

2005 BCSECCOM 628

September 9, 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)

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 Front Street Long/Short Income Fund II (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 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 calculate net asset value at least once every business day (the “Requested Relief”).

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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 Fund:

1. The Fund is an investment fund corporation established under the laws of Ontario. The Fund’s manager is Front Street Capital 2004 (the “Manager”), and its investment advisor is Front Street Investment Management Inc. (the “Investment Advisor”).
2. The Fund will make an offering (the “Offering”) to the public, on a best efforts basis, of units of the Fund (the “Units”) in each of the provinces of Canada.
3. The Units will be listed for trading on the Toronto Stock Exchange (the “TSX”).
4. The Fund will invest the net proceeds of the Offering primarily in a portfolio of securities of income trusts (the “Portfolio”), although the Fund may also invest in preferred shares, corporate and government debt securities and common shares.
5. In order to assist the Fund in achieving its investment objectives, the Fund may invest in or use derivatives and employ a variety of hedging strategies. The Portfolio will include securities which the Investment Advisor believes are undervalued and may include short positions in securities which the Investment Advisor believes are overvalued. The Investment Advisor will manage the relative weightings of the Fund’s long and short positions to achieve the Fund’s investment objectives of generating a stable stream of income and enhanced capital growth while managing risk to preserve capital. The Fund will also engage in merger arbitrage, convertible arbitrage and trading in securities of issuers that may be involved in restructurings or business unit dispositions.

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6. The Fund will calculate its net asset value per Unit on the Thursday of each week of the fiscal year (or if Thursday is not a business day, the immediately preceding day), the last business day of each month and on such other days as the Manager and the Trustee shall determine from time to time (a “NAV Valuation Date”). Net asset value will be calculated as at the close of business on each NAV Valuation Date by subtracting the aggregate amount of the Fund’s liabilities (including any accrued performance bonuses and fees payable to the Manager) from the aggregate value of the Fund’s assets.
7. The Fund’s objectives are to provide holders of Units (“Unitholders”) with a stable stream of monthly cash distributions initially targeted to be \$0.05 per Unit (or \$0.60 per annum), representing a yield of 6.0% per annum on the original issue price of the Units, and to provide Unitholders with the opportunity for enhanced capital growth through the selection, management and strategic trading of long and short positions primarily in securities of Income Trusts. On or about December 31, 2015, the Fund will distribute the net assets to Unitholders unless the term is extended by a vote of shareholders.
8. Subject to the Fund’s right to suspend redemptions, Units may be surrendered for redemption during the last five business days of November and the first ten business days of December for redemption on the last business day of December in such year (a “Redemption Date”). Units so surrendered for redemption by the registered holder will be redeemed on the applicable Redemption Date.

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 the Prospectus discloses:

- (a) that the net asset value calculation 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

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(d) the Fund calculates its net asset value at least weekly.

Leslie Byberg
Manager, Investment Funds Branch
Ontario Securities Commission