

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, 2019 ABASC 29

Date: 20190207

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 Canadian Monthly Income Class
Canoe Equity Income Class
Canoe Canadian Corporate Bond Fund
Canoe Floating Rate Income Fund
(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**) approving (the **Approval Sought**) the following proposed mergers (the **Mergers**) pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**):

- (a) Canoe Canadian Monthly Income Class into Canoe North American Monthly Income Class;
- (b) Canoe Equity Income Class into Canoe Asset Allocation Class;
- (c) Canoe Canadian Corporate Bond Fund into Canoe Bond Advantage Fund; and
- (d) Canoe Floating Rate Income Fund into Canoe Strategic High Yield Fund.

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 Corporate Class Fund means each of Canoe North American Monthly Income Class and Canoe Asset Allocation Class;

Continuing Portfolio Class Fund means the combined investment in shares of a Continuing Corporate Class Fund and units of the CTF;

Continuing Fund means each of Canoe North American Monthly Income Class, Canoe Asset Allocation Class, Canoe Bond Advantage Fund and Canoe Strategic High Yield Fund;

Continuing Trust Fund means each of Canoe Bond Advantage Fund and Canoe Strategic High Yield Fund;

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

CTF means Canoe Trust Fund;

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

Hard Capped Series means Series FX of Canoe Bond Advantage Fund and Series UA, Series UF and Series FH of Canoe Strategic High Yield Fund;

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);

Terminating Corporate Class Fund means each of Canoe Canadian Monthly Income Class and Canoe Equity Income Class;

Terminating Portfolio Class Fund means the combined investment in shares of a Terminating Corporate Class Fund and units of the CTF; and

Terminating Trust Fund means each of Canoe Canadian Corporate Bond Fund and Canoe Floating Rate Income Fund.

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 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 in Alberta, Ontario, Québec and Newfoundland and Labrador, as a portfolio manager in Alberta, Ontario and Québec and as an exempt market dealer in each jurisdiction of Canada. The Manager is also registered as a derivatives portfolio manager in Québec.

The Funds

3. The Terminating Corporate Class Funds and the Continuing Corporate Class Funds are each open-ended mutual funds structured as a share class of the Corporation. The Terminating Trust Funds and Continuing Trust Funds are each open-ended mutual fund trusts governed by a master declaration of trust under the laws of Alberta. The Terminating Corporate Class Funds and the Continuing Corporate Class Funds are part of Canoe's portfolio class structure which consists of an investment in a share class of the Corporation, as described above, and units of CTF.
4. Securities of certain series of the Funds are qualified for sale in each jurisdiction of Canada under a simplified prospectus, annual information form and fund facts document each dated August 28, 2018, as amended, prepared in accordance with the requirements of NI 81-101 (collectively, the **Offering Documents**). Securities of certain other series of the Funds are offered only on an exempt distribution basis; for example, Series FH, UA and UF securities of certain Funds have never been qualified for distribution under a prospectus.
5. Each of the Funds is a reporting issuer under the securities legislation of each jurisdiction of Canada.
6. Neither the Manager nor any of the Funds is in default under the securities legislation of 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 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 on SEDAR on October 24, 2018, 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 October 11, 2018 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. Security holders of the Terminating Funds, other than the Canoe Canadian Monthly Income Class, approved the Mergers at special meetings held on January 17, 2019. Security holders of the Canoe Canadian Monthly Income Class approved the Merger at a special meeting held on January 24, 2019.
14. In addition, in compliance with corporate law, security holders of the Continuing Corporate Class Funds approved the exchange of securities of the applicable Terminating Corporate Class Fund for securities of the applicable Continuing Corporate Class Fund at a special meeting held on January 24, 2019.
15. The merger of each Terminating Corporate Class Fund into the applicable Continuing Corporate Class 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.
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 security holders 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 document relating to the relevant series of the Continuing Funds, other than the funds facts document for the Hard Capped Series, will be sent to security holders of the Terminating Funds and the Continuing Corporate Class Funds commencing on or about December 18, 2018. 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. Each of the Hard Capped Series are being created as a new series of a Continuing Fund solely to facilitate the Mergers, will not be qualified for distribution under a prospectus and will not be available for purchase subsequent to the Mergers. Accordingly, in respect of the Mergers set out in the table below (the **Hard Capped Mergers**), security holders

of each of the corresponding series of the Terminating Funds will be sent a fund facts document relating to the following series of securities of the applicable Continuing Fund:

Terminating Fund	Series Currently Held	Hard Capped Series Received pursuant to Merger	Series of Fund Facts Document Received	Continuing Fund
Canoe Canadian Corporate Bond Fund	FH	FH	F	Canoe Bond Advantage Fund
Canoe Floating Rate Income Fund	A (USD)	UA	A	Canoe Strategic High Yield Fund
	F (USD)	UF	F	
	FH	FH		

18. In order to effect the Hard Capped Mergers, securities of the applicable series of the Continuing Funds will be distributed to security holders of the Terminating Funds in reliance on the prospectus exemption contained in section 2.11 of National Instrument 45-106 *Prospectus Exemptions*.
19. 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 were described in the information circular, thereby allowing security holders of the Terminating Funds to consider this information before voting on the Mergers. The information circular also described the various ways in which investors can obtain a copy of the simplified prospectus, annual information form and fund facts document for the Continuing Funds and their most recent interim and annual financial statements and management reports of fund performance.
20. Security holders 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.

