed on a stock exchange and unitholders can buy or sell shares of the fund through the exchange, or (b) convertible into units listed or to be listed on a stock 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,  
Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador,  
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  
diversiCAPITAL Global Dividend Split Corp.  
(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”) for an exemption from the requirement contained in section 14.2(3)(b) of National

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Instrument 81-106 – *Investment Fund Continuous Disclosure* (“NI 81-106”) to calculate net asset value (“NAV”) at least once every business day (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:

The Filer

1. The Filer is a mutual fund corporation established under the laws of Ontario. The Filer’s promoter, manager, investment counsel and portfolio manager is Goodman & Company, Investment Counsel Ltd. (the “Manager”). The head office of the Manager is located in the province of Ontario.

The Offering

2. The Filer will make an offering (the “Offering”) to the public, on a best efforts basis, of Class A shares (the “Class A Shares”) and Class A preferred shares, series 1 (the “Preferred Shares”) (collectively, the “Shares”) in each province and territory of Canada. A unit will consist of one Class A Share and one Preferred Share (a “Unit”).
3. The Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the “TSX”). An application requesting conditional listing approval has been made by the Filer to the TSX.
4. The Offering of the Shares by the Filer is a one-time offering and the Filer will not continuously distribute the Shares.

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5. A preliminary prospectus of the Filer dated November 1, 2007 (the “Preliminary Prospectus”) has been filed with the securities regulatory authorities in each of the provinces and territories of Canada.

### The Shares

6. The Filer’s objectives in respect of the Class A Shares are: (i) to provide holders of Class A Shares with regular monthly cash distributions in an amount initially targeted to be 6.00% per annum on the NAV of the Class A Shares; and (ii) to provide holders of Class A Shares with the opportunity for leveraged growth in NAV and distributions per Class A Share.
7. The Filer’s objectives in respect of the Preferred Shares are: (i) to provide holders of Preferred Shares with fixed cumulative preferential quarterly cash distributions in the amount of \$0.13125 per Preferred Share (\$0.525 per year) representing a yield on the issue price of the Preferred Shares of 5.25% per annum; and (ii) to return the issue price of \$10.00 per Preferred Share to holders of Preferred Shares at the time of redemption of such shares on December 30, 2014 (the “Redemption Date”).
8. The net proceeds from the Offering will be invested in an actively managed, globally-diversified portfolio comprised primarily of dividend-paying equity securities of issuers that the Manager believes are trading at a discount to their intrinsic value and have strong cash flows and the ability to grow their dividends.
9. The Filer will use derivatives to ensure that at least 80% of the portion of its portfolio valued in foreign currencies will at all times be hedged back to the Canadian dollar.
10. The Shares may be surrendered for retraction at any time but will be retracted only on the last business day of each month (excluding December 2014) (a “Valuation Date”). The Filer will make payment for any Shares retracted on or before the tenth business day of the month following the date of the retraction.
11. Class A Shares or Preferred Shares may be retracted on a Valuation Date. The retraction price for a Class A Share surrendered for retraction on a monthly basis will be equal to 95% of the difference between (i) the NAV per Unit determined as of the relevant Valuation Date, and (ii) the cost to the Filer of the purchase of a Preferred Share in the market for cancellation. The retraction price for a Preferred Share surrendered for monthly retraction will be equal to 95% of the lesser of (i) the NAV per Unit determined as of the relevant Valuation Date less the cost to the Filer of the purchase of a Class A Share in

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the market for cancellation and (ii) \$10.00. To exercise a monthly retraction right, shareholders must surrender their Shares for retraction not less than 10 business days prior to the Valuation Date.

12. Shareholders also have an annual retraction right under which they may concurrently retract an equal number of Class A Shares and Preferred Shares on the December Valuation Date of each year, commencing on the December 2008 Valuation Date. The price paid by the Filer for such a concurrent retraction will be equal to the NAV per Unit calculated as of such date, less any costs associated with the retraction. The Shares must be surrendered for retraction at least 10 business days prior to a December Valuation Date.
13. Holders of Class A Shares also have a December 2014 retraction right under which they may retract Class A Shares on the Redemption Date at a retraction price per Class A Share equal to the greater of (i) the NAV per Unit on that date minus the sum of \$10.00 plus any accrued and unpaid dividends on a Preferred Share and (ii) nil. Such shareholders must surrender their Class A Shares for retraction not less than 45 days prior to the Redemption Date.

### Calculation of Net Asset Value

14. Under clause 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer is generally required to calculate the NAV per security of the fund on at least a weekly basis. Furthermore, an investment fund that uses or holds specified derivatives, such as the Filer intends to do, must calculate its NAV per security on a daily basis.
15. The Filer proposes to calculate its NAV per Unit and NAV per Class A Share on a weekly basis.
16. The Preliminary Prospectus of the Filer discloses and the final prospectus of the Filer will disclose that the NAV per Unit and the NAV per Class A Share will be made available to the financial press for publication on a weekly basis. The final prospectus of the Filer will also disclose that the NAV per Unit and the NAV per Class A Share will be made available to the public on the Manager's website on a weekly basis.

### 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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the Class A Shares and the Preferred Shares remain listed on the TSX; and
- (b) the Filer calculates its NAV per Unit and NAV per Class A Share at least weekly.

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