

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

National Instrument 81-102 *Investment Funds* - Change of Manager Approval – the Filer is an investment fund manager seeks approval to change the investment fund manager under the approval requirements in section 5.5(1)(a) of NI 81-102 - The Filer established the experience and integrity of the new manager; there are no expected material changes to the management, business, operations or affairs of the fund; the independent review committee reviewed the change of manager; securityholders will vote on the change of manager.

National Instrument 81-102 *Investment Funds* – Fund Mergers Approval – The Filer is an investment fund manager seeks approval of proposed fund mergers under the approval requirements of section 5.5(1)(b) of NI 81-102 - The mergers do not fully comply with the pre-approved merger requirements in NI 81-102, particularly that the merger is not a qualifying exchange and one of the funds is not a reporting issuer; the continuing fund's investment objectives will either be substantially similar to those of the terminating fund, or include a component of the fundamental investment objective of the terminating fund; the funds' independent review committee approved the merger; unitholders will vote on the proposed mergers; terminating fund unitholders will receive alternate prospectus-level disclosure; the tax consequences of the merger are as beneficial to unitholders as if the merger was on a tax-deferred basis; unitholders can redeem their investment after the merger with similar redemption fees

Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, ss. 5.5(1)(a) and 5.5(1)(b)

December 13, 2019

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
Vertex One Asset Management Inc.
(the Filer)

and

Vertex Value Fund
Vertex Enhanced Income Fund
Vertex Growth Fund
Vertex Fund
Vertex Managed Value Portfolio
(the Vertex Managed Funds)

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 approval under subsections 5.5(1)(a) and 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (NI 81-102), of the change in manager of the Vertex Managed Funds from the Filer to PenderFund Capital Management Ltd. (Pender) (the Change of Manager), and the proposed merger (the Merger) of the Vertex Growth Fund and the Vertex Fund (the Terminating Funds) into the Vertex Enhanced Income Fund (the Continuing Fund) (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 each of the other provinces and territories of Canada except Ontario and Québec; 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* or MI 11-102 have the same meanings if used in this decision, unless otherwise defined herein.

Representations

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

Vertex One Asset Management Inc.

1. the Filer is a corporation incorporated under the laws of Canada with its head office located at suite 3200-1021 West Hastings Street, Vancouver, British Columbia, V6E 0C3;

2. the Filer is registered as: (i) an investment fund manager in each of the provinces of Canada; (ii) a portfolio manager in each of the provinces of Canada, other than Newfoundland and Labrador and Québec; and (iii) an exempt market dealer in each of the provinces of Canada, other than Newfoundland and Labrador, and such registrations have not been cancelled or revoked;
3. the Filer is the manager and portfolio manager of each of the Vertex Managed Funds; the Filer may appoint third party sub-advisers to the Vertex Managed Funds;
4. the Filer is not in default of securities legislation in any jurisdiction;
5. the Filer offers discretionary portfolio management services to individuals, institutions and other entities seeking wealth management or related services;

Vertex Value Fund, Vertex Enhanced Income Fund and Vertex Growth Fund

6. the Vertex Value Fund, Vertex Enhanced Income Fund and Vertex Growth Fund (the Vertex Public Funds) are mutual fund trusts established under the laws of British Columbia under a master trust agreement dated September 14, 2009, as amended and restated on April 30, 2010 between the Filer and RBC Dexia Investor Services Trust (RBC Dexia); on October 5, 2012, the Filer and CIBC Mellon Trust Company (CIBC Mellon) entered into an amending agreement whereby CIBC Mellon was appointed as trustee of the Vertex Public Funds, replacing RBC Dexia;
7. any securities issued by the Vertex Public Funds have been sold to investors in accordance with applicable securities legislation;
8. the Vertex Public Funds currently offer two classes of units, Class B units and Class F units;
9. the Vertex Public Funds are reporting issuers in all of the provinces and territories of Canada, other than Québec;
10. the Vertex Public Funds are not in default of securities legislation in any jurisdiction;
11. securities of the Vertex Public Funds are offered under a simplified prospectus, annual information form and fund facts documents dated June 28, 2019, as amended by Amendment No. 1 dated September 5, 2019 and Amendment No. 2 dated October 21, 2019;

Vertex Fund

12. the Vertex Fund is an unincorporated open end investment trust formed under the laws of British Columbia on December 3, 2001; the Vertex Fund is governed by an amended and restated trust agreement made as of April 27, 2010 between the Filer and Computershare

Trust Company of Canada (Computershare), as amended by an amending agreement made as of October 5, 2012 between the Filer and CIBC Mellon whereby CIBC Mellon was appointed as trustee of the Vertex Fund, replacing Computershare;

