

2005 BCSECCOM 646

October 11, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - A fund wants relief from the requirements to disclose the name of the issuer of each of its portfolio assets and to disclose the names of the top 25 positions held by the fund - the portfolio of the fund is invested in non-public hedge funds about which information is not publicly available; under the fund's investment restrictions, the fund's portfolio must be diversified, investing in at least 25 underlying funds with no more than 10% of the property invested in any one underlying fund; the fund will provide meaningful alternative disclosure; if an investment in any one underlying fund represents more than 5% of the assets of the fund, the fund must disclose the name of that underlying fund

Applicable British Columbia Provisions

National Instrument 81-106, ss. 3.5(1)1 and 17.1
Form 81-106F1, Part B, item 5(2)

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,
New Brunswick, Nova Scotia, 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
Northwater Fund Management Inc. (the Filer) and
Northwater Market-Neutral Trust, Northwater Five-Year Market-Neutral Trust
and Northwater Top 75 Income Trusts^{PLUS}
(collectively, the Trusts)

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 and the Trusts for a

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decision under National Instrument 81-106 Investment Fund Continuous Disclosure (NI 81-106) for an exemption from the following provisions of NI 81-106 (the Requested Relief):

- (a) the requirement in paragraph 3.5(1)1 of NI 81-106 to include in the statement of investment portfolio for each Trust the name of the issuer of each portfolio asset; and
- (b) with respect to the preparation of both management reports of fund performance (MRFPs) under Part 4 of NI 81-106 and quarterly portfolio disclosure under Part 6 of NI 81-106, both required to be prepared in accordance with Form 81-106F1 or parts thereof (the Summary of Investment Portfolio), the requirement in Item 5(2)(b), Part B of Form 81-106F1 to disclose the names of the top 25 positions held by each Trust.

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 the manager of each Trust and the trustee of Northwater Five-Year Market-Neutral Trust (NMN5) and Northwater Top 75 Income Trusts^{PLUS} (NTP).
2. Each Trust is a reporting issuer in those Jurisdictions whose securities legislation contemplates such status and is a “non-redeemable investment fund” under NI 81-106. The Trusts distributed their securities in each Jurisdiction pursuant to prospectuses dated July 18, 1997 in respect of Northwater Market-Neutral Trust (NMNT), dated June 21, 2004 and December 6, 2004 in respect of NMN5 and dated February 15, 2005 in respect of NTP.
3. Each Trust invests directly or indirectly in a portfolio of hedge funds (each, a Hedge Fund Portfolio) that utilize market-neutral strategies and the returns

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to investors in each Trust are based, in whole or in part, as applicable, on the returns of the respective Hedge Fund Portfolio.

4. The hedge funds (the Underlying Hedge Funds) that comprise the Hedge Fund Portfolios are private investment funds, the managers of which are typically located in the U.S., Canada, Europe, Australia and Asia and, other than certain funds that are subject to the reporting requirements of the Irish Stock Exchange as a result of their listing thereon, are generally not subject to any continuous disclosure requirements in any jurisdiction.
5. The investment restrictions for each Hedge Fund Portfolio (other than for NMNT) require that the Hedge Fund Portfolio must be invested in a minimum of 25 underlying hedge funds and a minimum of 7 distinct investment strategies, and the investment restrictions for NMNT require that at no time may more than 10% of the Trust's property consist of securities of any one issuer.
6. The Filer believes that disclosure of the names of the Underlying Hedge Funds is contrary to the interests of the unitholders of the Trusts and would potentially decrease the value of the Underlying Hedge Fund investments held by the Trusts.
7. The Filer, as a fiduciary to the Trusts, believes it is in the best interests of the Trusts and the unitholders to tailor the disclosure related to the Hedge Fund Portfolio by providing information that is meaningful and will assist the unitholders in assessing the investment characteristics and risk of the individual investments held in the Hedge Fund Portfolio as well as the portfolio as a whole rather than disclosing the individual names of the Underlying Hedge Funds.
8. The requested relief is intended as a modest adjustment to certain requirements of NI 81-106 to better take into account the operations of the Trusts while remaining faithful to the public interest objective underlying NI 81-106.

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

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1. in the statement of investment portfolio or Summary of Investment Portfolio of a Trust,
 - (a) each Underlying Hedge Fund is identified by a unique name;
 - (b) the unique name assigned to each Underlying Hedge Fund will be used consistently whenever the Underlying Hedge Fund is referred to, will not be changed and will not be used to identify a different Underlying Hedge Fund;
 - (c) if an investment in any one of the Underlying Hedge Funds represents more than 5% of the net assets of a Trust, the name of that Underlying Hedge Fund is disclosed;
2. the Summary of Investment Portfolio for each Trust discloses the allocation of the Underlying Hedge Funds by investment strategy, including
 - (a) the number of Underlying Hedge Funds in each investment strategy category;
 - (b) the current dollar value of each investment strategy category;
 - (c) the percentage of the Hedge Fund Portfolio invested in each investment strategy category; and
 - (d) the largest individual Underlying Hedge Fund holding for each investment strategy as a percentage of the total net asset value of the Trust;
3. in the statement of investment portfolio, or the notes to that statement, of each Trust, the Hedge Fund Portfolio is broken down into subgroups showing:
 - (a) the geographic location of the Underlying Hedge Funds;
 - (b) the age or date of creation of the Underlying Hedge Funds; and
 - (c) the size of the Underlying Hedge Funds;
4. the Summary of Investment Portfolio for each Trust discloses

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- (a) any non-arm's length relationship between an Underlying Hedge Fund and any of a Trust, the Filer (or an affiliate of the Filer), or another investment fund managed by the Filer (or an affiliate of the Filer); and
 - (b) whether any other investment fund managed by the Filer (or an affiliate of the Filer) is invested in the same Underlying Hedge Fund;
- 5. the interim financial statements for the Trusts are reviewed by the auditor;
- 6. the information required by subsection 3.5(1) of NI 81-106 is provided at least quarterly to the advisory board of the Trusts; and
- 7. this Decision terminates upon the coming into force of any legislation or rule of the Decision Makers dealing with subsection 3.5(1) of NI 81-106, Item 5 in Part B of Form 81-106F1, or any matters relating to the portfolio disclosure provided by hedge funds or investment funds that invest in hedge funds.

Leslie Byberg
Manager, Investment Fund Branch
Ontario Securities Commission