

2005 BCSECCOM 113

January 7, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 171 – Revocation and replacement of existing order - Securities Act ss. 48 & 76 - Other - Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants - The applicant wants relief from the registration requirement to disseminate sales communications relating to the distribution of securities of a mutual fund and from requirement that the prospectus for the fund contain a certificate of the underwriters - Units of the fund trade on an exchange; trades of the fund will be made through underwriters and designated brokers; neither the underwriters nor the designated brokers receive any fees or commissions in connection with the distribution of units of the fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 171, 48 and 76

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

and

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

and

In the Matter of iUnits Canadian Bond Broad Market Index Fund (the “Fund”)

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 Fund and Barclays Global Investors Canada Limited, as trustee of the Fund (“Barclays”), for a decision under the securities legislation of the Jurisdictions (the “Legislation”) revoking and replacing a MRRS decision dated October 11, 2000 as it relates to the Fund (the “Existing Decision”) and that:

2005 BCSECCOM 113

- (a) the registration requirement of the Legislation does not apply to Barclays or the Fund in connection with their dissemination of sales communications relating to the distribution of securities of the Fund; and
- (b) in connection with the distribution of securities of the Fund pursuant to a prospectus, the Fund be exempt from the requirement that the prospectus contain a certificate of the underwriter or underwriters who are in a contractual relationship with the issuer whose securities are being offered.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- 1. the Ontario Securities Commission is the principal regulator for this application; and
- 2. this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 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 Fund:

- 1. The Fund is a trust established under the laws of Ontario. Barclays is the trustee of the Fund. Barclays' head office is located in Toronto, Ontario.
- 2. Barclays is registered in all of the Jurisdictions, except Quebec, as a portfolio manager and investment counsel (or the equivalent categories of registration) under the securities legislation of such Jurisdictions. Barclays is currently registered in Quebec as a non-resident adviser. Barclays is also registered as a Commodity Trading Manager and Limited Market Dealer in Ontario and as a Limited Market Dealer in Newfoundland and Labrador.
- 3. The Fund is a mutual fund within the meaning of the *Securities Act* (Ontario) and is a reporting issuer under the securities legislation of each Jurisdiction, where such term is applicable.
- 4. The units of the Fund are listed and posted for trading on the Toronto Stock Exchange (the "TSX").
- 5. At a special meeting on December 15, 2004, unitholders of the Fund approved a change to the investment objective of the Fund and certain related matters. The new investment objective of the Fund is to replicate, to the extent

2005 BCSECCOM 113

possible, the return of the *Scotia Capital Universe Bond Index*TM (the “SC Universe Bond Index”) by investing in a regularly rebalanced portfolio of bonds that closely matches the characteristics of the SC Universe Bond Index. Unitholders also approved certain related amendments to the Fund’s declaration of trust, including changing the name of the Fund and amendments to the provisions relating to the trustee fee, exchanges and redemptions of units, and subscriptions for units. The units of the Fund are “index participation units”.

6. The prior investment objective of the Fund was to replicate, to the extent possible, the return of a bond issued by the Government of Canada with a ten year term to maturity. In order to achieve that objective, the Fund invested in the Government of Canada bond selected by Barclays with a remaining term to maturity of ten years.
7. Pursuant to the Existing Decision, the Fund (then named iUnits Government of Canada 10 Year Bond Fund) was granted an exemption from the registration requirement of securities legislation in connection with the dissemination of sales communications relating to the distribution of units and an exemption from the requirement of securities legislation that the prospectus include a certificate of the underwriters. The Fund continues to require this relief in order to conduct its activities.
8. An Amended and Restated Final Prospectus, dated December 15, 2004, for the Fund was filed in each of the Jurisdictions to reflect the changes to the Fund described in paragraph 5.
9. The Fund receives interest income on the bonds that it holds. The interest income and any other income may be held in cash or be invested by the Fund in bond futures contracts and short-term securities.
10. The interest income received, investment income and any other income of the Fund is expected to be distributed at least quarterly to unitholders.
11. The units of the Fund may only be subscribed for or purchased directly from the Fund by:
 - (a) one or more members of the TSX who are registered dealers or brokers and who have entered into an underwriting agreement with the Fund (the “Underwriters”); and

2005 BCSECCOM 113

- (b) one or more members of the TSX who are registered dealers or brokers and who have entered into a designated broker agreement with the Fund (the “Designated Brokers”).

