

# 2006 BCSECCOM 42

November 22, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 171 – Revocation and replacement of existing order - *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 takeover bid - Units of the fund trade on an exchange; the units are “voting” and “equity securities”; no unitholder can control the fund because of the terms of the constating documents; no purchaser will exercise the votes attached to more than 20% of the outstanding units of the fund

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 114(2) and 171

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  
iUnits S&P/TSX 60 Capped Index Fund (“XIC”), iUnits Government of Canada  
5-Year Bond Fund (“XGV”), iUnits S&P 500 Index RSP Fund (“XSP”) and  
iUnits MSCI International Equity RSP Fund (“XIN”)  
(collectively, the “Affected iUnits Funds”)  
and Barclays Global Investors Canada Limited as trustee of the Affected iUnits  
Funds  
(“Barclays Canada”, and together with the Affected iUnits Funds, the “Filers”)

MRRS Decision Document

## 2006 BCSECCOM 42

### **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filers for a decision (the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”):

- (a) revoking and replacing certain MRRS decision documents dated July 26, 2002 (for XIC) and December 18, 2002 (for XGV, XSP and XIN) as they relate to the Affected iUnits Funds (the “Existing Decisions”); and
- (b) exempting all holders (“Unitholders”) of units (“Units”) of the Affected iUnits Funds 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 Affected iUnits Funds.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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**

“Basket of Bonds” means, in relation to XGV under its proposed investment objective, a group of bonds in specified principal amounts as Barclays Canada may determine in its discretion from time to time.

“Baskets of iShares” means, in relation to each of XSP and XIN under its proposed investment objective, baskets of shares of the applicable iShares fund or other securities in which XSP and XIN may invest from time to time in the discretion of Barclays Canada in order to obtain exposure to the relevant International Fund Index.

“Baskets of Securities” means, in relation to XIC under its proposed investment objective, a group of securities of each constituent issuer of the S&P/TSX Capped Composite 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 S&P/TSX Capped Composite Index.

## 2006 BCSECCOM 42

“Baskets” means, collectively, Baskets of Securities, Baskets of Bonds and Baskets of iShares, as applicable to each Affected iUnits Fund.

“Circular” means the Notice of Meeting and Information Circular dated October 18, 2005 and delivered by Barclays Canada to Unitholders which sets out the Proposed Changes to be considered at the Meetings.

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

“Early Warning Requirements” means the requirements of the Legislation set out in Appendix B of NI 62-103.

“Effective Date” means the date on which the Proposed Changes, if approved by Unitholders at the Meetings, will be effective, which will be no later than November 21, 2005.

“International Fund Indices” means the S&P 500 Index (for XSP) and the MSCI EAFE™ Index (for XIN) and “International Fund Index” means either one of them.

“iUnits Funds” means a family of exchange traded funds of which Barclays Canada is the trustee.

“Meetings” means special meetings of the Unitholders to be held on November 15, 2005, as described in the Circular.

“NI 62-103” means National Instrument 62-103 – The Early Warning System and Related Take-Over Bid and Insider Reporting Issuers.

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

“Proposed Changes” means proposed changes to the investment objectives of the Affected iUnits Funds and related changes to the Declarations of Trust of the iUnits Funds to be considered at the Meetings, as set out in the Circular. A summary of the Proposed Changes that are relevant to this Application is provided in Schedule A hereof.

## 2006 BCSECCOM 42

“Take-over Bid Requirements” means the requirements of the Legislation relating to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee in each Jurisdiction.

“Transition Period” means, if the Proposed Changes are approved by Unitholders, the period between November 15 and the Effective Date, when each Affected iUnits Fund will be engaged in reconstituting its holdings by disposing of some or all of its existing portfolio of securities and acquiring the initial portfolio of securities that reflects the Affected iUnits Fund’s new investment objective.

“TSX” means the Toronto Stock Exchange.

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

Defined terms contained in National Instrument 14-101 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 Affected iUnits Funds:

#### *Background*

1. Each Affected iUnits Fund is a mutual fund trust governed by the laws of Ontario.
2. Each Affected iUnits Fund is a reporting issuer under the laws of all of the Jurisdictions.
3. Units of each Affected iUnits Fund are listed on the TSX.
4. Units issued by XIC, XSP and XIN are, and Units issued by XGV, under its proposed investment objective will be, index participation units within the meaning of National Instrument 81-102 – Mutual Funds. The Affected iUnits Funds are generally described as exchange traded funds (“ETFs”).
5. Barclays Canada is the trustee of all iUnits 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

## 2006 BCSECCOM 42

Limited Market Dealer in Ontario and as a Limited Market Dealer in Newfoundland and Labrador.

