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November 5, 2010

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*

An issuer wants relief from the investment restrictions in National Instrument 81-102 *Mutual Funds* that operate to restrict a mutual fund from investing in an index participation unit unless that index participation unit is traded on a Canadian or US exchange - The securities to be acquired by the fund meet the definition of index participation unit in NI 81-102 but for the fact that they trade on an exchange in the United Kingdom; the investment by the fund in securities of an UK IPU is in accordance with the fundamental investment objectives of the fund; the fund is not a money market fund

An issuer wants relief from the investment restrictions in National Instrument 81-102 *Mutual Funds* that restrict a mutual fund from investing in another mutual fund unless the other mutual fund is subject to National Instrument 81-102 and 81-101 and the securities of the other mutual fund are qualified for distribution in the local jurisdiction - The investment by a fund in securities of underlying ETFs is in accordance with the fundamental investment objectives of the fund; the underlying ETFs consist of leveraged ETFs, inverse ETFs, gold ETFs and leveraged gold ETFs; the Fund is restricted from short-selling the underlying ETFs and complies with concentration limits for the underlying ETFs; the fund is not a money market fund

Applicable British Columbia Provisions

National Instrument 81-102 *Mutual Funds* – sections 2.1(1), 2.2(1), and 2.5(2)(a), (b), (c) and (f), and s. 19.1

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
Matrix Fund Management (a Division of GrowthWorks Capital Ltd.
(GrowthWorks))
(the Manager)

and

the mutual funds now (the Existing Funds) or in the future (the Future Funds, together with the Existing Funds, the Funds) managed by the Manager or an affiliate of the Manager that are subject to National Instrument 81-102 *Mutual Funds* (NI 81-102), other than “money market funds” as defined in NI 81-102, and that may in accordance with the terms of their investment objectives, invest in UK IPU's and underlying ETFs (as defined below)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Manager on behalf of the Funds for a decision under the securities legislation of the Jurisdictions (the Legislation) granting:
- (a) an exemption relieving the Funds from the prohibitions in paragraphs 2.1(1), 2.2(1), 2.5(2)(a), 2.5(2)(b), 2.5(2)(c), and 2.5(2)(f) of NI 81-102 (the UK IPU Exemption) to permit the Funds to invest in securities of mutual funds that are exchange-traded funds (ETFs) that, but for the fact they are traded on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, would otherwise qualify as “index participation units” (IPUs) as defined in NI 81-102 (UK IPU's);
 - (b) an exemption (the ETF Exemption) relieving the Funds from the restrictions contained in paragraphs 2.5(2)(a) and (c) of NI 81-102 to permit each Fund to purchase and hold securities of:
 - (i) exchange-traded funds (ETFs) that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the ETF's Underlying Index) by a multiple of up to 200% (Leveraged Bull ETFs) or an inverse multiple of up to 200%

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(Leveraged Bear ETFs, which together with Leveraged Bull ETFs are referred to collectively in this decision as Leveraged ETFs);

- (ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of 100% (Inverse ETFs);
- (iii) ETFs that seek to replicate the performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (Gold ETFs); and
- (iv) ETFs that seek to provide daily results that replicate the daily performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (the ETF's Underlying Gold Interest) by a multiple of up to 200% (Leveraged Gold ETFs);

Leveraged ETFs, Inverse ETFs, Gold ETFs, and Leveraged Gold ETFs are referred to collectively in this decision as the Underlying ETFs;

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, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; 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 GrowthWorks on its own behalf and on behalf of the Manager and the Funds:

