

April 19, 2010

**In the Matter of
the Securities Legislation of Manitoba and Ontario
(the Jurisdictions)
and
In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions
and
In the Matter of
North West Company Fund
(the Filer)**

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement to include, under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), and more specifically under Item 14.2 of Form 51-102F5 *Information Circular* (Form 51-102F5), in the information circular (the Information Circular) to be sent to unitholders of the Filer (Unitholders) in connection with the Filer's proposed conversion from an income trust to a corporation by way of a plan of arrangement under the *Canada Business Corporations Act* (Proposed Arrangement) of Prospectus-Level Disclosure and the Prospectus Financial Statements in respect of the NWC Entities (including, for greater certainty, the Amalgamating Entities (as predecessor entities of New NWC)) (as such terms are defined below), in accordance with Item 32 of Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1) (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) The Manitoba Securities Commission is the principal regulator for the 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 British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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:

The Filer

1. The Filer is an unincorporated, open-ended mutual fund trust governed by the laws of the Province of Manitoba. The Filer was established pursuant to a declaration of trust dated January 31, 1997, as amended and restated on March 2, 1997, June 4, 1998, February 25, 2003, June 9, 2005, June 1, 2007 and June 11, 2009.
2. The Filer's head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.
3. The Filer is a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation thereunder.
4. The Filer is authorized to issue an unlimited number of trust units (Units) and an unlimited number of special units (Special Units). As at March 25, 2010, the Filer had 48,378,000 Units and no Special Units issued and outstanding.
5. The Units are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the trading symbol "NWF.UN".
6. The Filer has filed a current AIF and current annual financial statements (as such terms are defined in National Instrument 44-101 *Short Form Prospectus Distributions*) for the financial year ended January 31, 2009.

The NWC Trust

7. The NWC Trust (NWC Trust) is an unincorporated, open-ended trust established under the laws of the Province of Manitoba pursuant to a declaration of trust dated February 15, 2006. NWC Trusts head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.
8. NWC Trust is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.
9. NWC Trust is authorized to issue an unlimited number of trust units. NWC Trust currently has 10 trust units issued and outstanding, all of which are held by the Filer.
10. NWC Trusts fiscal year-end is January 31.

NWC GP Inc.

11. NWC GP Inc. (NWC GP) is a corporation incorporated under the laws of Canada. NWC GPs head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.

12. NWC GP is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

13. NWC GP is authorized to issue an unlimited number of common shares. NWC GP currently has one common share issued and outstanding, all of which are held by the Filer.

14. NWC GPs fiscal year-end is January 31.

The North West Company LP

15. The North West Company LP (NWC LP) is a limited partnership formed under the laws of Canada and is governed by the third amended and restated limited partnership agreement of NWC LP dated June 16, 2009. NWC LPs head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.

16. NWC LP is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

17. NWC LP is authorized to issue an unlimited number of Class A limited partnership units (Class A LP Units) and Class B limited partnership units (Class B LP Units). NWC LP currently has issued and outstanding 6,313,002 Class A LP Units which are held by the Filer (52.5%), NWC Trust (47.5%) and NWC GP (0.00002%), and 47,357 Class B LP Units which are held by the Filer.

18. NWC LPs fiscal year-end is January 31.

The North West Company Inc.

19. The North West Company Inc. (NWC) is a corporation amalgamated under the laws of Canada. NWCs head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.

20. NWC is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

21. NWC is authorized to issue an unlimited number of common shares (NWC Shares). NWC currently has 1,000 NWC Shares issued and outstanding, all of which are held by the Filer.

22. NWCs fiscal year-end is January 31.

2891973 Manitoba Ltd.

23. 2891973 Manitoba Ltd. (289) is a corporation incorporated under the laws of the Province of Manitoba. 289s head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.

24. 289 is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

25. 289 is authorized to issue an unlimited number of common shares. 289 currently has 100 Class A common voting shares issued and outstanding, all of which are held by NWC LP.

26. 289s fiscal year-end is January 31.

4698844 Manitoba Ltd.

27. 4698844 Manitoba Ltd. (469) is a corporation incorporated under the laws of the Province of Manitoba. 469s head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.

28. 469 is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

29. 469 is authorized to issue an unlimited number of common shares. 469 currently has 100 common voting shares issued and outstanding, all of which are held by NWC LP.

30. 469s fiscal year-end is January 31.

Buffalo Pharmacy Ltd.

31. Buffalo Pharmacy Ltd. (Buffalo) is a corporation incorporated under the laws of the Province of Saskatchewan. Buffalos head office is located at Gibraltar House, 77 Main Street, Winnipeg, Manitoba R3C 2R1.

