

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Approval of mutual fund reorganization, exemptions from disclosure requirements – Relief from National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, National Instrument 81-102 *Investment Funds* and National Instrument 81-106 *Investment Fund Continuous Disclosure*

Applicable Legislative Provisions

National Instrument 81-101 *Mutual Fund Prospectus Disclosure* sections 2.1, 2.2, 2.2.1, 2.2.2, 2.2.3, 2.3, 2.3.1, 4.1, 4.2, Form 81-101F1, Form 81-101F2 and Form 81-101F3

National Instrument 81-102 *Investment Funds* sections 1.3(1), 2.5(2), 5.5(1), 9.3(1), 10.3(1) and Part 15

National Instrument 81-106 *Investment Fund Continuous Disclosure* Parts 2, 3, 4, 5, 6, 10, 12, 15 and 16

Citation: Re Canoe Financial LP, 2018 ABASC 115

Date: 20180719

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 **Filer**)

Decision

Background

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

1. approval pursuant to paragraph 5.5(1)(b) National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit the Filer to offer the New Proposed Structure (as defined below) to investors;
2. relief for: (i) the classes of shares of the Canoe ‘GO CANADA!’ Fund Corp. (the **Existing Corporate Fund**), that are currently offered by means of a simplified prospectus, an annual information form and fund facts dated June 19, 2017, as amended on June 22, 2017, as applicable, (each, an **Existing Fund**); (ii) all new classes of shares of the Existing Corporate Fund that may be offered in the future (each, a **New Fund** and together with the

Existing Funds, the **Funds** and individually, a **Fund**); (iii) units of the Canoe Trust Fund (the **New Trust**); and (iv) limited partnership interests of the Canoe Portfolio Class Limited Partnership (the **New LP**), from the following provisions of the Legislation:

- (a) subsection 1.3(1) of NI 81-102 which requires that each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets be considered as a separate investment fund for purposes of NI 81-102;
- (b) subsections 9.3(1) and 10.3(1) of NI 81-102 which require that securities of a mutual fund be issued at the net asset value per security of that class, or series of a class;
- (c) paragraphs 2.5(2)(a) and (c) of NI 81-102 which require that the New LP be subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and be a reporting issuer;
- (d) sections 2.1, 2.2, 2.2.1, 2.2.2, 2.2.3, 2.3, 2.3.1, 4.1 and 4.2 of NI 81-101, Form 81-101F1, Form 81-101F2 and Form 81-101F3 and the applicable provisions in the legislation in Ontario as referred to in NI 81-101 to permit the Funds and the New Trust to offer investors only one set of offering documents, including a single simplified prospectus (**SP**), a single annual information form (**AIF**) and a single fund fact for each series of each class of each Fund and the New Trust (each, a **Fund Fact**);
- (e) parts 2, 3, 5, 15 and 16 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) to permit the applicable Fund and the New Trust to be reported and offered to investors as a single security pursuant to a single FundServ code such that investors receive: (i) a single management expense ratio; (ii) combined financial results and ratios; and (iii) consolidated audited annual financial statements and consolidated unaudited interim financial statements;
- (f) parts 4 and 5 of NI 81-106 to permit the Funds and the New Trust to prepare for investors a joint annual management report of fund performance and a joint semi-annual management report of fund performance (each, a **MRFP**);
- (g) parts 6, 10 and 12 of NI 81-106 which require the New Trust to prepare and disseminate quarterly portfolio information, proxy voting results and proxy solicitation and information circulars;
- (h) subsection 5.1(1) of NI 81-102, in respect of unit holders of the New Trust, which requires prior approval for certain actions of the security holders of an investment fund;
- (i) part 15 of NI 81-102 which requires the New Trust to provide performance results and sales communications and which require the Existing Corporate Fund to report

and to continue to report, its performance results as reflecting the performance results of both the Existing Corporate Fund and the New Trust; and

