

## **2002 BCSECCOM 791**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted for initial and continuous distribution of units of exchange-traded fund to permit the fund and its promoter to disseminate sales communication promoting the fund, subject to compliance with Part 15 of NI 81-102 - Relief granted from requirement that the fund's prospectus contain an underwriter's certificate - Relief from the registration requirement granted to permit members of futures exchanges and their partners, directors or officers to trade in units of the fund, subject to specified conditions

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 34(1)(b), 48, 61, 69, 76  
National Instrument 81-102 *Mutual Funds* - Part 15.

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUEBEC, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEW  
BRUNSWICK, NEWFOUNDLAND AND LABRADOR, THE YUKON,  
THE NORTHWEST TERRITORIES AND NUNAVUT**

**AND**

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

**AND**

**IN THE MATTER OF THE iUNITS S&P/TSX CANADIAN REIT INDEX  
FUND**

**AND**

**IN THE MATTER OF BARCLAYS GLOBAL INVESTORS CANADA  
LIMITED**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from the iUnits S&P/TSX Canadian REIT Index Fund (the "Fund") and Barclays Global Investors Canada Limited ("Barclays"), the trustee

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of the Fund, (collectively, the “Filer”), for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation:

- (a) to be registered as a dealer in connection with the dissemination of sales communications, as defined in National Instrument 81-102 (“NI 81-102”), related to units of beneficial interest issued by the Fund (“Units”);
- (b) to have members of futures exchanges and their partners, officers and employees be registered to trade Units of the Fund;
- (c) to include an underwriters’ certificate in the Fund’s prospectus and any renewal thereof,

shall not apply to the Fund and Barclays;

and for a decision under the securities legislation of New Brunswick, Prince Edward Island and Yukon that:

- (d) the registration requirement under section 5 of *The Securities Frauds Prevention Act*, R.S.N.B. 1973, c. S-6, as amended (the “NB Act”) and the corresponding provisions in legislation of Prince Edward Island and Yukon; and
- (e) the requirement to deliver a prospectus under section 13 of the NB Act and the corresponding provisions in legislation of Prince Edward Island and Yukon,

shall not apply to the Fund and Barclays in connection with trades in Units for the purpose of distributing income or capital gains;

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

AND WHEREAS the Filer has represented to the Decision Makers that:

1. The Fund is a trust established under the laws of Ontario and its investment objective is to track the performance of the S&P/TSX Canadian REIT Index (the “Index”).

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2. Barclays is the trustee of the Fund. Barclays' head office is located in Toronto, Ontario. Barclays is registered in all provinces and territories, other than the Yukon, as a portfolio manager and investment counsel (or the equivalent categories of registration) under the securities legislation of such Jurisdictions.
3. The Fund will be a reporting issuer under the securities legislation of each Jurisdiction, where such term is applicable.
4. The Fund seeks to provide income and long-term growth to unitholders of the Fund ("Unitholders") by investing in shares of the companies that are included in the Index (collectively, the "Constituent Companies") in the same proportion as they are reflected in the Index. The Fund may also invest in futures contracts and other similar instruments in order to track the Index.
5. The Fund will issue Units which will confer on investors in one security a proportionate share of economic benefits similar to those that an investor could obtain through individual investments in the securities comprising the Index (collectively, the "Index Shares").
6. It is intended that the market price of the shares of the Constituent Companies underlying the Units (the "Core Asset Share Value per Unit") will equal, as closely as possible,  $1/10^{\text{th}}$  of the level of the Index. From time to time, however, there may be a deviation in tracking such that the Core Asset Share Value per Unit will be greater or less than  $1/10^{\text{th}}$  of the Index level. Any substantial deviation of the market price for Units is expected to be corrected by arbitrage.
7. Units may be purchased directly from the Fund only by one or more registered brokers or dealers who have entered into an underwriting agreement with the Fund (the "Underwriters"). The majority of the consideration payable by Underwriters for Units will consist of shares of Constituent Companies, in prescribed amounts, and cash. Certain issuances to one or more designated brokers of the Fund (each, a "Designated Broker") will be made entirely in cash.
8. Underwriters and Designated Brokers will not receive any fees or commissions in connection with the Fund's issuance of Units to them. On the issuance of Units, Barclays may require the Underwriter who placed the order to pay a transaction fee equal to 0.04% of the value of the aggregate proceeds received by the Fund in connection with such issuance. Barclays may, at its discretion, charge an administrative fee on the issuance of Units to the Underwriters to offset the expenses incurred in issuing Units.

