

2012 BCSECCOM 30

January 25, 2012

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 31-103, s. 15.1, 13.5(2)(b) *Registration Requirements*

Inter-Fund Trades

An investment fund manager, portfolio manager and/or dealer wants relief from self-dealing restrictions in section 13.5(2)(b) of NI 31-103 for trades in portfolio securities between and among investment funds managed by the Filer, pooled funds managed by the Filer, and discretionary accounts managed by the Filer (except for trades among managed accounts) and for those trades to occur at the current market price or the last sale price - Inter-fund trades are consistent with the investment objective of the fund or the managed account; funds without an IRC have constituted an equivalent entity; trades are referred to and approved by the fund's IRC or equivalent and comply with any standing instructions; the managed account has authorization for inter-fund trades; the trade will occur at the last sale price or the current market price and complies with paragraphs (c), (d), (f) and (g) of section 6.1(2) of NI 81-107

Managed Account In Specie Transactions

A portfolio manager wants relief from self-dealing restrictions in section 13.5(2)(b) of NI 31-103 to permit purchases and redemptions of units or shares using portfolio securities between (i) managed accounts and pooled funds, (ii) managed accounts and mutual funds and/or (iii) managed accounts and closed-end funds - The managed account client has authorized in specie transactions; where applicable, the IRC of the fund has approved the transaction and any standing instructions have been complied with; none of the portfolio securities are securities of a related issuer of the filer; the next account statement for the managed account describes the portfolio securities and their value; the fund will keep written records of the transaction; the filer does not receive compensation - For an acquisition by a managed account: the fund is permitted to purchase the portfolio securities; the portfolio securities are acceptable to the portfolio manager of the fund and meet the investment criteria; the value of the portfolio securities is equal to the issue price of units in the fund - For a redemption by a managed account: the portfolio securities meet the investment criteria of the managed account and are acceptable to the filer; the value of the portfolio securities is equal to the net asset valuation calculation

Pooled Fund and Mutual Fund In Specie Transactions

A portfolio manager wants relief from self-dealing restrictions in section 13.5(2)(b) of NI 31-103 to permit purchases and redemptions of units or shares

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using portfolio securities between and among pooled funds and mutual funds - Where applicable, the IRC of the fund has approved the transaction and any standing instructions have been complied with; none of the portfolio securities are securities of a related issuer of the filer; the fund will keep written records of the transaction; the filer does not receive compensation. For an acquisition: the fund is permitted to purchase the portfolio securities; the portfolio securities are acceptable to the portfolio manager of the acquiring fund and meet the investment criteria; the value of the portfolio securities is equal to the issue price of units in the fund - For a redemption: the portfolio securities meet the investment criteria of the acquiring fund and are acceptable to the filer; the value of the portfolio securities is equal to the net asset valuation calculation

Applicable Legislative Provisions

National Instrument 31-103, s. 15.1, 13.5(2)(b) *Registration Requirements*

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
Deans Knight Capital Management Ltd.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each, a Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the restriction against a registered adviser knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of: (i) a responsible person (ii) an associate of a responsible person or (iii) an investment fund for which a responsible person acts as an adviser, to permit:

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1. the purchase and sale of securities of any issuer within a portfolio of an NI 81-102 Fund (defined below), a Closed-end Fund (defined below), a Pooled Fund (defined below) and a Managed Account (defined below):
 - (a) between an NI 81-102 Fund and (i) another NI 81-102 Fund, (ii) a Closed-end Fund or (iii) a Pooled Fund;
 - (b) between a Closed-end Fund and (i) another Closed-end Fund, (ii) an NI 81-102 Fund or (iii) a Pooled Fund;
 - (c) between a Pooled Fund and (i) another Pooled Fund, (ii) a Closed-end Fund or (iii) an NI 81-102 Fund; or
 - (d) between a Managed Account and (i) an NI 81-102 Fund, (ii) a Closed-end Fund or (iii) a Pooled Fund,