3. variation of the following prior decisions (the **Prior Decisions**) granted to either or both of the Filer and the Existing Funds to allow such relief to continue to be applicable to the Filer, the Funds, the New Trust and the New LP, after the New Proposed Structure is implemented:
- (a) a decision to allow a Fund to invest through the New LP more than 10% of its net assets in an underlying fund that invests in another fund as set out in *Re Canoe Financial LP*, 2015 ABASC 786;
 - (b) a decision to allow the use of derivatives for hedging and non-hedging purposes and to the extent cash cover is required, to cover specified derivative positions with other alternatives all as set out in *Canoe Financial LP, Re*, 2011 ABASC 94;
 - (c) a decision to allow purchases of securities of exchange traded funds that seek to replicate the performance of gold and silver, or to use specified derivatives where the underlying interest is gold or silver as set out in *Canoe Financial LP, Re*, 2011 ABASC 96; and
 - (d) a decision to allow the use derivatives with respect to the implementation of a Fund's or an underlying fund's investment strategies, including derivatives where the underlying interest is sweet crude oil or natural gas; as set out in *Canoe Financial LP, Re*, 2011 ABASC 97

(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 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 each jurisdiction of Canada, other than Ontario; 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.

Representations

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

Existing Structure

1. The Filer is a limited partnership established under the laws of Alberta. The Filer is registered as a portfolio manager, investment fund manager and exempt market dealer in Alberta and certain other jurisdictions of Canada.
2. The Existing Corporate Fund is a corporation incorporated under the *Business Corporations Act* (Alberta).
3. The Filer is the manager and trustee of each Existing Fund and is also the portfolio manager of certain of the Existing Funds.
4. The Filer will be the manager and trustee of each New Fund and will also be the portfolio manager of certain of the New Funds.
5. Each Existing Fund is a class of shares of the Existing Corporate Fund that is offered to investors in each jurisdiction of Canada pursuant to a simplified prospectus, an annual information form and a fund fact for each series of shares of that class of that Existing Fund.
6. Each New Fund will be a class of shares of the Existing Corporate Fund and will be offered to investors in each jurisdiction of Canada pursuant to the SP, the AIF and a Fund Fact for each series of shares of that class of that New Fund.
7. Certain of the Existing Funds invest in another public mutual fund trust of the Filer offered in accordance with NI 81-101 as part of the same simplified prospectus and annual information form as the Existing Funds (each an **Existing Underlying Fund**).
8. Certain of the New Funds may also invest in another public mutual fund trust of the Filer offered in accordance with NI 81-101 as part of the same SP and AIF as the Funds (each a **New Underlying Fund** and together collectively with the Existing Underlying Funds, the **Underlying Funds** and together individually, an **Underlying Fund**).
9. The assets under management of the Existing Funds currently amounts to approximately \$2.3 billion.
10. None of the Filer, any of the Funds nor any of the Existing Underlying Funds is in default of securities legislation in any jurisdiction of Canada.

New Proposed Structure

11. The Filer will establish the New Trust and the New LP. The Filer will be the manager and portfolio manager of the New Trust and the New LP and the trustee of the New Trust. A separate related entity will be the general partner of the New LP.
12. Interests of the New LP will only be sold to the Funds and the New Trust.
13. Each of the Funds and the New Trust will be a reporting issuer in each jurisdiction of Canada. The New LP will not be a reporting issuer in any jurisdiction of Canada.
14. The securities of each Existing Fund will be transferred in a tax efficient manner, permissible under the *Income Tax Act* (Canada) (the **Tax Act**), that will result in that Existing Fund and the New Trust holding parallel investments in interests of the New LP, which will in turn to the extent applicable, hold units of the appropriate Existing Underlying Fund on behalf of that Existing Fund and the New Trust (the **New Proposed Structure**).
15. The security holders in the Existing Funds will be notified about the New Proposed Structure before it is implemented which will describe the New Proposed Structure, the benefits that it is expected to achieve for such security holders and a description of their rights after the New Proposed Structure is implemented.
16. Before the New Proposed Structure is implemented, a security holder in a Fund will have the ability to redeem its investment in accordance with the redemption provisions included in the current simplified prospectus and annual information form of the Fund.
17. All costs of implementing the New Proposed Structure will be paid for by the Filer.
18. The Filer will cap its administration fees with respect to the New Trust and the New LP in the same manner as it currently does with respect to the Existing Funds.
19. There will be no duplication of management fees in the New Proposed Structure and no sales charges or redemption fees will apply with respect to the purchase and/or redemption of interests of the New LP.
20. Security holders in the Funds and the New Trust will not experience any new expenses as a result of the Filer implementing the New Proposed Structure.
21. Security holders in the Funds and the New Trust will have the same voting rights as they would have in any other mutual fund, which will be combined together as set out above.

