

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 81-102 *Mutual Funds* - A mutual fund, the existing mutual fund manager and the proposed new mutual fund manager seek approval to change the mutual fund manager under the approval requirements in subsection 5.5(1)(a) NI 81-102 - The filer established the experience and integrity of the new manager; there are no expected material changes to the management, business, operations or affairs of the fund; securityholders have approved or will approve the change of manager

Applicable Legislative Provisions

National Instrument 81-102 *Mutual Funds*, s. 5.5(1)(a)

September 13, 2013

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications In Multiple Jurisdictions

and

In the Matter of
Matrix Short Term Income Fund (Corporate Class), Matrix Canadian Balanced Fund (Corporate Class), Matrix Monthly Pay Fund (Corporate Class), Matrix Dow Jones Canada High Dividend 50 Fund (Corporate Class), Matrix S&P/TSX Canadian Dividend Aristocrats Fund (Corporate Class), Matrix American Dividend Growth Fund (Corporate Class), Matrix Covered Call Canadian Banks Plus Fund (Corporate Class), Matrix Canadian Resource Fund (Corporate Class), Matrix Canadian Bond Fund, Matrix Canadian Resource Fund, Matrix International Income Balanced Fund, Matrix International Balanced Fund, Matrix Money Market Fund, Matrix Monthly Pay Fund, Matrix Small Companies Fund, Matrix Tax Deferred Income Fund and Matrix Tax Deferred Income Trust Pool

and

In the Matter of
Marquest Asset Management Inc.
and
Growthworks Enterprises Ltd.
(the Filers)

Decision

Background

- ¶ 1 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) for approval under section 5.5(1)(a) of National Instrument 81-102 *Mutual Funds* (NI 81-102) of the change of manager of Matrix Short Term Income Fund (Corporate Class), Matrix Canadian Balanced Fund (Corporate Class), Matrix Monthly Pay Fund (Corporate Class), Matrix Dow Jones Canada High Dividend 50 Fund (Corporate Class), Matrix S&P/TSX Canadian Dividend Aristocrats Fund (Corporate Class), Matrix American Dividend Growth Fund (Corporate Class), Matrix Covered Call Canadian Banks Plus Fund (Corporate Class) and Matrix Canadian Resource Fund (Corporate Class) (collectively, the Corporate Funds), and Matrix Canadian Bond Fund, Matrix Canadian Resource Fund, Matrix International Income Balanced Fund, Matrix International Balanced Fund, Matrix Money Market Fund, Matrix Monthly Pay Fund, Matrix Small Companies Fund, Matrix Tax Deferred Income Fund and Matrix Tax Deferred Income Trust Pool (collectively, the Trust Funds and together with the Corporate Funds, the Funds) from GrowthWorks Enterprises Ltd. (GWE) to Marquest Asset Management Inc. (Marquest) (the Approval Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this Application;
- (b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and Yukon; 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

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* or in MI 11-102 have the same meaning if used in this decision unless they are otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:

GrowthWorks Enterprises Ltd. and the Funds

1. the head office of GWE is located at Suite 2600, 1055 West Georgia Street, Vancouver, British Columbia V6E 3R6; GWE is a corporation incorporated under the laws of Canada in 1982 which adopted its current name in July 2013; GWE is not in default of the securities legislation in any of the jurisdictions of Canada;

2. GWE is registered as an adviser in the category of portfolio manager in each of the provinces of Canada, as a dealer in the categories of mutual fund dealer and exempt market dealer in each of the provinces of Canada, and as an investment fund manager in British Columbia, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador;
3. GWE is the manager of each of the Funds; it is also the manager of the Matrix 2012-1 National & Quebec Resource Flow Through LP (the Partnership), a limited partnership established under the laws of Ontario which is a reporting issuer in each of the provinces of Canada and which offers two classes of units, each of which is considered to be a separate non-redeemable investment fund for securities law purposes;
4. prior to July 16, 2013, the manager of the Funds was Growth Works Capital Ltd. (GWC); on July 16, 2013, the management responsibilities for the Funds were assigned by GWC to GWE; Matrix is the indirect parent company of GWC and direct parent company of GWE, which are therefore affiliates; in connection with the transfer of the management of the Funds from GWC to GWE on July 16, 2013, GWE assumed the obligations of Mavrix Fund Management Inc. relating to certain inter-fund trades of asset-backed commercial paper (the ABCP) in 2007 under an undertaking provided to the Ontario Securities Commission on April 1, 2008 (the ABCP Undertaking); the closing of the Transaction (as defined below) is conditioned on GWE, on behalf of the Funds, selling any ABCP held by the Funds;
5. each of the Funds is a reporting issuer in each of the provinces and territories of Canada; each of the Corporate Funds is a class of shares of Matrix Corporate Class Funds Ltd., a mutual fund corporation incorporated under the laws of Ontario, and is considered to be a separate mutual fund pursuant to section 1.3(1) of NI 81-102; each of the Trust Funds is a trust established under the laws of Ontario; the trustee of the Trust Funds is GWE; none of the Funds is in default of the securities legislation in any of the jurisdictions of Canada except as described in representation 25;
6. securities of the Funds other than the Matrix Tax Deferred Income Trust Pool (the Trust Pool) are offered under a simplified prospectus, annual information form and fund facts documents dated July 9, 2013; units of the Trust Pool are offered under a simplified prospectus, annual information form and fund facts documents dated September 12, 2013;

