

# 2007 BCSECCOM 150

March 1, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - 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 or to be 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 and Newfoundland and Labrador  
(the “Jurisdictions”)

and

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

and

In the Matter of  
First Trust/Highland Capital Senior Loan Income Fund 2007  
(the “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 the Fund 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 Instrument 81-106 - Investment Fund Continuous Disclosure (“NI 81-106”) to

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calculate net asset value (“NAV”) at least once every business day (the “Requested Relief”).

Under the Mutual Reliance Review System (“MRRS”) 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 Fund:

1. The Fund will be an investment trust established under the laws of Ontario pursuant to a declaration of trust in January 2007. The Fund’s head office is located in Toronto, Ontario.
2. The Fund will make an offering to the public (the “Offering”), on a best efforts basis, of the units of the Fund (the “Units”) in each of the provinces of Canada. The Fund filed a preliminary prospectus dated December 21, 2006 in connection with the Offering and intends to file a final prospectus (collectively, the “Prospectus”).
3. The Fund’s investment objectives will be: (i) to provide holders of Units (“Unitholders”) with monthly distributions which will fluctuate with changes in U.S. short-term interest rates; and (ii) to preserve and/or enhance the NAV per Unit in an effort to maximize the return of capital to Unitholders on or about January 31, 2017.
4. The Fund will invest the net proceeds of the Offering (and any funds borrowed pursuant to a credit facility) in a portfolio consisting of senior secured floating rate corporate loans issued by debtors that are primarily U.S. issuers. The Fund may utilize derivatives from time to time including with respect to its currency hedging strategy.
5. FT (NSI) Management Co. (the “Manager”) is a corporation incorporated under the laws of Nova Scotia. The Manager will be the trustee and manager

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of the Fund and will be responsible for providing or arranging for the provision of administrative services to the Fund.

6. The Manager will appoint First Trust Advisors L.P. as investment advisor to the Fund. It is intended that Highland Capital Management, L.P. will be appointed as the sub-advisor of the Fund.
7. A bank, trust company or other custodian will act as custodian of the assets of the Fund.
8. The Units may be surrendered for redemption not more than 60 days, and at least 30 days, prior to the second last business day of July of each year commencing in 2008 (each the “Annual Redemption Date”), at an amount that is calculated with reference to the NAV. Units may also be surrendered for redemption each month at a price based on the market price.
9. Unitholders that have redeemed their Units will receive payment on or before the 10<sup>th</sup> business day following the relevant redemption date.
10. The Fund is not considered to be a “mutual fund” for the purposes of securities law 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 Fund as contemplated in the definition of “mutual fund” in the securities legislation of the provinces of Canada. Accordingly, the Fund will be a “non-redeemable investment fund” as defined in NI 81-106.
11. The Fund intends to calculate the NAV per Unit on the Friday of each week, or if any Friday is not a business day, the immediately preceding business day, on the last business day of each month, on each Annual Redemption Date, and on any other date on which the Manager elects in its discretion or is required by law to calculate the NAV per Unit. The Manager will post the NAV per Unit on the internet at [www.firsttrust.ca](http://www.firsttrust.ca).
12. The Units are expected to be listed and posted for trading on the Toronto Stock Exchange (“TSX”) and the Manager has applied to the TSX to so list the Units. This is unlike securities of a conventional mutual fund which are not normally traded on a stock exchange and where, as a result, holders of such securities who wish to liquidate their holdings must cause the fund to redeem their securities. 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.

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### **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 the Requested Relief is granted provided the prospectus discloses:

- (a) that the NAV calculation is available to the public upon request; and
- (b) a toll-free telephone number or website which the public can access for this purpose;

for so long as:

- (c) the Units are listed on the TSX; and
- (d) the Fund calculates its NAV at least weekly.

Leslie Byberg  
Manager, Investment Funds Branch  
Ontario Securities Commission