

2002 BCSECCOM 689

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - all unitholders of exchange traded index fund exempted from formal take-over bid requirements in connection with normal course purchases of units on the TSE, provided that such unitholders provide trustee/manager of fund with an undertaking not to exercise any votes attached to units which represent more than 20% of the votes attached to all outstanding units of the fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-108, 110 and 114(2)(c)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR, YUKON AND NUNAVUT**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

**IN THE MATTER OF
TD SECURITIES INC. ("TDSI")
BMO NESBITT BURNS INC. ("BMO NB")
RBC DOMINION SECURITIES INC. ("RBCDS")
BARCLAYS GLOBAL INVESTORS CANADA LIMITED ("BARCLAYS")**

AND

**IN THE MATTER OF
iUNITS S&P/TSX 60 INDEX FUND
iUNITS S&P/TSX 60 CAPPED INDEX FUND
iUNITS S&P/TSX CANADIAN MIDCAP INDEX FUND
iUNITS S&P/TSX CANADIAN ENERGY INDEX FUND
iUNITS S&P/TSX CANADIAN INFORMATION TECHNOLOGY
INDEX FUND
iUNITS S&P/TSX CANADIAN GOLD INDEX FUND
iUNITS S&P/TSX CANADIAN FINANCIALS INDEX FUND
(COLLECTIVELY, THE "FUNDS")**

MRRS DECISION DOCUMENT

2002 BCSECCOM 689

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon and Nunavut (the “Jurisdictions”) has received an application from TDSI, BMO NB, RBCDS and Barclays for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) exempting all unitholders of the Funds from the requirements of the Legislation related to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee with each applicable Jurisdiction (the “Take-over Bid Requirements”) in respect of take-over bids for the Funds (as defined in paragraph 10 below);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS TDSI, BMO NB, RBCDS and Barclays have represented to the Decision Makers as follows:

1. Each Fund is a trust that has been created under the laws of Ontario, the units of each Fund are listed on The Toronto Stock Exchange (the “TSX”), the head office of each Fund is located in Toronto, Ontario and each Fund is a reporting issuer or its equivalent in every province and territory of Canada.
2. The investment objective of each Fund is to track the performance of a relevant S&P/TSX Index (each, an “Index” and collectively, the “Indices”). Each Fund holds shares of the companies (collectively, the “Constituent Companies”) that make up the relevant Index in substantially the same weight as they are reflected in the Index.
3. Barclays is the trustee of the Funds and as such is responsible for the day-to-day administration of each Fund.
4. The market price of the shares of Constituent Companies underlying each Fund unit equals, as closely as possible, a specified percentage of the level of the relevant Index. The net asset value of each Fund is calculated and published daily.
5. Units of a Fund may be purchased directly from the Fund by registered dealers who have entered into an underwriting agreement with the Fund. The consideration payable by underwriters for each Unit consists of a basket of shares of the Fund’s Constituent Companies (a “Basket of Shares”) and a cash component.

2002 BCSECCOM 689

6. Each Fund has appointed BMO NB and RBCDS as the designated brokers (the “Designated Brokers”) to perform certain functions which include standing in the market with a bid and ask price for the Fund’s units for the purpose of maintaining market liquidity for the units and facilitating adjustments to Baskets of Shares both as a result of adjustments that have been made to the Index and as a result of non-cash distributions received by the Fund.
7. Except as described in paragraphs 5 and 6 above, units of a Fund may not be purchased directly from the Fund. As a result, investors must generally acquire units through the facilities of the TSX.
8. Individuals who wish to dispose of units must generally do so by selling them through the TSX. Unitholders of the Funds (“Unitholders”) may, however, redeem prescribed numbers of units, or integral multiples thereof, for Baskets of Shares plus cash. Each Unitholder also has the right to have its units redeemed for cash only at a discount to the then market price of the units on the TSX. The cash redemption price of the units of each Fund is equal to 95% of the closing trading price of such units on the effective day of the redemption.
9. Unitholders holding at least a prescribed number of the units of a Fund are also entitled to vote the proportion of the shares of a Constituent Company that are held by the Fund that is equal to the Unitholder’s proportionate holding of outstanding units. Unitholders holding less than the prescribed number of units have no right to vote the shares of Constituent Companies.
10. Barclays may, from time to time, establish additional exchange traded index funds (the “Future Funds”) for the purpose of tracking indices other than those tracked by the Funds and it is anticipated that Future Funds will be structured and operated in a manner that is substantially similar to the way in which the Funds are structured and operated. For purposes of this MRRS Decision Document, Funds and Future Funds are referred to collectively as “Funds” and Unitholders and unitholders of Future Funds are referred to collectively as “Fund Unitholders”.
11. As the units of each Fund are, or will be, both voting and equity securities for purposes of the Take-over Bid Requirements, anyone acquiring beneficial ownership of, or the power to exercise control or direction over, 10% or more of the outstanding units of a Fund would be required to comply with the early warning press release and reporting requirements, as well as the further acquisition restrictions, imposed by the Legislation (the “Early Warning Requirements”) but for section 3.3 of National Instrument 62-103 which

2002 BCSECCOM 689

provides that the Early Warning Requirements do not apply in respect of the ownership or control of securities issued by a mutual fund that is governed by National Instrument 81-102.

12. There is no exemption from the Take-over Bid Requirements for conventional mutual funds that is comparable to the exemption from Early Warning Requirements in section 3.3 of National Instrument 62-103 because the securities of conventional mutual funds are not typically subject to the Take-over Bid Requirements because acquisitions of conventional mutual funds are made from treasury.
13. Although units of the Funds trade, or will trade, on the TSX and the acquisition of such units can therefore become subject to the Take-over Bid Requirements,
 - (a) it is not, and will not be, possible for one or more Fund Unitholders to exercise control or direction over a Fund as the constating document of each Fund generally ensures, or will ensure, that there can be no changes made to the Fund which do not have the support of the trustee of the Fund;
 - (b) it is difficult for purchasers of units of the Funds to monitor compliance with Take-over Bid Requirements because the number of outstanding units is always in flux as a result of the ongoing issuance and redemption of units by the Funds; and
 - (c) the way in which Fund units are, or will be, priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding units because unit pricing is dependent upon, and generally represents a prescribed percentage of, the level of the relevant Index.
14. The application of the Take-over Bid Requirements to the Funds can have an adverse impact upon Fund unit liquidity because they can cause both the Designated Broker and hedgers to cease trading Fund units once prescribed take-over bid thresholds are reached and this, in turn, can serve to provide conventional mutual funds with a competitive advantage over the Funds.

AND WHEREAS pursuant to the System this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

2002 BCSECCOM 689

AND WHEREAS each Decision Maker 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 pursuant to the Legislation is that the purchase of the units of a Fund by a person or company (a "Unit Purchaser") in the normal course through the facilities of the TSX is exempt from the Take-over Bid Requirements for so long as the Fund remains an exchange traded index fund provided that, prior to making any take-over bid for the units of the Fund that is not otherwise exempt from the Take-over Bid Requirements, the Unit Purchaser, and any person or company acting jointly or in concert with the Unit Purchaser (a "Concert Party"), provide Barclays, as trustee and manager of the Funds, with an undertaking not to exercise any votes attached to units of the Fund held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding units of the Fund.

DATED this 26th day of July, 2002.

Paul M. Moore

Robert L. Shirriff