

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund reorganization, exemptions from seed capital requirement and disclosure requirements to allow a Continuing Fund to use certain disclosure of a Terminating Fund -- Relief from NI 81-101, NI 81-102 and NI 81-106.

Applicable Legislative Provisions

NI 81-101 sections 2.1 and 5.5(1)(b)
NI 81-102 section 3.1
NI 81-106 section 4.4

Citation: Re Norrep Capital Management Ltd., 2017 ABASC 136

Date: 20170811

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
Norrep Capital Management Ltd. (the **Manager**)

and

Norrep High Yield Class (the **Terminating Fund**)

and

Norrep High Income Fund (the **Continuing Fund**,
and together with the Terminating Fund, the **Funds**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) have received an application from the Manager and the Funds (collectively, the **Filers**) for a decision under the securities legislation (the **Legislation**) of the Jurisdictions:

- (a) Approving (the **Requested Approval**) the proposed reorganization (the **Proposed Reorganization**) of the Funds pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds (NI 81-102)*;

- (b) Granting an exemption from Section 3.1 of NI 81-102 to permit the Manager to withdraw its initial investment in the Continuing Fund pursuant to such section upon granting of the Exemption Sought (defined below) herein (the **Seed Capital Relief**); and
- (c) Granting an exemption from:
 - (i) Section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for the purposes of the exemption sought from Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and for the purposes of the exemption sought from Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**) for the following:
 - (A) Sections 15.3(2), 15.6(1)(a), 15.6(1)(b), 15.6(1)(d), 15.8(2)(a), 15.8(3)(a), and 15.9(2)(d) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit the Continuing Fund to use performance data of the Terminating Fund in sales communications and other communications to securityholders (collectively, the **Fund Communications**);
 - (B) Item 5(b) of Part B of Form 81-101F1 to permit the Continuing Fund to disclose in its simplified prospectus for each applicable series of units of the Continuing Fund that such series' start date is the start date of the corresponding series of shares of the Terminating Fund;
 - (C) Section 13.2 of Part B of Form 81-101F1 to permit the Continuing Fund to use the information of the Terminating Fund for the purpose of calculating the information required under the heading "Fund Expenses Indirectly Borne by Investors" in the simplified prospectus of the Continuing Fund;
 - (D) Item 2 of Part 1 of Form 81-101F3 to permit each applicable series of the Continuing Fund to disclose the "date series started" (**Date Series Started**) date in the fund facts documents of the Continuing Fund as the date the corresponding series of the Terminating Fund was created;
 - (E) Item 4 of Part 1 of Form 81-101F3 to permit the Continuing Fund to present its risk disclosure as a continuation of the risk disclosure of the Terminating Fund; and
 - (F) Item 5 of Part 1 of Form 81-101F3 to permit the Continuing Fund to use performance data of the Terminating Fund in the "How Has the Fund Performed?" section of the fund facts documents of the Continuing Fund,

(collectively, the **Past Performance Relief**, and, together with the Requested Approval and the Seed Capital Relief, the **Exemption Sought**).

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 Filers have provided notice that subsection 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, Newfoundland and Labrador, Nova Scotia and Prince Edward Island, each of such other provinces (together with the Jurisdictions, the **Offering Jurisdictions**); and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 81-101, and NI 81-102 have the same meaning if used in this decision.

Representations

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

The Manager and the Funds

1. The Manager is a corporation incorporated under the laws of the Province of Alberta with its head office in Calgary, Alberta.
2. The Manager is registered as an investment fund manager in Alberta, Newfoundland and Labrador, Ontario, and Québec, and a portfolio manager in Alberta and Ontario.
3. The Manager acts as investment fund manager and portfolio manager of the Terminating Fund and will act as investment fund manager and portfolio manager of the Continuing Fund.
4. The Terminating Fund is a separate class of special shares of Norrep Opportunities Corp. (**NOC**), a mutual fund corporation incorporated by articles of incorporation under the laws of the Province of Alberta.
5. The Continuing Fund was formed as an open-end mutual fund trust pursuant to an Amended and Restated Master Trust Agreement effective June 29, 2017.
6. Shares of the Terminating Fund and units of the Continuing Fund are currently, or will be, offered for sale in the Offering Jurisdictions under a simplified prospectus, annual information form, and fund facts document dated June 29, 2017.

