

December 10, 2008

IN THE MATTER OF
THE CANADIAN SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON, NUNAVUT AND
NORTHWEST TERRITORIES

(collectively, the “Jurisdictions”)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE
JURISDICTIONS

AND

IN THE MATTER OF
EXCEL FUNDS MANAGEMENT INC.

(the “Manager”)

AND

IN THE MATTER OF
EXCEL INDIA FUND
EXCEL CHINA FUND
EXCEL CHINDIA FUND
EXCEL INCOME AND GROWTH FUND
EXCEL EMERGING EUROPE FUND
EXCEL MONEY MARKET FUND

(the “Existing Funds”)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (“**Decision Maker**”) has received an application from the Manager, on behalf of the Existing Funds, for a decision under the securities legislation of the Jurisdictions (the “**Legislation**”) that the time limits for the renewal of the Prospectus, as defined below, be extended to those time limits that would be applicable if the lapse date of the Prospectus was December 12, 2008 (the “**Exemption Sought**”).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

1. the Ontario Securities Commission is the principal regulator for this application; and
2. the decision is the decision of the principal regulator and evidences the decision of the Decision Makers.

Interpretation

Defined terms contained in National Instrument 14-401 - *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts as represented by the Manager and the Existing Funds:

Manager

- (a) The Manager is a corporation incorporated under the laws of the Province of Ontario with its head office located in Toronto, Ontario.
- (b) The Manager is the manager, trustee and promoter of the Existing Funds and is not in default of the Legislation.

Existing Funds

- (c) The Existing Funds: (i) were created under the laws of Ontario; (ii) are reporting issuers under the Legislation; (iii) are subject to National Instrument 81-102 (“**NI 81-102**”); and (iv) are not in default of any of the requirements of the Legislation.
- (d) Units of the Existing Funds are distributed in each province and territory of Canada under a simplified prospectus and annual information form dated November 30, 2007 (as amended) (collectively, the “**Prospectus**”) prepared in accordance with National Instrument 81-101 (“**NI 81-101**”).

Preliminary and Pro Forma Filing

(e) The lapse date of the Prospectus was November 30, 2008.

(f) In order for units of the Existing Funds to be distributed without interruption throughout the prospectus renewal period, the Existing Funds must comply with the lapse date timelines set out in section 62 of the *Securities Act* (Ontario) – namely:

(i) a pro forma simplified prospectus is filed 30 days prior to November 30, 2008;

(ii) a final version of the simplified prospectus is filed by December 10, 2008; and

(iii) a receipt for the simplified prospectus is issued by the securities regulatory authorities by December 20, 2008.

(g) On behalf of the Existing Funds and the Excel Latin America Fund (the “**New Fund**”), the Manager filed on SEDAR a combined preliminary and pro forma simplified prospectus and annual information form dated October 31, 2008 (the “**Combined Prospectus**”).

(h) The Combined Prospectus was a pro forma filing in respect of the Existing Funds and a preliminary filing with respect to the New Fund.

New Fund

The New Fund will be: (i) a mutual fund trust created under the laws of Ontario and governed under the terms of the same master declaration of trust governing the Existing Funds; (ii) managed by the Manager; (iii) a reporting issuer under the Legislation; and (iv) subject to NI 81-102.

For cost and administrative considerations, the Manager wishes to offer all funds under management under one simplified prospectus.

In order to be included in the Combined Prospectus, the New Fund will have to be created on or before December 10, 2008 (the last day the Combined Prospectus can be filed on a final basis for purposes of meeting the lapse date provisions of section 62 of the *Securities Act* (Ontario)).

New Fund: Qualifying as a Mutual Fund Trust

(l) If the New Fund is created on or before December 10, 2008, and in order to qualify as a “mutual fund trust” for purposes of the *Income Tax Act* (Canada) (and thus, be a “qualified investment” for registered tax plans like RRSPs), the New Fund must have 150 unitholders each holding 100 units (the “**150 Unitholder Test**”) before March 30, 2009.

(m) Assuming the New Fund is created on or before December 10, 2008 and fails to meet the 150 Unitholder Test before March 30, 2009, units of the New Fund would, among other things, not be a “qualified investment” for registered tax plans and the New Fund could be subject to other material adverse tax consequences to the detriment of its investors.

(n) The Manager is not certain that the New Fund will meet the 150 Unitholder Test before March 30, 2009 in light of prevailing conditions in the world’s capital markets.

Extending the Deadline by Electing a December 15th Tax Year-End

(o) In order to extend the deadline for meeting the 150 Unitholder Test for purposes of qualifying as a “mutual fund trust” under the Income Tax Act (Canada), the New Fund could be created sometime after December 15, 2008 and elect to have a December 15, 2009 initial tax year-end. In this way, the New Fund could extend the deadline for meeting the 150 Unitholder Test to March 14, 2010 in accordance with the Income Tax Act (Canada).

(p) However, proceeding on this basis would require a 12-day extension of the lapse date for the Prospectus such that the final filing date of the Combined Prospectus would be extended to December 22, 2008.

(q) Since the date of the Prospectus, no undisclosed material change has occurred. Accordingly, the Prospectus continues to provide accurate information regarding the Existing Funds. The requested extension will not affect the currency or the accuracy of the information contained in the Prospectus, and therefore will not be prejudicial to the public interest.

Decision

Each of the Decision Makers is satisfied that the exemptive relief application 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 Exemptive Sought is granted.

Manager, Investment Funds Branch
Ontario Securities Commission