(the purchases and sales in 1.(a), (b), (c) and (d) are collectively hereinafter referred to as Inter-Fund Trades);
2. the Inter-Fund Trades to occur at the last sale price, as defined in the Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the Last Sale Price) or at the relevant price contemplated by the definition of “current market price” as defined in section 6.1(1) of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) as required by paragraph (e) of section 6.1(2) of NI 81-107 (the Current Market Price);

(1.(a), (b), (c), (d) and 2. are collectively the Inter-Fund Trade Relief);
3. the purchase by a Managed Account of units of or shares in an NI 81-102 Fund, a Pooled Fund or a Closed-end Fund, and the redemption of units of or shares in an NI 81-102 Fund, a Pooled Fund or a Closed-end Fund (each a Fund and collectively, the Funds) held by a Managed Account, and as payment:
 - (a) for such purchase, in whole or in part, by the Managed Account making good delivery of portfolio securities to the Fund; and
 - (b) for such redemption, in whole or in part, by the Fund making good delivery of portfolio securities to the Managed Account; and

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4. the purchase by an NI 81-102 Fund or a Pooled Fund of units of or shares in another NI 81-102 Fund or Pooled Fund, and the redemption of units of or shares in an NI 81-102 Fund or a Pooled Fund held by another NI 81-102 Fund or Pooled Fund, and as payment for such purchase or redemption, in whole or in part, by making good delivery of portfolio securities that meet the investment objective of that NI 81-102 Fund or Pooled Fund;

(the purchases and redemptions in 3. and 4. are collectively hereinafter referred to as In Specie Transactions);

(3. and 4. are collectively the In Specie Relief); and

(the In Specie Relief and the Inter-Fund Trade Relief, collectively, the Exemption 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 Filer has 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 and Quebec; 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*, MI 11-102, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 81-102 *Mutual Funds* (NI 81-102) and NI 81-107 have the same meanings if used in this decision, unless otherwise defined.

The following terms have the following meanings:

1. Closed-end Funds means the existing non-redeemable investment funds listed in Appendix A and the future non-redeemable investment funds of which the Filer, or an affiliate of the Filer, is a portfolio adviser;
2. Managed Account means an account over which the Filer, or an affiliate of the Filer, has discretionary authority for a client that is not a responsible person;

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3. NI 81-102 Funds means the existing mutual funds listed in Appendix A and the future mutual funds to which NI 81-102 applies, of which the Filer, or an affiliate of the Filer, is a portfolio adviser;
4. Pooled Funds means the existing investment funds listed in Appendix A and the future investment funds of which the Filer, or an affiliate of the Filer, is a portfolio adviser, the units of or shares in which are distributed pursuant to exemptions from the prospectus requirement; and
5. certain other defined terms have the meanings given to them below under Representations.

Representations

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

The Filer

1. the Filer is a corporation organized under the laws of Canada, with its head office in Vancouver, British Columbia;
2. the Filer is registered under applicable securities legislation in British Columbia, Alberta, Manitoba, Ontario and Quebec as an adviser in the category of portfolio manager and as a dealer in the category of an exempt market dealer, and in British Columbia as an investment fund manager;
3. the Filer, or an affiliate of the Filer, is, or will be, the investment fund manager and/or a portfolio adviser of each of the Funds and is, or will be, a portfolio adviser of each of the Managed Accounts;
4. the Filer is not a reporting issuer in any jurisdiction of Canada;
5. the NI 81-102 Funds and the Public Closed-end Funds (as defined below) are reporting issuers and as a result the investment fund managers of such Funds have established independent review committees (IRCs) under NI 81-107; the NI 81-102 Funds and the Public Closed-end Funds do not use the same IRC;
6. the Filer has established, or will establish, an independent review committee (Private Funds' IRC) for each of the Pooled Funds and the Private Closed-end Funds (as defined below) as discussed further below; the Private Funds' IRC is, or will be, the same for each of the Pooled Funds and Private Closed-end Funds;

