

# 2010 BCSECCOM 487

August 26, 2010

## **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203  
*Process for Exemptive Relief Applications in Multiple Jurisdictions*

Mutual funds - Approval of fund mergers under Section 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* - A mutual fund manager seeks approval of proposed fund mergers under the approval requirements in NI 81-102 - The continuing fund's investment objectives will either be substantially similar to those of the terminating fund, or include a component of the fundamental investment objective of the terminating fund in the continuing funds' objectives; the funds' independent review committee approved the merger; unitholders will vote on the proposed mergers; terminating fund unitholders will receive alternate prospectus-level disclosure; the tax consequences of the merger are as beneficial to unitholders as if the merger was on a tax-deferred basis; unitholders can redeem their investment after the merger with similar redemption fees

Mutual funds - Approval of change of custodian under Section 5.5(1)(c) of National Instrument 81-102 *Mutual Funds* - A mutual fund manager seeks approval of a change of custodian under the approval requirements in NI 81-102 - The change of custodian is in connection with a change or proposed change of the mutual fund manager; the proposed custodial arrangements will comply with Part 6 of NI 81-102; independent review committee (IRC) has provided a positive recommendation; the change of custodian will be beneficial to unitholders and the fund

## **Applicable British Columbia Provisions**

Mutual funds - Approval of fund mergers under Section 5.5(1)(b) of National Instrument 81-102 *Mutual Funds*

Mutual funds - Approval of change of custodian under Section 5.5(1)(c) of National Instrument 81-102 *Mutual Funds*

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

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and

In the Matter of  
Qtrade Fund Management Inc.  
(the Filer)

and

QFM Money Market Fund  
QFM Fixed Income Fund  
(together, the Terminating Funds)

and

Meritas Money Market Fund  
Meritas Canadian Bond Fund  
Meritas Balanced Portfolio (formerly Meritas Balanced Portfolio Fund)  
Meritas Growth & Income Portfolio (formerly Meritas Balanced Growth Portfolio Fund)  
Meritas Monthly Dividend and Income Fund  
Meritas Jantzi Social Index<sup>®</sup> Fund  
Meritas U.S. Equity Fund  
Meritas International Equity Fund  
(collectively, the Meritas Funds)

## Decision

### **Background**

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting
- (a) approval under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (NI 81-102) to merge the QFM Money Market Fund into the Meritas Money Market Fund and the QFM Fixed Income Fund into the Meritas Canadian Bond Fund (the Mergers) (the Merger Approval), and
  - (b) approval under subsection 5.5(1)(c) of NI-81-102 for the change of custodian (the Custodian Change) of each of the Meritas Funds from CIBC Mellon Global Securities Services Company to Canadian Western Trust Company (the Custodian Change Approval),
- (collectively, the Approvals Sought)

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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 Filer 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 Alberta, Saskatchewan, Manitoba and Quebec in connection with the Merger Approval, and in each of the provinces and territories of Canada other than British Columbia and Ontario in connection with the Custodian Change Approval, 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* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

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

#### *The Filer*

1. the Filer is incorporated pursuant to the *Canada Business Corporations Act* with its head office located in Vancouver, British Columbia; the Filer is responsible for all of the day-to-day management and administration for each of the Terminating Funds and the Meritas Funds (collectively, the Funds) as their manager, portfolio adviser and trustee; the Filer is not in default of securities legislation in any of the provinces and territories of Canada;

#### *The Funds*

2. the Terminating Funds are open-ended unit trusts established under the laws of the Province of British Columbia pursuant to a declaration of trust dated January 27, 2005, as amended February 20, 2006; the securities of the Terminating Funds are qualified for continuous distribution in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario under an amended and restated simplified prospectus dated April 1, 2010, as amended May 10, 2010, and in Quebec under a simplified prospectus dated April 1, 2010, as amended May 10, 2010;

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3. the Meritas Funds, including the Meritas Money Market Fund and the Meritas Canadian Bond Fund (the Continuing Funds) are all open-ended unit trusts established under the laws of the Province of Ontario pursuant to declarations of trust dated March 21, 2001 (Meritas Jantzi Social Index<sup>®</sup> Fund, Meritas U.S. Equity Fund, Meritas International Equity Fund and the Continuing Funds), January 29, 2004, as amended July 29, 2010 (Meritas Balanced Portfolio), November 9, 2005 (Meritas Monthly Dividend and Income Fund) and February 24, 2010, as amended July 29, 2010 (Meritas Growth & Income Portfolio); the securities of the Meritas Funds are qualified for continuous distribution in each province and territory of Canada under a simplified prospectus dated April 8, 2010, as amended May 10, 2010;
4. each of the Funds is a reporting issuer under applicable Canadian securities legislation and subject to the requirements of NI 81-102; each of the Funds is not on the list of defaulting reporting issuers maintained under applicable Canadian securities legislation and is not in default of applicable securities legislation in any jurisdiction;
5. each of the Funds adheres to the standard investment restrictions and practices contained in NI 81-102;
6. each of the Funds calculates the net asset values for its units on a daily basis in accordance with the principles established in NI 81-102 on each day on which the Toronto Stock Exchange is open for trading;