6. iUnits Funds, including the Affected iUnits Funds have received exemptive relief from the Take-Over Bid Requirements under the Existing Decisions. The Existing Decisions refer specifically to the investment objectives, and in some cases, investment strategies, of each iUnits Fund. However, the reasons that the Existing Decisions are appropriate for each Affected iUnits Fund are not based on specific investment objective or strategy of each Affected iUnit Fund. Rather, the Existing Decisions are appropriate because the iUnits Funds are ETFs and (with the exception of XGV under its current investment objectives) index participation units and, as such, the securities regulatory concerns that are addressed by the Take-Over Bid Requirements ought not apply to the iUnits Funds.

### *Meetings*

7. Barclays Canada has called the Meetings to seek Unitholder approval for the Proposed Changes. The current and proposed investment objective and strategy of each Affected iUnits Fund and a summary of the related changes to the declarations of trust of the Affected iUnits Funds to be considered at the Meetings are set out in Schedule A. If the Proposed Changes are approved, Barclays Canada intends to change the name of each Affected iUnits Fund to reflect its new investment objective. The proposed name changes are also set out in Schedule A.
8. The Circular, describing the Proposed Changes, has been sent to Unitholders of record as of October 12, 2005 and has been filed with each of the Decision Makers.
9. An amendment to the prospectus of the Affected iUnits Funds dated October 7, 2005 (the "Amendment") has been filed with and a receipt for such Amendment has been issued by each of the Decision Makers.
10. If the Proposed Changes are approved at the Meetings, Barclays Canada intends to implement the new investment objectives and strategies of the Affected iUnits Funds during the Transition Period between the date of the Meetings and the Effective Date. During the Transition Period, Barclays Canada will reconstitute the holdings of each Affected iUnits Fund by disposing of some or all of its existing portfolio of securities and acquiring the initial portfolio of securities that reflects such Affected iUnits Fund's new investment objective.

## 2006 BCSECCOM 42

11. Because many of the Existing Decisions refer to specific investment objectives, and, in some cases, strategies of the Affected iUnits Funds, it is necessary for the Existing Decisions to be revoked and replaced to reflect the new investment objectives and strategies that will be implemented by the Affected iUnits Funds during the Transition Period and that will apply on and after the Effective Date, subject to approval of the Proposed Changes at the Meetings.

### *Representations of the Affected iUnits Funds*

If the Proposed Changes are approved by Unitholders and implemented, the following representations will be true as of the Effective Date. Many of these representations are already true and form the basis for Existing Relief that has been granted to the Affected iUnits Funds:

12. Units may only be subscribed or purchased directly from the Affected iUnits 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.
13. The Affected iUnits Funds have appointed Designated Brokers to perform certain functions which include standing in the market with a bid and ask price for each Affected iUnits Fund's Units for the purpose of maintaining liquidity for units of the Units and, in the case of XIC and XGV (under its proposed investment objective), facilitating adjustments to Baskets both as a result of adjustments that have been made to the relevant index and as a result of non-cash distributions received by XIC or XGV.
14. Each Underwriter or Designated Broker who 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 to be issued. XGV, XSP and XIN may also accept cash-only subscriptions for Units in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.
15. The net asset value of each Affected iUnits Fund is calculated and published daily.
16. 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 an amount not to exceed 0.15% of the net asset value of XIC and XGV or an amount not to exceed 0.30% of the net asset value of XSP or XIN, next

## 2006 BCSECCOM 42

determined following delivery of the notice of subscription to that Designated Broker.