22. The New Proposed Structure will be achieved in the following manner:
 - (a) the declaration of trust of the New Trust will provide that each investor who acquires a unit of the New Trust will have their own net asset value per unit of the New Trust;
 - (b) each Fund will continue to calculate its net asset value per security in accordance with the Existing Corporate Fund's constating documents;
 - (c) the net asset value of the Existing Corporate Fund and the New Trust will be calculated on the same basis;
 - (d) each Existing Fund will transfer certain of its investments to the New Trust in a qualifying exchange under the Tax Act for units of the New Trust;
 - (e) each Existing Fund will then redeem certain of its shares and distribute units of the New Trust to its shareholders in satisfaction of the redemption amount;
 - (f) each Existing Fund and the New Trust will then transfer certain of its investments to the New LP in exchange for interests of the New LP, including any interest in any Existing Underlying Funds, which will be done in a tax efficient manner as permissible under the Tax Act; and
 - (g) all of the foregoing steps will be carried out in a manner that will not have any adverse tax effects on any Existing Fund or any security holder of an Existing Fund.
23. Investors that purchased shares of an Existing Fund prior to the date the New Proposed Structure is implemented will receive a unit of the New Trust once the New Proposed Structure is implemented. Investors that purchase a share of a Fund after the New Proposed Structure is implemented will also purchase a unit of the New Trust at the same time if they do not already own a unit of the New Trust (each share of a Fund and the unit of the New Trust, a **Joint Investment**).
24. The applicable Fund and the New Trust will then invest in parallel in interests of the New LP, which in turn will invest to the extent applicable, in units of the appropriate Underlying Fund, which if the Fund is an Existing Fund, is the Existing Underlying Fund that the Existing Fund had previously invested in directly.
25. After the date of this decision and once the New Proposed Structure is implemented, each holder of a Joint Investment will have the ability to redeem that holder's investment in the Joint Investment in accordance with the redemption provisions in the SP and AIF of the Joint Investment, based on the net asset value of each element of the Joint Investment being redeemed, as applicable, which will be reported on a combined basis.

26. Each Fund and the New Trust will derive its value from the investments held by the New LP as that Fund and the New Trust will invest in parallel in interests of the New LP as noted above.
27. Each Fund, the New Trust and the New LP will be a mutual fund as such term is defined in the Legislation.
28. Except as exempted by this decision or other exemptive relief, each Fund and the New Trust will fully comply with the requirements of NI 81-102.
29. Each Fund, the New Trust and each Underlying Fund will have an independent review committee, which is expected to be comprised of the same individuals.
30. Each holder of a Joint Investment will receive:
 - (a) one Fund Fact for the Joint Investment, which will reflect the results of the Fund and the New Trust on a combined basis;
 - (b) a single annual and semi-annual MRFP for the Joint Investment, which will reflect the combined results of the Fund and the New Trust;
 - (c) one set of annual audited and semi-annual unaudited financial statements for the Joint Investment, which will also reflect the results of the Fund and the New Trust on a consolidated basis, including a consolidated audit report, the consolidated net asset value of the Fund and the New Trust and the consolidated net asset value of the securities of the Fund and the New Trust;
 - (d) combined quarterly portfolio information, combined proxy voting results, combined performance reports, combined performance results and combined sales communications for the Fund and the New Trust; and
 - (e) combined confirmations and account statements reflecting their investment in the Fund and the New Trust as a joint investment, although the investor can at any time request their net asset value per security in the Fund and the New Trust

(collectively, the **Disclosure Documents**).
31. An investor holding a Joint Investment will not receive separate quarterly portfolio information, proxy voting results, performance reports, performance results, sales communications, proxy solicitation and information circulars, confirmations or account statements for the New Trust.
32. The reorganization of the Existing Funds into the New Proposed Structure as well as its tax operating model comply with the Tax Act.

33. The Filer and the Funds want to be able to continue relying on the Prior Decisions and will continue to fully comply with the terms and conditions set out in the Prior Decisions once the New Proposed Structure is implemented. The New Proposed Structure does not affect the underlying rationale for granting the Prior Decisions and the request for a variation of the Prior Decisions is intended solely to ensure that the Filer and the Funds can continue to rely on the Prior Decisions after the New Proposed Structure is implemented.

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 relevant Disclosure Documents are provided to each investor at the time that investor acquires the Joint Investment; and
- (b) the Funds and the New Trust comply with their respective continuous disclosure obligations by preparing the relevant Disclosure Documents as required by securities legislation.

“original signed by”
Tom Graham
Director, Corporate Finance