

# 2009 BCSECCOM 200

April 6, 2009

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-101 s.2.5 - An issuer requires an extension of the lapse date of its funds' simplified prospectus - Issuer intends to terminate certain of its mutual funds by merger into other mutual funds managed by it; mergers require regulatory and shareholder approval; all shareholders will be provided with required disclosure documents; IRC of the funds has approved the merger; issuer is in the process of amending its prospectus to reflect the proposed 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  
("Mackenzie" or the "Filer")

and

Keystone Sceptre Canadian Large Cap Fund  
Keystone Sceptre Canadian Small Cap Fund  
(the "Funds")

Decision

## 2009 BCSECCOM 200

### **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 limit pertaining to the distribution of securities of the Funds under their simplified prospectuses dated April 8, 2008 (the “Prospectus”) be extended to permit the continued distribution of securities of the Funds until June 5, 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 the portfolio advisor to 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.
3. The Funds are currently qualified for distribution in all Jurisdictions under the Prospectus, as amended.
4. Pursuant to the Legislation, the lapse date (the “Lapse Date”) for the distribution of securities of the Funds is April 8, 2009.
5. Pursuant to the Legislation, provided a pro forma simplified prospectus is filed 30 days prior to April 8, 2009, a final version is filed by April 18, 2009, and a receipt for the simplified prospectus is issued by the securities regulatory

## 2009 BCSECCOM 200

authorities by April 28, 2009, the securities of the Funds may continue to be distributed after the Lapse Date.

6. Subject to obtaining all applicable approvals of the securities regulatory authorities, together with the requisite investor approvals by way of a special meeting of investors to be held before June 5, 2009 (the "Special Meeting"), Mackenzie intends to merge the Funds into other mutual funds managed by Mackenzie by June 5, 2009. Prior to the Special Meeting, all investors will be provided with the necessary disclosure documents, including but not limited to, an information circular.
7. As the Funds are proposed to be terminated by way of mergers, a renewal prospectus of the Funds will not be filed. Therefore, securities of the Funds will not be qualified for distribution in the period that follows the Lapse Date and that leads up to the effective date of the mergers unless an extension is granted to permit the continued distribution of securities of the Funds during that period. An extension of the Lapse Date is therefore requested until June 5, 2009.
8. The purchases the Filer expects to see of the Funds' securities after the Lapse Date are principally those made pursuant to pre-authorized purchases ("PAP") from existing investors. These scheduled PAPs will continue until the effective date of the mergers.
9. If the Exemption Sought is not granted, a pro forma prospectus and a final prospectus for the Funds would have to have been filed by March 9, 2009 and April 8, 2009 respectively in accordance with the existing time limits for the renewal of the Prospectus, notwithstanding that the Funds will be terminated on or about the effective date of the mergers. The financial costs and time involved in preparing, filing and printing a revised prospectus for the Funds would be unduly costly.
10. Mackenzie is in the process of amending the Prospectus to reflect the proposed mergers such that, since April 8, 2008, no material changes will have occurred that have not been disclosed by way of an amendment to the Prospectus. Accordingly, as amended, the Prospectus will present up-to-date information regarding the Funds. The extension requested will not affect the currency or accuracy of the information contained in the Prospectus, as amended, and as may be further amended in accordance with NI 81-106, and, accordingly, will not be prejudicial to the public interest.

## **2009 BCSECCOM 200**

### **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.

David L. Knight  
Commissioner  
Ontario Securities Commission

Margo Howard  
Commissioner  
Ontario Securities Commission