13. any securities issued by the Vertex Fund have been, and will continue to be, sold solely to investors under exemptions from the prospectus requirements in accordance with National Instrument 45-106 *Prospectus Exemptions* (NI 45-106);
14. the Vertex Fund currently offers three classes of units, Class A units, Class B units and Class F units;
15. the Vertex Fund is not, nor will it become, a reporting issuer in Canada;
16. the Vertex Fund is not in default of securities legislation in any jurisdiction;
17. securities of the Vertex Fund are offered on a prospectus exempt basis under an offering memorandum dated October 24, 2019;

Vertex Managed Value Portfolio

18. the Vertex Managed Value Portfolio, formerly known as the Vertex Balanced Fund, is an unincorporated open end investment trust which was formed under the laws of British Columbia on March 31, 1998; the Vertex Managed Value Portfolio is governed by an amended and restated trust agreement made as of June 1, 2007 between the Filer and RBC Dexia; on October 5, 2012, the Filer and CIBC Mellon entered into an amending agreement whereby CIBC Mellon was appointed as trustee of the Vertex Managed Value Portfolio, replacing RBC Dexia;
19. any securities issued by the Vertex Managed Value Portfolio have been, and will continue to be, sold solely to investors under exemptions from the prospectus requirements in accordance with NI 45-106;
20. the Vertex Managed Value Portfolio currently offers three classes of units, Class A units, Class B units and Class F units;
21. the Vertex Managed Value Portfolio is not, nor will it become, a reporting issuer in Canada;
22. the Vertex Managed Value Portfolio is not in default of securities legislation in any jurisdiction;
23. securities of the Vertex Managed Value Portfolio are offered on a prospectus exempt basis under an offering memorandum dated October 24, 2019;

Pender

24. Pender is a corporation incorporated under the laws of British Columbia with its head office located at Suite 1830, 1066 West Hastings Street Vancouver, BC, V6E 3X1;
25. Pender is registered as: (i) an investment fund manager in British Columbia, Ontario, Québec and Newfoundland and Labrador; (ii) a portfolio manager in British Columbia; and (iii) an exempt market dealer in British Columbia, Alberta, Manitoba, Ontario and Quebec;
26. Pender is not in default of the securities legislation in any jurisdiction;
27. Pender is currently the manager of the PenderFund Group of mutual funds, consisting of the Pender Corporate Bond Fund, the Pender Small Cap Opportunities Fund, the Pender Strategic Growth and Income Fund, the Pender Canadian Opportunities Fund, the Pender Value Fund, the Pender US All Cap Equity Fund, and the Pender North American Small Cap Fund (collectively, the Pender Public Funds); each of the Pender Public Funds is considered to be a separate mutual fund under section 1.3(1) of NI 81-102;
28. each of the Pender Public Funds is a reporting issuer in all of the provinces and territories of Canada; shares of the Pender Public Funds are offered under a simplified prospectus, annual information form and fund facts documents dated June 26, 2019; none of the Pender Public Funds are in default of the securities legislation in any jurisdiction;
29. in addition to managing the Pender Public Funds, Pender is currently the manager and portfolio manager of (i) the Working Opportunity Fund (EVCC) Ltd. and (ii) the Pender Tech Inflation Fund I Limited Partnership, through its subsidiary Pender Private Equity Management (collectively, the Pender Private Funds); the securities of each of the Pender Private Funds are offered on a prospectus-exempt basis in Canada;
30. Pender possesses all registrations under Canadian securities legislation and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to allow it to manage the Vertex Managed Funds after the closing of the Transaction (as defined below);
31. Pender has or will have the appropriate personnel, policies and procedures and systems in place to assume the management of the Vertex Managed Funds on closing of the Transaction; additional sales, operational and portfolio management personnel from the Filer have been offered employment with and are expected to be employed by Pender to provide additional operational and compliance capabilities and support;
32. Pender will engage a regulatory consultant to assist it in assessing and enhancing its compliance systems to address any additional business risks associated with the Transaction, among other matters; accordingly, Pender has not identified, and does not believe that there will be, any aspects of the Transaction or the subsequent management of the Vertex Managed Funds that would hinder its compliance with securities regulation in any way;

33. after the closing of the Transaction, the trustee of the Vertex Managed Funds, the directors and officers of Pender will have the integrity and experience to manage and operate the Vertex Managed Funds as contemplated by Section 5.7(1)(a)(v) of NI 81-102;
34. Pender has an independent review committee in place for all of its funds (the Pender IRC) and upon completion of the Change of Manager the members of the Pender IRC will serve as the independent review committee for the Vertex Managed Funds;

