

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Exemptive relief granted to exchange-traded Fund for initial and continuous distribution of units, including: relief from dealer registration requirements to permit promoter to disseminate sales communications promoting the Fund subject to compliance with Part 15 of NI 81-102, relief to permit the Fund' prospectus to not contain an underwriter's certificate, and relief from take-over bid requirements in connection with normal course purchases of units on the Toronto Stock Exchange subject to undertaking by unitholders not to exercise any votes attached to units which represent more than 20% of the votes attached to all outstanding units of the Fund -- Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 59(1), 74(1), 95, 96, 97, 98, 100, 104(2)(c), 147.

Rules Cited

National Instrument 81-102 Mutual Funds -- Part 15.

May 9, 2007

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

AND

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

AND

**IN THE MATTER OF
CLAYMORE INVESTMENTS, INC.
("Claymore")**

AND

**IN THE MATTER OF
CLAYMORE EQUAL WEIGHT BANC & LIFECO TRUST
(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 Claymore on behalf of the Fund for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that:

1. the dealer registration requirement of the Legislation does not apply to Claymore in connection with its dissemination of sales communications relating to the distribution of units ("**Units**") of the Fund;
2. in connection with the distribution of securities of the Fund pursuant to a prospectus, the Fund be exempt from the requirement that the prospectus contain a certificate of the underwriter or underwriters who are in a contractual relationship with the issuer whose securities are being offered; and
3. purchasers of Units of the Fund be exempted from the requirement 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 Fund.

Paragraphs 1 through 3 above are collectively referred to in this decision as the "**Requested Relief**".

Under the Mutual Reliance Review System for Exemptive Relief Applications ("**MRRS**"):

1. the Ontario Securities Commission is the principal regulator for this application; and
2. this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

"**Basket of Securities**" means a group of securities determined by Claymore from time to time representing the constituents of the investment portfolio then held by the Fund.

"**Designated Brokers**" means registered brokers and dealers that enter into agreements with the Fund to perform certain duties in relation to the Fund.

"Prescribed Number of Units" means the number of Units of the Fund determined by Claymore from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

"Underwriters" means registered brokers and dealers that have entered into underwriting agreements with the Fund and that subscribe for and purchase Units from the Fund, and "Underwriter" means any one of them.

"Unitholders" means beneficial and registered holders of Units.

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 Claymore:

Background

1. The Fund is a mutual fund trust governed by the laws of Ontario and a reporting issuer under the laws of all of the Jurisdictions.
2. Claymore has applied to list the Units of the Fund on the Toronto Stock Exchange ("**TSX**"). Claymore will not file a final prospectus for the Fund until the TSX has conditionally approved the listing of Units.
3. Claymore is the trustee and manager of the Fund and is a registered investment counsel and portfolio manager in Ontario and is registered as an investment adviser with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940 (the "**Advisers Act**"). Claymore is a wholly-owned subsidiary of Claymore Group, Inc., a financial services and asset management company based in Lisle, Illinois. Claymore Group, Inc. and its U.S. affiliates include two investment advisers registered with the U.S. Securities and Exchange Commission under the Advisers Act and a broker-dealer registered with the National Association of Securities Dealers, Inc. under the United States Securities Exchange Act of 1934.
4. The Fund's investment objectives are to seek to provide Unitholders with:
 - (a) monthly cash distributions targeted to be \$0.04167 per Unit;
and
 - (b) the potential for capital appreciation from the Portfolio (defined below).

The net proceeds of the Fund's initial public offering will be invested on an equally weighted basis, in a portfolio (the "**Portfolio**") consisting of common shares of the largest Canadian banks and Canadian life insurance companies. Inclusion in the Portfolio will be based on the following criteria: (i) the minimum market capitalization to be included in the Portfolio is \$5 billion for banks and \$1.5 billion for life insurance companies; and (ii) the companies must be Canadian banking or Canadian life insurance companies. The Fund will generally invest in Portfolio securities on an equal weighted basis however, Claymore, as manager, will have discretion to determine the appropriate composition of the Portfolio in the event of mergers or other transactions involving the banks or life insurance companies, as it may see fit.

5. Units may be surrendered for redemption annually in November of each year for a redemption price per Unit equal to net asset value per Unit less any costs and expenses incurred by the Fund in connection with funding the redemption. Units are also redeemable monthly for a redemption price determined by reference to the trading price of the Units.

6. The Fund is structured such that commencing after six months following the closing of the offering, if for a period of 10 consecutive trading days, the daily weighted average trading price (or, in the event there has been no trading on a particular day, the average of the closing bid and ask prices) of the Fund's Units is greater than a discount of 2% of NAV per Unit for that day, there will be an automatic conversion (the "**Conversion**") of the Fund to an exchange-traded fund ("**ETF**").

7. Units initially issued by the Fund will not be index participation units within the meaning of National Instrument 81-102 -- *Mutual Funds* ("**NI 81-102**"). After the Conversion, the Fund will be generally described as an ETF.