Merger Steps

21. The proposed Merger of each Terminating Corporate Class Fund into the applicable Continuing Corporate Class Fund will be structured as follows:
 - (a) Prior to effecting each Merger, if required, each Terminating Portfolio Class Fund will sell any securities in its portfolio that do not meet the investment objectives and investment strategies of its corresponding Continuing Portfolio Class Fund. As a result, the portfolio of each Terminating Portfolio Class 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 each Terminating Portfolio Class Fund's portfolio and other assets and liabilities will be determined at the close of business on the effective date of the Merger in accordance with its constating documents.
 - (c) The Corporation may pay ordinary income, taxable dividends or capital gains dividends to security holders of each Terminating Corporate Class Fund and/or the applicable Continuing Corporate Class Fund, as determined by the Manager at the time of the applicable Merger.
 - (d) CTF will distribute a sufficient amount of its net income and net realized capital gains, as applicable, to its unitholders on or before the effective date of the Merger to ensure that CTF will not be subject to tax for its taxation year ending on the effective date of the Merger.
 - (e) On the effective date of the Merger:
 - (i) the investment portfolio and other assets and liabilities attributable to each Terminating Portfolio Class Fund (within each of the Corporation and CTF) will be included in the investment portfolio and other assets and liabilities attributable to the applicable Continuing Portfolio Class Fund (within each of the Corporation and CTF); and
 - (ii) the net asset value of the applicable Continuing Portfolio Class Fund (within each of the Corporation and CTF) will be increased by an amount equal to the value of the portfolio and other assets (minus liabilities) being attributed to the applicable Continuing Portfolio Class Fund (within each of the Corporation and CTF) determined at the close of business on the effective date of the Merger in accordance with the constating documents of the applicable Continuing Portfolio Class Fund.
 - (f) The articles of the Corporation will be amended so that all of the issued and outstanding shares of the Corporation representing each Terminating Corporate Class Fund will be exchanged for shares of the Corporation forming part of the applicable Continuing Corporate Class Fund for equal value on a series-by-series and dollar-for-dollar basis, so that security holders of each Terminating Corporate Class Fund become security holders of the applicable series of the corresponding Continuing Corporate Class Fund and then the shares of the Corporation forming part of each Terminating Corporate Class Fund will be cancelled.
22. The proposed Merger of each Terminating Trust Fund into the applicable Continuing Trust Fund will be structured as follows:
- (a) Prior to effecting each Merger, if required, each Terminating Trust Fund will sell any securities in its portfolio that do not meet the investment objectives and investment strategies of the applicable Continuing Trust Fund. As a result, each 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 each Terminating Trust Fund's portfolio and other assets will be determined at the close of business on the effective date of each applicable Merger in accordance with the constating documents of the applicable Terminating Trust Fund.
 - (c) On the effective date of the Merger, each Continuing Trust Fund will acquire the investment portfolio and other assets of the applicable Terminating Trust Fund in exchange for units of the Continuing Trust Fund.
 - (d) Each Continuing Trust Fund will not assume any liabilities of the applicable 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 applicable Merger.
 - (e) The units of each Continuing Trust Fund received by the applicable Terminating Trust Fund will have an aggregate net asset value equal to the value of the portfolio assets and other assets that the Continuing Trust Fund is acquiring from the Terminating Trust Fund, and the units of the Continuing Trust Fund will be issued at the applicable series net asset value per unit as of the close of business on the effective date of the applicable Merger.
 - (f) Each Terminating Trust Fund will distribute a sufficient amount of its net income and net realized capital gains, if any, to unitholders to ensure that the Terminating Trust Fund will not be subject to tax for the taxation year ended on the effective date of the applicable Merger.
 - (g) Immediately thereafter, units of each Continuing Trust Fund received by the applicable Terminating Trust Fund will be distributed to unitholders of the Terminating Trust Fund in exchange for their units in the Terminating Trust Fund on a dollar-for-dollar and series-by-series basis, as applicable.
 - (h) Each Terminating Trust Fund and its corresponding Continuing Trust Fund will not elect that the Merger occur on a tax-deferred basis.
 - (i) As soon as reasonably possible following the Merger, and in any case within 90 days following the effective date of each Merger, the applicable Terminating Trust Fund will be wound up.
23. 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.

24. No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of its applicable Terminating Fund.
25. 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.
26. 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

27. The Manager believes that the Mergers are beneficial to security holders 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) for the Mergers of Canoe Canadian Monthly Income Class into Canoe North American Monthly Income Class and Canoe Canadian Corporate Bond Fund into Canoe Bond Advantage Fund, the Continuing Fund may offer a broader investment mandate, thereby providing greater flexibility to the portfolio manager, which may improve returns;
 - (c) following the Mergers, each Continuing Fund will have a portfolio of greater value, which may allow for increased portfolio diversification opportunities if desired;
 - (d) 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; and
 - (e) 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”

Timothy Robson
Manager, Legal
Corporate Finance
Alberta Securities Commission