7. The Continuing Fund will not be available for purchase by investors until following completion of the Proposed Reorganization.
8. Each of the Terminating Fund and the Continuing Fund is a reporting issuer under the applicable securities legislation of the Offering Jurisdictions and is subject to the requirements of NI 81-101 and NI 81-102.
9. Neither the Manager nor the Funds are in default of securities legislation in any jurisdiction of Canada.
10. Each of the Terminating Fund and the Continuing Fund follows the standard investment restrictions and practices in NI 81-102, except pursuant to the terms of any exemption that has been previously obtained.
11. The net asset value for each series of securities of each of the Terminating Fund and the Continuing Fund is or will be calculated on a daily basis on each day that the Toronto Stock Exchange is open for trading (each, a **Business Day**) and securities of each of the Terminating Fund and the Continuing Fund are, or will be, generally redeemable on any Business Day.

The Proposed Reorganization

12. The Manager is proposing to reorganize the Terminating Fund as follows:
 - (a) NOC may declare, pay, and automatically reinvest ordinary dividends or capital gains dividends to shareholders of the Terminating Fund where determined fair and equitable by the Manager, and as approved by the board of directors of NOC;
 - (b) The value of the portfolio and other assets and liabilities of the Terminating Fund will be determined at the close of business on the Business Day immediately before the effective date (the **Effective Date**) of the Proposed Reorganization in accordance with the constating documents of the Terminating Fund;
 - (c) On the Effective Date, the Continuing Fund will acquire all or substantially all of the assets and assume all or substantially all of the liabilities attributed to the Terminating Fund from NOC in exchange for the issuance by the Continuing Fund to NOC of units of the Continuing Fund having an aggregate net asset value equal to the value of the assets and liabilities so transferred or assumed;
 - (d) Immediately following such transfer and assumption, NOC will redeem the shares of the Terminating Fund at their net asset value and distribute units of the corresponding series of the Continuing Fund in payment of the redemption proceeds on a series by series basis, such that the shareholders of the Terminating Fund will become unitholders of the Continuing Fund following such redemption and distribution; and

- (e) As soon as reasonably possible following the Effective Date, the Terminating Fund will be terminated.
13. Upon completion of the Proposed Reorganization, the investment objectives, investment strategies, fee structures, valuation procedures, investment fund manager, and portfolio manager of the Continuing Fund will be identical, in all material respects, to those of the Terminating Fund, and the only material difference between the Funds will be that the Continuing Fund will be an open-end mutual fund trust whereas the Terminating Fund is a class of shares of a mutual fund corporation.
 14. The Terminating Fund offers Series A, Series F, and Series I shares.
 15. The Continuing Fund will offer Series A, Series F, Series F6, Series I, and Series T6 units. Series A, Series F and Series I are the series that correspond to the existing series of the Terminating Fund. Security holders of the Terminating Fund series will become security holders of the corresponding series in the Continuing Fund.
 16. Upon completion of the Proposed Reorganization, the portfolio assets and liabilities referable to each series of shares of the Terminating Fund will become referable to a corresponding series of units of the Continuing Fund. The rights associated with each corresponding series of units of the Continuing Fund will be identical, in all material respects, to the rights formerly associated with the corresponding series of shares of the Terminating Fund.
 17. Series F6 and series T6 will be new series of the Continuing Fund. There will be no securityholders of these series until after the Effective Date.