Subscription or purchase orders may be placed by an Underwriter or Designated Broker only for units in the prescribed number determined by Barclays from time to time (the “Prescribed Number”) or any integral multiple thereof on any day on which there is a trading session of the TSX and the SC Universe Bond Index is calculated (a “Trading Day”).

12. Every subscription or purchase order for the Prescribed Number of units of the Fund must be paid for by delivery of, in Barclays discretion:

- (a) one Basket of Bonds and cash in an amount sufficient so that the value of the Basket of Bonds and the cash received is equal to the net asset value of the units next determined following the receipt of the subscription order; or
- (b) cash in an amount equal to the net asset value of the units next determined following the receipt of the subscription order; or
- (c) a combination of bonds and cash, as determined by Barclays, in an amount sufficient so that the value of the bonds and cash received is equal to the net asset value of the units next determined following the receipt of the subscription order.

(The term “Basket of Bonds” means a group of bonds in specified principal amounts as Barclays may determine in its discretion from time to time.)

13. The units of the Fund may also be issued directly from time to time and, in any event, not more than once every quarter, to one or more Designated Brokers, pursuant to a designated broker agreement which obliges each Designated Broker, upon notice given by Barclays, to make a cash subscription for units in an amount not to exceed 0.15% of the net asset value of the Fund.
14. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with each Fund’s issuance of units to them. Barclays, as trustee of the Fund may, at its discretion, charge an administrative fee on the issuance of units to the Underwriters.
15. Except as described in paragraphs 11 and 13 above, units of the Fund may not be purchased directly from the Fund. However, the Fund may issue additional

2005 BCSECCOM 113

units to unitholders to the extent that the Fund has not distributed the full amount of its net income in any year.

16. While unitholders who wish to dispose of their units may generally do so by selling their units on the TSX, unitholders may also on any Trading Day:
- (a) exchange units in the Prescribed Number or an integral multiple of the Prescribed Number of units for bonds and cash. The exchange price will generally be payable by the delivery of Baskets of Bonds (constituted as most recently published prior to the receipt of the exchange request) and cash; provided that in the case of exchange requests in excess of two times the Prescribed Number, Barclays, in its discretion, may make payment of the of the exchange price by delivering to the unitholder, to the extent practicable, a pro rata portion of the aggregate principal amount of each of the bonds held by the Fund or such other amounts of bonds as Barclays shall determine, together with cash. Barclays may charge, at its discretion, an administrative fee of up to 0.05% of the exchange proceeds to offset certain transaction costs associated with the exchange; or
 - (b) redeem any number of units of each Fund for cash at a redemption price per unit equal to 95% of the closing price of the units on the TSX on the effective day of redemption.
17. Barclays is entitled to receive an annual trustee fee of 0.30% of the net asset value of the Fund, calculated and accrued daily and paid quarterly. Barclays is responsible for all costs and expenses of the Fund, except the trustee fee, fees payable by Underwriters upon the issuance of units or by unitholders upon the exchange or redemption of units and income and withholding taxes.

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 Existing Decision is revoked and replaced as of, and from, the date of this decision and that:

- (a) the registration requirement of the Legislation does not apply to Barclays or the Fund in connection with their dissemination of sales communications relating to the distribution of securities of the Fund, provided they comply with Part 15 of National Instrument 81-102, Mutual Funds; and

2005 BCSECCOM 113

- (b) in connection with the distribution of securities of the Fund pursuant to a prospectus or any renewal prospectus, the Fund is exempt from the requirement of the Legislation that the prospectus or renewal prospectus contain a certificate of the Underwriters (as defined in paragraph 11 above).

Paul Moore
Vice Chair
Ontario Securities Commission

H. Lorne Morphy
Commissioner
Ontario Securities Commission