

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of mutual fund merger pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* – approval required because merger does not meet the criteria for pre-approved reorganizations and transfers – a reasonable person may not consider the Funds to have substantially similar fundamental investment objectives – merger will not be a “qualifying exchange” or a tax-deferred transaction under the *Income Tax Act* – some securityholders provided with fund facts document for different series than the series they will receive – merger to otherwise comply with pre-approval criteria, including securityholder vote and IRC approval – securityholders to be provided with timely and adequate disclosure regarding the merger.

Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, paragraph 5.5(1)(b), subsection 5.6(1), and paragraph 5.7(1)(b)

Citation: Re Canoe Financial LP, 2020 ABASC 105

Date: 20200629

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 Global All Cap Class (the **Terminating Fund**,
and with the Manager, the **Filers**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Manager on behalf of the Terminating Fund for a decision under the securities legislation of the Jurisdictions (the **Legislation**) approving (the **Approval Sought**) the proposed merger (the **Merger**) of the Terminating Fund into Canoe Global Equity Fund (the **Continuing Fund**), pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**).

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) 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* 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:

Corporation means Canoe 'GO CANADA!' Fund Corp.;

Funds means, collectively, the Terminating Fund and the Continuing Fund;

Hard Capped Series means Series AN of the Continuing Fund;

IRC means the independent review committee for the Funds;

NI 81-101 means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

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*.

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 Fund is an open-ended mutual fund structured as a share class of the Corporation. The Continuing Fund is an open-ended mutual fund trust governed by a master declaration of trust under the laws of Alberta. The Terminating Fund is a 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 Canoe Trust Fund.
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 2, 2019, as amended by amendment No. 1 dated April 17, 2020, and further amended by amendment No. 2 dated April 29, 2020, prepared in accordance with the requirements of NI 81-101 (collectively, the **Offering Documents**). Securities of the Hard Capped Series of the Continuing Fund are offered only on an exempt distribution basis and are not qualified for distribution under a prospectus.
5. Each of the Funds is a reporting issuer under the securities legislation of each jurisdiction of Canada, and is subject to the requirements of NI 81-102.
6. Neither the Manager nor either of the Funds is in default under the securities legislation of any jurisdiction of Canada.
7. Each of the Funds follows the standard investment restrictions and practices established under the Legislation, except to the extent that the Fund has received an exemption to deviate therefrom.
8. The net asset value for each series of the Funds is calculated on a daily basis in accordance with the Funds' valuation policy, in the manner described in the Offering Documents.

Reason for Approval Sought

9. Regulatory approval of the Merger is required because the 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 Fund are not, or may be considered not to be, "substantially similar" to the investment objectives of the Terminating Fund;
 - (b) the Merger will not be completed as a "qualifying exchange" or other tax-deferred merger under the *Income Tax Act* (Canada);

- (c) the materials to be sent to Series X securityholders of the Terminating Fund will not include fund facts documents for the Hard Capped Series (being the series of the Continuing Fund into which Series X of the Terminating Fund is merging), because the Hard Capped Series is not qualified for distribution under a prospectus and will not be available for sale subsequent to the Merger.
10. Except as described in this decision, the proposed Merger complies with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

The Proposed Merger

11. In accordance with NI 81-106, a press release announcing the proposed Merger was issued and filed on SEDAR on April 22, 2020. The material change report announcing the changes in connection with the proposed Merger was filed on SEDAR on April 28, 2020 and the amendments to the Offering Documents announcing the changes in connection with the proposed Merger were filed on SEDAR on April 29, 2020.
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 Merger to the IRC. The IRC reviewed the potential conflict of interest matters related to the proposed Merger and on May 7, 2020 provided its positive recommendation for the Merger, after determining that the proposed Merger, if implemented, would achieve a fair and reasonable result for each Fund.
13. Securityholders of the Terminating Fund approved the Merger at a special meeting held on June 22, 2020.
14. 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 securityholders of the Terminating Fund which instead allows the Terminating Fund 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 Fund, other than the funds facts document for the Hard Capped Series, was sent to securityholders of the Terminating Fund on May 15, 2020. Additionally, the Notice-and-Access Document, form of proxy and information circular were concurrently filed via SEDAR and posted on the Manager's website.
15. In order to effect the Merger, securities of the Hard Capped Series will be distributed to Series X securityholders of the Terminating Fund in reliance on the prospectus exemption contained in section 2.11 of National Instrument 45-106 *Prospectus Exemptions*.
16. The Hard Capped Series is not qualified for distribution under a simplified prospectus and will not be available for purchase subsequent to the Merger. Series X securityholders of the Terminating Fund were sent the fund facts document relating to Series A securities of the Continuing Fund. For fund facts delivery purposes, Series A of the Continuing

