

September ¹⁶, 2011

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
MANITOBA AND ONTARIO
AND
IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS
AND
IN THE MATTER OF
VALUE PARTNERS INVESTMENTS INC.
(the Filer)
AND
IN THE MATTER OF
THE REPRESENTATIVE DEALER
(as defined below)
DECISION

Background

The securities regulatory authority or regulator in each of Manitoba and Ontario (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of Manitoba and Ontario (**Legislation**) for exemptive relief to permit a Dealer (as defined below), including the Representative Dealer (as defined below), to send or deliver the most recently filed fund facts document (**Fund Facts**) to satisfy the requirement contained in the Legislation that obligates a Dealer to send or deliver, within a specified time period and in a specified manner, the prospectus, and any amendment to the prospectus (**Delivery Requirement**), in respect of an order or subscription to purchase securities of a Fund (as defined below) (the **Exemption Sought**).

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

- (a) The Manitoba 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 British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (together with Ontario and Manitoba, the **Jurisdictions**); 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 National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Rights of Withdrawal means the right, given to a purchaser under the Legislation, to withdraw from a purchase order for a security of a mutual fund if the dealer from which the purchaser purchases the security receives written notice evidencing the intention of the purchaser not to be bound by the purchase order within two days of receipt of the latest prospectus sent or delivered in compliance with the Delivery Requirement.

Rights of Rescission means the right of action, under the Legislation, for rescission or damages against a dealer, for failure of the dealer to send or deliver the prospectus to a purchaser of a security to whom a prospectus was required to be sent or delivered, but was not sent or delivered in compliance with the Delivery Requirement.

Representations

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

1. The Filer applied for registration as an investment fund manager in Manitoba by letter dated September 28, 2010.
2. The head office of the Filer is located in Manitoba.
3. Each of the existing mutual funds managed by the Filer to which the Exemption Sought relates is offered for sale on a continuous basis in the Jurisdictions (each, a **Current Fund**). Any future mutual funds managed by the Filer to which the Exemption Sought will relate (each, a **Future Fund**) will be offered for sale on a continuous basis in one or more of the provinces and territories of Canada. Each Current Fund and each Future Fund are hereinafter referred to individually as a **Fund** and collectively as the **Funds**.
4. Each Fund is, or will be, offered for sale pursuant to a simplified prospectus governed by National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) (each, a **Prospectus**).
5. Each Fund is, or will be, a reporting issuer in one or more of the provinces or territories of Canada.

6. Securities of the Current Funds may be purchased through BMO Nesbitt Burns Inc. (the **Representative Dealer**).
7. Securities of the Funds are, or will be, distributed through dealers which may or may not be affiliated with the Filer (individually, each dealer that distributes securities of a Fund or the Representative Dealer is a **Dealer** and collectively, the **Dealers**).
8. Each Dealer is, or will be, registered as a dealer in one or more of the provinces or territories of Canada. Most of the Dealers are, or will be, members of either the Investment Industry Regulatory Organization of Canada or the Mutual Fund Dealers Association of Canada and, in Québec, members of the Chambre de la sécurité financière, or their successors.
9. The Filer and the Funds are not in default of securities legislation in any of the Jurisdictions.
10. Pursuant to the Legislation, each Dealer has an obligation to send or deliver the Prospectus to a purchaser of a security of a Fund within two days of their purchase of the security.
11. Pursuant to the Canadian Securities Administrators' (the **CSA**) point of sale disclosure project for mutual funds (the **Project**), the CSA has determined that it is desirable to create a summary disclosure document called the Fund Facts.
12. CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds*, outlines the CSA's decision to implement the point of sale disclosure framework in stages.
13. Stage 1 of the Project became effective on January 1, 2011 by amending NI 81-101 and related instruments mandating a mutual fund to prepare and file a Fund Facts on the System for Electronic Document Analysis and Retrieval (**SEDAR**) for each relevant class or series of the mutual fund, and having the Fund Facts posted to the mutual fund's or its manager's website and delivered to any person upon request, at no cost.
14. Stage 2 of the Project proposes to allow delivery of the Fund Facts to satisfy the current requirement under the Legislation to send or deliver a prospectus within two days of purchasing a mutual fund.
15. The Filer has determined that it would be desirable to apply for relief consistent with the proposed requirements in Stage 2 of the Project prior to the implementation of the Stage 2 amendments and, accordingly, requires an exemption to satisfy the Delivery Requirement, as contemplated by CSA Staff Notice 81-321 *Early Use of Fund Facts to Satisfy Prospectus Delivery Requirements*.
16. Investors will be able to request a copy of the Prospectus, at no cost, by contacting the Filer or applicable Dealer and will continue to be able to access the Prospectus on the SEDAR website and on the website of the Filer or the Fund (as applicable).

