

2006 BCSECCOM 748

December 18, 2006

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 and Yukon Territory
(the “Jurisdictions”)

and

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

and

In the Matter of
STaRS Income Fund
(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 Middlefield STRS Management Limited (the “Manager”), the manager of the Trust, 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

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calculate net asset value (“NAV”) at least once every business day (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (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 Trust:

1. The Trust is governed pursuant to a declaration of trust as amended and restated as of January 8, 2004, as further amended.
2. The Trust’s investment objectives are: (i) to provide holders (“Unitholders”) of its trust units (“Units”) with a stable stream of monthly distributions; and (ii) to return the original issue price of the Units to Unitholders upon termination of the Trust, as well as to provide Unitholders with capital appreciation above the original issue price.
3. The Trust has acquired a fixed portfolio of equity securities (the “Fixed Portfolio”) and pursuant to agreements between the Manager, on behalf of the Trust, and one or more counterparties, such counterparties have agreed to pay the Trust a capital support payment equal to an aggregate of \$5.00 per Unit of the Trust outstanding on the termination date of December 31, 2013 (the “Termination Date”), in exchange for the Trust agreeing to deliver to such counterparties the securities comprising the Fixed Portfolio or the cash equivalent of their value on the Termination Date (the “Forward Agreements”).
4. The Trust has also invested the trust property not comprising the Fixed Portfolio in a diversified managed portfolio of securities consisting of real estate investment trust, oil and gas royalty trust, income fund, high yield debt and other high yielding equity and debt securities primarily of North

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American issuers as determined by the Co-Advisors (as defined below) from time to time.

5. The Trust may invest in or use derivative instruments, in addition to the Forward Agreements, for hedging purposes consistent with its investment strategy and in accordance with National Instrument 81-102 - Mutual Funds or as otherwise permitted by the Canadian securities regulators from time to time. However, the Trust may not make any investment that would result in the Trust failing to comply with its investment restrictions regarding its status as a “mutual fund trust” as defined in the *Income Tax Act* (Canada).
6. The Manager is a corporation incorporated under the laws of Ontario. The Manager is the trustee and manager of the Trust and is responsible for providing or arranging for the provision of administrative services to the Trust.
7. Guardian Capital LP and Middlefield Capital Corporation are the investment co-advisors to the Trust (the “Co-Advisors”).
8. Units are redeemable on the last day of each month prior to the Termination Date (each a “Redemption Valuation Date”). Unitholders whose Units are redeemed on a Redemption Valuation Date in the month of December are entitled to receive a redemption price per Unit that is equal to the NAV per Unit determined as of the December Redemption Valuation Date. In respect of any other Redemption Valuation Date, Unitholders whose Units are redeemed are entitled to receive a redemption price per Unit determined as of the applicable Redemption Valuation Date equal to the NAV per Unit less the lesser of (a) 4% of NAV per Unit as of such Redemption Valuation Date, and (b) \$0.40 per Unit.
9. Unitholders that have redeemed their Units will receive payment on or before the tenth business day of the month following the relevant Redemption Valuation Date.
10. The Manager intends to calculate the NAV per Unit on a weekly basis on Thursday of each week (or if Thursday is not a business day, then on the immediately preceding business day) and on the last business day of each month and December 31 of each year. The Trust will make available to the financial press for publication on a weekly basis its NAV per Unit as well as through the internet at www.middlefield.com.
11. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”). Since the Units are listed for trading on the TSX, Unitholders

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do not have to rely solely on the redemption feature of the Units in order to provide liquidity for their investment.

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 NAV calculation is available to the public upon request; and
- (b) a toll-free telephone number or website is available which 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
Ontario Securities Commission