Marquest Asset Management Inc.

7. the head office of Marquest is located at Suite 4420, 161 Bay Street, TD Canada Trust Tower, Toronto, Ontario, M5J 2S1; Marquest is a corporation incorporated under the laws of Canada in 1986 that offers a diverse range of equity and fixed income investment products to individuals, corporations and institutions;
8. Marquest is registered as a dealer in the category of exempt market dealer, as an adviser in the category of portfolio manager and as an investment fund manager with the securities regulatory authorities of each of the Jurisdictions, Alberta, Saskatchewan, Quebec and New Brunswick; it has made application to be registered as an investment fund manager in Newfoundland and Labrador;
9. Marquest is not in default of the securities legislation in any of the jurisdictions of Canada;

10. Marquest is currently the manager of the Marquest group of mutual funds, consisting of the Explorer Series Fund, the Energy Series Fund, the Canadian Flex Series Fund, the Resource Flex Series Fund, and the Flex Dividend and Income Growth Series Fund; each of these funds is a series of shares of Marquest Mutual Funds Inc./Fonds Communs De Placement Marquest Inc., and is considered to be a separate mutual fund pursuant to section 1.3(1) of NI 81-102;
11. each of such mutual funds is a reporting issuer in each of the jurisdictions of Canada; shares of these funds are offered under an amended and restated simplified prospectus, annual information form and funds facts documents dated March 1, 2013; none of these funds is in default of the securities legislation in any of the jurisdictions of Canada;
12. in addition to managing such mutual funds, Marquest is currently the manager and portfolio manager of the Marquest Canadian Equity Income Fund, a closed end investment fund whose units are listed on the Toronto Stock Exchange (TSX), and also manages a family of six pooled funds, the securities of which are offered on a prospectus-exempt basis in Canada;
13. Marquest possesses all registrations under the legislation and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) to allow it to manage the Funds after the closing of the Transaction;

The Proposed Change of Manager

14. pursuant to a term sheet dated June 4, 2013, Marquest agreed with Matrix Asset Management Inc. (Matrix) to purchase from GWC certain assets (the Purchased Assets), consisting principally of all of the issued and outstanding common shares of Matrix Corporate Class Funds Ltd. and all of the issued and outstanding shares of the general partner of the Partnership; an assignment of all of the declarations of trust for the Trust Funds, such that Marquest will become the trustee of each Trust Fund; and the assumption of all of the rights and responsibilities of GWC as investment fund manager under all custodian agreements for the Funds, all licence agreements relating to the Funds, all portfolio management or sub-advisory agreements relating to the Funds and any other material contracts for the Funds or agreements necessary for their proper operation (the Transaction);
15. the board of directors of Matrix, a public company whose shares are listed on the TSX, met on July 2, 2013 and approved the Transaction;
16. on July 5, 2013, the independent review committee (IRC) established for the Funds under National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) met to consider the Transaction and advised GWC that in the opinion of the IRC, after reasonable enquiry, the Transaction would achieve a fair and reasonable result for the Funds;
17. Marquest has or will have the appropriate personnel, policies and procedures and systems in place to assume the management of the Funds on closing of the Transaction; David Balsdon will become the chief operating officer and chief compliance officer of Marquest on closing; additional sales, operational and portfolio management personnel from GWE have been offered employment with and are expected to be employed by Marquest to provide additional operational and compliance capabilities and support;

