

# **2006 BCSECCOM 647**

October 30, 2006

## **Headnote**

National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - NAV calculation - 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 Legislative Provisions**

National Instrument 81-106, s. 14.2(3)(b) and 17.1

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

**and**

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

**and**

**In the Matter of Financial Preferred Securities Corporation  
(the Filer)**

## **MRRS Decision Document**

## **Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filer dated October 3, 2006 for a decision under the securities legislation (the Legislation) of the Jurisdictions for an exemption from section 14.2(3)(b) of National Instrument 81-106 Investment Funds Continuous Disclosure (NI 81-106), which requires an investment fund that uses specified derivatives (as such term is defined in National Instrument 81-102 Mutual Funds) to calculate net asset value at least once every business day (the Requested Relief).

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2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
  - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
  - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - 4.1 The Filer is a mutual fund corporation incorporated under the laws of Alberta on September 25, 2006.
  - 4.2 CGF Funds Management Ltd. (the Manager) is the promoter and manager of the Filer and will perform administrative services on behalf of the Filer.
  - 4.3 Shaunessy & Company Ltd. (the Advisor) will be the rebalancing advisor to the Filer. The Advisor is registered as an advisor in the category of investment counsel and portfolio manager in Alberta and Ontario.
  - 4.4 Computershare Trust Company of Canada (the Registrar) will act as the registrar, transfer agent and distribution agent of the Filer.
  - 4.5 It is expected that CIBC Mellon Global Securities Services Company (the Custodian) will act as the custodian of the assets of the Filer and will be responsible for certain aspects of the day-to-day administration of the Filer.
  - 4.6 A preliminary prospectus of the Filer dated October 3, 2006 (the Preliminary Prospectus) has been filed with the securities regulatory authorities in each of the Jurisdictions in connection with a proposed issuance of preferred shares of the Filer (the Preferred Shares).
  - 4.7 The Preferred Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the TSX). An application requesting

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conditional listing approval has been made on behalf of the Filer to the TSX.

- 4.8 The Preferred Shares will be redeemable at the option of the holders of Preferred Shares (the Shareholders) on both a monthly and an annual basis. The monthly redemptions are at a price computed by reference to the market price of the Preferred Shares. Since the Preferred Shares are not redeemable on demand at net asset value, the primary purpose of the Filer is to invest money provided by its Shareholders, the Filer does not invest for the purpose of exercising effective control, seeking to exercise effective control or being actively involved in the management of the issuers in which it invests, the Filer will not be a “mutual fund” under applicable securities legislation, but will be a “non-redeemable investment fund” for purposes of the Legislation.
- 4.9 The investment objectives of the Filer are to:
- 4.9.1 provide Shareholders with a stable stream of tax efficient quarterly distributions consisting of capital gains dividends and returns of capital of \$0.3125 per Preferred Share (\$1.25 per annum to yield 5.00% on the offering price); and
- (b) 4.9.2 preserve net asset value,
- by acquiring exposure to an equally-weighted, notional U.S. securities portfolio managed on a rules-based passive basis of different classes or series of U.S. preferred securities listed on the NYSE with a minimum rating by S&P of BBB and a minimum rating by Moody’s of Baa (the U.S. Securities Portfolio).
- 4.10 The Filer will invest the net proceeds of the offering of Preferred Shares in a portfolio consisting of shares of Canadian public companies that are “Canadian Securities” for the purposes of the Income Tax Act (Canada) (the Canadian Securities Portfolio).
- 4.11 The U.S. Securities Portfolio will be held by a Canadian financial institution (the Counterparty).
- 4.12 The Filer will enter into a forward agreement with the Counterparty (the Forward Agreement) which will provide the Filer with the economic return generated by the U.S. Securities Portfolio. Under the Forward Agreement the Counterparty will agree to pay to the Filer, on or about December 31, 2016 (the Forward Termination Date), as the purchase

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price for the Canadian Securities Portfolio, an amount equal to the Canadian dollar value of the U.S. Securities Portfolio.

- 4.13 From time to time, the Filer may hold a portion of its assets in cash and cash equivalents.
- 4.14 The terms of the Forward Agreement provide that the Forward Agreement may be settled in whole or in part prior to the Forward Termination Date by the Filer in its discretion to permit the Filer to fund distributions, redemptions and repurchases of Preferred Shares from time to time and to fund operating expenses and other liabilities of the Filer.
- 4.15 The net asset value per Preferred Share of the Filer will be calculated and made available to the financial press for publication on a weekly basis. The Manager will post the net asset value per Preferred Share of the Filer on its website at [www.citadelfunds.com](http://www.citadelfunds.com).
- 4.16 The Advisor may employ leverage to enhance total returns.
- 4.17 In order to generate additional returns, the Filer may lend Canadian Securities Portfolio securities to borrowers acceptable to the Filer pursuant to the terms of a securities lending agreement between the Filer and any such borrower (a Securities Lending Agreement). Under any Securities Lending Agreement: (i) the borrower will pay to the Filer a negotiated securities lending fee and will make compensation payments to the Filer equal to any distributions received by the borrower on the securities borrowed; (ii) the securities loans will qualify as “securities lending arrangements” for the purposes of the Income Tax Act (Canada); and (iii) the Filer will receive prescribed collateral security which it may pledge as security under the Forward Agreement or any loan facility.
- 4.18 The Preliminary Prospectus contains, and the final prospectus (the Prospectus) will contain, disclosure with respect to securities lending by the Filer.

### **Decision**

- 5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

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6. The decision of the Decision Makers is that the Requested Relief is granted, provided that the Prospectus of the Filer discloses:
  - 6.1 that the net asset value calculation of the Filer is available to the public upon request;
  - 6.2 a website that the public can access to obtain the net asset value;for so long as:
  - 6.3 the Preferred Shares are listed on the TSX; and
  - 6.4 the Filer calculates its net asset value per Preferred Share at least weekly.

Patricia Leeson  
Associate Director, Corporate Finance  
Alberta Securities Commission