

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Relief granted from the self-dealing provision in s.4.2(1) of National Instrument 81-102 *Investment Funds* to permit inter-fund trades in debt securities among investment funds and managed accounts managed by the same manager – inter-fund trades will comply with the conditions in subsection 6.1(2) of NI 81-107 *Independent Review Committee for Investment Funds*, including the requirement for independent review committee approval.

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Relief from subparagraphs 13.5(2)(b)(ii) and (iii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to permit inter-fund trades among investment funds and managed accounts managed by the same manager – inter-fund trades subject to conditions, including independent review committee approval and pricing requirements – trades involving exchange-traded securities permitted to occur at last sale price as defined in the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada.

Applicable Legislative Provisions

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, sections 13.5 and 15.1

National Instrument 81-102 *Investment Funds*, subsections 4.2(1), 4.3(1) and 4.3(2) and section 19.1

National Instrument 81-107 *Independent Review Committee for Investment Funds*, subsection 6.1(2)

Citation: Re CWB Wealth Management Ltd., 2018 ABASC 87

Date: 20180601

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
CWB Wealth Management Ltd. (the **Filer**)

Decision

Background

The securities 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 the following exemptions (collectively, the **Exemption Sought**):

- (a) an exemption (**Subsection 4.2(1) Relief**) from the prohibition in subsection 4.2(1) of National Instrument 81-102 *Investment Funds (NI 81-102)* to permit each Public Fund (as defined below) to purchase debt securities from, or sell debt securities to, a Pooled Fund (as defined below);
- (b) an exemption (the **Inter-Fund Trading Relief**) from the prohibitions in subparagraphs 13.5(2)(b)(ii) and (iii) (the **Trading Prohibitions**) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* against a registered adviser knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an associate of a responsible person, or from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, in order to permit:
 - i. a Fund or a Managed Account (both as defined below) to purchase securities from or sell securities to a Fund or a Managed Account (an **Inter-Fund Trade**); and
 - ii. an Inter-Fund Trade of an Exchange-Traded Security (as defined below) to be executed at the Last Sale Price (as defined below) prior to the execution of the trade, in lieu of the closing sale price on the day of the transaction (the **Closing Sale Price**) contemplated by the definition of "current market price of the security" in subparagraph 6.1(1)(a)(i) of National Instrument 81-107 *Independent Review Committee for Investment Funds (NI 81-107)*.

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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon by the Filer in each of the provinces and territories of Canada other than Ontario; 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

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 31-103, NI 81-102 or NI 81-107 have the same meaning if used in this decision, unless otherwise defined herein. The following terms have the following meanings:

Exchange-Traded Security means a security of a class that is listed for trading on an exchange in Canada or a foreign jurisdiction.

Fund means each Public Fund or Pooled Fund, and **Funds** means all the Funds.

Last Sale Price means the “last sale price” as defined in the Universal Market Integrity Rules of the IIROC.

Managed Account means an existing or future account for which the Filer makes the investment decisions, having been granted the discretion to trade in securities for the account without requiring the client’s express written consent to a transaction.

Public Fund means each existing or future investment fund that is a reporting issuer and subject to NI 81-102 and 81-107, for which the Filer acts, or may act, as investment fund manager, portfolio adviser or both.

Pooled Fund means each existing or future investment fund that is not a reporting issuer, for which the Filer acts, or may act, as investment fund manager, portfolio adviser or both.

Representations

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

The Filer

1. The Filer is a corporation established under the laws of Alberta with its head office in Edmonton, Alberta.
2. The Filer is registered as a portfolio manager and exempt market dealer in Alberta, Ontario, British Columbia, Manitoba and Saskatchewan, and as an investment fund manager in Alberta and Ontario.
3. The Filer is the portfolio manager and investment fund manager of each Fund.
4. The Filer is the portfolio manager of each Managed Account.
5. The Filer is not in default of securities legislation of any province or territory of Canada.