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 provided that:

1. Prior to providing the Fund Facts to a Dealer to send or deliver in lieu of the Prospectus, the Filer:
 - (a) files a Fund Facts for the applicable class or series of securities of the Fund in accordance with the requirements of NI 81-101 and in the format prescribed by Form 81-101F3 *Contents of Fund Facts Document*;
 - (b) discloses in the Fund Facts for a specific class or series
 - (i) if management fees, administration fees and/or other fees are payable directly by investors to the Filer in respect of holding securities of that class or series of the mutual fund, the existence of such fees and, in any Fund Facts filed after the date of this decision and no later than the next renewal of the Prospectus for such class or series, the maximum management fees, administration fees and/or other fees that may be charged by the Filer to the investor; and
 - (ii) any requirement for an investor to participate in a fee-based arrangement with their dealer in order to be eligible to purchase the particular class or series of the mutual fund; and
 - (c) renews or amends the Prospectus that offers such class or series of the Fund to specify under Item 3 of Part A of Form 81-101F1 *Contents of Simplified Prospectus* that the Fund Facts is incorporated by reference into the Prospectus.
2. A Fund Facts that is being sent or delivered will not be attached to, or bound with another Fund Facts unless each Fund Facts:
 - (a) relates to securities of a Fund that have been purchased by the investor; and
 - (b) is being sent or delivered pursuant to this decision.
3. The Filer, and any Dealer relying on the ability to send or deliver Fund Facts in lieu of the Prospectus for Funds managed by the Filer, grants to an investor purchasing the securities of a Fund a right equivalent to the Rights of Withdrawal upon the sending or delivery of the Fund Facts. The Rights of Withdrawal and the Rights of Rescission will no longer apply if the Fund Facts is sent or delivered to an investor in accordance with the time period and in the manner specified for the Prospectus under the Delivery Requirement.

4. Prior to a Dealer relying on the ability to send or deliver Fund Facts in lieu of the Prospectus for Funds managed by the Filer, the Filer or an agent of the Filer provides to the Dealer:
 - (a) a copy of this decision;
 - (b) a disclosure statement informing the Dealer of the implications of this decision; and
 - (c) an acknowledgment of the matters referred to in paragraph 5 below (the **Acknowledgment**), to be signed and returned by the Dealer to the Filer or its agent.

5. Prior to a Dealer relying on the ability to send or deliver Fund Facts in lieu of the Prospectus for Funds managed by the Filer, the Dealer returns the Acknowledgement to the Filer or an agent of the Filer:
 - (a) acknowledging receipt of a copy of this decision;
 - (b) agreeing to send or deliver the Fund Facts to an investor in lieu of the Prospectus;
 - (c) confirming that the Dealer will provide a right equivalent to the Rights of Withdrawal attaching to the sending or delivery of the Fund Facts;
 - (d) acknowledging that, in the event a Fund Facts is not sent or delivered in accordance with this decision, a Prospectus must be sent or delivered and the Rights of Rescission will continue to apply to the failure to send or deliver the Prospectus;
 - (e) undertaking that the Dealer will only attach or bind one Fund Facts with another Fund Facts if both are being sent or delivered at the same time to an investor pursuant to this decision; and
 - (f) confirming that the Dealer has in place written policies and procedures to ensure that there is compliance with the conditions of the decision.

6. Investors in the Funds managed by the Filer receive notice in a document other than the Fund Facts, at or before the time they receive the Fund Facts, indicating that they will have equivalent rights and protections otherwise applicable under securities law in their jurisdiction for the sending or delivery of the Fund Facts, which includes wording substantially similar to the following:

The Fund Facts for the securities you purchase is being sent or delivered to you instead of the simplified prospectus. You will continue to have the equivalent rights and protections otherwise applicable under securities law as if you were sent or delivered the simplified prospectus. Depending on your province or territory, you may have the right to:

- withdraw from an agreement to buy securities of mutual funds within two business days after you receive a fund facts document, or
- cancel your purchase within 48 hours after you receive confirmation of the purchase.

For more information, see the securities law of your province or territory or ask a lawyer.

7. The Filer will cause the Funds managed by it to honour any request made by an investor to exercise a right equivalent to the Rights of Withdrawal in respect of an agreement to purchase securities of a Fund managed by the Filer that a Dealer fails to honour, provided such request is made in respect of a validly exercised right.
8. The Filer or its agent keeps records of the Dealers that have returned to the Filer or its agent signed copies of the Acknowledgement and, on a confidential basis, the Filer or its agent provides the principal regulator for its Funds on a quarterly basis beginning 60 days after the date upon which the Exemption Sought is first relied upon by the Filer and the Funds it manages, and upon request, at the discretion of the Filer, either (i) a current list of all such Dealers, or (ii) an update to the list of such Dealers or confirmation that there has been no change to such list.
9. The Exemption Sought terminates the earlier of (a) 6 months from any notice by the CSA that the Exemption Sought may no longer be relied upon; and (b) the coming into force of any legislation or rule relating to the sending or delivery of the Fund Facts to satisfy the Delivery Requirement.



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The Manitoba Securities Commission