

# 2010 BCSECCOM 236

May 3, 2010

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 - *Cease to be a Reporting Issuer in BC* - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer is a mutual fund; the issuer will not be a reporting issuer in any jurisdiction; the issuer distributes its securities only to client accounts that are fully managed by the issuer's manager; the manager controls all trading in the issuer's securities

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 88

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

and

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

and

In the Matter of  
Burgundy Asset Management Ltd.  
("Burgundy")

and

Burgundy American Equity Fund, Burgundy Balanced Income Fund, Burgundy Bond Fund, Burgundy Canadian Equity Fund, Burgundy European Equity Fund, Burgundy Focus Canadian Equity Fund, Burgundy Foundation Trust Fund, Burgundy Money Market Fund, Burgundy Partners' Balanced RSP Fund, Burgundy Partners' Equity RSP Fund, Burgundy Partners' Global Fund and Burgundy U.S. Money Market Fund  
(collectively, the "Funds" and with Burgundy, the "Filers")

Decision

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### **Background**

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”) that each Fund is not a reporting issuer in each Jurisdiction (the “Exemptive Relief 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 Filers:

1. Burgundy is incorporated under the laws of Ontario, with its head office in Toronto, Ontario.
2. Burgundy is registered as portfolio manager in each of the Jurisdictions, as well as in Quebec. Burgundy is also registered as an exempt market dealer in Ontario and in Newfoundland and Labrador.
3. Burgundy is currently the manager, trustee and portfolio manager of the Funds.
4. The Funds are not in default of securities legislation in the Jurisdictions.
5. Burgundy offers investment management and financial counselling services, primarily to high net worth individuals, institutions and foundations (each, a “Client”) through a managed account (“Managed Account”).
6. Each Client who wishes to receive the investment management services of Burgundy executes a written agreement (the “Investment Counsel Agreement”) whereby the Client appoints Burgundy to act as portfolio

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manager in connection with an investment portfolio of the Client with full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the Client to execute the trade. The Investment Counsel Agreement further sets out how the Managed Account operates and informs the Client of Burgundy's various rules, procedures and policies.

7. Burgundy sends each Client a quarterly statement showing current holdings and a summary of all transactions carried out in their Managed Account during the quarter.
8. The Funds are only distributed to Managed Account Clients of Burgundy and therefore are not widely distributed. All investors in the Funds are invested through a Managed Account with Burgundy.
9. None of the Funds, other than Burgundy Money Market Fund and Burgundy U.S. Money Market Fund, charge a commission or a management fee directly to investors. Instead, under the Investment Counsel Agreement between each Client and Burgundy, the Client agrees to pay Burgundy a management fee based upon a percentage of assets under management in the Managed Account (excluding assets invested in Burgundy Money Market Fund and Burgundy U.S. Money Market Fund). Burgundy Money Market Fund and Burgundy U.S. Money Market Fund charge a management fee directly to investors. Terms of the fees are detailed in each Client's Investment Counsel Agreement.
10. Each of the Funds is a reporting issuer in all Jurisdictions as a result of having filed a prospectus in the Jurisdictions.
11. The Funds currently distribute their securities to Managed Account Clients in Ontario pursuant to a simplified prospectus dated May 27, 2009 (the "Ontario Prospectus"), prepared pursuant to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.
12. The Funds currently distribute their securities to Managed Account Clients in the other jurisdictions of Canada (excluding Ontario) pursuant to the "accredited investor" exemption from the prospectus requirement for managed accounts contained in National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106").
13. Absent an exemption, the Funds are prohibited in Ontario from distributing, and Burgundy is effectively prohibited from investing in, securities of the Funds for the Managed Accounts in Ontario, in circumstances where the individual Client who is the beneficial owner of the Managed Account is not

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otherwise qualified as an “accredited investor” or does not otherwise use the \$150,000 minimum investment exemption available under NI 45-106.

14. Pursuant to an order of the Ontario Securities Commission dated December 1, 2009 (the “Ontario Decision”), Burgundy is now permitted to distribute securities of the Funds under an exemption from the prospectus requirements to Managed Account Clients in Ontario in circumstances where the Client is not an “accredited investor” and does not invest a minimum of \$150,000 in each Fund.
15. As a result of the Ontario Decision, Burgundy will not renew the Ontario Prospectus and instead proposes to distribute securities of the Funds to its Managed Account Clients pursuant to exemptions from the prospectus requirement.
16. Investors in the Funds are only comprised of, and will in the future only be comprised of, persons from the following categories:
  - (a) Investors who qualify as “accredited investors”, as defined in NI 45-106, other than pursuant to paragraph (q) of the definition;
  - (b) Outside of Ontario, investors who have entered into an Investment Counsel Agreement with Burgundy, making Burgundy the accredited investor on behalf of the Client’s Managed Account pursuant to paragraph (q) of the “accredited investor” definition in NI 45-106; and
  - (c) Investors in Ontario who have entered into an Investment Counsel Agreement with Burgundy, where Burgundy is relying on the Ontario Decision.
17. Each of the Funds, other than Burgundy Balanced Income Fund and Burgundy U.S. Money Market Fund, has more than 51 securityholders in total in Canada. In addition, each of the Funds has 15 or more securityholders in one or more jurisdictions in Canada.
18. The only reason that the Funds are not eligible for relief pursuant to CSA Staff Notice 12-307 *Application for a Decision that an Issuer is not a Reporting Issuer* is because of the number of securityholders in each Fund.
19. Burgundy has sent a notice to all securityholders of the Funds on February 24, 2010, advising that the Funds have applied to cease to be reporting issuers and explaining the implications of such fact. As there are no redemption charges payable by securityholders in the Funds, Clients will be permitted to instruct

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Burgundy if they no longer wish to be invested in the Funds and there will be no fees associated with such change.

20. The financial statements of the Funds will be prepared and delivered to securityholders in accordance with the requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106"). The Funds intend to rely on the filing exemption set out in section 2.11 of NI 81-106.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

David L. Knight  
Commissioner  
Ontario Securities Commission

Margot C. Howard  
Commissioner  
Ontario Securities Commission