

# 2007 BCSECCOM 459

July 9, 2007

## **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 either: (a) listed or to be listed on a stock exchange and unitholders can buy or sell shares of the fund through the exchange, or (b) convertible into units listed or to be listed on a stock 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 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  
Front Street Resource Performance Fund Ltd.  
(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 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 at least once every business day (the Requested Relief).

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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 Filer:

1. The Filer is a mutual fund corporation established under the laws of Ontario. The Filer's manager is Front Street Capital 2004 (the Manager), and its portfolio advisor is Front Street Investment Management Inc. The Filer's head office is located in Ontario.
2. The Filer will make an offering (the Offering) to the public, on a best efforts basis, of transferable units of the Filer, each unit consisting of an equity share (the Equity Shares) and one warrant to purchase such shares (the Warrants). Each Warrant entitles the holder to purchase one Equity Share at a price of \$11.00 on November 9, 2009. Any Warrants not exercised by such date will be void and of no value. The Filer does not intend to continuously offer units once the Filer is out of primary distribution.
3. A preliminary prospectus dated May 30, 2007 (the Preliminary Prospectus) has been filed with the securities regulatory authorities in each of the provinces of Canada under SEDAR Project No. 1112858.
4. The Equity Shares and the Warrants are expected to be listed and posted for trading on the Toronto Stock Exchange (the TSX). An application for conditional listing approval has been made by the Filer to the TSX.
5. The Filer's investment objective is to maximize capital appreciation by investing on a long/short basis in small and medium-sized business entities in a range of natural resource sector industries, including base and precious metal mining and exploration, and in energy-related industries. The Filer will invest the net proceeds of the Offering in a portfolio consisting primarily of equity

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and equity-related securities. The Filer's investment strategies will involve the use of specified derivatives.

6. The Equity Shares may be surrendered for redemption at any time and will be redeemed on a monthly basis on the 15<sup>th</sup> day of each month or, if the 15<sup>th</sup> day is not a business day, the immediately preceding business day (each a Monthly Redemption Date). The Filer will make payment for any shares retracted within 10 business days of such date.
7. The monthly redemption price for the Equity Shares is the lower of: (i) 95% of the "market price" (as defined in the Preliminary Prospectus) of the Equity Shares on the principal market on which the Equity Shares are quoted for trading during the 20 trading day period ending immediately before the redemption date; and (ii) 100% of the "closing market price" on the principal market on which the Equity Shares are quoted for trading on the Redemption Date.
8. On the Monthly Redemption Date in October of each year commencing October 2008, Equity Shares can be surrendered for redemption for a redemption price equal to the net asset value per Equity Share (calculated as described in paragraph 11 below), less any redemption charges and applicable costs (as described in the Preliminary Prospectus). In order to exercise the annual redemption right in 2008 and 2009, a shareholder must concurrently surrender for redemption one Warrant for each Equity Share surrendered for redemption.
9. Under clause 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer is generally required to calculate the net asset value of the fund on at least a weekly basis. Furthermore, an investment fund that uses or holds specified derivatives, such as the Filer intends to do, must calculate its net asset value on a daily basis.
10. The Filer will calculate its net asset value on (a) the Thursday of each week of each fiscal year or, if Thursday is not a business day, the immediately preceding business day, (b) the last business day of each month, (c) each Monthly Redemption Date, if not otherwise a valuation date, and (d) such other day or days as the Manager shall determine from time to time (each a NAV Valuation Date).
11. The net asset value per Equity Share on a NAV Valuation Date will be calculated by dividing the net asset value of the Filer on such NAV Valuation Date (the numerator) by the total number of Equity Shares issued and outstanding on such NAV Valuation Date (the denominator). In addition, if

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the net asset value per Equity Share is greater than \$11.00 (the exercise price of the Warrants), then a diluted net asset value per Equity Share will also be calculated. The diluted net asset value per Equity Share will be calculated by (i) adding to the denominator the total number of Warrants then outstanding; and (ii) by adding to the numerator the product of such number of Warrants and \$11.00. The resulting quotient of (i) and (ii) will be the diluted net asset value per Equity Share.

12. The Preliminary Prospectus discloses and the final prospectus will disclose that the net asset value per Equity Share and the diluted net asset value per Equity Share (when applicable) will be made available to the public on the Manager's website at [www.frontstreetcapital.com](http://www.frontstreetcapital.com). The Manager's website will also contain an explanation of the difference between the net asset value per Equity Share and the diluted net asset value per Equity Share.
13. Shareholders will have the opportunity to trade their Equity Shares on the TSX and as such do not have to rely on the redemption features to provide liquidity for their shares.

### **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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted for so long as:

- (a) the Equity Shares are listed on the TSX; and
- (b) the Filer calculates its net asset value per Equity Share at least once a week.

Leslie Byberg  
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Ontario Securities Commission