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1. GrowthWorks was incorporated under the laws of Canada on November 12, 1998 and its head office is located in Vancouver, British Columbia; GrowthWorks is not in default of securities legislation in any jurisdiction in Canada;
2. GrowthWorks is an indirect wholly-owned subsidiary of Matrix Asset Management Inc. (Matrix), a reporting issuer in each of the provinces and territories of Canada; the common shares of Matrix are listed on The Toronto Stock Exchange under the symbol TSX: MTA;
3. the Manager is a division of GrowthWorks;
4. GrowthWorks is registered in the categories of:
 - (a) Portfolio Manager in British Columbia, Ontario, Saskatchewan, Manitoba and Nova Scotia;
 - (b) Mutual Fund Dealer in British Columbia, Ontario, Saskatchewan and Nova Scotia (exempt from membership in the Mutual Fund Dealers Association of Canada); and
 - (c) Exempt Market Dealer in British Columbia and Ontario;
5. the Manager or an affiliate or a successor of the Manager is or will be the manager of each of the Funds;
6. each Fund is, or will be: (a) an open ended mutual fund organized and governed by the laws of a jurisdiction of Canada, (b) a reporting issuer under the laws of some or all of the provinces and territories of Canada, and (c) governed by the provisions of NI 81-102;
7. securities of each Fund are, or will be, qualified for distribution in some or all of the provinces and territories of Canada under a simplified prospectus and annual information form filed with and receipted by the securities regulators in the applicable jurisdictions;
8. neither the Manager nor any of the Existing Funds is in default of securities legislation in any jurisdiction of Canada;
9. the investment objective of each of the Funds is to achieve income or long-term growth or both using asset allocation in an international context; the investment objective of each Fund, as well as its investment strategy, will be disclosed on an ongoing basis in the prospectus of each Fund;

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The UK IPU's

10. each UK IPU will be a “mutual fund” within the meaning of applicable Canadian securities legislation and an ETF traded on a stock exchange in the United Kingdom; each UK IPU’s only purpose will be to (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index, or (b) invest in a manner that causes the ETF to replicate the performance of that index; in replicating the performance of an index, a UK IPU may purchase securities of other mutual funds;
11. it is the Filer’s understanding that the regulatory regime, administration, operation, investment objectives and restrictions applicable to each UK IPU are materially as rigorous as those applicable to similar Canadian IPU’s; it is the Filer’s understanding that stock exchanges in the United Kingdom are subject to materially equivalent regulatory oversight to securities exchanges in Canada;

The Underlying ETFs

12. each Leveraged ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index;
13. each Inverse ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed -100% of the corresponding daily performance of its Underlying Index;
14. each Leveraged Gold ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Gold Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold Interest;
15. the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States;

Investments in UK IPU's and the Underlying ETFs

16. each Existing Fund is, and each Future Fund will be, permitted, in accordance with its investment objectives and investment strategies, to invest in ETFs;

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17. in addition to investing in securities of ETFs that qualify as IPU as currently defined in NI 81-102, the Funds propose to have the ability to invest in UK IPU and the Underlying ETFs;
18. the amount of the loss that can result from an investment by a Fund in an UK IPU or Underlying ETF will be limited to the amount invested by the Fund in securities of the UK IPU or Underlying ETF;
19. each Fund will only purchase gold, permitted gold certificates and specified derivatives with such underlying interests (including Gold ETFs and Leveraged Gold ETFs), if immediately after the purchase, no more than 10% of the net assets of the Fund, taken at market value at the time of the purchase, would consist of such assets in aggregate;
20. the UK IPU and the Underlying ETFs are attractive investments for the Funds as they provide an efficient and cost effective means of achieving diversification and exposure;
21. on June 25, 2010, the Canadian Securities Administrators published for comment proposed amendments to NI 81-102 (the Modernization Amendments) which included a proposal to expand the definition of IPU to include UK IPU (the Proposed IPU Amendments);
22. in the absence of the UK IPU Exemption:
 - (a) the concentration restriction in paragraph 2.1(1) would prohibit a Fund from purchasing or holding more than 10% of the net assets of a Fund in securities of a UK IPU; because IPU are currently defined to only be those traded on a Canadian or US exchange, a Fund would not be able to rely on the IPU exemption from this concentration restriction in paragraph 2.1(2) of NI 81-102 for investments and holdings in UK IPU;
 - (b) the control restriction in paragraph 2.2(1) would prohibit a Fund from purchasing or holding securities representing more than 10% of the votes attaching to the outstanding voting securities of a UK IPU, or representing more than 10% of the outstanding equity securities of a UK IPU, or from purchasing a security of a UK IPU for the purpose of exercising control over or management of a UK IPU; because IPU are currently defined to only be those traded on a Canadian or US exchange, a Fund would not be able to rely on the IPU exemption from this control restriction in paragraph 2.2(1.1) of NI 81-102 for its investments and holdings in UK IPU;