Requested Approval

18. The Manager presented the Proposed Reorganization to the investment review committee (**IRC**) for its recommendation on July 6, 2017. The IRC reviewed the Proposed Reorganization and recommended that it be put to shareholders of the Terminating Fund for their consideration and approval on the basis that the Proposed Reorganization would be fair and reasonable for the Terminating Fund's shareholders.
19. The Filers will file amendments to the simplified prospectus, annual information form, and fund facts documents of the Funds relating to the Proposed Reorganization.
20. A special meeting of shareholders of the Terminating Fund will be held to vote on the Proposed Reorganization, as required pursuant to paragraph 5.1(1)(f) of NI 81-102 and pursuant to the *Business Corporations Act* (Alberta) (the **ABCA**). The Proposed Reorganization must also be approved by the sole common shareholder of NOC, as required pursuant to the ABCA.
21. The management information circular (the **Circular**) in respect of such special meeting

will contain a description of the Proposed Reorganization and of the Continuing Fund, a summary of the IRC's determination, the related Canadian federal income tax considerations for the Terminating Fund and its shareholders, and a description of the material differences between being a shareholder of a corporation and being a unitholder of a trust. The Circular will also include the most recently filed fund facts document of the Continuing Fund and will disclose that shareholders of the Terminating Fund may obtain, at no cost, the Continuing Fund's current simplified prospectus, annual information form, and fund facts document by contacting the Manager or by accessing the website of the Manager or SEDAR.

22. Units of the Continuing Fund received by shareholders of the Terminating Fund as a result of the Proposed Reorganization will have the same sales charge option and, for units corresponding to shares of the Terminating Fund purchased under a deferred sales charge option, the same remaining deferred sales charge schedule as such shares.
23. The Proposed Reorganization will not proceed if approval of shareholders of the Terminating Fund is not received at the special meeting.
24. If the requisite approvals are obtained, it is anticipated that the Proposed Reorganization will be implemented on the Effective Date.
25. Shareholders of the Terminating Fund will continue to have the right to redeem their shares or exchange their shares for securities of any other mutual funds in the Norrep family of mutual funds or to redeem their shares for cash at any time up to the close of business on the Business Day immediately before the Effective Date. Shareholders of the Terminating Fund who exchange their shares for securities of other mutual funds for which the Manager is the manager will not incur any charges. Shareholders of the Terminating Fund who redeem their shares may be subject to redemption charges.
26. The shareholders of the Terminating Fund will be permitted to dissent from the Proposed Reorganization pursuant to the provisions of the ABCA.
27. None of the costs and expenses associated with the Proposed Reorganization will be borne by the Funds. All such costs will be borne by the Manager. There are no charges payable by shareholders of the Terminating Fund who acquire units of the Continuing Fund as a result of the Proposed Reorganization.
28. Following the Proposed Reorganization, pre-authorized chequing plans, systematic withdrawal plans, and any other optional service that had been established with respect to the Terminating Fund will be re-established with respect to the Continuing Fund unless securityholders advise otherwise.
29. No sales charges will be payable in connection with the acquisition by the Continuing Fund of the investment portfolio of the Terminating Fund.
30. Prior to the Effective Date, the portfolio assets and liabilities of the Terminating Fund to

be acquired or assumed by the Continuing Fund must be acceptable to the portfolio adviser of the Continuing Fund and will be consistent with the investment objective and strategies of the Continuing Fund.

31. Following the Effective Date, the Continuing Fund will continue as a publicly offered open-end mutual fund trust and the Terminating Fund will be terminated as soon as reasonably possible.
32. The Filers have complied, or will comply, with section 11.2(1) of NI 81-106 in connection with the making of the decision to proceed with the Proposed Reorganization.
33. Section 5.6 of NI 81-102 is not available in these circumstances because the Proposed Reorganization will not be effected on a tax-deferred basis.
34. In light of the proposed disclosure in the Circular, investors will have all of the information necessary to determine whether the Proposed Reorganization is appropriate for them, including a description of the material differences between being a shareholder of a corporation and being a unitholder of a trust, and will have daily redemption or exchange rights under the terms of their shares or dissent rights pursuant to the ABCA to permit them to dispose of their shares of the Terminating Fund should they not wish to become unitholders of the Continuing Fund.

