

# 2007 BCSECCOM 16

November 7, 2006

## 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

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34, 48, 69 and 76

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, 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  
iShares CDN Dow Jones Canada Select Growth Index Fund  
(“XCG”), iShares CDN Dow Jones Canada Select Value Index Fund (‘‘XCV’’),  
iShares CDN Scotia Capital All Corporate Bond Index Fund (‘‘XCB’’), iShares  
CDN Scotia Capital All Government Bond Index Fund (‘‘XGB’’) and iShares  
CDN Scotia Capital Long Term Bond Index Fund (‘‘XLB’’) (collectively, the ‘‘New iShares Funds’’)  
and Barclays Global Investors Canada Limited  
as trustee of the New iShares Funds

(‘‘Barclays Canada’’, and together with the New iShares Funds, the ‘‘Filers’’)

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## 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 Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

1. the registration requirement of the Legislation does not apply to the Filers in connection with their dissemination of sales communications relating to the distribution of units of the New iShares Funds (“Units”);
2. the registration requirement of the Legislation does not apply to the Filers in connection with trades in Units of the New iShares Funds by futures commission merchants registered in Jurisdictions other than British Columbia (“FCMs”) that may not be registered securities dealers under the Legislation (the “FCM Relief”); and
3. in connection with the distribution of securities of the New iShares Funds pursuant to a prospectus, the New iShares 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.

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**

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

“Baskets of Bonds” means, in relation to XCB, XGB and XLB under their applicable investment objectives, a group of bonds in specified principal amounts as Barclays Canada may determine in its discretion from time to time.

“Baskets of Securities” means, in relation to XCG and XCV, 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

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approximately equivalent to the constituent issuer's relative weight in the applicable index.

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

“Prescribed Number of Units” means, in relation to a New iShares Fund, the number of Units of the New iShares 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 New iShares Funds and that subscribe for and purchase Units from the New iShares Funds, and “Underwriter” means any one of them.

“Unitholders” means beneficial and registered holders of Units.

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 Filers:

#### *Background*

1. Each New iShares Fund will be a mutual fund trust governed by the laws of Ontario and will issue Units.
2. Each New iShares Fund will be a reporting issuer under the laws of all of the Jurisdictions.
3. Barclays Canada has applied to list the Units of each New iShares Fund on the Toronto Stock Exchange (the “TSX”). Units of the New iShares Funds will not be sold to investors until the TSX has conditionally approved the listing of Units of each New iShares Fund.
4. Units issued by the New iShares Funds will be index participation units within the meaning of National Instrument 81-102 - Mutual Funds. New iShares Funds will be generally described as exchange traded funds (“ETFs”).

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5. Barclays Canada is the trustee of all iShares 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.
6. The investment objective of each New iShares Fund is to replicate the performance of an index provided by a third-party index provider, net of expenses. The investment objective and applicable index for each New iShares Fund, as well as its investment strategy, is disclosed in the preliminary prospectus filed by Barclays Canada on October 3, 2006 and will be disclosed on an ongoing basis in the prospectus of the New iShares Funds.
7. Units may only be subscribed for or purchased directly from the New iShares 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.
8. The New iShares 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 New iShares Fund for the purpose of maintaining liquidity for the Units.
9. 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 of the subscription order. In the discretion of Barclays Canada, XCB, XGB and XLB 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.
10. The net asset value per Unit of each New iShares Fund will be calculated and published daily.
11. 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 XCG and XCV and 0.15% of the net asset value of XCB, XGB and XLB, next determined following delivery of the notice of subscription to that Designated Broker.

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12. 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.
13. Except as described in paragraphs 7 through 11 above, Units may not be purchased directly from the New iShares 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.
14. 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.
15. The New iShares Funds expect that FCMs may seek to trade Units of the New iShares Funds in order to hedge their futures and other derivative holdings that provide exposure to the indices replicated by the New iShares Funds. In some Jurisdictions, FCMs may be registered under commodity futures legislation only, or to trade exclusively in “exchange contracts”, and may not be registered to trade in securities.
16. As trustee, Barclays Canada will be entitled to receive a fixed annual fee from each New iShares Fund. Such annual fee will be calculated as a fixed percentage of the net asset value of each New iShares Fund. Barclays Canada will be responsible for the payment of all expenses of the New iShares 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 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.

### **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.

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The decision of the Decision Makers under the Legislation is that:

1. the registration requirement of the Legislation does not apply to the Filers in connection with their dissemination of sales communications relating to the distribution of Units of the New iShares Funds, provided they comply with Part 15 of NI 81-102;
2. the registration requirement of the Legislation does not apply to the Filers in connection with trades in Units of the New iShares Funds by registered FCMs that may not be registered securities dealers under the Legislation, provided that
  - (a) the FCMs are registered for trading purposes under the commodity futures legislation or requirements (if any) of the Jurisdiction where such FCMs carry on the business of dealing in futures contracts,
  - (b) trades in Units of the New iShares Funds are made only for such members own account, and
  - (c) FCMs will not trade in Units of the New iShares Funds on behalf of their clients; and
3. in connection with the distribution of Units of the New iShares Funds pursuant to a prospectus or any renewal prospectus, the New iShares Funds are exempt from the requirement of the Legislation that the prospectus or renewal prospectus contain a certificate of the Underwriters.

Wendell S Wigle  
Commissioner  
Ontario Securities Commission

Carol S. Perry  
Commissioner  
Ontario Securities Commission