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- (c) the investment restriction in paragraph 2.5(2)(a) would prohibit a Fund from purchasing or holding a security or a UK IPU because the UK IPUs are not subject to both NI 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101); because IPUs are currently defined to only be those traded on a Canadian or US exchange, a Fund would not be able to rely on the IPU exemption from this investment restriction in paragraph 2.5(3)(a) of NI 81-102 for its investment and holdings in UK IPUs.;
 - (d) the investment restriction in paragraph 2.5(2)(b) would prohibit a Fund from purchasing or holding a security of a UK IPU if, at the time of the purchase, the UK IPU holds more than 10% of the market value of its net assets in securities of other mutual funds; because IPUs are currently defined to only be those traded on a Canadian or US exchange, a Fund would not be able to rely on the IPU exemption from this investment restriction in paragraph 2.5(4)(b)(ii) of NI 81-102 for its investments and holdings in UK IPUs;
 - (e) the investment restriction in paragraph 2.5(2)(c) would prohibit a Fund from purchasing or holding securities of UK IPUs because the UK IPUs will not be qualified for distribution in the local jurisdiction; because IPUs are currently defined to only be those traded on a Canadian or US exchange, a Fund would not be able to rely on the exemption from this investment restriction in paragraph 2.5(3)(a) of NI 81-102 for its investments and holdings in UK IPUs; and
 - (f) the investment restriction in paragraph 2.5(2)(f) would restrict a Fund from paying sales fees or redemption fees in relation to its purchases or redemptions of securities of a UK IPU that, to a reasonable person, would duplicate a fee payable by an investor in a Fund; because IPUs are currently defined to only be those traded on a Canadian or US exchange, a Fund would not be able to rely on the IPU exemption from this investment restriction in paragraph 2.5(5) of NI 81-102 for its investments and holdings in UK IPUs;
23. in the absence of the ETF Exemption, paragraph 2.5(2)(a) would prohibit a Fund from purchasing or holding a security of an Underlying ETF, because the Underlying ETFs are not subject to both NI 81-102 and NI 81-101;
24. in the absence of the ETF Exemption, paragraph 2.5(2)(c) would prohibit a Fund from purchasing or holding securities of some Underlying ETFs, because some Underlying ETFs will not be qualified for distribution in the local jurisdiction; and

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25. an investment by a Fund in securities of a UK IPU or Underlying ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

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:

(a) the UK IPU Exemption is granted provided that:

- (i) the investment by a Fund in securities of a UK IPU is in accordance with the fundamental investment objectives of the Fund;
- (ii) paragraphs 2.1(3) and 2.1(4) of NI 81-102 will apply with respect to the Fund's investments and holdings in UK IPUs in determining a Fund's compliance with the concentration restrictions of Section 2.1 of NI 81-102; and
- (iii) the relief from paragraph 2.5(2)(f) of NI 81-102 will only apply to brokerage fees incurred for the purchase or sale of UK IPUs;

(b) the ETF Exemption is granted provided that:

- (i) the investment by a Fund in securities of Underlying ETFs is in accordance with the fundamental investment objectives of the Fund;
- (ii) a Fund does not sell short securities of an Underlying ETF;
- (iii) the securities of the Underlying ETFs are treated as specified derivatives for the purposes of Part 2 of NI 81-102, and prior to investing in Underlying ETFs, the Fund's prospectus will contain disclosure regarding the use of specified derivatives as required under Form 81-101F1 *Contents of Simplified Prospectus*;
- (iv) the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States;
- (v) a Fund does not purchase securities of an Underlying ETF if, immediately after the purchase, more than 10% of the net assets of

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the Fund in aggregate, taken at market value at the time of the purchase, would consist of securities of the Underlying ETFs; and

- (vi) if a Fund is permitted to short-sell, the Fund does not enter into any transaction if, immediately after the transaction, more than 20% of the net assets of the Fund, taken at market value at the time of the transaction, would consist of, in aggregate, securities of Underlying ETFs and all securities sold short by the Fund; and
- (c) the prospectus of each Fund discloses, or will disclose the next time it is renewed after the date of this decision, (i) in the investment strategy section of the prospectus, the fact that the Fund has obtained relief to invest in the Underlying ETFs together with an explanation of what each Underlying ETF is, (ii) the risks associated with investments in the Underlying ETFs; and (iii), if the Proposed IPU Amendments are not yet in effect, the fact that the Fund has obtained relief to invest in UK IPUs; and
- (d) the UK IPU Exemption will terminate six months after the coming into force of the Modernization Amendments.

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