

2006 BCSECCOM 213

March 27, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 Continuous Disclosure Requirements for Investment Funds - *Financial statement delivery requirement* - A fund wants relief from the requirement in s. 5.1 of NI 81-106 to deliver audited annual financial statements for a particular year - The fund filed a final prospectus with audited financial statements dated before its year end; the fund had limited operations between the date of the audited financial statements and its year end; the fund's audited annual financial statements will not disclose any material information that is not already disclosed, either in the financial statements included in the prospectus or elsewhere in the prospectus - *MRFP requirement* - A fund wants relief from the requirement in s. 4.2 of NI 81-106 to prepare and file an annual management report of fund performance (MRFP) for a particular year - The fund filed a final prospectus with audited financial statements dated before its year end; the fund had limited operations between the date of the audited financial statements and its year end; because of its limited operations, the fund cannot discuss changes in risk, the result of operations, or economic trends and market conditions that affect the fund in the annual MRFP for its first financial year

Applicable British Columbia Provisions

National Instrument 81-106, ss. 4.2, 5.1 and 17.1

In the Matter of
the Securities Legislation
of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New
Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories,
Yukon and Nunavut (the "Jurisdictions")

and

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

and

In the Matter of Allbanc Split Corp. II (the "Filer")

MRRS Decision Document

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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:

- an exemption from the requirement contained in section 5.1(2)(a) of National Instrument 81-106 – *Investment Fund Continuous Disclosure* (“NI 81-106”) to deliver to its shareholders annual financial statements for the period from incorporation to February 28, 2006; and
- an exemption from the requirement contained in section 4.2 of NI 81-106 to file a management report of fund performance (“MRFP”) for the period from incorporation to February 28, 2006, as would otherwise be required pursuant to applicable Legislation (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. In this decision:

“Capital Shares” means the 13,300,000 class A capital shares of the Filer distributed pursuant to the Prospectus;

“Initial Financial Statements” means the financial statements of the Filer for the period from incorporation to February 28, 2006;

“Portfolio Shares” means the portfolio of common shares of Bank of Montreal, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada, The Bank of Nova Scotia and The Toronto-Dominion Bank held by the Filer;

“Preferred Shares” means the 6,650,000 class A preferred shares of the Filer distributed pursuant to the Prospectus; and

“Prospectus” means the final prospectus of the Filer dated January 25, 2006.

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Representations

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated under the laws of the Province of Ontario on December 7, 2005. The fiscal year end of the Filer is February 28. The Filer filed the Prospectus with the securities regulatory authority in each of the provinces and territories of Canada pursuant to which the distribution of Capital Shares and Preferred Shares was completed on February 9, 2006 (the "Closing Date"). Pursuant to an over-allotment option exercisable for a period of 30 days from the Closing Date, up to 15% of the number of each of the Capital Shares and Preferred Shares have been authorized for issuance. The Filer carried on no relevant business activity from its date of incorporation until filing the Prospectus.
2. The Filer is a passive investment company whose principal undertaking is the holding of the Portfolio Shares in order to generate fixed cumulative preferential distributions for the holders of the Preferred Shares and to enable the holders of Capital Shares to participate in any capital appreciation in the Portfolio Shares after payment of administrative and operating expenses of the Filer. The Portfolio Shares held by the Filer will only be disposed of as described under the heading "The Company – Sale of Portfolio Shares" commencing on page 11 of the Prospectus and "Details of the Offerings" commencing on page 17 of the Prospectus. The sole purpose of the Filer is to provide a vehicle through which different investment objectives with respect to participation in the Portfolio Shares may be satisfied.
3. Pursuant to the requirements of the Legislation, and subject to any relief obtained pursuant to this application, the Filer would be required to (i) prepare and file in the Jurisdictions and deliver to its shareholders the Initial Financial Statements and (ii) prepare and file in the Jurisdictions an MRFP for the same period.
4. The Filer will audit its financial statements for the period ended February 28, 2006.
5. The benefit to be derived by the shareholders of the Filer from receiving the Initial Financial Statements would be minimal in view of (i) the short period from the date of the Prospectus, January 25, 2006, to the fiscal year end, February 28, 2006; and (ii) the nature of the minimal business carried on by the Filer.

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6. The expense to the Filer of sending to its shareholders the Initial Financial Statements would not be justified in view of the benefit to be derived by the shareholders from receiving such statements.
7. The limited activities of the Filer for the period from December 7, 2005 to February 28, 2006 do not provide meaningful information for the purposes of the preparation of an MRFP.
8. For example, in respect of certain MRFP requirements, Form 81-106F1 requires a discussion of how changes to the investment fund over the financial year affected the overall level of risk associated with an investment in the investment fund, a summary of the results of operations of the investment fund for the financial year in which the management discussion of fund performance pertains, a discussion of the recent developments affecting the investment fund, a discussion of any transactions involving related parties to the investment fund, disclosure of selected financial highlights for the investment fund and a summary of the investment fund's portfolio as at the end of the financial year of the investment fund to which the MRFP pertains. Given the minimal business carried on by the Filer and the fact that the Filer filed its Prospectus close to the time of its fiscal year end, no disclosure on these and other items required to be disclosed by Form 81-106F1 could be meaningfully provided in the MRFP.

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:

- (i) the Initial Financial Statements are filed and posted for viewing on SEDAR and www.scotiamanagedcompanies.com;
- (ii) the Filer send a copy of such Initial Financial Statements to any shareholder of the Filer who so requests;
- (iii) the Filer will prepare an MRFP for the period ended August 28, 2006 in accordance with Form 81-106F1, except that it will also include financial highlights as required by Part B, Item 3 of Form 81-106F1; and

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- (iv) the Filer will deliver the MRFP referred to in (iii) to each of its securityholders, as if section 18.5 of NI 81-106 applied.

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Ontario Securities Commission