

2006 BCSECCOM 424

June 29, 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
Ontario, Quebec, British Columbia, Alberta, Saskatchewan, Manitoba, New
Brunswick, Nova Scotia and Newfoundland and Labrador
(the “Jurisdictions”)

and

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

and

In the Matter of
Oil Sands Sector 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 from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for relief from the requirement that the net asset value of an investment fund that uses specified derivatives (as such term is defined in National Instrument 81-102 *Mutual Funds*) be calculated at least once every business day (the “Requested Relief”).

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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 the Province of Ontario pursuant to a declaration of trust dated February 24, 2006. Markland Street Asset Management Inc. (the “Manager”) will serve as manager and trustee of the Filer. The principal office of the Filer and the Manager is located at 200 Bay Street, Suite 2200, South Tower, Royal Bank Plaza, Toronto, Ontario, M5J 2J1.
2. The Filer is an investment fund as defined in NI 81-106 and has filed a final prospectus dated February 24, 2006 (the “Final Prospectus”) with securities regulators in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.
3. The investment objectives of the Filer are to provide holders (“Unitholders”) of units (“Units”) with: (i) long term capital appreciation; and (ii) a stable stream of quarterly cash distributions targeted to be \$0.125 per Unit (\$0.50 per Unit per annum, representing a yield of 5.0% per annum on the original issue price of \$10.00 per Unit). Quarterly distributions for the period ending December 31, 2006 will be \$0.125 per Unit (\$0.50 per annum or 5.0% per annum on the original issue price of \$10.00 per Unit). Commencing in 2007, the Filer will annually determine and announce each January the distribution amount for the following 12 months based upon prevailing market conditions and the Manager's estimate of distributable cash flow for the year.
4. The Manager, on behalf of the Filer, has retained AGF Funds Inc. (the “Investment Advisor”) to act as the investment advisor of the Filer.

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5. The Filer will seek to achieve its investment objectives by actively managing a portfolio (the “Portfolio”) of equity securities initially comprised of approximately 50 issuers, consisting primarily of issuers participating in the Canadian oil sands sector with the balance (up to 25% of total assets) consisting primarily of other issuers involved in the energy sector. The Portfolio’s composition will vary over time depending on the Investment Advisor’s assessment of market conditions and outlook.
6. At least 75% of the total assets by value of the initial Portfolio following the investment in full of the use of proceeds of the Filer’s initial public offering of Units as contemplated in the Final Prospectus will be invested in securities, other than debt securities, issued by issuers with direct investments in oil sands projects and those whose underlying business is directly or indirectly related to the oil sands sector (“Oil Sands Securities”).
7. At least every 90 days, or more often at the discretion of the Investment Advisor, the Investment Advisor will rebalance the Portfolio such that Oil Sands Securities represent, at the time of such rebalancing, at least 75% of the total assets of the Portfolio by value.
8. The Filer may invest in or use derivative instruments, other than commodity derivatives, for hedging purposes consistent with its investment objectives, investment strategy and investment criteria and subject to its investment restrictions, as permitted by Canadian securities regulators from time to time.
9. The Filer may, from time to time, generate additional income for the Filer by writing covered call options on securities in the Portfolio. Such covered call options may be either exchange traded options or over-the-counter options.
10. Although the Filer is a mutual fund trust for purposes of the *Income Tax Act* (Canada), it is not a mutual fund for purposes of securities legislation and its operation differs from that of a conventional mutual fund.
11. The Filer does not intend to continuously offer Units once the Filer is out of primary distribution and therefore the Filer is not a conventional mutual fund.
12. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”).
13. Commencing in 2007, Units may be surrendered for redemption during the period from July 15th until 5:00 p.m. (Eastern Standard Time) on the 20th business day before the last business day in August in each year (the “Notice Period”). Units surrendered for redemption by a Unitholder during the Notice

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Period will be redeemed only on the last business day in August of each year (the “Annual Redemption Date”) and the Unitholder will receive payment on or before the 15th business day following such Annual Redemption Date. The foregoing is subject to the Trust’s right to suspend redemptions in certain circumstances.

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 is that the Requested Relief is granted, provided that the Final Prospectus of the Filer discloses:

- (a) that the net asset value 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 weekly.

Rhonda Goldberg, Assistant Manger
Investment Funds Branch
Ontario Securities Commission