

2007 BCSECCOM 639

September 28, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - Investment funds require relief from the requirement in section 14.2 of National Instrument 81-106 (NI 81-106) to calculate net asset value in accordance with Canadian GAAP - Canadian GAAP, as outlined in the Handbook changed through the adoption of s.3855 of the Handbook; as a result of this change, investment funds must use the bid and ask prices of listed securities to value them, rather than the closing price; because the change will affect different funds at different times, this change in the valuation method could result in different funds and different investors in the same fund being treated differently; this inconsistent treatment is contrary to the intent of section 14.2 of NI 81-106, and could have an adverse effect on the value of an investor's investment in an investment fund; the objective of section 14.2 of NI 81-106 is to ensure all investment funds calculated their NAV consistently, resulting in a fair and consistent valuation for investors; an investment fund will continue to price its securities for purchase and redemption using the close price, and will use the bid and ask prices to report its NAV in its annual and interim financial statements; an investment fund must reconcile the two different NAVs in the notes to its financial statements; an investment fund will otherwise comply with Canadian GAAP as required by NI 81-106; the exemption is for a limited time period to permit investment funds to fully assess the impact of this change in Canadian GAAP to their operations

Applicable British Columbia Provisions

National Instrument 81-106, Part 14 and s. 17.1 and
Securities Act, R.S.B.C. 1996, c. 418, s. 171

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

and

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

and

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In the Matter of
AGF Funds Inc., on behalf of the AGF Group of Funds
under its Management (the Funds)
(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 from the Filer, on behalf of the Funds and each investment fund which is now or becomes subject to section 14.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) which is managed by a manager other than the Filer (collectively, the Affected Funds), for a decision under the securities legislation of the Jurisdictions (the Legislation) to vary the decision document issued by the Decision Makers dated September 28, 2006 (the Original Decision).

The Original Decision granted relief from the requirements of section 14.2 of NI 81-106 insofar as it relates to:

- calculating net asset value for any purpose (including for greater certainty, for purchases and redemptions of securities of a mutual fund as required by Parts 9 and 10 of National Instrument 81-102 *Mutual Funds*), other than for purposes of the financial statements, or
- providing the net asset value of each Fund or Affected Fund, or providing information based on net asset value of a Fund or Affected Fund, in any report, marketing material, any other document or any other commentary (including arranging for publication of net asset value pursuant to subsection 14.2(7) of NI 81-106), other than in the financial statements of the Fund or Affected Fund.

The Original Decision terminates on the earlier of (i) September 30, 2007, or (ii) the date on which changes to Part 14 of NI 81-106 come into effect with respect to calculating net asset value for purposes other than the financial statements and providing net asset value of a Fund or Affected Fund, or information based on net asset value of a Fund or Affected Fund, in any report, marketing material, any other document or any other commentary.

The variation requested is that termination of the Original Decision be extended to the earlier of (i) September 30, 2008, or (ii) the date on which changes to Part 14 of NI 81-106 come into effect with respect to calculating net asset value for

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purposes other than the financial statements and providing net asset value of a Fund or Affected Fund, or information based on net asset value of a Fund or Affected Fund, in any report, marketing material, any other document or any other commentary (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 the manager of the Funds under its management.
2. Each of the existing Funds is a reporting issuer and is subject, amongst others, to the requirements of NI 81-106.
3. Each existing Fund currently calculates its net asset value as required by the Original Decision.
4. Since the date of the Original Decision, extensive submissions and dialogue between the investment funds industry and the staff of the Decision Makers regarding the calculation of net asset value have occurred in a very timely manner.
5. A notice of proposed amendments to certain sections of NI 81-106, including Part 14, consequential amendments and request for comments were published by the CSA on June 1, 2007 (the Proposed Amendments). The Proposed Amendments require the net asset value of an investment fund to be calculated using the fair value of the investment fund's assets and liabilities. The Proposed Amendments require the financial statements of an investment fund to be prepared in accordance with Canadian GAAP.
6. The comment period for the Proposed Amendments ended on August 31, 2007. The Filer expects the CSA to review and consider the comments

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received, and to determine whether any changes will be made to the Proposed Amendments. The Filer understands that the CSA requires additional time before finalizing the Proposed Amendments and time before final amendments come into effect.

7. The Filer does not believe that allowing the Original Decision to terminate on September 30, 2007 is in the best interests of investors in the Funds. The Filer believes that the Funds should continue to rely on the relief granted in the Original Decision until changes to Part 14 of NI 81-106 come into effect.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers 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.

Leslie Byberg
Interim Director, Investment Funds Branch
Ontario Securities Commission