

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 137

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 granting an exemption from the following provisions of the Legislation to enable the Continuing Fund to include in its annual and interim management reports of fund performance (**MRFPs**) the performance data and information derived from the financial statements and other financial information (collectively, the **Financial Data**) of the Terminating Fund:

- (a) Section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for the relief requested from Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**) to permit the Continuing Fund to use the Financial Data of the Terminating Fund, as follows:
- (i) Items 3.1(1), 3.1(7), 3.1(7.1) and 3.1(8) of Part B of Form 81-106F1 to permit the Continuing Fund to use the financial highlights of the Terminating Fund in its Form 81-106F1;
 - (ii) Items 4.1(1), 4.1(2), 4.2(1), 4.2(2), 4.3(1)(a) and 4.3(1)(b) of Part B of Form 81-106F1 to permit the Continuing Fund to use the past performance data of the Terminating Fund in its Form 81-106F1; and
 - (iii) Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Continuing Fund to use the financial highlights and past performance data of the Terminating Fund in its Form 81-106F1;

(collectively, 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, 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, as described below.
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 the 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.
18. 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.

19. 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 its series 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.
20. 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.
21. In connection with the Exemption Sought, the Filers propose that:
 - (a) The Continuing Fund will prepare annual MRFPs commencing with the year ending October 31, 2017 and interim MRFPs commencing with the period ending April 30, 2018 using the Terminating Fund's historical financial data;
 - (b) The Continuing Fund will prepare comparative annual financial statements commencing with the year ending October 31, 2017 and interim financial statements commencing with the period ending April 30, 2018 using the Terminating Fund's historical financial data; and
 - (c) Where relevant, the Continuing Fund will include in its MRFPs disclosure of the proposed reorganization.
22. The Filers have also applied for exemptive relief from certain provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, Form 81-101F1 *Contents of Simplified Prospectus*, Form 81-101F3 *Contents of Fund Facts Document* and NI 81-102 to permit the Continuing Fund to use Financial Data of the Terminating Fund in sales communications and other communications to securityholders (collectively, the **Fund Communications**), its simplified prospectus and fund facts documents and to permit the Continuing Fund to disclose the start date of the Terminating Fund as its start date (the **NI 81-101 and NI 81-102 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:

- (a) the MRFP for each series of the Continuing Fund includes Financial Data of the corresponding series of the Terminating Fund and discloses the proposed reorganization for the relevant time period; and
- (b) the Continuing Fund prepares its simplified prospectus, fund facts documents and Fund Communications in accordance with the NI 81-101 and NI 81-102 Exemption Sought.

“original signed by”

Stan Magidson
Chair

“original signed by”

Tom Cotter
Vice-Chair