

August 31, 2011

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, MANITOBA, ONTARIO AND  
NEW BRUNSWICK  
(the "Jurisdictions")

AND

IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE  
JURISDICTIONS

AND

IN THE MATTER OF  
K.J. HARRISON & PARTNERS INC. ("KJH")  
AND  
KJH CAPITAL PRESERVATION FUND (the "Fund")  
(the Fund together with KJH, the "Filers")

DECISION

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the Fund cease to be a reporting issuer in each Jurisdiction (the "**Exemptive Relief Sought**").

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

**Interpretation**

Terms defined in 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 Filers:

1. KJH is incorporated under the laws of Ontario, with its head office in Toronto, Ontario.
2. KJH is registered as an investment fund manager in Ontario and an investment dealer in each of the Jurisdictions and in Quebec. KJH is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**"), with the applicable individuals designated as portfolio managers under, and acting in such capacity in accordance with, the relevant IIROC rules.
3. KJH is currently the investment fund manager and portfolio manager of various open-ended mutual fund trusts, including the Fund.
4. Caledon Trust Company is the trustee of the Fund.
5. KJH and the Fund are not in default under the securities legislation of any province or territory of Canada.
6. KJH offers investment management and financial counselling services, primarily to high net worth individuals, institutions and foundations (each, a "**Client**") through a managed account ("**Managed Account**").
7. Each Client who wishes to receive the investment management services of KJH executes a written agreement (the "**Managed Account Agreement**") whereby the Client appoints KJH to act as portfolio manager in connection with an investment portfolio of the Client with full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the Client to the trade. The Managed Account Agreement further sets out how the Managed Account operates and informs the Client of KJH's various rules, procedures and policies.
8. KJH sends the Client a monthly statement showing current holdings and a summary of all transactions carried out in their Managed Account during the month. In addition, KJH provides the Client with a comprehensive quarterly portfolio reporting package that includes current holdings, capital allocation, asset mix and performance.
9. The Fund is only distributed to Managed Account Clients of KJH and therefore is not widely distributed. All investors in the Fund are invested through a Managed Account with KJH.
10. Under the Managed Account Agreement, Clients who invest in securities of the Fund do not pay a management fee or performance fee to KJH in respect of such investment. Instead, KJH charges a management fee to the Fund based on the Fund's constating document. The Fund pays all administration fees and expenses relating to its operation. No sales or redemption fees are payable by a Client to invest in the Fund.
11. If KJH charges management fees or performance fees to the Fund and KJH invests, on behalf of a Managed Account, in securities of the Fund, the necessary steps will be taken to ensure that there will be no duplication of fees between a Managed Account and the Fund.

12. The Fund is a reporting issuer in all Jurisdictions as a result of having filed a simplified prospectus in the Jurisdictions.

13. The Fund distributes its securities to Managed Account Clients in the Jurisdictions pursuant to a simplified prospectus dated August 27, 2010, prepared pursuant to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

14. Absent an exemption, the Fund is prohibited in Ontario from distributing, and KJH is effectively prohibited from investing in, securities of the Fund for the Managed Accounts in Ontario, in circumstances where the individual Client who is the beneficial owner of the Managed Account is not otherwise qualified as an "accredited investor" or does not otherwise use the \$150,000 minimum investment exemption available under National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").

15. Pursuant to an order of the Ontario Securities Commission dated August 25, 2011 (the "**Ontario Decision**"), KJH is now permitted to distribute securities of the Fund under an exemption from the prospectus requirements to Managed Account Clients in Ontario in circumstances where the Client is not an "accredited investor" and does not invest a minimum of \$150,000 in the Fund.

16. Investors in the Fund will in the future only be persons from the following categories:

(a) Investors who qualify as "accredited investors", as defined in NI 45-106;

(b) Outside of Ontario, investors who have entered into a Managed Account Agreement with KJH, making KJH the accredited investor pursuant to paragraph (q) of the "accredited investor" definition in NI 45-106; and

(c) Investors in Ontario who have entered into a Managed Account Agreement with KJH, where KJH is relying on the Ontario Decision.

17. The Fund has more than 51 securityholders in total in Canada. In addition, the Fund has 15 or more securityholders in one or more jurisdictions in Canada.

18. The only reason that the Fund is not eligible for relief pursuant to CSA Staff Notice 12-307 *Application for a Decision that an Issuer is not a Reporting Issuer* is because of the number of securityholders in the Fund.

19. KJH has sent a notice to all securityholders of the Fund on August 25, 2011, advising that the Fund has applied to cease to be a reporting issuer and explaining the implications of such fact. As there are no redemption charges payable by securityholders in the Fund, Managed Account Clients will be permitted to instruct KJH if they no longer wish to be invested in the Fund and there will be no fees associated with such redemption.

20. The financial statements of the Fund will be prepared and delivered to securityholders in accordance with the requirements of National Instrument 81-106 *Investment Fund Continuous*

*Disclosure* ("NI 81-106"). The Fund intends to rely on the filing exemption set out in section 2.11 of NI 81-106.

## **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 Exemptive Relief Sought is granted.

*"James Turner"*

Title: Vice-Chair

Ontario Securities Commission

*"Charles Wesley Moore Scott"*

Title: Commissioner

Ontario Securities Commission

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Application by mutual fund to cease being a reporting issuer under securities legislation - Mutual fund not eligible to rely on simplified process set out in CSA Staff Notice 12-307 because beneficially owned by more than 50 persons - Mutual fund securities distributed by manager/portfolio manager exclusively to managed accounts fully managed by it - Mutual fund securities distributed on exempt basis to managed accounts pursuant to available regulatory and discretionary exemptions from dealer registration and prospectus requirements - No need to renew prospectus to continue distributions to managed accounts.

## **Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S5, as am., paragraph 1(10)(b).

CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer*.