8. In the event of a Conversion, the Fund's investment objectives and investment strategies will remain the same.

9. At the time of Conversion, the Fund will prepare and file a preliminary prospectus of the Fund relating to the proposed continuous distribution of Units issuable after Conversion and enter into the necessary designated broker and underwriting agreements in connection with such offerings. The Fund will not commence continuous distribution of the Units at least until the final prospectus in respect of such distribution has been received.

10. From and after Conversion:

(a) Units may only be subscribed for or purchased directly from the Fund by Underwriters or Designated Brokers and orders may only be placed for Units in the Prescribed Number of Units (or an integral multiple thereof) on any day when there is a trading

session on the TSX. Under Designated Broker and Underwriter agreements, the Designated Brokers and Underwriters agree to offer Units for sale to the public only as permitted by applicable Canadian securities legislation, which require a prospectus to be delivered to purchasers buying Units as part of a distribution. Therefore, first purchasers of Units in the distribution on the TSX will receive a prospectus from the Designated Brokers and Underwriters.

(b) The Fund will appoint Designated Brokers to perform certain functions which include standing in the market with a bid and ask price for Units of the Fund for the purpose of maintaining liquidity for the Units.

(c) Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash delivered is equal to the net asset value of the Units subscribed for next determined following the receipt of the subscription order. In the discretion of Claymore, the Fund may also accept subscriptions for Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.

(d) The net asset value per Unit of the Fund will be calculated and published daily and the investment portfolio of the Fund will be made available daily on Claymore's website.

(e) Upon notice given by Claymore from time to time and, in any event, not more than once quarterly, a Designated Broker will subscribe for Units in cash in an amount not to exceed 0.3% of the net asset value of the Fund, or such other amount established by Claymore and disclosed in the prospectus of the Fund, next determined following delivery of the notice of subscription to that Designated Broker.

(f) Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units to them. Claymore may, at its discretion, charge an administration fee on the issuance of Units to the Designated Brokers or Underwriters.

(g) Except as described in subparagraphs (a) through (e) above, Units may not be purchased directly from the Fund. Investors are

generally expected to purchase Units through the facilities of the TSX. However, Units may be issued directly to Unitholders upon the reinvestment of distributions of income or capital gains and in accordance with the distribution reinvestment plan of the Fund as disclosed in its prospectus, if such plan is implemented.

(h) Unitholders that wish to dispose of their Units may generally do so by selling their Units on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets of Securities and cash; Unitholders may also redeem their Units for cash at a redemption price equal to 95% of the closing price of the Units on the TSX on the date of redemption.

(i) As manager, Claymore receives a fixed annual fee from the Fund. Such annual fee is calculated as a fixed percentage of the net asset value of the Fund. As manager, Claymore is responsible for all costs and expenses of the Fund except the management fee, the servicing fee, any expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107 -- *Independent Review Committee for Investment Funds*, brokerage expenses and commissions, income taxes and withholding taxes and extraordinary expenses.

(j) No investment dealers will act as principal distributors for the Funds in connection with the distribution of Units. The Underwriters will not receive any commission or other payment from the Fund or Claymore. As a result, Claymore will be the only entity desiring to foster market awareness and promote trading in the Units through the dissemination of sales communications.

(k) Because Underwriters will not receive any remuneration for distributing Units, and because Underwriters will change from time to time, it is not practical to require an underwriters' certificate in the prospectus of the Fund.

(l) Unitholders will have the right to vote at a meeting of Unitholders in respect of the Fund in certain circumstances, including prior to any change in the fundamental investment objective of the Fund, any change to their voting rights and prior to any increase in the amount of fees payable by the Fund.

(m) Although Units trade on the TSX and the acquisition of Units can therefore be subject to the Take-over Bid Requirements:

(i) it will not be possible for one or more Unitholders to exercise control or direction over a Fund as the declaration of trust in respect of the Fund will ensure that there can be no changes made to the Fund which do not have the support of Claymore and also will ensure that a Unitholder cannot exercise the votes attached to Units which represent 20% or more of the votes attached to all outstanding Units;

(ii) it will be difficult for purchasers of Units to monitor compliance with Take-over Bid Requirements because the number of outstanding Units will always be in flux as a result of the ongoing issuance and redemption of Units by the Fund; and

(iii) the way in which Units will be priced deters anyone from either seeking to acquire control of, or offering to pay a control premium for, outstanding Units because Unit pricing will be dependent upon the performance of the portfolio of the Fund as a whole.

(n) The application of the Take-over Bid Requirements to the Fund would have an adverse impact upon Unit liquidity because they could cause Designated Brokers and other large Unitholders to cease trading Units once prescribed take-over bid thresholds are reached. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over the Fund.

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 to the Fund from and after the Conversion provided that:

1. in respect of the relief granted from the registration requirement of the Legislation, Claymore complies with Part 15 of NI 81-102; and
2. in respect of the relief granted from the Take-over Bid Requirements, prior to a person or company (a "**Unit Purchaser**") making any take-over bid for Units 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 Claymore with an undertaking not to exercise any votes attached to the Units held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding Units.

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission