

## Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of mutual fund mergers pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* – approval required because mergers do not meet the criteria for pre-approved reorganizations and transfers – the fundamental investment objectives of the terminating funds and the continuing funds are not substantially similar in two of the mergers and none of the mergers can be completed on a tax-deferred basis – security holders are provided with timely and adequate disclosure regarding the mergers.

## Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, paragraph 5.5(1)(b) and subsection 19.1

**Citation: Re Canoe Financial LP, 2017 ABASC 120**

**Date: 20170717**

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  
Canoe Financial LP (the **Manager**)

and

Canoe Global Balanced Fund  
Envest Natural Resource Fund Ltd.  
Canoe Global Opportunities Class  
(each, a **Terminating Fund**, and with the Manager, the **Filers**)

Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Manager on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for approval (the **Approval Sought**) pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of each of the proposed mergers (the **Mergers**):

- (a) Canoe Global Balanced Fund (the **Terminating Trust Fund**) to merge into Canoe North American Monthly Income Class;

- (b) Canoe Global Opportunities Class (the **Terminating Corporate Class Fund**) to merge into Canoe Global Equity Income Class; and
- (c) EnerVest Natural Resource Fund Ltd. (**EnerVest Fund**) to merge into Canoe Energy Class.

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

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Manager 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 each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia, 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* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

The following additional terms shall have the following meanings:

**Continuing Fund** means each of Canoe North American Monthly Income Class, Canoe Energy Class and Canoe Global Equity Income Class;

**Corporation** means Canoe ‘GO CANADA!’ Fund Corp.;

**Fund** or **Funds** means, individually or collectively, the Terminating Funds and the Continuing Funds;

**Investment Objective Mergers** means the Merger of Canoe Global Balanced Fund into Canoe North American Monthly Income Class and the Merger of Canoe Global Opportunities Class into Canoe Global Equity Income Class;

**IRC** means the independent review committee for the Funds;

**NI 81-106** means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

**NI 81-107** means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

**Tax Act** means the *Income Tax Act* (Canada); and

**Voting Continuing Fund** means Canoe North American Monthly Income Class.

### **Representations**

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

#### *The Manager*

1. The Manager is a limited partnership established under the laws of the Province of Alberta. The general partner of the Manager is Canoe Financial Corp., a corporation incorporated under the laws of Alberta. The Manager's head office is located in Calgary, Alberta.
2. The Manager is the investment fund manager of the Funds. The Manager is registered as an investment fund manager, portfolio manager and exempt market dealer under the securities legislation in each of jurisdiction of Canada.

#### *The Funds*

3. The Terminating Corporate Class Fund and the Continuing Funds are each open-ended mutual funds structured as a share class of the Corporation, a mutual fund corporation established under the laws of Alberta. The Terminating Trust Fund is an open-ended mutual fund trust governed by a master declaration of trust under the laws of Alberta. The EnerVest Fund is an open-ended mutual fund structured as a separate mutual fund corporation established under the laws of Alberta.
4. Securities of the Funds are qualified for sale in each jurisdiction of Canada under a simplified prospectus, annual information form and fund facts each dated June 19, 2017, as they may be amended from time to time, prepared in accordance with the requirements of NI 81-101 (collectively, the **Offering Documents**).
5. Each of the Funds is a reporting issuer under the securities legislation of each of the jurisdictions of Canada.
6. Neither the Manager nor the Funds is in default under the securities legislation in any jurisdiction of Canada.
7. Other than circumstances in which the regulator or securities regulatory authority of a jurisdiction of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under NI 81-102.
8. The net asset value for each series of the Funds is calculated on a daily basis in accordance with the Funds' valuation policy and as described in the Offering Documents.

*Reason for Approval Sought*

9. Regulatory approval of the Mergers is required because each Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102. The pre-approval criteria are not satisfied in the following ways:
  - (a) the fundamental investment objectives of the Continuing Funds in the Investment Objective Mergers are not, or may be considered not to be, “substantially similar” to the investment objectives of their corresponding Terminating Funds; and
  - (b) the Mergers will not be completed as a “qualifying exchange” or other tax-deferred merger under the Tax Act.
10. Except as described in this decision, the proposed Mergers comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

