

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Roll-over transaction exempt from the self-dealing prohibitions in paragraph s.13.5(2)(b)(iii), National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* - funds managed and advised by the same portfolio manager - one time trade of securities from non-redeemable investment fund to mutual fund in connection with Roll-over of flow-through LP – non redeemable investment fund is not a reporting issuer.

Applicable Legislative Provisions

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, ss. 13.5(2)(b)(iii), 15.1

Citation: Re Norrep Capital Management Ltd., 2015 ABASC 887

Date: 20150924

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 **Filer** or **Norrep**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for exemptive relief from sub-paragraph 13.5(2)(b)(iii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), which prohibits a registered adviser from 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 investment fund for which a responsible person acts as an adviser (the **Exemption Sought**).

The Filer seeks the Exemption Sought with respect to and in order to effect the transfer of the assets of Centurion Short Duration 2014 Flow-Through Limited Partnership (the **Partnership**) to Norrep Energy Class (the **Fund**) of Norrep Opportunities Corp. (the **Mutual Fund Corp.**) in consideration for the issue to the Partnership of shares of the Fund, a class of shares of the Mutual Fund Corp., on a tax-deferred basis followed by the dissolution and winding-up of the Partnership (the **Roll-over Transaction**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator (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 of the provinces and territories of Canada; and
- (c) this decision is the decision of the Principal Regulator and also evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

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

1. The Partnership is a limited partnership established under the laws of the Province of Alberta and governed by a limited partnership agreement dated as of July 23, 2014 (the **Partnership Agreement**). During the period July 31, 2014 to October 28, 2014, units of the Partnership were issued on a private placement basis to seven investors pursuant to the “private issuer” exemption from the prospectus requirement. The proceeds raised by the Partnership pursuant to the offering were used principally to subscribe for flow-through shares of resource issuers in accordance with the investment criteria and restrictions set out in the Partnership Agreement. As disclosed in its Partnership Agreement and in the subscription agreements executed by the limited partners, the Partnership intends on or before December 31, 2015 to transfer its assets to the Mutual Fund Corp. (which specifically allocates such assets as assets of the Fund) in exchange for shares of the Fund to be distributed to the investors in the Partnership, subject to compliance with all applicable laws and the extension permitted by the Partnership Agreement. For ease of reference throughout this document, the transfer of the Partnership’s assets to the Mutual Fund Corp. and allocation to the Fund will be referred to as the transfer of the Partnership’s assets to the Fund.
2. The Partnership is a “non-redeemable investment fund” as defined under applicable securities laws. Centurion 2014 FTLP Management Inc. (the **General Partner**), a corporation incorporated under the *Business Corporations Act* (Alberta), is the general partner of the Partnership and pursuant to the Partnership Agreement, has the exclusive authority to manage and operate the business and affairs of the Partnership. The Filer was retained by the General Partner on behalf of the Partnership to manage and operate the business and affairs of the Partnership and to manage the investment portfolio of the Partnership.
3. The Fund is a class of shares of the Mutual Fund Corp., a mutual fund corporation incorporated under the *Business Corporations Act* (Alberta). Shares of the Fund are

currently offered under fund facts documents, simplified prospectus and annual information form, each dated June 29, 2015. As disclosed in the simplified prospectus, the Mutual Fund Corp. can facilitate exchange transactions pursuant to which the assets of one or more limited partnerships are transferred into the Fund on a rollover transaction.

4. The Fund is a “mutual fund” as defined under applicable securities laws and is subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**).
5. The Filer is the investment fund manager and portfolio manager of each of the Partnership and the Fund. The head office of the Filer is located in Calgary, Alberta.
6. The Filer is registered as an investment fund manager, exempt market dealer and a portfolio manager in the Provinces of Alberta and Ontario; as portfolio manager and exempt market dealer in British Columbia; and an investment fund manager in Newfoundland and Labrador.
7. The Filer is not in default of any requirement of securities legislation in any jurisdiction.
8. The Partnership is not, and will not be, a “reporting issuer” or equivalent under applicable securities laws.
9. The Fund is a reporting issuer under the applicable securities legislation of each of the Provinces of Canada and is not on the list of defaulting reporting issuers maintained under such securities legislation.
10. The General Partner, on behalf of the Partnership, and the Filer, on behalf of the Fund, intend to effect the Roll-over Transaction on or prior to December 31, 2015 (the **Effective Date**), subject to regulatory approval and the satisfaction of all other conditions precedent to the proposed transaction.
11. Although not required by National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), an independent review committee (**IRC**) has been appointed for the Partnership and maintained in all material respects as if NI 81-107 applied to the Partnership, and the Roll-over Transaction has been presented to the IRC for a recommendation. The IRC of the Partnership considered the Roll-over Transaction and provided a positive recommendation on the basis that they considered that the Roll-over Transaction would achieve a fair and reasonable result for the Partnership.
12. The IRC of the Fund has also considered and provided a positive recommendation for the Roll-over Transaction on the basis that they considered that the Roll-over Transaction would achieve a fair and reasonable result for the Fund.
13. The Roll-over Transaction is not a matter that requires approval by the limited partners of the Partnership or the shareholders of the Fund.
14. No sales charges, redemption fees or other fees, charges or commissions will be payable by the limited partners of the Partnership in connection with the Roll-over Transaction.