The Funds

6. Each of the Funds is, or will be, an investment fund established as a trust, partnership or corporation under the laws of Canada or a province or territory of Canada, or a jurisdiction outside of Canada.
7. The securities of each Public Fund are, or will be, qualified for distribution under a prospectus, and each Public Fund is, or will be, a reporting issuer under the securities legislation of one or more jurisdictions in Canada.
8. The securities of each Pooled Fund are, or will be, distributed pursuant to one or more available exemptions from the prospectus requirement of applicable securities legislation. None of the Pooled Funds are, or are expected to be, reporting issuers in any province or territory of Canada or other jurisdiction and none are, or are expected to be, subject to NI 81-102 or NI 81-107 (except to the extent applicable pursuant to the Exemption Sought).
9. Each Fund's reliance on the Exemption Sought will be compatible with its investment objectives and strategies.
10. The Filer acts, or will act, as the trustee of each Public Fund. Canadian Western Trust, a registered trust corporation and an affiliate of the Filer, acts, or will act, as the trustee of each Pooled Fund.
11. None of the existing Funds are in default of securities legislation of any province or territory of Canada.

Managed Accounts

12. Each Managed Account is, or will be, managed pursuant to an investment management agreement or other document which is, or will be, executed by each client who wishes to receive the portfolio management services of the Filer and which provides the Filer full discretionary authority to trade securities for the Managed Account without obtaining the specific consent of the client to execute the trade.
13. The investment management agreement or other document in respect of each Managed Account contains, or will contain, authorization from the client for the Filer to make Inter-Fund Trades.

Independent Review Committee

14. Each Public Fund has, or will have, an independent review committee (**IRC**) in accordance with the requirements of NI 81-107. Each Inter-Fund Trade by a Public Fund with a Pooled Fund or a Managed Account will be authorized by the IRC of the Public Fund in accordance with section 5.2 of NI 81-107, and the Filer will comply with section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with such Inter-Fund Trades.

15. Though the Pooled Funds are not, and will not be, subject to the requirements of NI 81-107, each Pooled Fund will have an IRC at the time the Pooled Fund makes an Inter-Fund Trade. The mandate of the IRC of each Pooled Fund will comply with the following provisions of NI 81-107 as if the Pooled Fund was a reporting issuer: (a) composition of the IRC as set out in section 3.7, and (b) the standard of care set out in section 3.9. The IRC of a Pooled Fund will not approve an Inter-Fund Trade involving a Pooled Fund unless it has made the determination set out in subsection 5.2(2) of NI 81-107.
16. If the IRC of a Fund becomes aware of an instance where the Filer did not comply with the terms of this decision or a condition imposed by securities legislation or the IRC in its approval, the IRC will, as soon as practicable, notify in writing the Decision Makers.

Inter-Fund Trades

17. At the time of an Inter-Fund Trade, the Filer will have policies and procedures in place to enable the applicable Funds and Managed Accounts to engage in Inter-Fund Trades. The following procedures will be applied:
 - (a) in respect of a purchase or a sale of a security by a Fund or Managed Account, as applicable (Portfolio A), the portfolio manager of the Filer will either place the trade directly or will deliver the trade instructions to a trader on a trading desk of the Filer;
 - (b) in respect of a purchase or sale of a security by another Fund or Managed Account, as applicable (Portfolio B), the portfolio manager of the Filer will either place the trade directly or will deliver the trade instructions to a trader on a trading desk of the Filer;
 - (c) each portfolio manager of the Filer will request the approval of the chief compliance officer of the Filer (or his or her designated alternate during periods when it is not practicable for the chief compliance officer to address the matter) (the **CO**) to execute the trade as an Inter-Fund Trade;
 - (d) once the portfolio manager or trader on the trading desk has confirmed the approval of the CO, the portfolio manager or the trader on the trading desk will have the discretion to execute the trade as an Inter-Fund Trade between Portfolio A and Portfolio B in accordance with the requirements of paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107, except that for purposes of paragraph (e) of subsection 6.1(2) in respect of Exchange-Traded Securities, the trade may be executed at the Last Sale Price;
 - (e) the policies applicable to the portfolio manager and the trading desk of the Filer will require that all Inter-Fund Trade orders are to be executed on a timely basis and will remain open no longer than 30 days; and

- (f) the portfolio manager or the trader on a trading desk will advise the Filer of the price at which the Inter-Fund Trade occurred.

