

2006 BCSECCOM 25

December 7, 2005

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 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 Ontario, Quebec, British Columbia, Alberta, Saskatchewan, Manitoba, New
Brunswick, Nova Scotia 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 Premium U.S. Income Trust
(the "Filer" or the "Trust")

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 (the "Legislation") of the Jurisdictions for relief from clause 14.2(3)(b) of National Instrument 81-106 Investment Fund Continuous Disclosure ("NI 81-106"), which requires the net asset value of an investment fund that uses specified derivatives (as such term is defined in

2006 BCSECCOM 25

National Instrument 81-102) to be calculated 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:

General

1. The Trust is an investment trust established under the laws of the Province of Ontario pursuant to a Trust Agreement dated January 22, 1997, as amended from time to time (the “Trust Agreement”) between Mulvihill Fund Services Inc. (“Mulvihill”), as manager, and The Royal Trust Company, as trustee. Mulvihill is a wholly-owned subsidiary of Mulvihill Capital Management Inc. (“MCM”), the Trust’s investment manager pursuant to an investment management agreement between the Trust and MCM dated January 22, 1997.
2. The Trust is a reporting issuer in each of the Provinces of Canada. Units of the Trust (“Units”) are listed for trading on the TSX under the symbol FPU.UN.
3. On February 3, 1997, the Trust completed its initial public offering of 12,500,000 Units pursuant to a final prospectus dated January 22, 1997 (the “Prospectus”).

The Current Portfolio

4. The Trust currently invests in a diversified portfolio (the “Current Portfolio”) consisting primarily of common shares issued by corporations that rank in the top 50 of the Standard & Poor’s 100 Index on the basis of market capitalization.

2006 BCSECCOM 25

5. The Trust's current investment objectives are: (i) to provide holders ("Unitholders") of units ("Units") of the Trust with a stable stream of quarterly distributions of at least \$0.50 per Unit (\$2.00 per annum); and (ii) to return the original issue price of the Units (\$25.00 per Unit) to Unitholders upon termination of the Trust on January 1, 2007.
6. To generate returns above the dividend income earned on the Current Portfolio, the Trust writes covered call options in respect of all or a part of the securities in the Current Portfolio from time to time. From time to time, the Trust may also hold a portion of its assets in cash equivalents, which may be used to provide cover in respect of the writing of cash covered put options in respect of securities in which the Trust is permitted to invest. The composition of the Current Portfolio, the securities that are subject to call options and the terms of such options vary from time to time based on MCM's assessment of market conditions.
7. The Trust will terminate on January 1, 2007 and its net assets will be distributed thereafter to Unitholders unless the term is extended as part of the Proposal (defined below).

The Proposal

8. Since its inception, the Trust has accumulated approximately \$45 million of capital losses for which it would receive no value if the Trust ceased to operate. In an effort to reposition the Trust to enable it to grow in size and increase in value as well as to extend the term of the Trust in order to enable it to utilize its existing tax losses, management is proposing to reposition the Trust's investment portfolio and to issue new securities consisting of capital units (the "Capital Units") and preferred securities (the "Preferred Securities") in order to enable the Trust to continue with a new "split trust" structure going forward. The Preferred Securities have been provisionally rated Pfd-2 (low) by Dominion Bond Rating Service Limited ("DBRS"). Management is also proposing to significantly reduce the fees payable to the manager and investment manager as a part of the restructuring of the Trust as described below.

To implement the restructuring, Unitholders were asked to approve a proposal (the "Proposal") to reposition the Trust and its portfolio in the following respects:

- (a) amend the investment strategy and investment restrictions of the Trust. The Trust will invest exclusively in the six largest Canadian

2006 BCSECCOM 25

banks and the four largest Canadian life insurance companies by market capitalization (the “Financial Portfolio”);