*The Proposed Mergers*

11. In accordance with NI 81-106, a press release announcing the proposed Mergers was issued and filed via SEDAR on June 12, 2017, together with a material change report.
12. As required by NI 81-107, an IRC has been appointed for the Funds. The Manager presented the potential conflict of interest matters related to the proposed Mergers to the IRC. The IRC reviewed the potential conflict of interest matters related to the proposed Mergers and on June 8, 2017 provided its positive recommendation for each of the Mergers, after determining that each proposed Merger, if implemented, would achieve a fair and reasonable result for each applicable Fund.
13. Securityholders of the Terminating Funds will be asked to approve the Mergers at special meetings to be held on or about August 16, 2017. In addition, in compliance with corporate law, securityholders of the Voting Continuing Fund will be asked to approve the exchange of securities of the Terminating Corporate Class Fund for securities of the Voting Continuing Fund at a special meeting to be held on or about August 16, 2017.
14. The Merger of the Terminating Corporate Class Fund into the Voting Continuing Fund involves an exchange of securities of the Corporation and so has also been approved by the sole common voting shareholder of the Corporation, as required under applicable corporate law.
15. The Merger of the EnerVest Fund will also be approved by the Manager as the sole common voting shareholder of the EnerVest Fund, as required under applicable corporate law.
16. Pursuant to a decision dated November 30, 2016 (the **Decision**), the Manager has obtained an exemption from the requirement in paragraph 12.2(2)(a) of NI 81-106 to send an information circular and proxy-related materials to the securityholders of the Funds

and instead allow the Funds to make use of a notice-and-access process. The notice prescribed by the Decision (the **Notice-and-Access Document**), the form of proxy and, where applicable, the fund facts relating to the relevant series of the Continuing Corporate Class Funds, will be sent to securityholders of the Terminating Funds and the Voting Continuing Fund commencing on or about July 17, 2017. Additionally, the Notice-and-Access Document, form of proxy and information circular will be concurrently filed via SEDAR and posted on the Manager's website.

17. The tax implications of the Mergers as well as the differences between the investment objectives of the Terminating Funds and the Continuing Funds and the recommendation of the IRC regarding the Mergers are described in the information circular so that the securityholders of the Terminating Funds may consider this information before voting on the Mergers. The information circular also describes the various ways in which investors can obtain a copy of the simplified prospectus, annual information form and fund facts for the Continuing Funds and their most recent interim and annual financial statements and management reports of fund performance.
18. Securityholders of each Terminating Fund will continue to have the right to redeem securities of the Terminating Fund at any time up to the close of business on the business day immediately before the effective date of the Mergers.
19. The proposed Merger of the Terminating Corporate Class Fund into Canoe Global Equity Income Class will be structured as follows:
  - (a) Prior to effecting the Merger, the Corporation will sell any securities in the portfolio underlying the Terminating Corporate Class Fund that do not meet the investment objectives and investment strategies of Canoe Global Equity Income Class. As a result, the portfolio of the Terminating Corporate Class Fund may temporarily hold cash or money market instruments and may not be fully invested in accordance with their investment objectives for a brief period of time prior to the Merger being effected.
  - (b) The value of the Terminating Corporate Class Fund's portfolio of assets and liabilities will be determined at the close of business on the effective date of the Merger in accordance with the constating documents of the Terminating Corporate Class Fund.
  - (c) The Corporation may pay ordinary dividends or capital gains dividends to securityholders of the Terminating Corporate Class Fund, as determined by the Manager at the time of the Merger.
  - (d) The portfolio of assets and liabilities attributable to the Terminating Corporate Class Fund will be included in the portfolio of assets and liabilities attributable to the Canoe Global Equity Income Class and the net asset value of Canoe Global Equity Income Class will be increased by an amount equal to the value of the portfolio of assets (minus liabilities) being attributed to Canoe Global Equity

Income Class determined at the close of business on the effective date of the Merger in accordance with the constating documents of Canoe Global Equity Income Class.

- (e) The articles of the Corporation will be amended so that all of the issued and outstanding securities of the Terminating Corporate Class Fund will be exchanged for securities of Canoe Global Equity Income Class on a series-by-series and dollar-for-dollar basis, so that securityholders of the Terminating Corporate Class Fund become securityholders of the applicable series of Canoe Global Equity Income Class and then the securities of the Terminating Corporate Class Fund will be cancelled.
20. The proposed Merger of the Terminating Trust Fund into Canoe North American Monthly Income Class will be structured as follows:
- (a) Prior to effecting the Merger, the Terminating Trust Fund will sell any securities in its portfolio that do not meet the investment objectives and investment strategies of Canoe North American Monthly Income Class. As a result, the Terminating Trust Fund may temporarily hold cash or money market instruments and may not be fully invested in accordance with its investment objectives for a brief period of time prior to the Merger being effected.
  - (b) The value of the Terminating Trust Fund's portfolio of assets will be determined at the close of business on the effective date of the Merger in accordance with the constating documents of the Terminating Trust Fund.
  - (c) The Corporation will acquire the investment portfolio and other assets of the Terminating Trust Fund in exchange for securities of Canoe North American Monthly Income Class and the portfolio of assets received by the Corporation will be included in the portfolio of assets attributable to Canoe North American Monthly Income Class.
  - (d) The Corporation will not assume any liabilities of the Terminating Trust Fund and the Terminating Trust Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the Merger.
  - (e) The Terminating Trust Fund will distribute a sufficient amount of its net income and net realized capital gains, if any, to securityholders to ensure that it will not be subject to tax for its current tax year.
  - (f) The securities of Canoe North American Monthly Income Class received by the Terminating Trust Fund will have an aggregate net asset value equal to the value of the portfolio of assets that Canoe North American Monthly Income Class is acquiring from the Terminating Trust Fund, and the securities of Canoe North American Monthly Income Class will be issued at the applicable series net asset value per security as of the close of business on the effective date of the Merger.

