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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 81-102, s. 19.1, 4.2 *Mutual Funds* (NI 81-102) - A group of mutual funds seeks relief from the self-dealing restrictions in section 4.2 of NI 81-102 in order to conduct inter-fund trades in debt securities - The inter-fund trade is consistent with the objectives of the fund; the manager refers the trade to the IRC and the manager and IRC comply with any standing instructions; each IRC approves the trade in accordance with section 5.2(2) of NI 81-107; the inter-fund trade complies with paragraphs (c) to (g) of section 6.1(2) of NI 81-107

## Applicable Legislative Provisions

National Instrument 81-102, s. 19.1, 4.2 *Mutual Funds* (NI 81-102)

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 (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 in section 4.2 of National Instrument 81-102 *Mutual Funds* (NI 81-102) to permit the purchase or sale of debt securities (each purchase or sale, an Inter-Fund Trade) between an NI 81-102 Fund (as defined below) and (i)

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a Closed-end Fund (as defined below) or (ii) a Pooled Fund (as defined below) (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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the 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*, MI 11-102, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, NI 81-102 and National Instrument 81-107 *Independent Review Committee for Investment Funds* (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. 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;
3. 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;
4. Funds means collectively, NI 81-102 Funds, Closed-end Funds and Pooled Funds; and

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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;
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;
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;

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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;
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);

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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;

### *Inter-Fund Trades*

21. as a portfolio adviser, the Filer may desire to cause an NI 81-102 Fund to engage in an Inter-Fund Trade with (i) a Closed-end Fund or (ii) a Pooled Fund;
22. 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 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;
  - (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;
23. at the time of an Inter-Fund Trade, the Filer will have in place policies and procedures to enable the Funds to engage in Inter-Fund Trades;

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24. Inter-Fund Trades of debt securities will be executed through a registered dealer or otherwise be subject to market integrity requirements as defined in subsection 6.1(1) of NI 81-107;
25. 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 another Fund or a managed account; the Private Funds' IRC will not approve an Inter-Fund Trade 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;
26. 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;
27. each Fund may be an associate or affiliate of the investment fund manager, portfolio adviser or trustee of the Fund; accordingly, absent the granting of the Exemption Sought, the Filer, or its affiliate, would be restricted from engaging in Inter-Fund Trades; and
28. due to the various investment objectives and investment strategies utilized by the Funds, 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; these benefits include lower trading costs, reduced market disruption and quicker execution, as well as simpler and more reliable compliance procedures.

### **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.

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The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Inter-Fund Trade is consistent with the investment objective of each of the Funds involved in the trade;
- (b) the Filer refers the Inter-Fund Trade 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 IRC(s) or Private Funds' IRC provide in connection with the Inter-Fund Trade;
- (c) 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; and
- (d) the Inter-Fund Trade of debt securities complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107.

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