

2007 BCSECCOM 250

April 27, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act ss. 48 & 76 – Other – Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants - The applicant wants relief from the registration requirement to disseminate sales communications relating to the distribution of securities of a mutual fund and from requirement that the prospectus for the fund contain a certificate of the underwriters - Units of the fund trade on an exchange; trades of the fund will be made through underwriters and designated brokers; neither the underwriters nor the designated brokers receive any fees or commissions in connection with the distribution of units of the fund

Securities Act s. 114(2) Takeover Bids – Exemption from the formal take over bid requirements in Part 13 of the Act - The applicant wants relief so unitholders of certain mutual funds can purchase more than 20% of the units of the fund without constituting a take over bid - Units of certain funds trade on an exchange; the units are “voting” and “equity” securities; no unitholder can control the funds because of the terms of the constating documents; no purchaser will exercise the votes attached to more than 20% of the outstanding units of a fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34, 48, 69, 76 and 114(2)

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

and

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

and

In the Matter of
Barclays Global Investors Canada Limited

2007 BCSECCOM 250

(“Barclays Canada”)

and

In the Matter of
iShares CDN S&P/TSX Smallcap Index Fund (“XCS”),
iShares CDN Jantzi Social Index Fund (“XEN”) and
iShares CDN Russell 2000® Index - Canadian Dollar
Hedged Index Fund (“XSU”)
(collectively, the “New Funds”), and
iShares CDN S&P/TSX Capped Reit Index Fund
(the “Existing 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 Barclays Canada for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

1. the dealer registration requirement of the Legislation does not apply to Barclays Canada in connection with its dissemination of sales communications relating to the distribution of units (“Units”) of the New Funds, any additional exchange traded funds that Barclays Canada may establish that have the investment objective of replicating, to the extent possible, the returns of an index, net of expenses (the “Future Funds” and together with the New Funds and the Existing Fund, the “Funds”);
2. in connection with the distribution of securities of the New Funds and Future Funds pursuant to a prospectus, the New Funds and Future Funds be exempt from the requirement that the prospectus contain a certificate of the underwriter or underwriters who are in a contractual relationship with the issuer whose securities are being offered; and
3. purchasers of Units of the Funds be exempt from the requirements of the Legislation related to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee with each applicable Jurisdiction, (the “Take-over Bid Requirements”) in respect of take-over bids for the Funds.

Under the Mutual Reliance Review System for Exemptive Relief Applications (“MRRS”):

2007 BCSECCOM 250

1. the Ontario Securities Commission is the principal regulator for this application; and
2. this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

“Baskets” means (i) in relation to a particular Fund, a group of securities of each constituent issuer of the applicable index which, when multiplied by the constituent issuer’s last sale price per security, is approximately equivalent to the constituent issuer’s relative weight in the applicable index, or (ii) a group of bonds, shares or other securities as Barclays Canada may determine in its discretion from time to time, that may be used, along with cash, by Designated Brokers and Underwriters as subscription proceeds for a Prescribed Number of Units of the relevant Fund and for which, along with cash, a Prescribed Number of Units of the relevant Fund may be exchanged.

“Designated Brokers” means registered brokers and dealers that enter into agreements with the Funds to perform certain duties in relation to the Funds.

“index” means an index provided to Barclays Canada by a third party provider for use in connection with a Fund.

“Prescribed Number of Units” means, in relation to a Fund, the number of Units of the Fund determined by Barclays Canada from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

“Underwriters” means registered brokers and dealers that have entered into underwriting agreements with the Funds and that subscribe for and purchase Units from the Funds, and “Underwriter” means any one of them.

“Unitholders” means beneficial and registered holders of Units.

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 Barclays Canada:

Background

1. Each New Fund and the Existing Fund is, and it is expected that each of the Future Funds will be, a mutual fund trust governed by the laws of Ontario and a reporting issuer under the laws of all of the Jurisdictions.

2007 BCSECCOM 250

2. Barclays Canada has applied to list the Units of each New Fund on The Toronto Stock Exchange (“TSX”) and will apply to list the Units of each Future Fund on the TSX. Units of the Existing Fund are listed on the TSX. Units of the Funds will not be sold to investors until the TSX has conditionally approved the listing of Units of each Fund.
3. Units issued by the Funds will be index participation units within the meaning of National Instrument 81-102 – *Mutual Funds*. The Funds will be generally described as exchange traded funds (“ETFs”).
4. Barclays Canada is the trustee of all the Funds. Barclays Canada is registered under the Legislation of all Jurisdictions as a portfolio manager and investment counsel (or the equivalent categories of registration). Barclays Canada is also registered as a Commodity Trading Manager and Limited Market Dealer in Ontario and as a Limited Market Dealer in Newfoundland and Labrador. The head office of Barclays Canada is located in Toronto, Ontario.
5. The investment objective of each Fund is, or will be, to replicate the performance of an index, net of expenses. The investment objective, the applicable index for each Fund, as well as its investment strategy will be disclosed on an ongoing basis in the prospectus of each Fund.
6. Units may only be subscribed for or purchased directly from the Funds by Underwriters or Designated Brokers and orders may only be placed for Units in the Prescribed Number of Units (or an integral multiple thereof) on any day when there is a trading session on the TSX. Under Designated Broker and Underwriter agreements, the Designated Brokers and Underwriters agree to offer Units for sale to the public only as permitted by applicable Canadian securities legislation, which require a prospectus to be delivered to purchasers buying Units as part of a distribution. Therefore, first purchasers of Units in the distribution on the TSX will receive a prospectus from the Designated Brokers and Underwriters.
7. The Funds have appointed or will appoint Designated Brokers to perform certain functions which include standing in the market with a bid and ask price for Units of each Fund for the purpose of maintaining liquidity for the Units.
8. Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket and cash in an amount sufficient so that the value of the Basket and cash delivered is equal to the net asset value of the Units next determined following the receipt

2007 BCSECCOM 250

of the subscription order. In the discretion of Barclays Canada, the Funds may also accept cash only subscriptions for Units in amount equal to the net asset value of the Units next determined following the receipt of the subscription order.