Fund was selected because this series has a management fee that is higher than that of the Hard Capped Series, with the same administration fee and expense structure as the Hard Capped Series. As a result, the performance and expense data shown in the Series A fund facts would be worse than that of the Hard Capped Series and thus no investor in the Hard Capped Series could be prejudiced by the failure to receive fund facts for the Hard Capped Series.

17. The tax implications of the Merger as well as the differences between the investment objectives of the Terminating Fund and the Continuing Fund and the recommendation of the IRC regarding the Merger were described in the information circular, thereby allowing securityholders of the Terminating Fund to consider this information before voting on the Merger. 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 Fund and its most recent interim and annual financial statements and management reports of fund performance.
18. Securityholders of the 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 Merger.

Merger Steps

19. The proposed Merger will be structured as follows:
 - (a) Prior to effecting the Merger, the Terminating Fund will sell some or all of the securities in its portfolio that do not meet the investment objectives and investment strategies of the Continuing Fund. As a result, the Terminating Fund will 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 the Terminating Fund's portfolio and other assets will be determined at the close of business on the effective date of the Merger in accordance with its constating documents.
 - (c) On the effective date of the Merger, the Continuing Fund will acquire the investment portfolio and other assets of the Terminating Fund in exchange for units of the Continuing Fund.
 - (d) The Continuing Fund will not assume any liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the Merger.
 - (e) The units of the Continuing Fund received by the Terminating Fund will have an aggregate net asset value equal to the value of the portfolio assets and other assets that the Continuing Fund is acquiring from the Terminating Fund, and the units of

the Continuing 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 Merger.

- (f) Immediately thereafter, units of the Continuing Fund received by the Terminating Fund will be distributed to securityholders of the Terminating Fund in exchange for their securities in the Terminating Fund on a dollar-for-dollar and series-by-series basis, as applicable.
 - (g) The Terminating Fund and the Continuing Fund will not elect that the Merger occur on a tax-deferred basis.
 - (h) As soon as reasonably possible following the Merger, and in any case within 60 days following the effective date of the Merger, the Terminating Fund will be wound up.
- 20. The Manager will pay for the costs of the Merger. These costs consist mainly of brokerage charges associated with the Merger-related trades that occur both before and after the effective date of the Merger and legal, proxy solicitation, printing, mailing and regulatory fees.
 - 21. No sales charges will be payable in connection with the acquisition by the Continuing Fund of the investment portfolio of the Terminating Fund.
 - 22. On the effective date of the Merger, the investment portfolio and other assets of the Terminating Fund to be acquired by the Continuing Fund in order to effect the Merger will be acceptable to the portfolio manager of the Continuing Fund and consistent with the investment objectives of the Continuing Fund.
 - 23. The Terminating Fund will merge into the Continuing Fund and the Continuing Fund will continue as a publicly offered open-ended mutual fund.

Benefits of Merger

- 24. The Manager believes that the Merger is beneficial to securityholders of the Funds for the following reasons:
 - (a) the Merger will result in a more streamlined and simplified product line-up that is easier for investors to understand;
 - (b) following the Merger, the Continuing Fund will have a portfolio of greater value, which may allow for increased portfolio diversification opportunities if desired;
 - (c) the 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;

- (d) investors of the Terminating Fund will receive securities of the Continuing Fund 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 Maker 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