Reasons for Exemption Sought

18. Since the Filer is, or will be, the trustee of each Public Fund, each Public Fund is, or will be, an associate of the Filer. Where the Filer is, or will be, the adviser to a Fund, the Filer is, or will be, a responsible person of the Fund. The Filer is, or will be, a responsible person of each Managed Account. Accordingly, each Public Fund is, or will be, an associate of a responsible person of another Fund or Managed Account.
19. Pursuant to the Legislation, a Fund or a Managed Account, as applicable, may be restricted from making Inter-Fund Trades with another Fund or Managed Account if:
- (a) the second Fund is an associate of a responsible person of the first Fund or of the Managed Account, as applicable, which will be the case on each occasion that the second Fund is a Public Fund; or
 - (b) a responsible person of the first Fund or the Managed Account, as applicable, is an adviser to the second Fund, which is expected to be the case for each second Fund.
20. Absent the Exemption Sought, the Trading Prohibitions prohibit the Filer from engaging in Inter-Fund Trades. Specifically:
- (a) as the adviser to a Pooled Fund or Managed Account, the Filer cannot rely upon the exemption from the Trading Prohibitions codified in subsection 6.1(4) of NI 81-107 because such codified relief is not available in the context of the Pooled Funds and Managed Accounts; and
 - (b) although the Trading Prohibitions are similar to the restrictions applicable to Public Funds contained in subsection 4.2(1) of NI 81-102, there is no codified relief from the Trading Prohibitions equivalent to subsection 4.3(1) of NI 81-102 for purchases and sales of securities with available public quotations. Subsection 6.1(4) of NI 81-107 provides relief from the Trading Prohibitions only if, among other conditions:
 - i. the trade involves two investment funds to which NI 81-107 applies (which is not the case when a Managed Account or Pooled Fund is one of the parties to the Inter-Fund Trade); and
 - ii. the Inter-Fund Trade occurs at the current market price of the security which, in the case of Exchange-Traded Securities, does not include the Last Sale Price.

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:

- (a) the Subsection 4.2(1) Relief is granted in respect of the Inter-Fund Trade of debt securities provided that, whether or not the Fund is a reporting issuer, the following conditions are satisfied:
 - i. the Inter-Fund Trade is consistent with the investment objective of each of the Funds involved in the trade;
 - ii. the IRC of each Fund involved in the trade has approved the Inter-Fund Trade in accordance with the terms of section 5.2 of NI 81-107; and
 - iii. the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107; and

- (b) the Inter-Fund Trading Relief is granted in respect of an Inter-Fund Trade provided that, whether or not the Fund is a reporting issuer, the following conditions are satisfied:
 - i. the Inter-Fund Trade is consistent with the investment objective of each Fund and Managed Account, as applicable;
 - ii. the Inter-Fund Trade has been referred by the Filer, as manager of each Fund, to the IRC of that Fund in the manner contemplated by section 5.1 of NI 81-107 and the Filer and the IRC of the Fund have complied with section 5.4 of NI 81-107 in respect of any standing instructions the IRC has provided in connection with the Inter-Fund Trade;
 - iii. the IRC of each Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - iv. if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account contains or will contain the authorization of the client to engage in Inter-Fund Trades and such authorization has not been revoked; and
 - v. the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) of NI 81-107 in respect of Exchange-Traded Securities, the Last Sale Price may be used in lieu of the Closing Sale Price.

“original signed by”

Tom Graham
Director
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