

April 29, 2008

In the Matter of  
the Securities Legislation  
of Nova Scotia (the Jurisdiction)

and

In The Matter of B.E.S.T. Total Return Fund Inc. (the Filer)

Decision Document

**Background**

The local securities regulatory authority (the Decision Maker) in the Jurisdiction has received an application from the Filer for a decision under section 17.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106), that the Filer be exempt from the requirement in section 9.2 and 9.3 of NI 81-106 to prepare and file an annual information form (AIF) for the Class A Shares in the Jurisdiction for this and subsequent financial years (the Requested Relief):

**Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated under the *Canada Business Corporations Act* by articles of incorporation dated October 31, 2003, as amended on November 30, 2004 and December 20, 2005.
2. The Filer is registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) and as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada), as amended.
3. B.E.S.T. Investment Counsel Limited is the current manager of the Filer with its head office in Toronto, Ontario.
4. The Filer is an investment fund in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Offering Jurisdictions) and the Jurisdiction.
5. The Filer currently offers Class A Shares to investors pursuant to a long form prospectus dated December 20, 2007 in the Offering Jurisdictions.
6. Pursuant to a long form prospectus dated December 23, 2003, the Filer offered Class A Shares to purchasers resident in certain jurisdictions of Canada, including the Jurisdiction. Pursuant to a prospectus amendment dated August 23, 2004, the Filer disclosed that Class A Shares of the Filer may not be offered for sale in the future in the

Jurisdiction at the manager's sole discretion. At the subsequent lapse date, the Filer ceased to offer Class A Shares in the Jurisdiction.

7. The Filer is a reporting issuer in the Offering Jurisdictions and the Jurisdiction. The Filer ceased to be a reporting issuer in Quebec as of February 27, 2008.
8. The securities of the Filer are not traded on any marketplace as defined in National Instrument 21-102 *Marketplace Operation*.
9. The financial year end of the Filer is August 31 of each year.
10. Pursuant to Sections 9.2 and 9.3 of NI 81-106, an investment fund must file an annual information form no later than 90 days after the end of its most recently completed financial year if the investment fund does not have a current prospectus as at its financial year end.
11. The Filer has filed a current prospectus to offer its Class A Shares to the public in the Offering Jurisdictions.
12. As indicated above, the Filer remains a reporting issuer in the Offering Jurisdictions and the Jurisdiction and, as a result, files its continuous disclosure documents on SEDAR. In addition, the Filer renews its long-form prospectus on an annual basis except in the Jurisdiction. As a result, prospectus-level disclosure with respect to the Filer is publicly available to all holders of its Class A Shares, including shareholders in the Jurisdiction.

## **Decision**

The 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 Maker is that the Requested Relief is granted provided that

- (a) the Filer continues to have a current prospectus;
- (b) the Filer's future prospectuses will contain all disclosure required by NI 81-106 to be included in an AIF for the Class A Shares;
- (c) the Filer files no later than November 29, 2008, and on an annual basis thereafter, on SEDAR a notice which includes the following:
  - (i) a statement that the Filer has received exemptive relief from the requirement to file an AIF in respect of the Class A Shares in the Jurisdiction; and
  - (ii) a direction to holders of Class A Shares in the Jurisdiction that they should refer to the then current prospectus of the Filer, as it may be amended from time to time, for information concerning the Class A Shares;

- (d) if a holder of Class A Shares in the Jurisdiction requests a copy of an AIF for the Class A Shares after November 29, 2008, the Filer sends, without charge, to the holder within 10 calendar days after the Filer receives the request, a copy of the most recent prospectus of the Filer, together with a clear and concise statement that indicates that the prospectus contains the information about the Class A Shares that would otherwise be disclosed in an AIF;
- (e) the Filer files and delivers its annual financial statements and management reports of fund performance in accordance with securities laws requirements; and
- (f) the Filer files and delivers notices as required under all other continuous disclosure requirements as set out in securities legislation and NI 81-106.

“J. William Slattery”

J. William Slattery, CA  
Director, Corporate Finance