9. The net asset value per Unit of each Fund will be calculated and published daily.
10. Upon notice given by Barclays Canada from time to time and, in any event, not more than once quarterly, a Designated Broker will subscribe for Units in cash in an amount not to exceed 0.30% of the net asset value of the New Funds and the Existing Fund, or such other amount established by Barclays Canada in respect of each Future Fund and disclosed in the prospectus of such Future Fund, next determined following delivery of the notice of subscription to that Designated Broker.
11. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units to them. Barclays Canada may, at its discretion, charge an administration fee on the issuance of Units to the Designated Brokers or Underwriters.
12. Except as described in paragraphs 6 through 10 above, Units may not be purchased directly from the Funds. Investors are generally expected to purchase Units through the facilities of the TSX. However, Units may be issued directly to Unitholders upon the reinvestment of distributions of income or capital gains and in accordance with the distribution reinvestment plan of each Fund as disclosed in its prospectus.
13. Unitholders that wish to dispose of their Units may generally do so by selling their Units on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets and cash; Unitholders may also redeem their Units for cash at a redemption price equal to 95% of the closing price of the Units on the TSX on the date of redemption.
14. As trustee, Barclays Canada will be entitled to receive a fixed annual fee from each Fund. Such annual fee will be calculated as a fixed percentage of the net asset value of each Fund. Barclays Canada will be responsible for the payment of all expenses of the Funds, except for the trustee fee, any administration fee payable by Designated Brokers or Underwriters in connection with the issuance of Units, any redemption fees payable by Unitholders upon the redemption of a Prescribed Number of Units, any

2007 BCSECCOM 250

expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107 – *Independent Review Committee for Investment Funds*, any withholding taxes and any income taxes.

15. No investment dealers will act as principal distributors for the Funds in connection with the distribution of Units. The Underwriters will not receive any commission or other payment from the Funds or Barclays Canada. As a result, Barclays Canada will be the only entity desiring to foster market awareness and promote trading in the Units through the dissemination of sales communications.
16. Because Underwriters will not receive any remuneration for distributing Units, and because Underwriters will change from time to time, it is not practical to require an underwriters' certificate in the prospectus of the Funds.
17. Unitholders holding at least the Prescribed Number of Units of the New Funds and the Existing Fund (and, in the discretion of Barclays Canada, a Future Fund) will be or are entitled to vote the applicable portion of the securities of constituent issuers of the applicable index held by the New Funds, the Existing Fund or a Future Fund. Unitholders of the New Funds, the Existing Fund or a Future Fund holding less than a Prescribed Number of Units will not or do not have rights to vote the securities of constituent issuers of the applicable index.
18. Unitholders will have the right to vote at a meeting of Unitholders in respect of a Fund prior to any change in the fundamental investment objectives of such Fund, any change to their voting rights and prior to any increase in the amount of fees payable by a Fund.
19. Although Units trade on the TSX and the acquisition of Units can therefore be subject to the Take-over Bid Requirements:
 - (a) it will not be possible for one or more Unitholders to exercise control or direction over a Fund as the declaration of trust of each Fund will ensure that there can be no changes made to the Fund which do not have the support of Barclays Canada;
 - (b) it will be difficult for purchasers of Units to monitor compliance with Take-over Bid Requirements because the number of outstanding Units will always be in flux as a result of the ongoing issuance and redemption of Units by the Funds; and

2007 BCSECCOM 250

- (c) the way in which Units will be priced deters anyone from either seeking to acquire control of, or offering to pay a control premium for, outstanding Units because Unit pricing will be dependent upon, and will generally represent a prescribed percentage of, the level of the applicable index.
20. The application of the Take-over Bid Requirements to the Funds would have an adverse impact upon Unit liquidity because they could cause Designated Brokers and other large Unitholders to cease trading Units once prescribed take-over bid thresholds are reached. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over the Funds.

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:

1. the dealer registration requirement of the Legislation does not apply to Barclays Canada in connection with its dissemination of sales communications relating to the distribution of Units of the New Funds and Future Funds, provided Barclays Canada complies with Part 15 of NI 81-102;
2. in connection with the distribution of Units of a New Fund and a Future Fund pursuant to a prospectus or any renewal prospectus, the New Fund or Future Fund is exempt from the requirement of the Legislation that the prospectus or renewal prospectus contain a certificate of the Underwriters; and
3. the purchase of Units by a person or company (a "Unit Purchaser") in the normal course through the facilities of the TSX is exempt from the Take-over Bid Requirements for so long as the Funds remain ETFs provided that, prior to making any take-over bid for Units that is not otherwise exempt from the Take-over Bid Requirements, the Unit Purchaser, and any person or company acting jointly or in concert with the Unit Purchaser (a "Concert Party"), provide Barclays Canada, as trustee and manager of the Funds, with an undertaking not to exercise any votes attached to the Units held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding Units.

Robert L. Shirriff
Commissioner
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