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9. Units may also be issued periodically by the Fund to one or more Designated Brokers upon an Index adjustment, take-over bid or similar extraordinary situation, or to fund permitted cash redemptions. Units will also be issued to Unitholders upon the automatic reinvestment of special dividends or capital gains distributions made on the Index Shares held by the Fund.
10. The net asset value of the Fund will be calculated daily and displayed at [www.iunits.com](http://www.iunits.com).
11. The Units of the Fund will be listed and posted for trading on the Toronto Stock Exchange (the "Exchange"). The Fund will be subject to the rules of the Exchange with respect to the declaration of distributions, including with respect to the determination of the record date for distributions.
12. Except as described in paragraphs 7 and 9, Units may not be purchased directly from the Fund. Investors are generally expected to purchase Units through the facilities of the Exchange. However, Units will be issued directly to Unitholders upon the reinvestment of the Fund's distributions of income or capital gains.
13. Unitholders who wish to dispose of their Units may generally do so by selling such Units on the Exchange. Holders of a prescribed number of Units, or an integral multiple thereof, however, may redeem Units for baskets of the Index Shares plus cash. Unitholders who redeem a prescribed number of Units, or integral multiple thereof, may be charged an administrative fee in order to offset the expenses incurred by the Funds in effecting such exchange.
14. All Unitholders will also have the right to redeem Units solely for cash at a redemption price per Unit equal to 95% of the closing trading price of Units on the Exchange on the effective day of the redemption.
15. Unitholders holding at least the prescribed number of Units will be entitled to vote a proportion of the shares of a Constituent Company held by the Fund equal to that Unitholder's proportion of outstanding Units. Unitholders holding less than a prescribed number of Units will have no right to vote shares of a Constituent Company held by the Fund.
16. As trustee, Barclays will be entitled to receive from the Fund a fixed annual fee (the "Trustee Fee") equal to 0.55% of the net asset value of the Fund. Barclays will be responsible for all costs and expenses of the Fund, except for the Trustee Fee.

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17. The Fund proposes to lend the Index Shares which it holds itself or through an agent to brokers, dealers and other financial institutions desiring to borrow securities. The securities lending will enable the Fund to earn income to partially offset the costs and expenses of the Fund. This will enable the Fund to reduce the effect of such costs and expenses, thereby enhancing the Fund's ability to provide investment results which most closely correspond to the price and performance of the applicable Index.
18. Members of a futures exchange (or their partners, directors and officers), who are registered only under the commodity futures legislation or requirements (if any) of the Jurisdiction where such members carry on the business of dealing in futures contracts, may have to trade units of the Funds in order to hedge their futures and other derivatives holdings based on the Index. Their registration under the applicable commodity futures legislation does not permit them to trade in Units of the Funds.

AND WHEREAS under the System, this MRRS Decision Document evidences the decisions of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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:

- (a) the registration requirement of the Legislation does not apply to Barclays and the Fund, in connection with any dissemination of sales communications relating to the distribution of Units of the Fund, provided that they comply with Part 15 of National Instrument 81-102 Mutual Funds;
- (b) the registration requirement of the Legislation does not apply to trades in Units of the Fund by members of a futures exchange, or the members' partners, directors or officers trading on behalf of such members, provided that
  - (i) the members or their partners, directors or officers are registered for trading purposes under the commodity futures legislation or requirements (if any) of the Jurisdiction where such members carry on the business of dealing in futures contracts,
  - (ii) the trades in Units of the Fund are made only for such members' own account, and

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- (iii) neither the members nor their partners, directors or officers will trade in Units of the Fund on behalf of their clients.
- (c) In connection with the proposed distribution of Units of the Fund pursuant to the Prospectus or any renewal prospectus, the Fund is exempt from the requirement of the Legislation that the Prospectus or renewal prospectus contain a certificate of the Underwriters as defined in paragraph 7 above.

AND THE DECISION of the securities regulatory authority or regulator in each of New Brunswick, Prince Edward Island and Yukon pursuant to section 13(12) of the NB Act and corresponding provisions in legislation of Prince Edward Island and Yukon is that:

- (d) the registration requirement under section 5 of the NB Act and the corresponding provisions in legislation of Prince Edward Island and Yukon; and
- (e) the requirement to deliver a prospectus under section 13 of the NB Act and the corresponding provisions in legislation of Prince Edward Island and Yukon,

shall not apply to the Fund and Barclays in connection with trades in Units for the purpose of distributing income or capital gains.

DATED at Toronto this 20<sup>th</sup> day of August, 2002.

Paul Moore

Harold P. Hands