

2006 BCSECCOM 133

January 31, 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 British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, New Brunswick, Newfoundland and Labrador and Yukon Territory
(the “Jurisdictions”)

and

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

and

In the Matter of MG Dividend & Income Fund
(the “Fund”)

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 Fund for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from the requirement contained in section 14.2(3)(b) of National Instrument 81-106 - Investment Fund Continuous Disclosure (“NI 81-106”) to calculate net asset value (“NAV”) at least once every business day (the “Requested Relief”).

2006 BCSECCOM 133

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (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 Fund:

1. The Manager is a corporation incorporated under the laws of Ontario. It intends to establish the Fund pursuant to a declaration of trust in January or February 2006.
2. The Fund’s investment objectives will be: (i) to pay monthly distributions to holders (“Unitholders”) of Units (“Units”) and (ii) to enhance the initial value of the Units offered by the Fund through capital appreciation of the Fund’s investment portfolio (the “Portfolio”).
3. The Fund will invest the net proceeds of its proposed offering (the “Offering”) (and any funds borrowed pursuant to a credit facility) in a broadly-diversified portfolio of income producing equity securities initially consisting primarily of income trust securities and supplemented by dividend paying common stocks.
4. The Fund will have the ability to invest in or utilize derivatives from time to time including to offset or reduce risks associated with an investment or group of investments and to offset or reduce risks such as currency value fluctuations, commodity price fluctuations, stock market risks and interest rate changes. The Fund also will have the ability from time to time to engage in writing covered call options on securities held in the Portfolio and in writing cash covered put options. However, the Fund will not invest in or use derivatives if it will result in the Fund failing to comply with its investment restrictions regarding its status as a “unit trust” or “mutual fund trust” as defined in the *Income Tax Act* (Canada).
5. The Manager will be the trustee and manager of the Fund and will be responsible for providing or arranging for the provision of administrative services to the Fund.

2006 BCSECCOM 133

6. Guardian Capital LP and Middlefield Capital Corporation (together the “Co-Advisors”) will act as investment advisors to the Fund. It is expected that Groppe, Long & Littell will be appointed as special advisor to the Co-Advisors.
7. A bank, trust company or other custodian will act as custodian of the assets of the Fund.
8. The Units will be redeemable only on the last day of August of each year commencing in 2007 (each a “Valuation Date”), at an amount that is calculated with reference to the NAV.
9. The Fund is not considered to be a “mutual fund” because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund as contemplated in the definition of “mutual fund” in the Legislation. Accordingly, the Fund will be a “non-redeemable investment fund” as defined in NI 81-106.
10. Unitholders that have redeemed their Units will receive payment on or before the 15th business day following the relevant Valuation Date.
11. The Trust intends to calculate the NAV per Unit on a weekly basis on Thursday of each week (or if Thursday is not a business day, then on the immediately preceding business day), on each Valuation Date and on any other date on which the Manager elects in its discretion to calculate the NAV per Unit. The Manager will post the NAV per Unit on the internet at www.middlefield.com.
12. The Units are expected to be listed and posted for trading on the TSX and the Manager has applied to the TSX to so list the Units. This is unlike securities of a conventional mutual fund in which there is normally no such market and where, as a result, holders of such securities who wish to liquidate their holdings must cause the fund to redeem their securities. Since the Units will be listed for trading on the TSX, Unitholders will not have to rely solely on the redemption feature of the Units in order to provide liquidity for their investment.

Decision

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.

2006 BCSECCOM 133

The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the NAV calculation is available to the public upon request; and
- (b) a toll-free telephone number or website is available which the public can access for this purpose;

for so long as:

- (c) the Units are listed on the TSX; and
- (d) the Fund calculates its NAV at least weekly.

Leslie Byberg
Manager, Investment Funds
Ontario Securities Commission