- (g) Immediately thereafter, securities of Canoe North American Monthly Income Class received by the Terminating Trust Fund will be distributed to securityholders of the Terminating Trust Fund in exchange for their securities in the Terminating Trust Fund on a series-by-series and dollar for dollar basis, as applicable.
  - (h) As soon as reasonably possible following the Merger, and in any case within 60 days following the effective date of the Merger, the Terminating Trust Fund will be wound up.
21. The proposed Merger of the EnerVest Fund into Canoe Energy Class will be structured as follows:
- (a) The articles of the EnerVest Fund will be amended to create a right of the EnerVest Fund to redeem mutual fund securities held by investors in exchange for property of the corporation in an amount equal to the net asset value of such securities on the effective date of the Merger.
  - (b) Prior to effecting the Merger, the EnerVest Fund will sell any securities in its portfolio that do not meet the investment objective and investment strategies of Canoe Energy Class. As a result, the portfolio of the EnerVest Fund may temporarily hold cash or money market instruments and may not be fully invested in accordance with its investment objective for a brief period of time prior to the Merger being effected.
  - (c) The value of the EnerVest Fund's portfolio of assets will be determined at the close of business on the effective date of the Merger in accordance with the constating documents of the EnerVest Fund.
  - (d) The Corporation will acquire the investment portfolio and other assets of the EnerVest Fund in exchange for Series A securities of Canoe Energy Class and the portfolio of assets received by the Corporation will be included in the portfolio of assets attributable to Canoe Energy Class.
  - (e) The Corporation will not assume any liabilities of the EnerVest Fund and the EnerVest Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the Merger.
  - (f) The EnerVest Fund may pay ordinary dividends or capital gains dividends to its securityholders.
  - (g) The Series A securities of Canoe Energy Class received by the EnerVest Fund will have an aggregate net asset value equal to the value of the portfolio of assets that Canoe Energy Class is acquiring from the EnerVest Fund, and the securities

of Canoe Energy Class will be issued at the series net asset value per security as of the close of business on the effective date of the Merger.

- (h) Immediately thereafter, the mutual fund securities of the EnerVest Fund held by investors will be redeemed by the EnerVest Fund in exchange for the Series A securities of Canoe Energy Class received by EnerVest Fund in an amount equal to the net asset value of such securities on the effective date of the Merger.
  - (i) As soon as reasonably possible following the Merger, the EnerVest Fund will be wound up and dissolved.
22. The Manager will pay for the costs of the Mergers. These costs consist mainly of brokerage charges associated with the Merger-related trades that occur both before and after the effective date of the Mergers and legal, proxy solicitation, printing, mailing and regulatory fees.
23. No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of its applicable Terminating Fund.
24. The investment portfolio and other assets of each Terminating Fund to be acquired by the applicable Continuing Fund in order to effect the Mergers are currently, or will be, acceptable, on or prior to the effective date of the Mergers, to the portfolio manager(s) of the applicable Continuing Fund and are, or will be, consistent with the investment objectives of the applicable Continuing Fund.
25. Each Terminating Fund will merge into its applicable Continuing Fund and the Continuing Funds will continue as publicly offered open-ended mutual funds.

#### *Benefits of Mergers*

26. The Manager believes that the Mergers are beneficial to securityholders of each Terminating Fund and Continuing Fund for the following reasons:
- (a) the Mergers will result in a more streamlined and simplified product line-up that is easier for investors to understand;
  - (b) the Continuing Funds have delivered stronger long-term performance than the applicable Terminating Funds;
  - (c) for the Mergers of Canoe Global Balanced Fund into Canoe North American Monthly Income Class and Canoe Global Opportunities Class into Canoe Global Equity Income Class, the Continuing Fund may offer a broader investment mandate, thereby providing greater flexibility to the portfolio manager, which may improve returns;

- (d) following the Mergers, each Continuing Fund will have a portfolio of greater value, which may allow for increased portfolio diversification opportunities if desired;
- (e) each Continuing Fund, as a result of its greater size, may benefit from its larger profile in the marketplace to attract greater assets and thus allow for greater portfolio diversification;
- (f) for the Merger of EnerVest Fund into Canoe Energy Class, there is significant overlap between portfolio holdings of the Terminating Fund and portfolio holdings of the Continuing Fund; and
- (g) investors of each of the Terminating Funds will receive securities of the applicable Continuing Funds that have a management fee and administration fee that are the same as, or lower than, the management fee and administration fee charged in respect of the securities of the Terminating Fund that they currently hold.

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Approval Sought is granted.

*“original signed by”* \_\_\_\_\_

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