

Citation: 2015 BCSECCOM 448

**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 Legislative Provisions**

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

December 9, 2015

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

and

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

and

In the Matter of  
Newport Private Wealth Inc.  
(the Manager)

and

The Lonsdale Tactical Balanced Portfolio  
(the Fund, and together with the Manager, the Filers)

Decision

**Background**

- ¶ 1 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 the Fund is not a reporting issuer in each Jurisdiction (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.

## **Representations**

¶ 2 This decision is based on the following facts represented by the Filers:

### *The Manager*

1. the Manager is a corporation established under the laws Ontario and its head office is in Toronto, Ontario;
2. the Manager is registered as an investment fund manager, exempt market dealer and portfolio manager in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan;
3. the Manager is the investment fund manager, portfolio manager and trustee of the Fund;
4. the Manager is not in default of its obligations under the Legislation;

### *The Fund*

5. the Fund is an open-ended mutual fund trust created under the laws of Ontario;
6. the Fund is a reporting issuer in all of the Jurisdictions as a result of having filed a prospectus in the Jurisdictions; as a reporting issuer, the Fund is subject to National Instrument 81-102 – *Investment Funds* (NI 81-102); the Fund ceased to offer units under a prospectus no later than November 5, 2015;
7. for so long as the Manager is the trustee of the Fund, the portfolio assets of the Fund will be held in the custody of an entity that meets the requirements of section 6.2 of NI 81-102 for assets held in Canada and section 6.3 of NI 81-102 for assets held outside of Canada;
8. the Fund is not in default of any of its obligations under the Legislation as a reporting issuer;
9. the Fund is not currently traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
10. the Manager offers discretionary investment management services to individuals, corporations and other entities (each a Client) seeking wealth management or related services through a managed account (Managed Account);
11. the Managed Accounts are managed by representatives of the Manager (the Portfolio Managers) who meet the proficiency requirements of an advising representative (or associate advising representative) under the applicable Legislation;

12. the Portfolio Managers have full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the Client to the trade pursuant to investment management services agreements executed by each Client (the Managed Account Agreements); the Managed Account Agreements further set out how the applicable Managed Account operates and informs the Client of the Manager's various rules, procedures and policies;
13. Clients receive a quarterly statement showing current holdings and a summary of all transactions carried out in their Managed Account in each month during which a transaction was effected in such clients' accounts; the Manager is available to review and discuss with the Client all account statements; the Manager provides the Client with a comprehensive quarterly portfolio reporting package that includes current holdings, capital allocation, asset mix and performance; in addition, Clients also receive monthly statements from the Fund's custodian, NBCN Inc., which shows their current holdings in the Fund as well as the applicable transactions;
14. the Fund is currently owned by, and distributed only to, Clients who have signed Managed Account Agreements and therefore are not offered to the public;
15. investors in the Fund 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 National Instrument 45-106 – *Prospectus Exemptions* (NI 45-106), other than pursuant to paragraph (q) of the definition, and
  - (b) investors who have entered into a Managed Account Agreement with the Manager or a similar agreement with another qualified portfolio manager, making the Manager or such other portfolio manager the accredited investor pursuant to paragraph (q) of the "accredited investor" definition in NI 45-106;
16. the Manager will send a notice to each investor that holds units of the Fund, which will be mailed in November 2015, advising that the Fund has ceased to be a reporting issuer and explaining the implications of such fact; investors will be permitted to instruct their Portfolio Manager if they no longer wish to be invested in the Fund and there will be no fees associated with such redemption;
17. the Fund does not have fewer than 51 securityholders in total worldwide. In addition, the Fund has 15 or more securityholders in one or more jurisdictions in Canada; as a result, the Funds are not eligible for relief pursuant to CSA Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer* because of the number of securityholders in the Fund and because the Fund is a reporting issuer in British Columbia;
18. the Fund does not qualify to use the procedures in BC Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* because of the number of securityholders in the Fund;
19. the Fund will continue as a pooled fund subject to National Instrument 81-106 – *Investment Fund Continuous Disclosure* (NI 81-106) and the regulatory obligations therein;

- 20. the Manager shall provide to all securityholders of the Fund resident in jurisdictions other than Ontario the same disclosure to be provided to securityholders of the Fund resident in Ontario as may be required pursuant to NI 81-106; the Fund intends to rely on the filing exemption set out in section 2.11 of NI 81-106; and
- 21. the Filers seek the Exemption Sought because the only unitholders in the Fund are, or will be, Managed Account clients or accredited investors; the Filers submit that the Fund ceasing to be a reporting issuer will reduce the regulatory and financial burdens associated therewith, such as the costs of preparing the Management Reports of Fund Performance; as the expenses of the Fund will be reduced, this will be a benefit to unitholders to the extent the costs and expenses associated with these requirements will no longer be applicable.

**Decision**

- ¶ 3 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 Exemption Sought is granted.

*William Furlong*  
Commissioner  
Ontario Securities Commission

*Edward P. Kerwin*  
Commissioner  
Ontario Securities Commission