32. Buffalo is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.

33. Buffalo is authorized to issue an unlimited number of common shares. Buffalo currently has 51 Class A common voting shares, 49 Class B common non-voting shares and 49 Class E preferred voting shares issued and outstanding, all of which are held by NWC LP.

34. Buffalos fiscal year-end is January 31.

NWC Entities

35. For the purposes of this application, NWC Trust, NWC GP, NWC LP, NWC, 289, 469 and Buffalo are, collectively, referred to herein as the NWC Entities.

The Proposed Arrangement

36. Pursuant to the Proposed Arrangement, the Filer would convert from an income trust to a corporation pursuant to which Unitholders would receive, through a series of steps, one common share of a corporation (New NWC) to be formed pursuant to an amalgamation of NWC, 289, 469 and Buffalo (the Amalgamating NWC Entities) as part of the Proposed Arrangement in exchange for each Unit held on the effective date of the Proposed Arrangement (resulting in the Unitholders becoming shareholders of New NWC). Upon completion of the Proposed Arrangement, New NWC will carry on the existing businesses of the Filer and its subsidiaries under a substantially similar name and it is intended that New NWC will be a reporting issuer (or the equivalent thereof) in all of the provinces of Canada and that the common shares of New NWC will, subject to approval by the TSX, be listed and posted for trading on the TSX.

37. As part of the Proposed Arrangement, it is contemplated that, among other things: (a) NWC LP will issue a promissory note to the Fund, and will consolidate all of its issued and outstanding limited partnership units into a single class of limited partnership units of NWC LP; (b) NWC LP will transfer all of the shares of each of 289, 469 and Buffalo held by NWC LP to NWC; (c) the Units held by Unitholders will be transferred to NWC in exchange for NWC Shares on one-for-one basis; (d) all of the assets of NWC Trust (which will include, without limitation, Class A LP Units of NWC LP) will be transferred to the Filer, the Filer will assume all of the liabilities of NWC Trust and NWC Trust will be dissolved; (e) all of the assets of the Filer (which will include, without limitation, Class A LP Units and Class B LP Units of NWC LP, all of the trust units of NWC Trust and all of the shares in the capital of NWC GP) will be transferred to NWC, NWC will assume all of the liabilities of the Filer and the Filer will be dissolved; and (f) the Amalgamating NWC Entities will be amalgamated to form New NWC which will then own, directly or indirectly, all of the existing assets and have assumed all of the existing liabilities of the Filer, effectively resulting in the internal reorganization of the Filer's trust structure into a corporate structure.

38. Assuming the Proposed Arrangement is approved by Unitholders and the applicable court approvals obtained, the Filer anticipates completing the Proposed Arrangement on or about December 31, 2010. There are compelling tax, accounting and commercial reasons for completing the Proposed Arrangement on that date.

The Information Circular

39. Implementation of the Proposed Arrangement will require the prior approval of the Unitholders and applicable court orders. In order to obtain Unitholder approval of the Proposed Arrangement, the Filer will be required to prepare and deliver the Information Circular to all Unitholders following its receipt of the applicable interim court order and to hold a meeting of Unitholders. The Filer anticipates holding an annual and special meeting of Unitholders in early-June 2010 and mailing the Information Circular to Unitholders in mid-April 2010, subject to receipt of the Information Circular Requested Relief. The Filer anticipates that the court hearing to obtain the interim order for the Proposed Arrangement will occur in mid-April 2010.

40. The Proposed Arrangement will constitute a restructuring transaction in respect of the Filer for the purposes of NI 51-102 and therefore would require compliance with Item 14.2 of Form 51-102F5.

41. Pursuant to Item 14.2 of Form 51-102F5 mandated by Part 9 of NI 51-102, because the Proposed Arrangement will constitute a restructuring transaction, the Filer will be required to include in the Information Circular, among other things, information sufficient to enable a reasonable Unitholder to form a reasoned judgment concerning the nature and effect of the Proposed Arrangement and the expected resulting entity or entities (being New NWC), and the disclosure (including financial statement disclosure) prescribed under securities legislation and described in the form of prospectus that each applicable entity would be eligible to use immediately prior to the sending and filing of the Information Circular.

42. Pursuant to the Proposed Arrangement, securities of each NWC Entity will be changed, exchanged issued or distributed, New NWC will become the successor reporting issuer resulting from the Proposed Arrangement and following the Proposed Arrangement, Unitholders will have an interest in each of the NWC Entities and New NWC (as opposed to the Filer). Consequently, absent the granting of the Information Circular Requested Relief, the Filer would be required under section 14.2 of 51-102F5 to include in the Information Circular the disclosure (including financial statement disclosure) for each NWC Entity and New NWC prescribed under securities legislation and described in the form of prospectus that each such entity would be eligible to use immediately prior to the sending and filing of the Information Circular.

