

# 2008 BCSECCOM 212

April 22, 2008

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106 *Investment Fund Continuous Disclosure*, ss. 14.2(3)(a) and 17.1 - NAV calculation - An investment fund wants relief from the requirement in s. 14.2(3)(a) of National Instrument 81-106 to calculate its net asset value at least once in each week - 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 either: (a) listed or to be listed on a stock exchange and unitholders can buy or sell units of the fund through the exchange, or (b) convertible into units listed or to be listed on a stock 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 *Investment Fund Continuous Disclosure*, ss. 14.2(3)(a) and 17.1

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,  
Nova Scotia, New Brunswick, 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  
Diamond Holdings Trust  
(the Filer)

## MRRS Decision Document

## Background

- ¶ 1 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 section 17.1 of National Instrument 81-106 *Investment Fund Continuous*

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*Disclosure* (NI 81-106) that the Filer be exempt from the requirement in section 14.2(3)(a) of NI 81-106 to calculate net asset value on a weekly basis (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a non-redeemable investment fund (as defined in NI 81-106) established under the laws of the Province of British Columbia pursuant to a declaration of trust dated October 23, 2007;
  - 2. Facet Management Ltd. (the Administrator) is the administrator of the Filer, and Douglas W. Bailey, Terrence W. Janes, Richard Molyneux, Dr. Rory Moore and James R. Rothwell are the initial trustees of the Filer (the Trustees);
  - 3. the principal office of the Filer and the Administrator is located in Vancouver, British Columbia;
  - 4. the Filer is authorized to issue an unlimited number of units (the Units) and certain convertible securities, including warrants;
  - 5. the Filer has filed a preliminary prospectus (the Preliminary Prospectus) dated November 13, 2007 with the securities regulatory authorities in each Jurisdiction under SEDAR project number 1181470;
  - 6. the Filer has applied to list the Units on the Toronto Stock Exchange (the TSX);
  - 7. the Filer was established to invest, through its wholly-owned subsidiary, Diamond Investments Limited (Diamond Investments), substantially all of its

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assets in rough diamonds, with the balance of its assets, after retaining funds reasonably required for working capital purposes, invested, either directly by the Filer or indirectly through one or more of its offshore wholly-owned affiliates, in Government of Canada and U.S. Government short-term debt obligations;

8. the Filer will not trade (directly or indirectly) in derivatives;
9. Diamond Management Ltd. (the Manager) will manage Diamond Investments' diamond portfolio and provide management services to Diamond Investments;
10. the Units will be redeemable at the option of the Unitholder on a monthly basis as required under the *Income Tax Act* (Canada) to qualify as a "mutual fund trust" at a redemption price per Unit, which will be equal to the lesser of:
  - (a) 90% of the "market price" of the Units on the principal market on which the Units are quoted for trading during the 20 trading day period ending immediately before the monthly redemption date; and
  - (b) 100% of the "closing market price" on the principal market on which the Units are quoted for trading on the monthly redemption date computed by reference to the market price of the Units;
11. although the Filer will be a mutual fund trust for purposes of the *Income Tax Act* (Canada), it will not be a mutual fund for purposes of securities legislation and its operation will differ from that of a conventional mutual fund as follows:
  - (a) the Filer does not intend to continuously offer Units once the Filer is out of primary distribution; and
  - (b) the Units are expected to be listed and posted for trading on the TSX; as a result, Unitholders will not have to rely solely on the redemption features of the Units (as described in the Preliminary Prospectus) in order to provide liquidity for their investment;
12. Diamond Investments has retained WWW International Diamond Consultants Ltd. (WWW Consultants) to be the independent valuator of the diamond portfolio;
13. WWW Consultants will conduct one physical valuation per year and three quarterly "price book" valuations of Diamond Investments' rough diamonds;

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14. in conducting the physical valuation, WWW Consultants will sort and classify the rough diamonds in the diamond portfolio into groups on the basis of physical characteristics such as size, shape, clarity and colour, and will apply the appropriate price point to each rough diamond based on its proprietary price book;
15. WWW Consultants will also physically evaluate all diamonds purchased by Diamond Investments before such diamonds are placed into safekeeping to enable WWW Consultants to provide future quarterly price book updates;
16. quarterly valuations of the diamond portfolio will be conducted by WWW Consultants by applying updated price book data to the physical characteristics of each diamond within the diamond portfolio based on its prior physical inspection;
17. the information derived from semi-annual window sales and other sales by Diamond Investments will also be provided to WWW Consultants in order to assist WWW Consultants in valuating the diamond portfolio;
18. the NAV per Unit will be calculated quarterly by the Administrator as at the last day of each financial quarter, as well as on such additional dates as the Trustees, in their discretion, may determine, or is otherwise required by applicable law and the value of the diamond portfolio, which value will be obtained exclusively from WWW Consultants (as described above) in connection with its quarterly valuation process, will form part of the calculation of the NAV of the Filer and the NAV per Unit;
19. physical valuation of rough diamonds takes a significant amount of time and is quite costly;
20. to the Administrator's knowledge, there is no reputable public information source that provides prices of rough diamonds on a regular basis;
21. unlike commodity funds which invest directly in commodities such as gold and uranium, there is no terminal market or spot pricing for rough diamonds; and
22. De Beers, as the dominant diamond producer and trader of rough diamonds, through its affiliate Diamond Trading Company, officially announces price changes once or twice each year, which the industry will use as a guideline for trading rough diamonds.

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### **Decision**

- ¶ 4 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 is that the Requested Relief is granted, provided the Filer's 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
- (d) the Filer calculates its net asset value at least quarterly.

Andrew Richardson, CA  
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British Columbia Securities Commission