

# 2009 BCSECCOM 265

May 7, 2009

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-101 s.2.5 - An investment fund requires an extension of the lapse date of the funds' simplified prospectus - The manager of an investment fund in continuous distribution intends to merge certain of its funds with other funds it manages; shareholders will receive required disclosure about the merger; disclosure about the merger will be publicly available; the current simplified prospectus otherwise contains up to date information; the pro forma simplified prospectus and AIF will reflect the proposed merger; the manager will file the final simplified prospectus and AIF shortly after the completion of the mergers

## **Applicable British Columbia Provisions**

National Instrument 81-101 s.2.5

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,  
Quebec, New Brunswick, Nova Scotia, Prince Edward Island,  
Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut  
(the "Jurisdictions")

and

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

and

In the Matter of  
Mackenzie Financial Corporation  
(the "Filer" or "Mackenzie")

and

Saxon Money Market Fund  
Saxon Bond Fund  
Saxon Balanced Fund  
Saxon High Income Fund  
Saxon Stock Fund  
Saxon Small Cap Fund  
Saxon Microcap Fund

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Saxon U.S. Equity Fund  
Saxon U.S. Small Cap Fund  
Saxon International Equity Fund  
Saxon World Growth  
Saxon Global Small Cap Fund  
(the “Funds”)

## Decision

### **Background**

The securities regulatory authority or regulator in each of the Jurisdictions (“Decision Maker”) has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the time limits for the renewal of the simplified prospectus of the Funds dated May 9, 2008, as amended (the “Prospectus”), be extended to those time limits that would be applicable if the lapse date of the Prospectus were May 29, 2009 (the “Exemption 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 Filer:

1. Mackenzie is a corporation amalgamated under the laws of Ontario. Mackenzie is the manager, trustee and portfolio advisor of the Funds. Each of the Funds is an open-ended mutual fund trust established under the laws of Ontario pursuant to a declaration of trust.
2. The Funds are reporting issuers under the Legislation and are not in default of any of the requirements of the Legislation.

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3. The Funds are currently qualified for distribution in the Jurisdictions under the Prospectus.
4. The lapse date (the “Lapse Date”) for the distribution of securities of the Funds is May 9, 2009.
5. Pursuant to the Legislation, provided a pro forma simplified prospectus is filed 30 days prior to May 9, 2009, a final simplified prospectus is filed by May 19, 2009, and a receipt for the final simplified prospectus is issued by the securities regulatory authorities by May 29, 2009, the securities of the Funds may be distributed without interruption during the prospectus renewal period.
6. On January 26, 2009, the Filer became the manager and trustee of the Funds as a result of an amalgamation with the previous manager and trustee, Saxon Funds Management Ltd. (the “Manager Change”). The Manager Change was disclosed by way of an amendment to the Prospectus dated February 5, 2009.
7. Related to the Manager Change, on or about June 1, 2009, Citibank Canada will cease to be the custodian of the Funds and Citigroup Fund Services Canada, Inc. will cease to be the registrar of the Funds, at which time Mackenzie will also be appointed the new registrar of the Funds and Canadian Imperial Bank of Commerce will be appointed as the new custodian (the “Operational Changes”). Disclosure of the Operational Changes will result in numerous revisions to the Prospectus.
8. If the Exemption Sought is not granted, the renewal simplified prospectus of the Funds must be filed by May 19, 2009, and the renewal simplified prospectus will be amended, within 13 days of filing the renewal simplified prospectus, to reflect the Operational Changes. The Exemption Sought will permit the renewal simplified prospectus of the Funds to be filed after the effective date of the Operational Changes. The renewal simplified prospectus will reflect the removal of the disclosure regarding Citibank Canada and Citigroup Fund Services Canada, Inc. and reflect disclosure of the Operational Changes, which will avoid potential investor confusion. The financial costs and time involved in preparing, filing and printing both the renewal simplified prospectus and an amendment to the simplified prospectus would be unduly costly.
9. Additionally, effective June 5, 2009, the Filer intends to merge certain other mutual funds that it manages (the “Terminating Funds”) into Saxon Balanced Fund, Saxon Stock Fund and Saxon Small Cap Fund (together, the “Proposed Continuing Funds”). Securityholder meetings have been scheduled on June 1, 2009 to obtain securityholder approval of the proposed mergers.

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10. In connection with the proposed mergers, the Filer intends to add several new series of units (the “New Series”) to two of the Proposed Continuing Funds that will be issued to securityholders of two of the Terminating Funds. The Filer intends to file a combined preliminary and pro forma simplified prospectus for the Funds that will be a pro forma filing with respect to the existing series of the Funds and a preliminary filing with respect to the New Series.
11. In order to reduce the costs of renewing the Prospectus and then filing an amendment to add the New Series, the Filer wishes to extend the Lapse Date to May 29, 2009 so that the Filer can file a final simplified prospectus for the Funds that will include the New Series after securityholder approval for the proposed mergers is obtained. If the Exemption Sought is granted, a combined preliminary and pro forma simplified prospectus and a final simplified prospectus will be filed by April 29, 2009 and June 8, 2009, respectively, in accordance with the time limits for the renewal of the Prospectus.
12. The Filer expects that purchases of the Funds’ securities after the Lapse Date will principally be those made pursuant to pre-authorized purchases from existing investors.
13. Since May 9, 2008, the date of the Prospectus, no material change has occurred that has not been disclosed by way of an amendment to the Prospectus. Accordingly, the Prospectus contains all material facts regarding the Funds. The requested extension will not affect the currency or accuracy of the information contained in the Prospectus, and therefore will not be prejudicial to the public interest.

### **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 Maker under the Legislation is that the Exemption Sought is granted.

Rhonda Goldberg  
Manager, Investment Funds Branch  
Ontario Securities Commission