### *The Mergers*

7. the merging Funds have complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the making of the decision to proceed with the Mergers by the board of directors of the Filer; copies of the press release, material change report and amendments to the simplified prospectuses of the Funds in respect of the Mergers have been filed on SEDAR under project numbers 01573549, 01573571, 01578579, 01578580, 01450597 and 01578606;
8. subject to receipt of required unitholder and regulator or securities regulatory authority approvals, the Mergers will be effective on or about October 12, 2010;
9. the fundamental investment objectives and strategies of each of the Continuing Funds are similar to those of their corresponding Terminating Fund, but not substantially similar, as the Continuing Funds adhere to the "Criteria for

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Socially Responsible Investing” and participate in “Direct Community Development Investments” initiatives as outlined in their simplified prospectuses and the Terminating Funds do not adhere to similar criteria nor participate in similar initiatives;

10. the fee structures of each of the Continuing Funds are substantially similar to the fee structures of their corresponding Terminating Fund;
11. the Filer believes that the Mergers will be beneficial to the merging Funds and their unitholders for the following reasons:
  - (a) unitholders of the merging Funds will enjoy increased economies of scale and lower fund operating expenses as unitholders of the larger combined Continuing Funds;
  - (b) each Continuing Fund will have a larger net asset value, allowing for greater portfolio diversification opportunities than with the existing smaller merging Funds;
  - (c) each Continuing Fund, as a result of its increased size, will benefit from a more significant profile in the marketplace; and
  - (d) the Mergers will eliminate the administrative and regulatory costs of operating each merging Fund separately;
12. the Filer referred the proposed Mergers to the independent review committee of the Funds (the IRC) for its recommendation, and after reasonable inquiry, the IRC concluded that the Mergers do not create any conflict issues that have not been adequately addressed and determined that the Mergers achieve a fair and reasonable result for the Funds; the IRC has provided its positive recommendation of the proposed Mergers;
13. the result of each Merger will be that unitholders in each Terminating Fund will cease to be unitholders of a series of the Terminating Fund and will become unitholders of an equivalent class of the applicable Continuing Fund;
14. the portfolios and other assets of each Terminating Fund are currently, or will be at the effective date of the Mergers, acceptable to the portfolio adviser and consistent with the fundamental investment objectives of the applicable Continuing Fund;
15. the Filer anticipates that on the effective date of the Merger of the QFM Money Market Fund and the Meritas Money Market Fund, the net asset value

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of the QFM Money Market Fund will be larger than the net asset value of the Meritas Money Market Fund; specifically, as at May 10, 2010, the net asset value of the QFM Money Market Fund was approximately \$8.8 million and the net asset value of the Meritas Money Market Fund was approximately \$4.3 million; however, the Filer has concluded that the Money Market Fund Merger will not represent a material change to the Meritas Money Market Fund requiring unitholder approval pursuant to subsection 5.1(g) of NI 81-102;

16. unitholders of the Terminating Funds will be asked to approve the proposed Mergers as required by subsection 5.1(f) and section 5.2 of NI 81-102 at meetings of unitholders of the Terminating Funds to be held on or about September 29, 2010 in accordance with section 5.4 of NI 81-102;
17. the management information circular and written notice of unitholder meeting (together, the Merger Materials) required to be sent to unitholders of the Terminating Funds under section 5.4 of NI 81-102 will contain or be accompanied by materials that contain all the information and documents necessary for the unitholders to consider the Merger, including
  - (a) a full description of the applicable Merger including the procedures for implementing it and consequences of the proposed Merger, including its fees consequences and its tax consequences for the Terminating Fund and for investors in the Terminating Fund;
  - (b) the proposed implementation date, a full description of the applicable Continuing Fund including Part A and Part B of the simplified prospectus of the applicable Continuing Fund, a full description of the similarities and differences between the Terminating Funds and the Continuing Funds and a summary of the IRC's decision with respect to the applicable proposed Merger; and
  - (c) a prominent statement that unitholders may obtain, free of charge, a copy of the annual information form and the most recent annual and interim financial statements that have been made public of the applicable Continuing Fund by calling the Filer's toll-free telephone number, by visiting the Filer's website or by visiting the SEDAR website at [www.sedar.com](http://www.sedar.com);
18. the Merger Materials provide sufficient information about the Mergers to permit investors to have made an informed decision about the Mergers;
19. upon receipt of a request from a unitholder of a Terminating Fund for the annual information form or financial statements of the applicable Continuing

