

December 14, 2010

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
Catapult Financial Management Inc.
(the Filer)

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 and Exemptions* (**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 Filer seeks the exemptive relief (the **Requested Relief**) with respect to and in order to effect the transfer of the investment portfolio of Catapult Energy 2008 FTS Limited Partnership (the **Partnership**) to Ark Resource Corp. (the **Mutual Fund Corp.**) in consideration for the issue to the Partnership of series A shares of Ark Catapult Energy Class Fund (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 (the **Non-Principal Jurisdictions**); 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 and National Instrument 14-101 - *Definitions* 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:

1. The Partnership is a limited partnership established under the laws of the Province of Alberta and governed by an amended and restated partnership agreement dated October 29, 2008, as amended (the **Partnership Agreement**). In November, 2008, units of the Partnership were issued pursuant to a prospectus dated October 29, 2008. The proceeds raised by the Partnership pursuant to the prospectus 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 prospectus, the Partnership intends on or before December 31, 2010 to transfer its assets to a mutual fund in exchange for shares of the mutual fund to be distributed to the investors in the Partnership.
2. The Partnership is a “non-redeemable investment fund” as defined under applicable securities laws. Catapult Energy 2008 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 the investment portfolio of the Partnership.
3. The Fund is a class of shares of Ark Resource Corp., a mutual fund corporation incorporated under the *Business Corporations Act* (Ontario). Shares of the Fund are currently offered under a combined simplified prospectus and annual information form each dated November 5, 2010. As disclosed in its simplified prospectus, the Fund was established, in part, to facilitate exchange transactions pursuant to which the assets of one or more limited partnerships are transferred into the Fund on a mutual fund rollover transaction.
4. The Fund is a “mutual fund” as defined under applicable securities laws. Redwood Asset Management Inc. (**Redwood**) is the manager of the Fund. The Filer was retained by Redwood on behalf of the Fund to manage the investment portfolio of the Fund. Redwood is not affiliated with the Filer, the Partnership or the General Partner.
5. The Filer is registered as a portfolio manager in the Provinces of Alberta and Ontario. The Filer is not currently in default of any requirements of applicable securities legislation.
6. The Partnership is a reporting issuer under the applicable securities legislation of each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec and is not on the list of defaulting reporting issuers maintained under such securities legislation.

7. 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.
8. The General Partner, on behalf of the Partnership, and Redwood, on behalf of the Fund, intend to effect the Roll-over Transaction on or about December 15, 2010 (the **Effective Date**), subject to regulatory approval and approval by the unitholders of the Partnership and the satisfaction of all other conditions precedent to the proposed transaction.
9. As 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 the Roll-over Transaction has been presented to the IRC for a recommendation. The IRC considered the Roll-over Transaction and provided a positive recommendation on the basis that the Roll-over Transaction would achieve a fair and reasonable result for the Partnership.
10. An IRC has also considered and provided a positive recommendation for the Roll-over Transaction on the basis that the Roll-over Transaction would achieve a fair and reasonable result for the Fund.
11. Unitholders of the Partnership were asked to approve the Roll-over Transaction at a special meeting of unitholders scheduled to be held on November 26, 2010 (the **Meeting**). At the meeting, 99.45% of the eligible unitholder votes that were cast were cast in favour of approving the Roll-over Transaction. The Roll-over Transaction is not a matter that requires approval by the shareholders of the Fund.
12. No sales charges, redemption fees or other fees or commissions will be payable by unitholders of the Partnership in connection with the Roll-over Transaction.
13. In connection with the Meeting, the General Partner on behalf of the Partnership sent to the unitholders of the Partnership a notice of special meeting of unitholders and management information circular each dated October 27, 2010 and a related form of proxy (collectively, the **Meeting Materials**). The Meeting Materials have been filed on SEDAR and were mailed to unitholders of the Partnership on November 1, 2010.
14. 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.
15. The Roll-over Transaction will be completed on a tax-deferred basis.
16. The transfer of the investment portfolio of the Partnership to the Fund (and the corresponding purchase of such investment portfolio 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 NI 31-103.
17. 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 Mutual Fund Corp. in exchange for series A 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 series A shares of the Fund that the Partnership received as consideration for the transfer of its assets will be distributed to the unitholders of the Partnership on a *pro rata* basis on the dissolution and winding up of the Partnership.
- 18. The transfer of assets from the Partnership to the Fund will take place at a value determined by common valuation procedures and unitholders of the Partnership will receive series A shares of the Fund, the value of which are equal to the net asset value of the units held by such unitholder in the Partnership.
- 19. Unitholders 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.
- 20. In the absence of this order, the Filer would be prohibited from purchasing and selling the securities of the Partnership (and thereby transferring its investment portfolio to the Fund) in connection with the Roll-over Transaction.
- 21. The effect of the Roll-over Transaction is that unitholders 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 will conform with the investment objectives the Fund. The General Partner believes that the Roll-over Transaction will be beneficial to unitholders of the Partnership because:
 - (i) the Roll-over Transaction will provide for liquidity because the shares of the Fund distributed to unitholders will be redeemable;
 - (ii) the Roll-over Transaction will provide for a tax-deferral should a unitholder wish to maintain his or her investment until a future date; and
 - (iii) 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.
- 22. Redwood believes that the Roll-over Transaction will be beneficial to shareholders of the Fund because:
 - (i) the Roll-over Transaction will result in the Fund having a larger portfolio and so should offer improved portfolio diversification to shareholders of the Fund; and

- (ii) shareholders of the Fund should benefit from increased economies of scale and lower proportionate fund operating expenses.
23. The assets of the Partnership will be transferred to the Fund in accordance with the steps described above. Because the transfer of assets will take place at a value determined by common valuation procedures and unitholders of the Partnership will receive series A shares of the Fund, the value of which are equal to the net asset value of the units held by such unitholder in the Partnership, it is the General Partner's and Redwood's opinion that there will be no conflict of interest for the Roll-over Transaction to be effected.
 24. The General Partner and Redwood believe that the Roll-over Transaction will not adversely affect unitholders of the Partnership or shareholders of the Fund and will in fact be in the best interests of such unitholders and shareholders. The IRC for the Partnership has considered the proposed Roll-over Transaction and has provided a positive recommendation on the basis that the Roll-over Transaction would achieve a fair and reasonable result for the Partnership.
 25. Unitholders of the Partnership were asked to and overwhelmingly did approve the Roll-over Transaction at the Meeting, as the benefits of a roll-over transaction are precisely what the unitholders had bargained to receive when they made their investment decision in November 2008 to invest in the Partnership, as disclosed extensively in the prospectus of the Partnership.
 26. Shareholders of the Fund are also expecting to receive the benefits of roll-over transactions into the Fund when they made their investment decision to invest in the Fund, as disclosed extensively in the simplified prospectus of the Fund.
 27. The Roll-over Transaction would comply with subsection 6.1(2) of NI 81-107 and the Requested Relief would not be necessary, but for the requirement in subsection 6.1(2) that the Partnership and the Fund be managed by the same manager or affiliated managers.

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 Requested Relief for the Roll-over Transaction is granted.

"original signed by"

David McKellar
Director, Market Regulation
Alberta Securities Commission