17. 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.
18. Except as described in paragraphs 12 through 16 above, Units may not be purchased directly from the Affected iUnits 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.
19. While Unitholders that wish to dispose of their Units may generally do so by selling their Units on the TSX, a Unitholder who 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.
20. As trustee, Barclays Canada will be entitled to receive a fixed annual fee from each Affected iUnits Fund. Such annual fee will be calculated as a fixed percentage of the net asset value of each Affected iUnits Fund. Barclays Canada will be responsible for the payment of all expenses of the Affected iUnits 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 withholding taxes and any income taxes.
21. Unitholders of XIC holding at least the Prescribed Number of Units will be entitled to vote a proportion of the securities of constituent issuers of the Capped Composite Index held by XIC equal to that Unitholder's proportion of outstanding Units. Unitholders holding less than a Prescribed Number of Units of XIC will have no rights to vote the securities of constituent issuers of the Capped Composite Index held by XIC.
22. Unitholders of XSP and XIN will have no right to vote the shares of iShares funds held by XSP and XIN.
23. As the Units are both voting and equity securities for the purposes of the Take-over Bid Requirements, anyone acquiring beneficial ownership of, or

## 2006 BCSECCOM 42

the power to exercise control or discretion over, 10% or more of the outstanding Units of an Affected iUnits Fund would be required to comply with the Early Warning Requirements but for Section 3.3 of NI 62-103. Securities of conventional mutual funds are not typically subject to the Take-over Bid Requirements because acquisitions of conventional mutual funds are made from treasury.

24. Although Units trade on the TSX and the acquisition of Units can therefore be subject to the Take-over Bid Requirements:
  - (a) it is not, and will not be, possible for one or more Unitholders to exercise control or direction over an Affected iUnits Fund as the declaration of trust of each Affected iUnit's Fund generally ensures, or will ensure, that there can be no changes made to the Affected iUnits Fund which do not have the support of Barclays Canada;
  - (b) it is difficult for purchasers of Units to monitor compliance with Take-over Bid Requirements because the number of outstanding Units is always in flux as a result of the ongoing issuance and redemption of Units by the Affected iUnits Funds; and
  - (c) the way in which Units are, or will be, priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding Units because Unit pricing is dependent upon, and generally represents a prescribed percentage of, the level of the relevant index (in the case of XSP and XIN under their proposed investment objectives, hedged to the Canadian dollar).
25. The application of the Take-over Bid Requirements to the Affected iUnits Funds can have an adverse impact upon Unit liquidity because they can cause both the Designated Broker and hedgers to cease trading Units once prescribed take-over bid thresholds are reached and this, in turn, can serve to provide conventional mutual funds with a competitive advantage over the Affected iUnits 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: (i) the Existing Decisions are revoked and replaced as of, and from, the date of this decision and (ii) the purchase of Units by a person or company (a "Unit Purchaser") in the

## **2006 BCSECCOM 42**

normal course through the facilities of the TSX is exempt from the Take-over Bid Requirements for so long as the Affected iUnits 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, as trustee and manager of the Affected iUnits 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.

Paul Moore  
Vice Chair  
Ontario Securities Commission

David Knight  
Commissioner  
Ontario Securities Commission

## 2006 BCSECCOM 42

### SCHEDULE A

#### *Changes to Investment Objectives and Strategies*

Barclays Canada proposes to change the investment objectives and strategies of the Affected iUnits Funds as follows:

iUnits Fund	Current Investment Objective and Strategy	Proposed Investment Objective and Strategy
XIC	To provide long term capital growth by replicating, to the extent possible, the performance of the S&P/TSX 60 Capped Index through investments in the constituent issuers of such Index.	To provide long term capital growth by replicating, to the extent possible, the performance of the S&P/TSX Capped Composite Index (the “Capped Composite Index”). To achieve this objective, XIC invests in the constituent issuers of the Capped Composite Index. S&P has publicly announced that it intends to add income trusts to the S&P/TSX Composite Index (the Capped Composite Index comprises the constituent issuers of the S&P/TSX Composite Index) starting in December 2005. S&P introduced a provisional S&P/TSX Composite Index, which included income trusts at their full weight, at the September 2005 rebalancing of the S&P/TSX Composite Index. If S&P continues with its currently published intention to add income trusts to the S&P/TSX Composite Index starting in December 2005, the new investment objective will allow XIC to invest in the constituent issuers of the provisional index until income trusts are included at full weight in the Capped Composite Index, at which time XIC will invest in the constituent issuers (including