The Change of Manager

35. under the purchase agreement entered into between the Filer and Pender dated August 26, 2019 (the Purchase Agreement), and in accordance with its terms and conditions, Pender agreed with the Filer to purchase from the Filer (a) all of the contracts listed in Schedule “A” of the Purchase Agreement that govern the Vertex Managed Funds; (b) all current and past records, in whatever format, used by or in relation to the Vertex Managed Funds (including, but not limited to, all Fund unitholder lists, logs and records, sales records, customer lists and supplier lists, and audit and financial records); and (c) the goodwill of the Vertex Managed Funds, including but not limited to, the right to Pender to represent itself as carrying on the business of the Vertex Managed Funds in continuation of and in succession to the Filer (the Transaction);
36. under the Purchase Agreement, the Filer will (a) appoint Pender as successor investment fund manager of the Vertex Managed Funds and Pender will accept such appointment as of and with effect from the time of the closing of the Transaction; and (b) resign as investment fund manager of the Vertex Managed Funds as of and with effect from the time of the closing of the Transaction;
37. the Transaction was approved by the board of directors of the Filer on August 26, 2019, and by the board of directors of Pender on August 26, 2019;
38. on October 15, 2019, the independent review committee established for the Vertex Managed Funds (the Vertex IRC) under National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) met to consider the Change of Manager and advised the Filer that in the opinion of the Vertex IRC, after reasonable enquiry, the Change of Manager would achieve a fair and reasonable result for the Vertex Managed Funds; the results of the Vertex IRC’s review of the Change of Manager were referred to in the Circular (defined below);

The Merger

39. regulatory approval of the Merger is required as it does not satisfy all of the criteria for pre-approval set out in section 5.6 of NI 81-102; the following is a list of the criteria for pre-approval that are not satisfied by the Merger:
 - (a) Pender, which will be the manager of the Continuing Fund upon completion of the Change of Manager, is not an affiliate of the Filer;

- (b) the Continuing Fund has investment objectives and strategies that are substantially similar to, but not necessarily the same in all respects as, the Terminating Funds;
 - (c) upon completion of the Change of Manager, the fee structure of the Continuing Fund will be substantially different from the Terminating Funds; direct expenses of the Continuing Fund will no longer be charged directly to the Continuing Fund; instead a fixed-rate administration fee will be implemented;
 - (d) the Vertex Fund, one of the Terminating Funds, is not a reporting issuer in any jurisdiction; and
 - (e) the Merger is not a “qualifying exchange” within the meaning of section 132.2 of the *Income Tax Act* (Canada) and is not a tax-deferred transaction under subsections 85(1), 85.1(1), 86(1) or 87(1) of the *Income Tax Act* (Canada);
40. the most recently filed fund facts document for the Continuing Fund will be sent to unitholders of the Terminating Funds prior to the effective date of the Merger;
41. the Merger is proposed to proceed on a taxable basis as affecting the Merger on a taxable basis will preserve, where applicable, any unused tax losses of the Continuing Fund, which would otherwise expire upon implementation of the Merger on a tax deferred basis and therefore would not be available to shelter income and capital gains realized by the Continuing Fund in future years;
42. unitholders of the Terminating Funds and the Continuing Fund were provided with information about the tax consequences of the Merger in the Circular and had the opportunity to consider such information prior to voting on the Merger;
43. each Terminating Fund and the Continuing Fund has an unqualified audit report in respect of their last completed financial period;
44. the Filer believes that the Merger will be beneficial to the unitholders of the Terminating Funds for the following reasons:
- (a) unitholders of the Terminating Funds may enjoy increased economies of scale and lower fund operating expenses (which are borne indirectly by unitholders) as part of the larger combined Continuing Fund;
 - (b) the Merger will eliminate the administrative and regulatory costs of operating each of the Terminating Funds as separate mutual funds;
 - (c) the Continuing Fund will have a portfolio of greater value, allowing for potentially increased portfolio diversification opportunities;

- (d) the Continuing Fund, as a result of its greater size, may benefit from a larger profile in the marketplace; and
 - (e) Pender has indicated that the management fees of some series of each Terminating Fund will decrease which may result in a reduction of management expense ratios for such series of the Continuing Fund;
45. it is proposed that the following steps will be carried out to effect the Merger:
- (a) prior to the Merger, each of the Terminating Funds will sell any securities in its portfolio that do not meet the investment objectives and investment strategies of the Continuing Fund; as a result, each of the Terminating Funds may temporarily hold cash or money market instruments and may not be fully invested in accordance with its investment objectives for a brief period of time prior to the Merger;
 - (b) the value of the Terminating Funds' portfolio and other assets will be determined at the close of business on the effective date of the Merger, in accordance with the declaration of trust of each of the Terminating Funds;
 - (c) the Continuing Fund will acquire the investment portfolio and other assets of the Terminating Funds in exchange for units of the Continuing Fund;
 - (d) the Continuing Fund will not assume liabilities of the Terminating Funds and each of the Terminating Funds will retain sufficient assets to satisfy its estimated liabilities, if any, as of the date of the Merger;
 - (e) each of the Terminating Funds will distribute a sufficient amount of its net income and net realized capital gains, if any, to unitholders to ensure that it will not be subject to tax for its current tax year;
 - (f) the units of the Continuing Fund received by the Terminating Funds will have an aggregate net asset value equal to the respective value of the portfolio assets and other assets that the Continuing Fund acquires from the Terminating Funds, and the units of the Continuing Fund will be issued at the applicable series net asset value per unit as of the close of business on the effective date of the Merger;
 - (g) immediately thereafter, the units of the Continuing Fund received by the Terminating Funds will be distributed to unitholders of the Terminating Funds in exchange for the unitholders' units in the Terminating Funds on a dollar-for-dollar or class-by-class basis; and
 - (h) as soon as reasonably possible following the Merger, the Terminating Funds will be wound up;
46. no sales charges, redemption fees or other fees or commissions will be payable by unitholders in connection with the Merger or with respect to any portfolio rebalancing in