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7. the Filer, the NI 81-102 Funds, the Closed-end Funds and the Pooled Funds are not in default of securities legislation in any jurisdiction of Canada;

The Pooled Funds

8. each Pooled Fund (a) is, or will be, an investment fund established as a trust or limited partnership under the laws of British Columbia or another jurisdiction of Canada or (b) is, or will be, an investment fund established as a trust or limited partnership under the laws of a jurisdiction outside of Canada;
9. the Filer, or an affiliate of the Filer, is, or will be, the investment fund manager and/or a portfolio adviser of each of the Pooled Funds;
10. the Pooled Funds are not, and will not be, reporting issuers in any jurisdiction of Canada;
11. units of or shares in the Pooled Funds are, or will be, distributed in some or all of the jurisdictions of Canada pursuant to exemptions from the prospectus requirement in those jurisdictions;

The NI 81-102 Funds

12. each NI 81-102 Fund is, or will be, an investment fund established as a trust or corporation under the laws of British Columbia or another jurisdiction of Canada;
13. the Filer, or an affiliate of the Filer, is, or will be, the investment fund manager and/or a portfolio adviser of each of the NI 81-102 Funds;
14. the NI 81-102 Funds are, and will be, reporting issuers in some or all of the jurisdictions of Canada;
15. units of or shares in the NI 81-102 Funds are, or will be, distributed pursuant to a prospectus and annual information form in some or all of the jurisdictions of Canada;

The Closed-end Funds

16. each Closed-end Fund is, or will be, a non-redeemable investment fund established as a trust or corporation under the laws of British Columbia or another jurisdiction of Canada;

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17. the Filer, or an affiliate of the Filer, is, or will be, the investment fund manager and/or a portfolio adviser of each of the Closed-end Funds;
18. units of or shares in the Closed-end Funds (a) were, or will be, distributed in some or all of the jurisdictions of Canada pursuant to exemptions from the prospectus requirement in those jurisdictions (each, a Private Closed-end Fund and collectively, the Private Closed-end Funds) or (b) were, or will be, distributed pursuant to a prospectus in some or all of the jurisdictions of Canada (each, a Public Closed-end Fund and collectively, the Public Closed-end Funds);
19. the Private Closed-end Funds are not, and will not be, reporting issuers in any jurisdiction of Canada;
20. the Public Closed-end Funds are, and will be, reporting issuers in some or all of the jurisdictions of Canada;

The Managed Accounts

21. the Filer, or an affiliate of the Filer is, or will be, a portfolio adviser of each of the Managed Accounts;
22. each client of the Filer, or its affiliate, wishing to receive the investment management services of the Filer, or its affiliate, has entered into, or will enter into, a written investment management agreement (or other similar agreement) whereby the client appoints the Filer, or its affiliate, to act as portfolio adviser 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;
23. investments in individual securities may not be appropriate in certain circumstances for a client; consequently, the Filer, or its affiliate, may, where authorized under the investment management agreement (or other similar agreement), from time to time, invest the client's assets in units of or shares in any one or more of the Funds in order to give the client the benefit of asset diversification and economies of scale regarding minimum commission charges on portfolio trades, and generally to facilitate portfolio management;
24. each investment management agreement (or other similar agreement) in respect of a Managed Account contains, or will contain, the authorization of the client to engage in Inter-Fund Trades and In Specie Transactions;

Inter-Fund Trades

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25. as a portfolio adviser, the Filer may desire to cause:

- (a) an NI 81-102 Fund to engage in an Inter-Fund Trade with (i) another NI 81-102 Fund, (ii) a Closed-end Fund or (iii) a Pooled Fund;
- (b) a Closed-end Fund to engage in an Inter-Fund Trade with (i) another Closed-end Fund, (ii) an NI 81-102 Fund or (iii) a Pooled Fund;
- (c) a Pooled Fund to engage in an Inter-Fund Trade with (i) another Pooled Fund, (ii) a Closed-end Fund or (iii) an NI 81-102 Fund; or
- (d) a Managed Account to engage in an Inter-Fund Trade with (i) an NI 81-102 Fund, (ii) a Closed-end Fund or (iii) a Pooled Fund;