Seed Capital Relief

35. The Manager subscribed for \$150,000 of units of the Continuing Fund as required by Section 3.1 of NI 81-102 upon the filing of the simplified prospectus, annual information form, and fund facts document in respect of the Continuing Fund. However, the assets of the Terminating Fund (which will become the assets of the Continuing Fund upon the Effective Date) are significantly in excess of the \$150,000 seed capital requirement.

Past Performance Relief

36. The Continuing Fund is a new fund that was established on June 29, 2017. While the Continuing Fund will have the same assets and liabilities as the Terminating Fund following the Proposed Reorganization, since it is a new fund and will not be available for purchase by investors prior to the Effective Date, it will not have its own Financial Data prior to the Effective Date.
37. The Financial Data of the Terminating Fund is relevant for all investors in the Continuing Fund and is significant and meaningful information that can assist investors in determining whether to purchase or hold units of the Continuing Fund. In the absence of the Exemption Sought being granted, investors will have no historical financial information (such as past performance) on which to base such an investment decision in the Continuing Fund.

38. In connection with the Exemption Sought, the Filers propose:
- (a) To include the performance data and risk disclosure of the Terminating Fund in the Continuing Fund's Fund Communications and fund facts documents, including in a manner such that the performance data and risk disclosure of the Continuing Fund is presented as a continuation of the performance data and risk disclosure of the Terminating Fund;
 - (b) That the simplified prospectus of the Continuing Fund:
 - (i) Incorporate by reference the Terminating Fund's annual and interim financial statements and MRFPs for the period ended April 30, 2017 and the period ending October 31, 2016, as applicable (collectively, the **Terminating Fund Disclosure**), until such Terminating Fund Disclosure is superseded by more current financial statements and MRFPs of the Continuing Fund;
 - (ii) State that the start date in the "Fund Details" table in Part B for each applicable series of the Continuing Fund is based upon the start date of the corresponding series of the Terminating Fund; and
 - (iii) Use information of the Terminating Fund for the purpose of calculating the information required under the "Fund Expenses Indirectly Borne by Investors" heading in Part B;
 - (c) To state in the "Date Series Started" section under the heading "Quick Facts" in the fund facts documents for the Continuing Fund that each applicable series of the Continuing Fund was created on the date the corresponding series of the Terminating Fund was created; and
 - (d) Where relevant, to include disclosure in the Continuing Fund's Fund Communications, simplified prospectus and fund facts documents of the Proposed Reorganization.
39. The Filers have also applied for exemptive relief from certain provisions of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) and Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* to enable the Continuing Fund to prepare annual and interim financial statements and MRFPs using the Terminating Fund's historical financial data (the **NI 81-106 Exemption Sought**).

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 Exemption Sought is granted provided that, in respect of the Past Performance Relief:

- (a) the Continuing Fund’s Fund Communications include the applicable performance data of the Terminating Fund prepared in accordance with Part 15 of NI 81-102;
- (b) the Continuing Fund’s simplified prospectus:
 - (i) incorporate by reference the Terminating Fund Disclosure, until such Terminating Fund Disclosure is superseded by more current financial statements and MRFPs of the Continuing Fund;
 - (ii) states that the start date for each series of the Continuing Fund is the start date of the corresponding series of the Terminating Fund; and
 - (iii) discloses the Proposed Reorganization where the start date for each series of the Continuing Fund is stated;
- (c) the fund facts documents of each series of the Continuing Fund:
 - (i) states that the Date Series Started date for each series of the Continuing Fund is the Date Series Started date of the corresponding series of the Terminating Fund;
 - (ii) includes the performance data of the Terminating Fund prepared in accordance with Part 15 of NI 81-102, including section 15.9(1) of NI 81-102; and
 - (iii) discloses the Proposed Reorganization where the Date Series Started date of each series of the Continuing Fund is stated; and
- (d) the Continuing Fund prepares its MRFPs in accordance with the NI 81-106 Exemption Sought.

“original signed by”

Stan Magidson
Chair

“original signed by”

Tom Cotter
Vice-Chair