15. The Fund will not bear any of the costs and expenses in connection with the Roll-over Transaction. Such costs and expenses will be borne by the Partnership.
16. Following completion of the Roll-over Transaction, the Fund will continue as a publicly offered open-end mutual fund and the Partnership will be wound up and terminated.
17. The Roll-over Transaction will be completed on a tax-deferred basis.
18. The sale of the assets of the Partnership to the Fund (and the corresponding purchase of such assets by the Fund) as a step in the Roll-over Transaction may be considered a purchase or sale of securities, knowingly caused by a registered adviser that manages the investment portfolios of both the Partnership and the Fund, from the Partnership to, or by the Fund from, an investment fund for which a “responsible person” acts as an adviser, contrary to sub-paragraph 13.5(2)(b)(iii) of NI 31-103.
19. Completion of the Roll-over Transaction will involve two principal steps as follows:
 - (a) on the Effective Date, the Partnership will, on a tax-deferred basis, transfer its assets to the Fund in exchange for shares of the Fund having a value equal to the Partnership’s aggregate net asset value on the Effective Date; and
 - (b) within 60 days of the Effective Date, the shares of the Fund that the Partnership received as consideration for the transfer of its assets will subsequently be distributed to the limited partners of the Partnership on a *pro rata* basis on the dissolution and winding up of the Partnership.
20. The assets of the Partnership will be valued in accordance with the formula for net asset value as prescribed by the Partnership Agreement, and, at this value, the assets of the Partnership will subsequently be exchanged for shares of the Fund.
21. The Partnership and the Fund follow the same valuation procedures for calculating net asset value.
22. Limited partners of the Partnership will not be required to take any action in order to be recognized as shareholders of the Fund or to be in a position to redeem the shares of the Fund following completion of the Roll-over Transaction.
23. In the absence of this order, the Filer would be prohibited from knowingly causing the purchase and sale of securities of the Partnership (and thereby transferring its assets to the Fund) in connection with the Roll-over Transaction.
24. The effect of the Roll-over Transaction is that limited partners of the Partnership will become shareholders of the Fund and the Fund would then own directly all of the assets previously owned by the Partnership. The assets of the Partnership to be transferred on the Effective Date will be acceptable to the portfolio adviser of the Fund and such assets will conform with the investment objectives of the Fund. The General Partner believes that the Roll-over Transaction will be beneficial to limited partners of the Partnership because:

- (a) the Roll-over Transaction will provide for liquidity since the shares of the Fund distributed to the limited partners will be redeemable on demand;
 - (b) the Roll-over Transaction will provide for a tax-deferral should a limited partner wish to maintain his or her investment in the Fund until a future date; and
 - (c) the alternative of liquidating the assets of the Partnership in a short period of time may have a larger negative impact on the Partnership's net asset value, in comparison to liquidating the corresponding assets of the Fund to fund redemption requests on a shareholder by shareholder basis.
25. The Filer believes that the Roll-over Transaction will be beneficial to shareholders of the Fund because:
- (a) the Roll-over Transaction will result in the Fund having a larger portfolio and should offer improved portfolio diversification to shareholders of the Fund; and
 - (b) shareholders of the Fund should benefit from increased economies of scale and lower proportionate fund operating expenses.
26. The General Partner and the Filer believe that the Roll-over Transaction will not adversely affect limited partners of the Partnership or shareholders of the Fund and will in fact be in the best interests of such limited partners and shareholders.
27. No illiquid asset (as that term is defined in NI 81-102) will be transferred to the Fund pursuant to the Roll-over Transaction as the Partnership does not hold any illiquid assets.
28. The transfer of the assets of the Partnership to the Fund will not adversely impact the liquidity of the Fund.
29. The transfer of the assets of the Partnership to the Fund will not adversely impact the Fund's compliance with applicable securities law requirements.
30. The benefits of the Roll-over Transaction are precisely what the limited partners of the Partnership anticipated would occur and authorized the General Partner to implement when they made their investment in the Partnership, as disclosed in the Partnership Agreement and in the subscription agreements executed by limited partners. Limited partners provided their consent to the Roll-over Transaction in the subscription agreements executed by limited partners.

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 the Exemption Sought for the Roll-over Transaction is granted.

“original signed by”

Lynn Tsutsumi, CA

Director, Market Regulation

Alberta Securities Commission