

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

Transfer of assets between non-redeemable investment funds and a mutual fund in connection with proposed mergers exempted from the self-dealing prohibition in paragraph 192(2) of the Act and subsection 36(1) of the Rules – mergers subject to unitholder approval – all costs of the mergers to be borne by the manager.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 192(2) and 213
Paragraph 36(1) of the Rules

Citation: Sentry Select Capital Inc., Re, 2009 ABASC 275

Date: 20090604

In the Matter of
the Securities Legislation of
Ontario and Alberta

and

In the Matter of the
Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Sentry Select Capital Inc. (the **Filer**)

and

Select 50 S-1 Income Trust, Sentry Select Focused Growth & Income Trust, Multi Select Income Trust, and Pro-Vest Growth & Income Fund
(together, the **Terminating Funds**)

and

Sentry Select Canadian Income Fund (the **Continuing Fund**)
(the Terminating Funds together with the Continuing Fund, the **Funds**)

Decision

Background

The securities regulatory authority or regulator in Ontario has received an application from the Filer for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Principal Regulator Legislation**) for an exemption from the restrictions on transactions with responsible persons, in connection with a proposed merger of the Terminating Funds into

the Continuing Fund (the **Mergers**) and all future mergers of investment funds managed by the Filer (the **Passport Exemption**).

The securities regulatory authority or regulator in each of Ontario and Alberta (the **Jurisdictions**) (**Coordinated Exemptive Relief Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting relief from the Legislation which prohibits a purchase or sale of any security in which an associate of an investment counsel has a direct or indirect beneficial interest from or to any portfolio managed or supervised by the investment counsel in connection with the Mergers and all future mergers of investment funds managed by the Filer (the **Coordinated Exemptive Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a hybrid application):

- (a) the Ontario Securities Commission is the principal regulator (the **Principal Regulator**) for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta;
- (c) the decision is the decision of the Principal Regulator; and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

Terms defined in MI 11-102 and National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer intends to merge the Terminating Funds into the Continuing Fund, which will involve the transfer of assets of the Terminating Funds in exchange for series A units (the **Series A Units**) of the Continuing Fund. The units of each Terminating Fund will be exchanged or transferred on a net asset value (**NAV**) basis for Series A Units of the Continuing Fund. The Filer intends to concurrently merge Sentry Select 40 Split Income Trust, an open-end mutual fund, into the Continuing Fund.
2. At the time the Mergers are effected, the Filer will be the “portfolio manager” or “investment counsel” for each of the Terminating Funds and the Continuing Fund for purposes of the Legislation.
3. The Filer is registered in Ontario as a dealer in the category of Mutual Fund Dealer and as an adviser in the categories of Investment Counsel and Portfolio Manager under the *Securities Act* (Ontario), and as an adviser in the category of Commodity Trading Manager under the *Commodity Futures Act* (Ontario). The Filer is also registered in

Alberta as an adviser in the category of Portfolio Manager and Investment Counsel under the *Securities Act* (Alberta).

4. The Filer is the manager and trustee of the Funds.
5. The head office of the Filer is located in Ontario.
6. Each Fund was established pursuant to a declaration of trust (except for the Sentry Select Focused Growth & Income Trust which was established pursuant to a trust agreement) under the laws of the Province of Ontario.
7. Each Terminating Fund is a “non-redeemable investment fund” as defined in the Legislation and its units are listed on the Toronto Stock Exchange (the **TSX**). The Continuing Fund is a mutual fund for the purposes of the Legislation.
8. Select 50 S-1 Income Trust offers its units in all of the provinces of Canada and in the Yukon Territory pursuant to a final prospectus dated July 30, 2003.
9. Sentry Select Focused Growth & Income Trust offers its units in all of the provinces of Canada and in the Yukon Territory pursuant to a final prospectus dated December 20, 2001.
10. Multi Select Income Trust (**Multi Select**) offers its units in all of the provinces and territories of Canada pursuant to a final prospectus dated August 30, 2004.
11. Pro-Vest Growth & Income Fund offers its units in all of the provinces and territories of Canada pursuant to a final prospectus dated January 29, 2004.
12. The Continuing Fund offers its Series A Units, series F units and series I units in all of the provinces and territories of Canada on a continuing basis pursuant to a simplified prospectus dated August 20, 2008.
13. The Funds are reporting issuers under the applicable securities legislation of each province and territory of Canada and are not on the list of defaulting reporting issuers maintained under such securities legislation.
14. Unitholders of the Terminating Funds approved the Mergers at special meetings of unitholders held on May 20, 2009 (the **Meetings**).
15. In connection with the Meetings, the Filer, as manager of the Terminating Funds, sent to the unitholders of the Terminating Funds a notice of special meetings of unitholders and joint management information circular each dated April 24, 2009 and a related form of proxy (collectively, the **Meeting Materials**).
16. It is proposed that the Mergers will occur on or about June 12, 2009 (the **Merger Date**), subject to regulatory approvals, where necessary.