26. when the Filer, or an affiliate of the Filer, engages in an Inter-Fund Trade, it will generally follow the following procedures or other similar procedures approved by the applicable IRC(s):

- (a) the portfolio adviser of the Filer, or an affiliate of the Filer, will request the approval of the chief compliance officer of the Filer, or an affiliate of the Filer, or his or her designated alternate, or of another designated individual, to execute a purchase or a sale of a security by a Fund or Managed Account as an Inter-Fund Trade;
- (b) upon receipt of the required approval, the portfolio adviser of the Filer, or an affiliate of the Filer, will either place the trade directly or deliver the trade instructions to a trader on a trading desk of the Filer, or an affiliate of the Filer;
- (c) upon receipt of the trade instructions and the required approval, the trader on the trading desk will have the discretion to execute the trade as an Inter-Fund Trade in accordance with the requirements of paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107, provided that, for exchange-traded securities, the Inter-Fund Trade may be executed at the Last Sale Price or the Current Market Price of the security;
- (d) the policies applicable to the trading desk of the Filer, or an affiliate of the Filer, will require that all orders are to be executed on a timely basis; and
- (e) the trader will advise the Filer of the price at which the Inter-Fund Trade occurred;

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27. at the time of an Inter-Fund Trade, the Filer will have in place policies and procedures to enable the Funds and Managed Accounts to engage in Inter-Fund Trades;
28. the Private Funds' IRC is, or will be, composed of independent members (who are not the same as the members of the IRC) in accordance with section 3.7 of NI 81-107 and will comply with the standard of care set out in section 3.9 of NI 81-107; the Private Funds' IRC is, or will be, an oversight committee, parallel to the IRC but the mandate of the Private Funds' IRC will be limited to approving, on behalf of a Pooled Fund or Private Closed-end Fund, purchases and sales of securities between a Pooled Fund or a Private Closed-end Fund and a Managed Account or between a Pooled Fund or a Private Closed-end Fund and another Fund; the Private Funds' IRC will not approve an Inter-Fund Trade between a Pooled Fund or a Private Closed-end Fund and a Managed Account or between a Pooled Fund or a Private Closed-end Fund and another Fund unless it has made the determination set out in subsection 5.2(2) of NI 81-107; the Private Funds' IRC may issue standing instructions in respect of Inter-Fund Trades in compliance with section 5.4 of NI 81-107;
29. if the Private Funds' IRC becomes aware of an instance where the Filer, as investment fund manager/and or a portfolio adviser of the Pooled Fund or Private Closed-end Fund, did not comply with the terms of this decision or a condition imposed by the Private Funds' IRC in its approval, the Private Funds' IRC will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the Pooled Fund or Private Closed-end Fund is organized;
30. as the Filer, or its affiliate, is, or will be, a portfolio adviser of a Fund and of the Managed Accounts, the Filer, or its affiliate, would be considered a "responsible person" and an "associate" of a responsible person within the meaning of the applicable provisions of the Legislation; accordingly, absent the granting of the Exemption Sought, the Filer, or its affiliate, would be restricted from engaging in Inter-Fund Trades;
31. due to the various investment objectives and investment strategies utilized by the Funds and the Managed Accounts, it may be appropriate for different investment portfolios to acquire or dispose of the same securities through the same trading system; the Filer has determined that there are benefits to be achieved from expanding the potential counterparties to include other Funds and Managed Accounts; these benefits include lower trading costs, reduced market disruption and quicker execution, as well as simpler and more reliable compliance procedures;

