

2006 BCSECCOM 320

April 26, 2006

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

and

In the Matter of
National Instrument 81-106
Investment Fund Continuous Disclosure
(“NI 81-106”)

and

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

and

In the Matter of
SCITI Total Return Trust
(the “Filer”)

MRRS Decision Document

2006 BCSECCOM 320

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 of the Jurisdictions (the “Legislation”) for exemptive relief from the daily calculation of net asset value (“NAV”) requirement of section 14.2(3)(b) of NI 81-106 pursuant to section 17.1 thereof (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.

In this decision

“Canadian Securities Portfolio” means a specified portfolio consisting of securities of Canadian public issuers that are “Canadian securities” for the purposes of the Income Tax Act (Canada) and listed on the TSX having a value based on the economic return provided by the Portfolio.

“Counterparty” means the Canadian financial institution which will be the initial beneficial holder of all of the Fund Units;

“Filer” means SCITI Total Return Trust;

“Fund Units” means the units of SCITI TR Fund;

“Holders” means the holders of the Units;

“Portfolio” means an equally weighted portfolio of the 100 largest income funds included in the Scotia Capital Income Trust Index from time to time;

“Portfolio Securities” means the securities included in the Portfolio;

“Preliminary Prospectus” means the preliminary prospectus of the Filer dated March 14, 2006;

“Prospectus” means the final prospectus of the Filer;

2006 BCSECCOM 320

“Purchase Agreement” means a forward purchase and sale agreement to be entered into between the Filer and the Counterparty;

“Scotia Capital” means Scotia Capital Inc., the promoter of the Filer;

“SCITI TR Fund” means a trust to be established under the laws of the Province of Ontario for the purpose of acquiring the Portfolio Securities that comprise the Portfolio;

“Termination Date” means a date that is approximately five years from the closing date of the offering of Units under the Prospectus;

“Trustee” means SCITI TR Limited, the trustee of the Filer;

“TSX” means the Toronto Stock Exchange;

“Units” means the units of the Filer;

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer’s investment objectives are to provide Holders with tax efficient exposure to the total return of the Portfolio.
2. The Portfolio will be held by SCITI TR Fund. The Counterparty will be the initial beneficial holder of all of the units of SCITI TR Fund.
3. In order to achieve its investment objectives, the Filer will use the net proceeds of the offering of Units for the payment of its purchase obligations under the Purchase Agreement which the Filer will enter into with the Counterparty pursuant to which the Filer will acquire on or before the Termination Date securities of Canadian public issuers that are “Canadian securities” for the purposes of the Income Tax Act (Canada) and listed on the TSX having a value based on the economic return provided by the Portfolio.
4. Under the terms of the Purchase Agreement, the Counterparty will agree to deliver to the Filer, on the Termination Date, the Canadian Securities Portfolio with an aggregate value equal to the redemption proceeds of a corresponding number of units of SCITI TR Fund net of any amount owing by the Filer to the Counterparty.

2006 BCSECCOM 320

5. The Purchase Agreement is expected to be the only material asset of the Filer, although the Filer may, from time to time, hold a portion of its assets in cash and cash equivalents.
6. The Filer will partially settle the Purchase Agreement prior to the Termination Date in order to fund (i) retractions, redemptions and repurchases of Units; and (ii) operating expenses and other liabilities of the Filer. Pursuant to the terms of the Purchase Agreement, the Counterparty will, in connection with a requested partial settlement deliver to the Filer securities of certain of the issuers in the Canadian Securities Portfolio with a value based on the partial settlement amount. The Filer will then sell such securities into the market in order to fund the retractions, redemptions and repurchases of Units or operating expenses or liabilities of the Filer.
7. Scotia Capital is the promoter of the Filer and one of the agents of the offering. The Filer is a connected issuer to Scotia Capital under applicable securities legislation by virtue of Scotia Capital's relationship with the Filer. Scotia Capital will be responsible for providing or arranging for the provision of administrative services required by both the Filer and SCITI TR Fund.
8. The Trustee is the trustee of the Filer and is responsible for managing the affairs of the Filer.
9. The Units are expected to be listed and posted for trading on the TSX. An application requesting conditional listing approval has been made on behalf of the Filer to the TSX.
10. Fund Units will be retractable at the demand of its unitholders. The Fund Units will be redeemed for cash or a combination of Portfolio Securities and cash in an amount computed by reference to the net asset value per unit of SCITI TR Fund.
11. The net asset value per Unit of the Filer will be calculated weekly. Scotia Capital will post the net asset value per Unit on its website at www.scotiamanagedcompanies.com.
12. SCITI TR Fund will employ leverage in the Portfolio to enhance the Portfolio's total returns.
13. In order to generate additional returns, SCITI TR Fund may lend the Portfolio Securities comprising the Portfolio to brokers, dealers and other financial institutions pursuant to the terms of a securities lending arrangement between SCITI TR Fund and any such borrower (a "Securities Lending Agreement").

2006 BCSECCOM 320

Under any Securities Lending Agreement: (i) the borrower will pay a negotiated securities lending fee and will make compensation payments equal to any distributions received by the borrower on the securities borrowed; (ii) the loans must qualify as “securities lending arrangements” for the purposes of the Income Tax Act (Canada); and (iii) SCITI TR Fund will receive prescribed collateral security.

14. The Preliminary Prospectus contains, and the Prospectus will contain, disclosure with respect to securities lending by SCITI TR Fund.

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 from the requirements of Section 14.2(3)(b) of NI 81-106 provided that the Prospectus discloses:

- (i) that the NAV calculation of the Filer is available to the public upon request; and
 - (ii) a website that the public can access for this purpose
- for so long as:
- (iii) the Units are listed on the TSX; and
 - (iv) the Filer calculates its NAV at least weekly.

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