17. Unitholders of the Terminating Funds were provided with tax disclosure about the ramifications of the Mergers in the Meeting Materials.
18. As required by National Instrument 81-107 - *Independent Review Committee for Investment Funds*, an Independent Review Committee (**IRC**) has been appointed for the Funds, and the Filer presented the terms of the Mergers (as well as the concurrent merger of Sentry Select 40 Split Income Trust into the Continuing Fund) to the IRC for a recommendation. The IRC considered the proposed Mergers and provided a positive recommendation to the Filer on the basis that the Mergers would achieve a fair and reasonable result for each of the Funds.
19. The Mergers will be effected on a taxable basis.
20. The Mergers are expected to take place using the following steps:
 - (a) As the Merger between Multi Select and the Continuing Fund has been approved by the Multi Select unitholders, as a preliminary step, the Filer will sell sufficient assets of Multi Select to raise proceeds equal to the aggregate principal amount of the outstanding Multi Select preferred securities (**MS Preferred Securities**) plus accrued but unpaid interest (**MS Preferred Security Amount**). Multi Select will use the MS Preferred Security Amount to repay the outstanding MS Preferred Securities on the Merger Date.
 - (b) On or about June 2, 2009, the Terminating Funds will be de-listed from the TSX.
 - (c) On the Merger Date, the Terminating Funds will transfer all of their assets to the Continuing Fund in exchange for Series A Units of the Continuing Fund. The Series A Units of the Continuing Fund received by the Terminating Funds will have an aggregate NAV equal to the NAV of the assets of the Terminating Funds and will be issued at the NAV per Series A Unit of the Continuing Fund, in each case as of the close of business on the business day prior to Merger Date.
 - (d) Immediately thereafter, the Series A Units of the Continuing Fund received by the Terminating Funds will be distributed to unitholders of the Terminating Funds. Each unitholder of the Terminating Funds will receive Series A Units of the Continuing Fund having the same aggregate NAV as the units they previously held in the Terminating Funds as of the close of business on the business day prior to the Merger Date.
 - (e) Immediately following the completion of the Mergers, the Terminating Funds will be wound up and terminated.
 - (f) The Filer will issue a press release forthwith after the Mergers are completed announcing the completion of the Mergers and the respective ratios by which units of the Terminating Funds were exchanged for Series A Units of the Continuing Fund. The records of the broker or other intermediary through whom a unitholder holds his, her or its units should reflect the Mergers within seven

business days after the Mergers (although the Filer has no control over this part of the process nor the timing involved).

21. All costs and expenses associated with the Mergers will be borne by the Filer. No sales charges, redemption fees or other fees or commissions will be payable by unitholders of the Funds in connection with the Mergers.
22. The transfer of the investment portfolios of the Terminating Funds to the Continuing Fund as a step in the Mergers may be considered a sale of securities caused by the “portfolio manager” from the Terminating Funds to the account of an associate of the “portfolio manager”, contrary to the Legislation.
23. The transfer of the investment portfolios of the Terminating Funds to the Continuing Fund as a step in the Mergers may be considered a sale of securities in which an associate of an investment counsel has a direct or indirect beneficial interest to a portfolio managed or supervised by the investment counsel, contrary to the Legislation.
24. In the opinion of the Filer, the Mergers will not adversely affect unitholders of the Terminating Funds or the Continuing Fund and will in fact be in the best interests of unitholders of each of the Funds.
25. In the absence of this order, the Filer would be prohibited from purchasing and selling the securities of the Terminating Funds in connection with the Mergers.

Decision

Each of the Principal Regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Principal Regulator under the Principal Regulator Legislation is that the Passport Exemption is granted provided that:

- (a) the information circular sent to unitholders in connection with a merger prominently discloses that unitholders can obtain the most recent interim and annual financial statements of the applicable continuing fund by accessing the SEDAR website at www.sedar.com, by calling the Filer’s toll-free telephone number at 1-888-739-4623 or by writing to Sentry Select Capital Inc., The Exchange Tower, Suite 2850, 130 King Street West, Toronto, Ontario, M5X 1A4;
- (b) upon a request by a unitholder of a terminating fund for financial statements, the Filer will make best efforts to provide the unitholder with financial statements of the applicable continuing fund;
- (c) each applicable terminating fund and the applicable continuing fund with respect to a merger have an unqualified audit report in respect of their last completed financial period; and

- (d) the information circular sent to unitholders in connection with a merger provides sufficient information about the merger to permit unitholders to make an informed decision about the merger

(collectively, the **Conditions**).

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted provided that the Conditions are complied with.

"Margot C. Howard"

(Name of Decision Maker)

Commissioner

(Title)

"Mary G. Condon"

(Name of Decision Maker)

Commissioner

(Title)

ONTARIO SECURITIES COMMISSION