18. Marquest will engage an experienced regulatory consultant to assist it in assessing and enhancing its compliance systems to address any additional business risks associated with the Transaction, among other matters; accordingly, Marquest has not identified, and does not believe that there will be, any aspects of the Transaction or the subsequent management of the Purchased Assets that would hinder its compliance with securities regulation in any way; after the closing of the Transaction, the trustee of the Trust Funds, the directors and officers of Matrix Corporate Class Funds Ltd. and the directors and officers of Marquest will have the integrity and experience to manage and operate the Funds as contemplated by paragraph 5.7(1)(a)(v) of NI 81-102;

Effect of the Transaction on the Funds and their securityholders

19. Marquest has an experienced and well respected IRC in place for all of its funds (the Marquest IRC) and upon completion of the change of manager the members of the Marquest IRC will serve as the IRC for the Funds;
20. Marquest has made no decisions at this time as to any mergers involving the Funds, but intends, following the change of manager, to consider the possibility of merging certain of the Funds with other Funds or with certain of its existing funds, where such mergers would be considered to be in the best interests of the securityholders of both merging funds; such mergers would therefore be designed to avoid duplication between the Funds and other funds currently managed by Marquest, and to take advantage of benefits flowing from such mergers such as potential improvements in management expense ratios; any such mergers would be implemented in accordance with applicable securities legislation, including obtaining any necessary regulatory or securityholder approvals and the approval of the IRC; the costs of any such mergers would be borne by Marquest;
21. Marquest anticipates that the Funds will be renamed; otherwise, except as discussed above, no changes to the Funds are currently contemplated by Marquest; Marquest may, however, seek to implement further changes to the Funds following the change of manager if it concludes that such changes would be in the interests of investors; such changes could include reductions in (but not increases to) the management fees payable by the Funds, changes to their distribution policies, or changes to portfolio advisers (but not to the custodian or auditor except in conjunction with a merger);
22. Fund securityholders would be notified of any such changes in accordance with the requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* to the extent applicable, and if required amendments would be made to the simplified prospectus, annual information form and fund facts documents of the Funds; if required under the terms of NI 81-107, such changes would only be implemented following a recommendation of the IRC of the affected Fund that the change would achieve a fair and reasonable result for the applicable Fund securityholders;
23. the approval of the Fund securityholders is required under section 5.1(b) of NI 81-102 before the Transaction may be completed; special meetings (the Meetings) of the Fund securityholders (other than the Fund securityholders of the Trust Pool) were called for August 15, 2013 for them to consider the proposed change of manager; a copy of the Joint

Management Proxy Circular (the Circular) for the Meetings has been filed and is available on SEDAR; the Meetings were adjourned to August 27, 2013 due to a lack of quorum; on such date, the Fund securityholders of each Fund other than the Trust Pool (the Circular Funds) voted to approve the change of manager from GWE to Marquest; the required approval of the sole unitholder of the Trust Pool to the change of manager was obtained separately on August 27, 2013; none of the expenses of these approvals was incurred by the Funds or the Fund securityholders and the approvals met the requirements of section 5.4 of NI 81-102;

24. the Circular provided securityholders of the Circular Funds with sufficient information, including a discussion regarding the tax implications of the change of manager, to permit them to make an informed decision whether to approve this change, which was required before the Transaction could be completed;
25. the Circular did not contain information about one of the directors of Marquest, Paul J. Crath; the Circular Funds are therefore in default of requirements under Form 51-102F5 *Information Circular* to provide information about all the directors of Marquest; and
26. Mr. Crath is Managing Director at Norvista Resources Corporation; he has acted in corporate finance strategy and development for several mid-market growth stage companies, including mergers and acquisitions and financing initiatives, where he has had past success with multiple investments, buyouts and disposition for portfolio companies; Mr. Crath has also worked extensively in a senior role with several groups in structured product development and marketing of investment funds; he currently is a director of Accilent Raw Materials Group Inc. and provides advisory services in the following areas: (i) speciality mergers and merchant banking transactions and investment products; and (ii) investment development services, where his focus is on product development and institutional/high net worth sales and marketing and legal and financial structuring; he began his career as a corporate lawyer at White & Case, LLP in New York City, specializing in acquisition financings.

Decision

- ¶ 4 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, provided that prior to completing the Transaction, GWE, on behalf of the Funds, sells the ABCP and shall have fulfilled all of its obligations under the ABCP Undertaking.

Peter Brady
Director, Corporate Finance
British Columbia Securities Commission