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In Specie Transactions

32. the Filer desires to enter into In Specie Transactions between a Managed Account and a Fund or between an NI 81-102 Fund or a Pooled Fund and another NI 81-102 Fund or Pooled Fund;
33. the Filer desires to be able to enter into In Specie Transactions between a Fund and a Managed Account or between an NI 81-102 Fund or a Pooled Fund and another NI 81-102 Fund or Pooled Fund that permit payment, in whole or in part, for units of or shares in a Fund purchased by a Managed Account, or for units of or shares in an NI 81-102 Fund or a Pooled Fund purchased by another NI 81-102 Fund or Pooled Fund, to be made by making good delivery of portfolio securities held by such Managed Account to a Fund or of portfolio securities held by such NI 81-102 Fund or Pooled Fund to an NI 81-102 Fund or a Pooled Fund, in any case provided those portfolio securities meet the investment criteria of the Fund;
34. similarly, following a redemption of units of or shares in a Fund by a Managed Account or the redemption of units of or shares in an NI 81-102 Fund or a Pooled Fund by another NI 81-102 Fund or Pooled Fund, the Filer desires to be able to enter into In Specie Transactions that permit payment, in whole or in part, of redemption proceeds to be satisfied by making good delivery of portfolio securities held in the investment portfolio of a Fund to such Managed Account, or of portfolio securities held in the investment portfolio of an NI 81-102 Fund or a Pooled Fund to another NI 81-102 Fund or Pooled Fund, provided those portfolio securities meet the investment criteria of the Managed Account or other Fund;
35. the Filer, or its affiliate, will value the portfolio securities under an In Specie Transaction using the same values that are used to calculate the net asset value for the purpose of the issue price or redemption price of units of or shares in the Fund;
36. the portfolio securities transferred in an In Specie Transaction will meet the investment criteria of the Fund or Managed Account, as the case may be, acquiring the portfolio securities;
37. none of the portfolio securities which are the subject of each In Specie Transaction will be securities of related issuers of the Filer;
38. the Funds will keep written records of each In Specie Transaction, including records of each purchase and redemption of portfolio securities and the terms thereof for a period of five years commencing after the end of the financial

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year in which the trade occurred, the most recent two years in a reasonably accessible place;

39. the only cost which will be incurred by a Fund or a Managed Account for an In Specie Transaction is a nominal administrative charge levied by the custodian of the Fund in recording the trades and/or any commission charged by the dealer executing the trade;
40. the Filer has obtained or will obtain the prior written consent of the relevant client before it engages in any In Specie Transactions in connection with the purchase or redemption of units of or shares in the Funds for the Managed Account;
41. at the time of an In Specie Transaction, the Filer, or its affiliate, as applicable, will have in place policies and procedures to enable the Funds and Managed Accounts to engage in In Specie Transactions with Funds and Managed Accounts;
42. as the Filer, or its affiliate, is, or will be, a portfolio adviser of the Funds and a portfolio adviser of the Managed Accounts, the Filer, or its affiliate, would be considered a “responsible person” and an “associate” of a responsible person within the meaning of the applicable provisions of the Legislation; accordingly, absent the granting of the Exemption Sought, the Filer, or its affiliate, would be prohibited from engaging in In Specie Transactions;
43. the Filer has determined that effecting In Specie Transactions of securities between a Fund and a Managed Account or between an NI 81-102 Fund or a Pooled Fund and another NI 81-102 Fund or Pooled Fund will allow the Filer to manage each asset class more effectively and reduce transaction costs for the client, as applicable, and the Funds; for example, In Specie Transactions reduce market impact costs, which can be detrimental to clients and/or Funds; In Specie Transactions also allow a portfolio adviser to retain within its control institutional-size blocks of securities that otherwise would need to be broken and re-assembled.

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 Exemption Sought is granted provided that:

Inter-Fund Trades

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1. in connection with Inter-Fund Trades:

- (a) the Inter-Fund Trade is consistent with the investment objective of the Fund or the Managed Account, as applicable;
- (b) the Filer refers the Inter-Fund Trade that involves a Fund to the IRC(s), and in the case of a Pooled Fund or Private Closed-end Fund, the Private Funds' IRC, in the manner contemplated by section 5.1 of NI 81-107 and the Filer and the applicable IRC(s) or Private Funds' IRC comply with section 5.4 of NI 81-107 in respect of any standing instructions the applicable IRC(s) or Private Funds' IRC provides in connection with the Inter-Fund Trade;
- (c) if the transaction is with a Fund or between two Funds, the IRC(s), and in the case of a Pooled Fund or Private Closed-end Fund, the Private Funds' IRC, has approved the Inter-Fund Trade in respect of that Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
- (d) if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account contains the authorization of the client for the Filer to engage in Inter-Fund Trades; and
- (e) for exchange-traded securities, the Inter-Fund Trade is executed at the Last Sale Price or the Current Market Price of the security and the Inter-Fund Trade complies with paragraphs (c), (d), (f) and (g) of subsection 6.1(2) of NI 81-107;

In Specie Transactions

2. in connection with an In Specie Transaction where a Managed Account acquires units of or shares in a Fund:

- (a) if the transaction involves the purchase of units of or shares in an NI 81-102 Fund or a Public Closed-end Fund, the IRC of the NI 81-102 Fund or the Public Closed-end Fund has approved the In Specie Transaction on behalf of the NI 81-102 Fund or the Public Closed-end Fund in accordance with the terms of section 5.2(2) of NI 81-107;
- (b) the Filer and the applicable IRC(s) comply with section 5.4 of NI 81-107 in respect of any standing instructions the applicable IRC(s) provides in connection with the In Specie Transaction;

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- (c) the Filer obtains the prior written consent of the client of the Managed Account before it engages in any In Specie Transaction;
 - (d) the Fund would, at the time of payment, be permitted to purchase the portfolio securities;
 - (e) the portfolio securities are acceptable to the portfolio adviser of the Fund and meet the investment criteria of the Fund;
 - (f) the value of the portfolio securities is equal to the issue price of the units of or shares in the Fund for which they are used as payment, valued as if the units or shares were portfolio assets of that Fund;
 - (g) none of the portfolio securities which are the subject of the In Specie Transaction will be securities of related issuers of the Filer;
 - (h) the account statement next prepared for the Managed Account will describe the portfolio securities delivered to the Fund and the value assigned to such units of or shares in the Fund; and
 - (i) the Fund will keep written records of each In Specie Transaction in a financial year of the Fund, reflecting details of the portfolio securities delivered to the Fund and the value assigned to such portfolio securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
3. in connection with an In Specie Transaction where a Managed Account redeems units of or shares in a Fund:
- (a) if the transaction involves the redemption of units of or shares in an NI 81-102 Fund or a Public Closed-end Fund, the IRC of the NI 81-102 Fund or the Public Closed-end Fund has approved the In Specie Transaction on behalf of the NI 81-102 Fund or the Public Closed-end Fund in accordance with the terms of section 5.2(2) of NI 81-107;
 - (b) the Filer and the applicable IRC(s) comply with section 5.4 of NI 81-107 in respect of any standing instructions the applicable IRC(s) provides in connection with the In Specie Transaction;
 - (c) the Filer obtains the prior written consent of the client of the Managed Account before it engages in an In Specie Transaction and such consent has not been revoked;

