

# 2005 BCSECCOM 697

November 14, 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, Newfoundland and Labrador, Northwest Territories,  
Yukon Territory and Nunavut (the “Jurisdictions”)

and

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

and

In the Matter of Canadian Fundamental 100 Income Fund  
(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 from the Filer for a decision under the securities legislation (the “Legislation”) of the Jurisdictions for relief from Section 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 National Instrument 81-102 *Mutual Funds*) to be calculated at least once every business day (the “Requested Relief”).

## 2005 BCSECCOM 697

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:

1. The Filer is an investment trust to be established under the laws of the Province of Ontario pursuant to a trust agreement to be entered into between Claymore Investments, Inc. (the “Manager”), as manager of the Filer, and The Royal Trust Company, as trustee of the Filer. The principal office of the Filer and the Manager is located at 170 University Avenue, 9th Floor, Toronto, Ontario, M5H 3B3.
2. The investment objectives of the Filer are to provide holders of redeemable, transferable units (the “Units”) of the Filer (“Unitholders”) with: (i) a stable stream of monthly cash distributions of \$0.05 per Unit (\$0.60 per annum, representing a yield of 6.0% per annum on the issue price of \$10.00 per Unit); and (ii) a total return that generally outperforms an investment in the S&P/TSX Composite Index.
3. The Filer will make an offering of Units in each of the provinces and territories of Canada and has filed a preliminary prospectus dated September 23, 2005 in each of the provinces and territories of Canada. The Filer does not intend to continuously offer Units once the Filer is out of primary distribution.
4. The Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the “TSX”). Conditional approval has been granted to list the Units on the TSX.
5. The Manager, on behalf of the Filer, has retained Research Affiliates, LLC (the “Investment Advisor”) to act as the investment advisor of the Filer.
6. To achieve its investment objectives, the net proceeds from the offering of Units will be invested in a diversified portfolio of 100 Canadian equity

## 2005 BCSECCOM 697

securities (the “Portfolio”), selected and weighted on the basis of the Investment Advisor’s fundamental index strategy.

7. Generally, the Portfolio will be rebalanced on a monthly basis by the Investment Advisor and least once per year.
8. In order to enhance the efficiency of the rebalancing process and to generate additional income for the Filer, the Investment Advisor may, from time to time, write covered call options and cash-covered put options on securities in the Portfolio. The Filer intends to write options only in connection with the rebalancing of the Portfolio.
9. The Filer will calculate its net asset value per Unit (“NAV per Unit”) on the following days: (i) each Thursday during the year (or, if a Thursday is not a business day, the next business day following such Thursday); (ii) the last business days of March, June, September and December; and (iii) the last business day of December of each year (the “Annual Redemption Date”). If the Filer elects to have a December 15 year-end for tax purposes as permitted by the *Income Tax Act* (Canada), the NAV per Unit will also be calculated on December 15.
10. Subject to the Filer’s right to suspend redemptions, Units may be surrendered for redemption at the option of a Unitholder: (i) commencing in 2006, on an annual basis on the Annual Redemption Date at a redemption price per Unit equal to the NAV per Unit determined as of the Annual Redemption Date, less any costs and expenses incurred by the Filer in connection with funding the redemption; and (ii) on the last business day of a month at a redemption price per Unit computed by reference to the market price of the Units.
11. The prospectus of the Filer will disclose that the net asset value per Unit of the Filer will be made available by the Manager via a toll-free telephone number and on the Manager’s website.
12. Because the Units will be listed for trading on the TSX, Unitholders will not have to rely solely on the redemption features 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 authority to make the decision has been met.

## **2005 BCSECCOM 697**

The decision of the Decision Makers is that the Requested Relief is granted, provided that the prospectus of the Filer discloses:

- (a) that the net asset value is available to the public upon request; and
- (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 Filer calculates its net asset value at least weekly.

Leslie Byberg  
Manager, Investment Funds Branch  
Ontario Securities Commission