

# 2007 BCSECCOM 328

April 27, 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 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,  
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  
S 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 Instrument 81-106 – *Investment Fund Continuous Disclosure* (“NI 81-106”) to

## 2007 BCSECCOM 328

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 and investment manager is Mulvihill Capital Management Inc. (“MCM”), and its manager is Mulvihill Fund Services Inc. (the “Manager”), a wholly-owned subsidiary of MCM. 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 of class A shares (the “Class A Shares”) and preferred shares (the “Preferred Shares”) (collectively, the “Shares”) in each of the provinces of Canada. A unit will consist of one Class A Share and one Preferred Share (a “Unit”).
3. A preliminary prospectus for the Filer dated March 30, 2007 (the “Preliminary Prospectus”) has been filed with the securities regulatory authority in each of the Provinces of Canada.
4. 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.
5. The Offering of the Shares by the Filer is a one-time offering and the Filer will not continuously distribute the Shares.

## 2007 BCSECCOM 328

### The Shares

6. The Filer's objectives in respect of the Class A Shares are: (i) to provide holders of Class A Shares with monthly cash distributions in an amount 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 monthly cash distributions in the amount of \$0.04375 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 1, 2014.
8. The net proceeds from the offering will be invested in a portfolio of common shares of The Bank of Nova Scotia ("BNS Shares").
9. To generate additional distributable income for the Filer, the Filer may from time to time write covered call options in respect of all or part of its BNS Shares.
10. The Shares may be surrendered for retraction at any time and will be retracted on a monthly basis on the last business day of each month (a "Valuation Date"), provided such shares are surrendered for retraction not less than 10 business days prior to the Valuation Date. The Filer will make payment for any shares retracted on or before the fifteenth business day of the following month.
11. 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.
12. The retraction price for a Preferred Share surrendered for retraction on a monthly basis 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 the market for cancellation and (ii) \$10.00.
13. Shareholders also have an annual retraction right under which they may concurrently retract an equal number of Class A Shares and Preferred Shares

## 2007 BCSECCOM 328

on the June Valuation Date in each year. 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.

### Calculation of NAV

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 per Class A Share on a weekly basis.
16. The Preliminary Prospectus discloses and the final prospectus will disclose that the NAV per Unit and per Class A Share will be made available to the public on a weekly basis by the Manager on the Manager's website at [www.mulvihill.com](http://www.mulvihill.com) and will be available to the public upon request.

### 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 that the prospectus of the Filer discloses:

- (a) that the NAV calculation per Unit is available to the public upon request;
- (b) a toll-free number or website that the public can access to obtain the NAV calculation per Unit;

for so long as:

- (c) the Class A Shares and the Preferred Shares are listed on the TSX; and
- (d) the Filer calculates its NAV per Unit at least weekly.

Rhonda Goldberg  
Assistant Manager, Investment Funds  
Ontario Securities Commission