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Fund, the Filer will make best efforts to fulfill the request before the unitholder meeting held to approve the applicable Merger;

20. the Funds will bear none of the costs and expenses associated with the Mergers, including all brokerage expenses incurred in respect of any required sale of portfolio assets of the Terminating Funds; these costs and expenses will be borne by the Filer;
21. the unitholders of a Terminating Fund will continue to have the right to redeem their units of the Terminating Fund up to the close of business on the last business day before the effective date of the Mergers;
22. no sales charges will be payable in connection with the purchase by the Terminating Funds of units of the Continuing Funds;
23. as soon as reasonably possible following the Mergers, the Terminating Funds will be wound up;
24. the Filer has concluded that pre-approval of the Mergers under section 5.6 of NI 81-102 is not available for the following reasons:
  - (a) the fundamental investment objectives of the merging Funds are not, or may be considered not to be, substantially similar, and so the pre-approval criteria set out in subsection 5.6(1)(a)(ii) of NI 81-102 is not satisfied;
  - (b) the Mergers will be completed on a taxable basis and not as a “qualifying exchange” or as a tax deferred transaction, and so the pre-approval criteria set out in subsection 5.6(1)(b) of NI 81-102 may not be satisfied; and
  - (c) the Merger Materials will not include the current simplified prospectus and the most recent annual and interim financial statements that have been made public for the Continuing Funds, and so the pre-approval criteria set out in subsection 5.6(1)(f)(ii) of NI 81-102 would not be satisfied;
25. the Filer has complied, and will continue to comply, with all applicable legal and regulatory requirements in effecting the Mergers, including obtaining all requisite unitholder approvals for the Mergers;

### *The Custodian Change*

26. the Funds complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* when deciding to proceed with the Custodian Change; copies of the press release, material change report and amendments to

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the simplified prospectuses of the Funds in respect of the Custodian Change have been filed on SEDAR under project numbers 01573549, 01573571, 01578579, 01578580, 01450597 and 01578606;

27. the Filer believes the Custodian Change will be beneficial to the Meritas Funds and their unitholders as it will reduce fund operating expenses for each of the Meritas Funds;
28. the Filer referred the proposed Custodian Change to the IRC for its recommendation; and after reasonable inquiry, the IRC determined that the Custodian Change achieves a fair and reasonable result for the Funds and provided its positive recommendation of the proposed Custodian Change;
29. the current custodian of the Meritas Funds is CIBC Mellon Global Securities Services Company (CIBC Mellon); CIBC Mellon has provided the Filer with a custodian compliance report in accordance with subsection 6.7(2) of NI 81-102 which has been filed on SEDAR;
30. the proposed Custodian Change will be in compliance with Part 6 of NI 81-102; the proposed custodian is Canadian Western Trust Company (CWTC) which is currently the custodian of the QFM mutual funds managed by the Filer; CWTC has provided the Filer with a custodian compliance report in accordance with subsection 6.7(2) of NI 81-102 which has been filed on SEDAR; the Filer believes that adding the Meritas Funds to that custodial arrangement will have no adverse impact on continued compliance with Part 6 of NI 81-102; and
31. the Filer has complied, and will continue to comply, with all applicable legal and regulatory requirements in effecting the Custodian Change.

### **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 Approvals Sought are granted provided that:

- (a) the Merger Materials sent to unitholders of a Terminating Fund in connection with a Merger provide sufficient information about the Merger to permit unitholders to make an informed decision about the Merger;
- (b) the Merger Materials sent to unitholders of a Terminating Fund in connection with a Merger include a tailored document comprised of



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- (i) Part A of the current simplified prospectus of the applicable Continuing Fund; and
- (ii) Part B of the current simplified prospectus of the applicable Continuing Fund;
- (c) the Merger Materials sent to unitholders of a Terminating Fund in connection with a Merger prominently discloses that unitholders may obtain, free of charge, the most recent annual and interim financial statements that have been made public of the applicable Continuing Fund by calling the Filer's toll-free telephone number, by visiting the Filer's website or by visiting the SEDAR website at [www.sedar.com](http://www.sedar.com);
- (d) upon request by a unitholder of a Terminating Fund for the financial statements of the applicable Continuing Fund, the Filer will make best efforts to fulfill the request in a timely manner so that the unitholder can make an informed decision regarding the applicable Merger; and
- (e) each applicable Terminating Fund and the applicable Continuing Fund with respect to a Merger has an unqualified audit report in respect of their last completed financial period.

Noreen Bent  
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British Columbia Securities Commission