the Terminating Funds arising in connection with the Merger; the costs and expenses specifically associated with the Merger will be borne by the Filer;

47. the valuation procedures for the Continuing Fund are the same as those of each Terminating Fund;
48. unitholders of the Terminating Funds and Continuing Fund will have the right to vote on the Merger under sections 5.1(1)(f) and 5.1(1)(g) of NI 81-102; due to the redemption rights of unitholders, each unitholder ultimately can make the unitholder's own choice as to whether to remain in the Continuing Fund or not;
49. the Merger was approved by the board of directors of the Filer on October 11, 2019;
50. on October 15, 2019, the Vertex IRC established for the Terminating Funds and Continuing Fund under NI 81-107 met to consider the Merger and advised the Filer that in the opinion of the Vertex IRC, after reasonable enquiry, the Merger would achieve a fair and reasonable result for the Terminating Funds and Continuing Fund and their unitholders; the results of the Vertex IRC's review of the Merger are referred to in the Circular;

Additional Changes

51. the Filer understands that Pender plans on implementing the following changes to the Vertex Managed Funds following the Change in Manager and Merger in accordance with the matters approved at the special meeting described in Representation 54:
 - (a) change of auditor for all Funds;
 - (b) change of investment objectives of the Continuing Fund;
 - (c) administrative fee change for all Funds;
 - (d) fee change for Class B unitholders of the Continuing Fund; and
 - (e) trust agreement amendment for all Funds (collectively, the Additional Changes);
52. securityholders of the Vertex Managed Funds have been notified of the Additional Changes in accordance with the requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106); a press release disclosing the Additional Changes was issued and posted on the website of the Filer and filed on SEDAR on October 11, 2019; in addition, a Form 51-102F3 *Material Change Report* (MCR) describing the Additional Changes was filed on SEDAR on October 21, 2019; the required amendments reflecting the Additional Changes have been made to the simplified prospectus, annual information form and fund facts documents of the Vertex Managed Funds;

53. the Additional Changes have received a positive recommendation from the Vertex IRC of all affected Funds that the changes will achieve a fair and reasonable result for the Vertex Managed Funds and their unitholders;

Other Requirements

54. the approval of the Change of Manager, Merger and the Additional Changes by unitholders of the Vertex Managed Funds as required under NI 81-102 was obtained at special meetings of the Vertex Managed Funds' unitholders on November 28, 2019; the notice of meeting and management information circular of the Filer (the Circular) were mailed to unitholders of the Vertex Managed Funds on October 25, 2019, in compliance with the notice and form requirements of Section 5.4 of NI 81-102; copies of both the notice of meeting and Circular have been filed on SEDAR; none of the expenses of these approvals will be incurred by the Vertex Managed Funds or the unitholders of the Vertex Managed Funds and the approvals meet the requirements of Section 5.4 of NI 81-102;
55. the Circular contained sufficient information, including a discussion regarding the tax implications of the Change of Manager, Merger and Additional Changes, to permit unitholders of the Vertex Managed Funds to make an informed decision whether to approve the Change of Manager, Merger and Additional Changes;
56. the Circular described the various ways in which unitholders of the Terminating Funds could obtain, at no cost, copies of the most recent interim and annual financial statements and management reports of fund performance of the Continuing Fund; accordingly, unitholders of the Terminating Funds were provided with sufficient information to make an informed decision about the Merger; and
57. as required by Section 11.2 of NI 81-106, a press release disclosing the Transaction and Change of Manager was issued and posted on the website of the Filer and filed on SEDAR on August 26, 2019; in addition, a MCR describing the Transaction and Change of Manager was filed on SEDAR on September 16, 2019; a press release announcing the Merger and Additional Changes was issued and posted on the website of the Filer and filed on SEDAR on October 11, 2019; in addition, an MCR describing the Merger and Additional Changes was filed on SEDAR on October 21, 2019; the Filer will issue a press release and file an MCR upon completion of both the Change of Manager and the Merger.

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.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission