

## Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Relief granted from NI 81-102 to permit alternative mutual funds to short sell up to 100% of net assets in connection with “market neutral” or other short selling strategies – NI 81-102 would allow funds to achieve similar short exposure through derivatives – Physical short selling is less expensive and more efficient and will not increase risk to the funds compared to short exposure through derivatives

## Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds* – subparagraph 2.6.1(1)(c)(v), and subsections 2.6.2(1) and 19.1(2)

**Citation: Re Accelerate Financial Technologies Inc., 2020 ABASC 8**

**Date: 20200121**

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  
Accelerate Financial Technologies 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 on behalf of Accelerate Market Neutral Yield Fund and Accelerate Arbitrage Fund (collectively, the **Proposed Funds**), which are mutual funds that will be established and structured as “alternative mutual funds” within the meaning of National Instrument 81-102 *Investment Funds* (**NI 81-102**), and such alternative mutual funds as may be established in the future and for which the Filer or an affiliate of the Filer acts as investment fund manager (the **Future Funds** and, together with the Proposed Funds, the **Funds**), for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that exempts the Funds from the following provisions of NI 81-102 (the **Short Selling Restrictions**), in order to permit the Funds to short sell securities having an aggregate market value of up to 100% of a Fund’s net asset value (**NAV**):

- (a) subparagraph 2.6.1(1)(c)(v), which restricts an alternative mutual fund from selling a security short if, at the time, the aggregate market value of all securities sold short by the fund exceeds 50% of the fund’s net asset value (**NAV**); and

- (b) section 2.6.2, which prohibits an alternative mutual fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the fund would exceed 50% of the fund's NAV

(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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in every jurisdiction of Canada other than Alberta and 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 NI 81-102, National Instrument 14-101 *Definitions*, and 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:

### **Background Facts**

#### *The Filer*

1. The Filer is registered as an adviser in the category of portfolio manager, as a dealer in the category of exempt market dealer and as an investment fund manager under the securities legislation of each of Alberta and Ontario. The Filer's head office is in Calgary, Alberta.
2. The Filer will be the investment fund manager and portfolio manager of the Proposed Funds and Future Funds.
3. The Filer is not in default of applicable securities legislation in any jurisdiction of Canada.

#### *The Funds*

4. The Funds will be public mutual funds created under the laws of the Province of Ontario or Alberta and will be governed by the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities. Each Fund will be an alternative mutual fund for purposes of NI 81-102.
5. Units of the Funds will be offered in every jurisdiction of Canada by simplified prospectus, annual information form and fund facts prepared in accordance with National Instrument

81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), or by a long form prospectus and ETF Facts prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* (NI 41-101), as applicable (a **Prospectus**), and each Fund will be a reporting issuer in every jurisdiction of Canada.

6. The investment objectives of the Proposed Funds are as follows:
  - (a) Accelerate Arbitrage Fund (**ARB**) seeks to achieve long-term capital appreciation and a superior risk-adjusted return relative to the S&P Merger Arbitrage Index. ARB seeks to outperform the S&P Merger Arbitrage Index through an arbitrage investment strategy by investing primarily in listed equity, debt or derivative securities of target companies involved in mergers or corporate actions, while selling short certain listed equity, debt or derivative securities of acquirer companies involved in mergers or corporate actions, where applicable.
  - (b) Accelerate Market Neutral Yield Fund (**MRKT**) seeks to achieve long-term appreciation and a superior risk-adjusted return relative to the FTSE Canada All Government Bond Index. MRKT seeks to outperform the FTSE Canada All Government Bond Index over the long term by investing primarily in listed equity securities that are expected to outperform, while selling short certain listed equity securities that are expected to underperform.

Therefore, each of ARB and MRKT utilize a market-neutral strategy (the **Market-Neutral Strategy**).

7. The investment objectives for each Future Fund will differ, but in each case, a core investment strategy as stated in the Prospectus will make the extensive use of short selling an investment strategy that is available to the portfolio manager in order to achieve the investment objectives of the applicable Fund and the portfolio manager's desired combination of long and short positions.

#### **Reasons for the Exemption Sought**

8. Because the Proposed Funds each employ a Market-Neutral Strategy that requires a constant level of 100% shorts, the Short Selling Restrictions would prevent the Proposed Funds from achieving their investment objectives through physical short selling alone. The Proposed Funds would instead have to use some combination of physical and synthetic short selling through derivatives in order to achieve the desired short exposure. The Future Funds that have investment strategies that contemplate short selling in excess of 50% of their NAV will be similarly restricted by the Short Selling Restrictions.
9. The Filer seeks the flexibility to enter into physical short positions when doing so is in the best interests of the Funds and not be obliged to enter into short positions synthetically through the use of derivatives in order to achieve a Fund's investment objectives or strategies.

10. The underlying investment exposure between a physical short position and a synthetic short position is the same. The Funds would not be subject to any additional risks by entering a physical short position over a synthetic short position.
11. In addition, while there may be certain situations in which using a synthetic short position is preferable, physical shorts are typically less costly, because of the ability to execute trades with a larger number of counterparties, compared to a single counterparty for synthetic shorts. This can result in wider options for borrowing securities resulting in lower borrowing costs. Funds are also exposed to less counterparty risk than with a synthetic short position (e.g., counterparty default, counterparty insolvency, and premature termination of derivatives).
12. The Exemption Sought would provide the Filer with the necessary flexibility to make timely trading decisions between physical short and synthetic short positions based on what is in the best interest of the Funds. The Filer, as a registrant and a fiduciary, is in the best position to determine whether the Funds should enter into a physical short position or a synthetic short position, depending on the surrounding circumstances. Accordingly, the Exemption Sought would permit the Filer to engage in the most effective portfolio management available for the benefit of the Funds and their unitholders.

## **General**

13. The Prospectus for each Fund will comply with the requirements of the Legislation applicable to alternative mutual funds, including cover page text box disclosure to highlight how the Funds differ from other mutual funds, and emphasize that the short selling strategies the Funds are permitted to use are outside the scope of NI 81-102 applicable to both alternative mutual funds and conventional mutual funds.
14. The Filer will determine each Fund's risk rating using the Investment Risk Classification Methodology as set out in Appendix F of NI 81-102.
15. The investment strategies of each Fund will clearly disclose the short selling strategies of the Funds that are outside of the scope of NI 81-102, including that the aggregate market value of all securities sold short by the Fund may exceed 50% of the Fund's NAV. The Prospectus will also contain appropriate risk disclosure, alerting investors of any material risks associated with such investment strategies.
16. The investment strategies of each Fund will permit it to sell securities short, provided that at the time the Fund sells a security short (a) the aggregate market value of securities of any one issuer (other than "government securities" as defined in NI 81-102) sold short by the Fund does not exceed 10% of the Fund's NAV, and (b) the aggregate market value of all securities sold short by the Fund does not exceed 100% of its NAV.
17. The investment strategies of each Fund will permit the Fund to enter into a cash borrowing or short selling transaction, provided that at the time a Fund sells a security short, the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Fund does not exceed 100% of the Fund's net asset value, or such other percentage required to achieve the investment objectives of the Fund.

18. The investment strategies of each Fund will permit the Fund to borrow cash, enter into specified derivative transactions or sell securities short, provided that immediately after entering into a cash borrowing, specified derivative or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Fund and the aggregate notional amount of the Fund's specified derivatives positions (other than positions held for hedging purposes, as defined in NI 81-102) would not exceed 300% of the Fund's NAV (the **Leverage Limit**). If the Leverage Limit is exceeded, the Fund shall, as quickly as commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and aggregate notional amount of the Fund's specified derivatives position to be within the Leverage Limit, in compliance with section 2.9.1 of NI 81-102.
19. Any physical short position entered into by a Fund will be consistent with the investment objectives and strategies of the applicable Fund.
20. Each Fund will implement the following controls when conducting a short sale:
  - (a) The Fund will assume the obligation to return to the borrowing agent the securities borrowed to effect the short sale;
  - (b) The Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;
  - (c) The Filer will monitor the short positions of the Fund at least once daily;
  - (d) The security interest provided by the Fund over any of its assets that is required to enable the Fund to effect a short sale transaction will be made in accordance with section 6.8.1 of NI 81-102 and will otherwise be made in accordance with industry practice for that type of transaction and relate only to obligations arising under such short sale transaction;
  - (e) The Fund will maintain appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records;
  - (f) The Filer and each Fund will keep proper books and records of short sales and all of its assets deposited with borrowing agents as security.
21. The Filer believes that it is in the best interests of the Funds to be permitted to engage in physical short selling in excess of the current limits set out in NI 81-102 applicable to alternative mutual funds.

### **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 is granted in respect of a cash borrowing or short selling transaction made by a Fund, provided that

- (a) immediately after the cash borrowing or short selling transaction,
  - (i) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV,
  - (ii) the aggregate value of cash borrowing by the Fund does not exceed 50% of the Fund's NAV, and
  - (iii) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV;
- (b) in the case of a short sale, the short sale otherwise complies with all of the short sale requirements applicable to alternative mutual funds under section 2.6.1 and 2.6.2 of NI 81-102, and is consistent with the Fund's investment objectives and strategies;
- (c) immediately after the cash borrowing or short selling transaction, the Fund's aggregate exposure to short selling, cash borrowing and specified derivatives will not exceed the Leverage Limit;
- (d) the Prospectus under which units of a Fund are offered discloses that the Fund can short sell securities having an aggregate market value of up to 100% of the Fund's NAV, and describes the material terms of this decision.

*"original signed by"*

Tom Graham, CA  
Director, Corporate Finance  
Alberta Securities Commission