## 2006 BCSECCOM 42

iUnits Fund	Current Investment Objective and Strategy	Proposed Investment Objective and Strategy
		income trusts) of the Capped Composite Index.
XGV	To replicate, to the extent possible, the return of a bond issued by the Government of Canada with a five-year term to maturity. To achieve this objective, XGV invests in the Government of Canada bond selected by Barclays Canada from time to time that has a term to maturity that closely matches the benchmark bond maturity (a “5-Year Benchmark Bond” or “Benchmark Bond”). XGV may hold bond futures contracts in order to provide market exposure for cash held by XGV.	To provide income by replicating, to the extent possible, the performance of the Scotia Capital Short Term Bond Index (the “SC Short Bond Index”). To achieve this objective, XGV invests in a regularly rebalanced portfolio of bonds, selected by Barclays Canada from time to time, that closely matches the characteristics of the SC Short Bond Index. XGV may invest in bond futures contracts in order to provide market exposure for cash held by XGV and may also hold money market instruments or cash to meet its current obligations.
XSP	To provide long term capital growth by replicating, to the extent possible, the performance of the S&P 500 Index. To achieve this objective, XSP invests primarily in exchange traded futures contracts based on the S&P 500 Index as well as high quality short term money market instruments. XSP will also use forward and futures contracts to match the currency exposure of the S&P 500 Index. XSP may also invest in the underlying securities of the S&P 500 Index, index participation units (including securities of certain iShares funds managed by an affiliate of Barclays Canada), trust units and other similar instruments.	To provide long-term capital growth by replicating, to the extent possible, the performance of the S&P 500 Hedged to Canadian Dollars Index, net of expenses. To achieve this objective, XSP invests primarily in iShares funds that track the S&P 500 Index and hedges any resulting currency exposure back to Canadian dollars. iShares funds are U.S.-based exchange traded funds managed by an affiliate of Barclays Canada. XSP will hedge its exposure to foreign currency by entering into currency forward contracts with financial institutions that have an “approved credit rating” as defined in NI 81-102.

## 2006 BCSECCOM 42

iUnits Fund	Current Investment Objective and Strategy	Proposed Investment Objective and Strategy
XIN	To provide long term capital growth by replicating, to the extent possible, the performance of the MSCI EAFE® Index. To achieve its objective, XIN invests primarily in exchange traded futures contracts based on the stock market indices in countries that are included in the EAFE Index as well as high quality short term money market instruments. XIN will also use forward and futures contracts to match the currency exposure of the EAFE Index. XIN may also invest in the underlying securities of the stock market indices in countries that are included in the EAFE Index, index participation units (including securities of certain iShares funds managed by an affiliate of Barclays Canada), trust units and other similar instruments.	To provide long-term capital growth by replicating, to the extent possible, the performance of the MSCI EAFE 100% Hedged to CAD Dollars Index, net of expenses. To achieve this objective, XIN invests primarily in iShares funds that track the EAFE Index and hedges any resulting currency exposure back to Canadian dollars. XIN will hedge its exposure to foreign currency by entering into currency forward contracts with financial institutions that have an “approved credit rating” as defined in NI 81-102.

### *Changes to Declarations of Trust*

In connection with the changes to the iUnits Funds’ investment objectives, Barclays Canada is seeking approval to make certain related amendments to the iUnits Funds’ Declarations of Trust including, without limitation, to reflect the following: (i) in the case of all iUnits Funds, changes in investment objectives, strategies and names; (ii) in the case of XGV, XSP and XIN, changes in subscription, exchange and redemption features; and (iii) in the case of XGV, changes in the valuation of securities held by XGV for the purpose of calculating the net asset value of XGV and contingencies in the event of a discontinuance of the SC Short Bond Index.

## 2006 BCSECCOM 42

### *Proposed Name Changes*

If the Proposed Changes are approved at the Meetings and implemented, Barclays Canada intends to change the English names of the Affected iUnits Funds as follows:

Old Name of iUnits Fund	New Name of iUnits Fund
iUnits S&P/TSX 60 Capped Index Fund	iUnits Composite Cdn Eq Capped Index Fund
iUnits Government of Canada 5-Year Bond Fund	iUnits Short Bond Index Fund
iUnits S&P 500 Index RSP Fund	iUnits S&P 500 C\$ Index Fund
iUnits MSCI® International Equity Index RSP Fund	iUnits International Equity C\$ Index Fund

In connection with the change in name and investment objective of XGV, its ticker symbol on the TSX will be changed to “XSB”.