

2006 BCSECCOM 321

April 28, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106 *Continuous Disclosure Requirements for Investment Funds*, s. 17.1 – net asset value calculation requirements - 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, ss. 14.2(3)(b) and 17.1

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

and

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

and

In the Matter of
Brompton Top 50 Compound Growth 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 (the “Application”) from the Filer dated April 4, 2006 for a decision under the securities legislation (the “Legislation”) of the Jurisdictions for an exemption from section 14.2(3)(b) of

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National Instrument 81-106 *Investment Funds Continuous Disclosure* (“NI 81-106”), which requires an investment fund that uses specified derivatives (as such term is defined in National Instrument 81-102 *Mutual Funds*) to calculate net asset value at least once every business day (the “Requested Relief”).

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 established under the laws of Ontario pursuant to a declaration of trust, and which will be governed by an amended and restated declaration of trust between the Manager and the Trustee (as defined below).
2. Brompton Funds Management Limited (the “Manager”) is the promoter and manager of the Filer and will perform administrative services on behalf of the Filer.
3. A trust company (the “Trustee”) will act as the trustee, registrar, transfer agent and distribution agent of the Filer.
4. It is expected that RBC Dexia Investor Services Trust (the “Custodian”) will act as the custodian of the assets of the Filer and will be responsible for certain aspects of the day-to-day administration of the Filer.
5. A preliminary prospectus of the Filer dated March 29, 2006 (the “Preliminary Prospectus”) has been filed with the securities regulatory authorities in each of the Provinces and Territories of Canada in connection with a proposed issuance of units of the Filer (the “Units”).
6. The Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the “TSX”). An application requesting conditional listing approval has been made on behalf of the Filer to the TSX.

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7. The Units will be redeemable at the option of the holders of Units (the “Unitholders”) on both a monthly and an annual basis. Units can be redeemed annually on the second to last business day of November of each year (the Redemption Date) for an amount based on the Net Asset Value per Unit on the Redemption Date. The monthly redemptions are at a price computed by reference to the market price of the Units on the monthly redemption date. Since the primary purpose of the Filer is to invest money provided by its Unitholders, the Filer does not invest for the purpose of exercising effective control, seeking to exercise effective control or being actively involved in the management of the issuers in which it invests. As a result, the Filer will not be a “mutual fund” under applicable securities legislation, but will be a “non-redeemable investment fund” for purposes of the Legislation.
8. The Filer’s investment objectives are to provide Unitholders with the benefits of compound investment returns on a tax deferred basis and the potential for additional capital appreciation of an equally weighted diversified portfolio of the top 50 income trusts, as measured by current yield, which qualify for inclusion in the S&P/TSX Composite Index (the “Portfolio”).
9. The Portfolio will be held by CGF Trust, a trust to be incorporated under the laws of the Province of Ontario. CGF Trust will be established for the purpose of acquiring and holding the Portfolio. A Canadian financial institution (the “Counterparty”) will be the initial beneficial owner of all of the units of CGF Trust (the “Trust Units”).
10. The Filer will use the net proceeds of the offering of Units for the pre-payment of its purchase obligations under a forward agreement that the Fund will enter into with the Counterparty (the “Forward Agreement”).
11. Under the terms of the Forward Agreement, the Counterparty will agree to deliver to the Filer in November, 2026, or earlier if the Forward Agreement is terminated prior to this date (the “Forward Termination Date”), a portfolio consisting of Canadian public issuers that are “Canadian Securities” as defined under subsection 39(6) of the Income Tax Act (Canada) (the “Canadian Securities Portfolio”). The aggregate value of the Canadian Securities Portfolio will be equal to the redemption proceeds of the relevant number of Trust Units, net of any amount owing by the Filer to the Counterparty.
12. From time to time, the Filer may hold a position of its assets in cash and cash equivalents.
13. The Forward Agreement provides that the Filer may settle the Forward Agreement, in whole or in part, prior to the Forward Termination Date: (i) to

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permit the Filer to fund redemptions and repurchases of Units from time to time; (ii) to fund operating expenses and other liabilities of the Filer; and (iii) for any other reason.

14. The Manager is the promoter of the Filer and has been retained to act as manager for both the Filer and CGF Trust. The Manager will be responsible for providing or arranging for the provision of administrative services required by both the Filer and CGF Trust.
15. Brompton Capital Advisors Inc. (the "Advisor") will be the investment advisor to CGF Trust. The Advisor is registered as an advisor in the category of investment counsel and portfolio manager and is registered as a limited market dealer. The Manager will appoint the Advisor as advisor to CGF Trust.
16. The Trust Units will be redeemable at the demand of its unitholders. The Trust Units will be redeemed at a price computed by reference to the net asset value per unit of CGF Trust.
17. The net asset value per Unit of the Filer will be calculated and made available to the financial press for publication on a weekly basis. The Manager will post the net asset value per Unit of the Filer on its website at www.bromptongroup.com.
18. The Advisor will employ leverage in the Portfolio to enhance the Portfolio's total returns.

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.

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

- (a) that the net asset value calculation of the Filer is available to the public upon request;
- (b) a website that the public can access to obtain the net asset value;

for so long as:

- (c) the Units are listed on the TSX; and

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(d) the Filer calculates its net asset value per Unit at least weekly.

Leslie Byberg
Manager, Investment Funds Branch
Ontario Securities Commission