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- (d) the portfolio securities meet the investment criteria of the Managed Account acquiring the portfolio securities and are acceptable to the Filer;
 - (e) the value of the portfolio securities is equal to the amount at which those securities were valued by the Fund in calculating the net asset value per security used to establish the redemption price;
 - (f) none of the portfolio securities which are the subject of the In Specie Transaction will be securities of related issuers of the Filer;
 - (g) the account statement next prepared for the Managed Account will describe the portfolio securities received from the Fund and the value assigned to such securities; and
 - (h) the Fund will keep written records of each In Specie Transaction in a financial year of the Fund, reflecting details of the portfolio securities delivered by the Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and
4. in connection with an In Specie Transaction where an NI 81-102 Fund or a Pooled Fund acquires portfolio securities of another NI 81-102 Fund or Pooled Fund:
- (a) if the transaction involves the purchase of units of or shares in an NI 81-102 Fund, the IRC of the NI 81-102 Fund has approved the In Specie Transaction on behalf of the NI 81-102 Fund in accordance with the terms of section 5.2(2) of NI 81-107;
 - (b) the Filer and the applicable IRC comply with section 5.4 of NI 81-107 in respect of any standing instructions the applicable IRC provides in connection with the In Specie Transaction;
 - (c) the NI 81-102 Fund or Pooled Fund acquiring the securities would, at the time of payment, be permitted to purchase the portfolio securities;
 - (d) the portfolio securities are acceptable to the portfolio adviser of the NI 81-102 Fund or Pooled Fund and meet the investment criteria of the NI 81-102 Fund or Pooled Fund acquiring the security;
 - (e) the value of the portfolio securities is equal to the issue price of the units of or shares in the NI 81-102 Fund or Pooled Fund for which they are used

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as payment, valued as if the portfolio securities were portfolio assets of that NI 81-102 Fund or Pooled Fund;

- (f) none of the portfolio securities which are the subject of the In Specie Transaction will be securities of related issuers of the Filer; and
 - (g) the NI 81-102 Fund or Pooled Fund will keep written records of each In Specie Transaction in a financial year of the NI 81-102 Fund or Pooled Fund, reflecting details of the portfolio securities delivered to the Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
5. in connection with an In Specie Transaction where an NI 81-102 Fund or a Pooled Fund redeems units of or shares in another NI 81-102 Fund or Pooled Fund:
- (a) if the transaction involves the redemption of units of or shares in an NI 81-102 Fund, the IRC of the NI 81-102 Fund has approved the In Specie Transaction on behalf of the NI 81-102 Fund in accordance with the terms of section 5.2(2) of NI 81-107;
 - (b) the Filer and the applicable IRC comply with section 5.4 of NI 81-107 in respect of any standing instructions the applicable IRC provides in connection with the In Specie Transaction;
 - (c) the portfolio securities are acceptable to the portfolio advisor of the NI 81-102 Fund or Pooled Fund and meet the investment criteria of the NI 81-102 Fund or Pooled Fund acquiring the security;
 - (d) the value of the portfolio securities is equal to the amount at which those securities were valued by the NI 81-102 Fund or Pooled Fund in calculating the net asset value per security used to establish the redemption price;
 - (e) none of the portfolio securities which are the subject of the In Specie Transaction will be securities of related issuers of the Filer; and
 - (f) the NI 81-102 Fund or Pooled Fund will keep written records of each In Specie Transaction in a financial year of the NI 81-102 Fund or Pooled Fund, reflecting details of the portfolio securities delivered by the Fund and the value assigned to such securities, for five years after the end of the Financial year, the most recent two years in a reasonably accessible place; and

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6. the Filer does not receive any compensation in respect of any In Specie Transaction and, in respect of any delivery of portfolio securities further to an In Specie Transaction, the only charges paid by the Managed Account or the applicable Fund is the commission charged by the dealer executing the trade (if any) and/or any administrative charges levied by the custodian.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission

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Appendix A

Existing NI 81-102 Funds

TDK Resource Fund Inc.

Existing Pooled Funds

Deans Knight Equity Fund

Deans Knight Equity 2 Fund

Deans Knight Income Fund

DK Capital Growth Master Fund Limited Partnership

DK Capital Strategic Yield Master Fund Limited Partnership

Existing Public Closed-end Funds

Deans Knight Income and Growth Fund

Deans Knight Income Corporation

Triax Diversified High-Yield Trust

Existing Private Closed-end Funds

DK Energy Fund II

DK Energy Fund III