

# 2007 BCSECCOM 461

May 29, 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 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, Newfoundland and Labrador  
(the Jurisdictions)

and

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

and

In the Matter of  
CIX 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 (the Application) from the Filer for a decision under section 17.1 of the securities legislation of the Jurisdictions (the Legislation) that exempts the Filer from the requirement contained in section 14.2(3)(b) of National Instrument 81-106 - Investment Fund Continuous Disclosure (NI 81-106) to calculate the net asset value (NAV) at least once every business day (the Requested Relief).

# 2007 BCSECCOM 461

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 manager is CI Investments Inc. (the Manager). The head office of the Manager is located in Toronto, Ontario.

### **The Offering**

2. The Filer will make an offering (the Offering) to the public, on a best efforts basis, of Priority equity shares (Priority Equity Shares) and Class A shares (Class A Shares) (collectively, the Shares) in each of the provinces of Canada.
3. The Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the TSX). An application for conditional listing approval has been made by the Filer to the TSX.
4. The Filer was created to provide tax-efficient exposure to the total return on trust units (Trust Units) of CI Financial Income Fund (CIX) through the Filer's two classes of Shares. Holders of the Priority Equity Shares will be provided with a stable yield and downside protection on their initial investment while holders of the Class A Shares will be provided with leveraged exposure to the performance of CIX.
5. The net proceeds of the Offering will be invested in a portfolio of common shares of Canadian public companies (the Common Share Portfolio) and Trust Units. The Filer also will enter into one or more forward purchase and sale agreements (collectively, the Forward Agreement) with the Canadian Imperial

## 2007 BCSECCOM 461

Bank of Commerce or an affiliate thereof (the Counterparty) to obtain economic exposure to the total return on a notional investment in Trust Units.

6. Under the Forward Agreement, the Counterparty will agree to pay to the Filer on or about January 31, 2011 (the Termination Date), as the purchase price for the Common Share Portfolio, an amount calculated by reference to the market value of the Reference Number (as defined below) of Trust Units and the distributions paid on such Trust Units during the term of the Forward Agreement (such aggregate amount being referred to as the CIX Total Return Value). The "Reference Number" initially will be equal to the number of Trust Units that could be acquired in the market on or about the effective date of the Forward Agreement for an amount approximately equal to the net proceeds of the Offering, as determined by the Filer and the Counterparty, not including the amount of the net proceeds of the Offering invested by the Filer directly in Trust Units.
7. The Filer will partially settle the Forward Agreement prior to the Termination Date in order to fund distributions on Shares, redemptions and retractions of Shares, the payment for purchases of Shares in the market, and expenses of the Filer. The CIX Total Return Value will be adjusted after each partial settlement of the Forward Agreement, generally by first reducing that portion of the CIX Total Return Value determined by reference to the distributions paid on Trust Units.
8. The Counterparty has, and will have at all times, an approved credit rating under National Instrument 81-102 - Mutual Funds. In the event that the Counterparty ceases to have an approved credit rating, the terms of the Forward Agreement will permit the Filer to seek an assignment of the obligations of the Counterparty to a replacement counterparty or counterparties in order to minimize adverse tax consequences to the Filer that may be associated with closing out the Forward Agreement.
9. 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 Retraction Date), provided such Shares are surrendered for retraction not less than 20 business days prior to the Retraction Date. The Filer will make payment for any Shares retracted within 15 business days after the Retraction Date.
10. Holders of Priority Equity Shares whose shares are surrendered for retraction will be entitled to receive a price per share equal to the lesser of (i) \$10.00; and (ii) 96% of the NAV per Unit determined as of the Retraction Date less the cost to the Filer of acquiring a Class A Share for cancellation. A "Unit" is one Priority Equity Share and one Class A Share, together.

## 2007 BCSECCOM 461

11. Holders of Class A Shares whose shares are surrendered for retraction will be entitled to receive a price per share equal to 96% of the NAV per Unit determined as of the Retraction Date less the cost to the Filer of acquiring a Priority Equity Share for cancellation.
12. Commencing in 2008, a holder of Shares also may concurrently retract one Class A Share and one Priority Equity Share on the last Retraction Date of the year at a retraction price equal to the NAV per Unit on that date.

### **NAV Calculation**

13. 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 investment fund on at least a weekly basis. Furthermore, an investment fund that uses or holds permitted derivatives, such as the Filer intends to do, must calculate its NAV per security on a daily basis.
14. The Filer will calculate its NAV per Unit on the last business day of each month for purposes of processing retractions, if any, of its Shares, and on the fifteenth day of each month (or the business day immediately prior thereto if the fifteenth day is not a business day).
15. The preliminary prospectus of the Filer discloses, and the final prospectus of the Filer will disclose, that the NAV per Unit will be provided by the Manager to the public upon request. The public also will be able to access the NAV per Unit on the Manager's website at [www.ci.com](http://www.ci.com).
16. NAV calculation on a daily basis is not necessary for redemption purposes because the Filer only allows investors to redeem monthly, thus the Manager believes it would not be prejudicial to investors to allow the Filer to calculate its NAV twice monthly.

### **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:

- (a) the final prospectus of the Filer discloses that the NAV per Unit will be provided by the Manager to the public on request and further discloses that

## **2007 BCSECCOM 461**

the NAV per Unit is accessible to the public on the Internet at [www.ci.com](http://www.ci.com);

- (b) the Priority Equity Shares and Class A Shares are listed on the TSX; and
- (c) the Filer calculates its NAV per Unit at least twice a month.

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Ontario Securities Commission