

2007 BCSECCOM 265

April 27, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-107, s. 7.1 - Independent Review Committee for Investment Funds - A fund requires relief from the obligation to appoint an IRC prior to May 1, 2007 - Unitholders have approved the termination of the fund; the fund is expected to dissolve before the fund must fully comply with NI 81-107; the IRC, if appointed, would not be required to take any action prior to the fund's dissolution

Applicable British Columbia Provisions

National Instrument 81-107, ss. 3.2, 8.2(2) and 7.1

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
Tremont Capital Opportunity Trust
(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 Trust for a decision under the securities legislation of the Jurisdictions (the "Legislation") for an exemption from the requirements in sections 3.2 and 8.2(2) of National Instrument 81-107 *Independent Review Committee for Investment Funds* ("NI 81-107") for the manager of the Trust to appoint each member of the Trust's first independent review committee by May 1, 2007 (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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- (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

The decision is based on the following facts represented by the Trust:

1. The Trust is a closed-end investment trust established under the laws of Ontario by a trust declaration which was amended and restated as of April 17, 2003 (the “Declaration of Trust”). Tremont Capital Management, Corp. is the trustee and manager of the Trust (the “Manager”).
2. The beneficial interest in the net assets of the Trust is represented by redeemable, transferable trust units of a single class and series (the “Units”).
3. The net proceeds of the initial public offering of Units were invested by the Trust in a portfolio consisting of common shares of Canadian public companies (the “Common Share Portfolio”). The Trust then entered into a forward purchase and sale agreement (the “Forward Agreement”) with TD Global Finance (the “Counterparty”), pursuant to which the Counterparty agreed to pay to the Trust on or about March 29, 2013 (the original termination date of the Trust), as the purchase price for the Common Share Portfolio, an amount equal to 100% of the redemption proceeds of a corresponding number of notes of Tremont Hedge Fund Limited (the “Fund”).
4. The Fund is a Cayman Islands exempted company with limited liability established on March 19, 2003 under the Companies Law (2002 Revision) of the Cayman Islands. The portfolio of the Fund is invested in a portfolio of offshore hedge funds. As a result of the Forward Agreement, the return to Unitholders and the Trust is dependant upon the return of the investment portfolio of the Fund.
5. On March 29, 2007, at a special meeting of the Unitholders, the Unitholders approved (i) an extraordinary resolution authorizing the termination of the Trust and the Forward Agreement, and (ii) an extraordinary resolution

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authorizing the Manager (as trustee) to amend the Declaration of Trust to terminate the annual redemption right attached to the Units.

6. The Trust is currently expected to dissolve on or about August 15, 2007. In connection with the dissolution, the Manager will terminate the Forward Agreement. On termination of the Forward Agreement, the Trust will be entitled to receive, in consideration for the Common Share Portfolio that is the subject of the Forward Agreement, the proceeds realized by the Counterparty pursuant to the redemption or sale of all outstanding notes of the Fund. The Trust will pay the required fees to the Counterparty in connection with the termination of the Forward Agreement.
7. On dissolution of the Trust, all outstanding Units will be redeemed and all trust property remaining after paying or providing for all liabilities and obligations of the Trust, including all costs associated with the wind-up of the Trust and the fees and expenses incurred to settle the Forward Agreement, will be distributed pro rata among the Unitholders.
8. The Units are expected to be de-listed from the Toronto Stock Exchange at the close of business on or about the dissolution date.
9. Pursuant to section 3.2 of NI 81-107, the Manager must appoint the first members of the IRC. Pursuant to section 8.2(2) of NI 81-107, the manager must appoint the first members of the IRC by May 1, 2007.
10. The Trust is currently expected to dissolve on or about August 15, 2007, in advance of November 1, 2007, the date on which full compliance with NI 81-107 will be required. In the circumstances, the Manager is not currently proposing to prepare an IRC charter, refer matters to an IRC or otherwise comply with the provisions of NI 81-107 earlier than required. As a result, without the Requested Relief, any members appointed to an IRC at this time will not have any duties to perform as contemplated by NI 81-107 but the Manager will have spent time, and the Trust will have been subject to the expense relating to the appointment of the initial IRC members. All expenses of the Trust will be borne by Unitholders of record on the dissolution of the Trust.
11. The Trust has an established advisory board, which is available to provide independent advice to the Manager to assist it in performing its services under the Declaration of Trust until the Trust is dissolved. The advisory board currently consists of two members who are independent from the Manager. Although the Trust is in wind-up mode, if necessary, the Manager will consult

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with the two independent members of the Trust's current advisory board with respect to conflict of interest matters until the Trust is dissolved.

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 the Trust dissolves on or about August 15, 2007, but in any event, not later than August 30, 2007.

Rhonda Goldberg
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Ontario Securities Commission