

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. Relief granted from NI 81-101, which requires a mutual fund to use a simplified prospectus, and NI 81-102 for relief from restrictions on payment of organizational costs and preparation of compliance reports – The fund is a ‘mutual fund’ for securities legislation purposes but is fundamentally different from a conventional mutual fund – structure is more akin to a closed-end Fund – Units are not in continuous distribution and not listed on any exchange – Units are redeemable once a week at net asset value.

Applicable Legislative Provisions

National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, section 1.3 and 6.1

National Instrument 81-102 *Mutual Funds*, section 3.3, 12.1 and 19

**Citation: Ross Smith Enhanced Index Fund LP and Ross Smith Enhanced Index GP Ltd.,
Re, 2010 ABASC 62** **Date: 20100216**

In the Matter of
the Securities Legislation of
Alberta and Ontario
(the **Jurisdictions**)

and

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

and

In the Matter of
Ross Smith Enhanced Index Fund LP (the **Partnership**) and
Ross Smith Enhanced Index GP Ltd. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from:

- (a) National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), which requires a mutual fund to provide its securityholders with a simplified prospectus and to concurrently file an annual information form; and
- (b) Section 3.3 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), which prohibits a mutual fund or its securityholders from bearing the costs of

incorporation, formation or initial organization, or the preparation and filing of any preliminary simplified prospectus or preliminary annual information form,

(Items (a) and (b) above are referred to as the **Exemption Sought**).

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

- (a) the Alberta Securities Commission (the **ASC**) is 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 British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

"**Manager**" means Ross Smith Asset Management Inc.

"**NAV**" means net asset value.

"**Offering**" means the offering of Units, as contemplated in the Preliminary Prospectus.

"**Partnership**" means Ross Smith Enhanced Index Fund LP.

"**Preliminary Prospectus**" means the preliminary prospectus of the Filer dated on or about December 22, 2009.

"**Units**" means limited partnership units in the capital of the Partnership.

Representations

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

1. The Partnership is an investment fund (as defined in NI 81-106) to be established under the laws of the Province of Alberta pursuant to the filing of a certificate of limited partnership. The Filer will be the general partner of the Partnership. The Manager will be responsible for the management and administration of the Partnership pursuant to the terms of an Investment Management Agreement to be entered into between the Filer, the Partnership and the Manager.

2. The principal office of the Filer, the Manager and the Partnership is in Calgary, Alberta.
3. The Partnership will be authorized to issue an unlimited number of Units.
4. The Units will be offered for sale on a best efforts basis through a syndicate of agents, each of whom will be members of the Investment Industry Regulatory Organization of Canada.
5. The Partnership will invest in a managed portfolio of stocks selected to closely match portfolio returns of the S&P/TSX 60 Index and designed to provide Unitholders with: (i) returns that correspond with the returns of the S&P/TSX 60 Index, without reference to reinvestment of dividends or distributions, with limited tracking error; and (ii) allocations of capital losses realized on the sale of certain securities that comprise the S&P/TSX 60 Index that have decreased in value.
6. Upon the issuance of a receipt for the final prospectus, the Partnership will be a reporting issuer in every Province and Territory of Canada.
7. The Units will not be listed on an exchange.
8. There will be no issuances of Units following the completion of the Offering other than pursuant to any distribution reinvestment plan adopted by the Partnership.
9. Commencing 30 days following closing of the Offering and subject to the Partnership's ability to suspend redemptions in certain circumstances, Units may be surrendered for redemption on any business day. Redemption requests received will be processed on a weekly basis with Unitholders receiving a redemption price per Unit equal to the NAV per Unit as calculated on the last business day of the week in which such redemption request is received, less any costs associated with redemption. The redemption amount will be paid and the Unitholder will receive payment on or before the 3rd business day following the redemption date.
10. The expenses incurred in connection with the Offering of Units by the Partnership of up to 1.5% of the gross proceeds of the Offering will be paid, together with the agent's fees, by the Partnership. The Manager has agreed to pay all expenses incurred in connection with the Offering, other than the agent's fees, that exceed 1.5% of the gross proceeds of the Offering.
11. The Manager considers the Partnership to be similar to a closed-end fund, as Units of the Partnership will be offered through a one-time offering through investment dealers.
12. Neither the Filer nor the Manager is in default of securities legislation in any jurisdiction.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, in lieu of a simplified prospectus as specified in NI 81-101, the Partnership file a long form prospectus in the form of Form 41-101F2 pursuant to National Instrument 41-101 *General Prospectus Requirements* which prospectus will constitute the Simplified Prospectus of the Partnership.

“original signed by” _____
Blaine Young
Associate Director, Corporate Finance