- (b) extend the termination date of the Trust to March 31, 2011 from January 1, 2007;
- (c) change the capital structure of the Trust to a “split trust” structure. Under this proposal, existing Units would first be consolidated such that after giving effect to the consolidation, net asset value (“NAV”) per Unit would be approximately \$25.00 (Units are expected to be consolidated on an approximate 2.3 to 1 basis). Unitholders would receive for each unit held: (i) one Capital Unit of the Trust with an initial NAV of approximately \$12.50 and (ii) one Preferred Security of the Trust with a principal amount of \$12.50;
- (d) amend the investment objectives of the Trust. The Trust’s investment objectives for the Capital Units will be (i) to provide holders of Capital Units, upon redemption, with the benefit of any capital appreciation in the market price of the securities in the Financial Portfolio and (ii) to pay quarterly distributions to holders of Capital Units in an amount targeted to be 7.5% per annum of the NAV of the Trust. The Trust’s investment objectives for the Preferred Securities will be (i) to pay holders of Preferred Securities fixed quarterly cash interest payments at least equal to 6.00% per annum on the \$12.50 principal amount of a Preferred Security and (ii) to repay the principal amount of \$12.50 per Preferred Security on termination of the Trust on March 31, 2011;
- (e) move the redemption right available to Unitholders at 100% of NAV from December 31, 2005 to November 30, 2005 in order to give Unitholders an opportunity to exit earlier should they wish not to participate in the Trust going forward. As a result of this change, there would be no December 31, 2005 redemption right for securityholders;
- (f) permit the Trust to issue additional Capital Units and Preferred Securities on a non-dilutive basis; and
- (g) provide for the payment of an annual service fee of 0.40% of the value of the Capital Units if the Trust completes a public offering of additional Capital Units and Preferred Securities after the Proposal has been approved.

2006 BCSECCOM 25

In connection with the Proposal, the Trust will change its name to Top 10 Split Trust to reflect better its new investment strategy and Mulvihill Fund Services Inc., as manager, and Mulvihill Capital Management Inc., as investment manager, will reduce their fees by approximately 37% from a total of 1.75% per annum of NAV to 1.10% per annum of the Trust's total assets from and after the effective date of the Proposal;

9. The Trust's Advisory Board and the Board of Directors of Mulvihill have approved the Proposal.
10. The Unitholders have approved the proposed amendments to the Trust Agreement at a special meeting (the "Special Meeting") called by the Trust's Advisory Board and the Board of Directors of Mulvihill held on November 21, 2005.
11. In connection with the Special Meeting, the Trust prepared and mailed to Unitholders an information circular describing the Proposal (the "Circular").

Retraction of Capital Units and Preferred Securities

12. The description of the retraction process in the Circular contemplates that a unitholder may surrender at any time (a "Regular Monthly Retraction") commencing in January 2006, a Capital Unit for retraction (either alone or together with the surrender of a Preferred Security for repayment), at least five (5) business days prior to the last business day in the month (the "Retraction Date") for retraction, subject to the Trust's right to suspend retractions or to postpone payment of retraction proceeds in certain circumstances.
13. A unitholder will receive payment within five business days following such Retraction Date.
14. A holder of Capital Units retracting Capital Units under a Regular Monthly Retraction (without surrendering a corresponding Preferred Security) will receive the amount ("the "Combined Value"), if any, by which 95% of the NAV per Capital Unit plus, the amount equal to the original subscription price for a Preferred Security, together with any accrued and unpaid interest thereon ("Repayment Price") exceeds the aggregate of (i) the price paid by the Trust for one Preferred Security in the market; and (ii) \$0.50.
15. A holder who surrenders a Capital Unit together with a Preferred Security will receive an amount equal to 95% of the Combined Value less \$0.50.

2006 BCSECCOM 25

16. A holder who surrenders a Capital Unit for retraction on the last business day in December (commencing in December 2006) (a “Special Annual Retraction”) (without surrendering a corresponding Preferred Security for repayment) will receive an amount equal to the Combined Value minus the price paid by the Trust for one Preferred Security in the market.
17. A holder of Capital Units who surrenders one Capital Unit and one Preferred Security under a Special Annual Retraction will receive an amount equal to the Combined Value.

Publication of NAV per Capital Unit

18. The NAV per Capital Unit will be calculated at least weekly.
19. The Prospectus indicates that the NAV per Capital Unit calculations are available upon request by unitholders.
20. The Circular issued in connection with the proposal indicates that NAV per Capital Unit will be made available though the internet at www.mulvihill.com.
21. Any future prospectus issued in connection with the public offering of the Capital Units and Preferred Securities of the restructured Trust under the Proposal will disclose that the NAV per Capital Unit will be made available through a toll free number or the internet at www.mulvihill.com.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

The decision of the Decision Makers is that the Requested Relief is granted provided that:

- 1) the NAV per Capital Unit be available on the internet at www.mulvihill.com; and
- 2) any future prospectus issued in connection with the public offering of the Capital Units and Preferred Securities of the restructured Trust under the Proposal discloses:
 - (a) that the NAV per Capital Unit is available to the public upon request; and

2006 BCSECCOM 25

- (b) a toll-free telephone number or website that the public can access for this purpose;

for so long as:

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

Leslie Byberg
Manager, Investment Funds Branch