43. The appropriate prospectus form for each NWC Entity and New NWC is Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1). Therefore, the Information Circular must contain the disclosure (including financial statement disclosure) in respect of each NWC Entity and New NWC prescribed by Form 41-101F1 (Prospectus-Level Disclosure).

44. As New NWC will not be in existence on the date of the Information Circular, subsection 32.1(a) of Form 41-101F1 requires that the financial statements for each of the Amalgamating NWC Entities be included as they will be the predecessor entities that will form part of the basis of the business of New NWC.

45. Pursuant to Item 32 of Form 41-101F1, the Filer would be required to include in the Information Circular the following annual financial statements for each of the NWC Entities, including, for greater certainty, the Amalgamating NWC Entities (as predecessor entities of New NWC):

(a) audited statements of income, retained earnings and cash flows for each of the three most recently completed financial years; and

(b) audited balance sheet as at the end of the two most recently completed financial years,

ended more than 90 days before the date of the Information Circular (collectively, the Prospectus Annual Financial Statements).

46. Additionally, pursuant to Item 32 of Form 41-101F1, the Filer would be required to include in the Information Circular the following interim financial statements for each of the NWC Entities, including, for greater certainty, the Amalgamating NWC Entities (as predecessor entities of New NWC):

(a) unaudited comparative statement of income, retained earnings and statement of cash flows; and

(b) unaudited balance sheet as at end of interim period and as at the end of the immediately preceding financial year,

ended more than 45 days before the date of the Information Circular (collectively, the Prospectus Interim Financial Statements, and together with the Prospectus Annual Financial Statements, the Prospectus Financial Statements).

47. The Filer anticipates that the date of the Information Circular will be a date in mid-April 2010. Accordingly, the Prospectus Annual Financial Statements of each NWC Entity, including, for greater certainty, the Amalgamating NWC Entities (as predecessor entities of New NWC) required to be included in the Information Circular will be its audited statements of income, retained earnings and cash flows for the years ended January 31, 2009, 2008 and 2007 and its audited balance sheet as at January 31, 2009 and 2008, and the Prospectus Interim Financial Statements of each of the NWC Entities required to be included in the Information Circular will be its unaudited statement of income and retained earnings and cash flows for the period ending October 31, 2009 and its unaudited balance sheet as at October 31, 2009 and balance sheet as at January 31, 2008.

48. The Proposed Arrangement will not result in a change in beneficial ownership of the assets and liabilities of the Filer and New NWC will continue to carry on the business of the Filer and the NWC Entities following completion of the Proposed Arrangement. The Proposed Arrangement will be an internal reorganization and the Unitholders will, following completion of the Proposed Arrangement, be the shareholders of the continuing entity, which will be New NWC. Accordingly, no acquisition will occur as a result of the Proposed Arrangement and therefore the significant acquisition financial statement disclosure requirements contained in the Form 41-101F1 are inapplicable.

49. The Proposed Arrangement will be accounted for on a continuity of interest basis and, accordingly, following the Proposed Arrangement, the comparative consolidated financial statements for New NWC prior to the Proposed Arrangement will reflect the financial position, results of operation of cash flows as if New NWC had always carried on the business formerly carried on by the Filer.

50. With the exception of Prospectus-Level Disclosure and the Prospectus Financial Statements for each NWC Entity (including, for greater certainty, the Amalgamating NWC Entities (as predecessor entities to New NWC)), the Information Circular will contain prospectus-level disclosure in accordance with Item 14.2 of 51-102F5, including a detailed description of the Proposed Arrangement and the disclosure (including financial statements) for the Filer

prescribed by Form 44-101F1 *Short Form Prospectus* and the disclosure (other than the Prospectus Financial Statements) for New NWC prescribed by Form 41-101F1, qualitative disclosure of the differences between the taxation of a trust and the taxation of a corporation, a qualitative comparison of the existing distribution policy of the Fund and the expected dividend policy of New NWC following the completion of the Proposed Arrangement, and will contain sufficient information to enable a reasonable securityholder to form a reasoned judgement concerning the nature and effect of the Proposed Arrangement.

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 this decision.

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

Furthermore, the decision of the Decision Makers under the Legislation is that the application of the Filer and this decision will be kept confidential and not be made public until the earlier of: (i) the date on which the Filer mails the Information Circular; (ii) the date the Filer advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and (iii) the date that is 90 days after the date of this decision.

"Chris Besko"

Chris Besko

Legal Counsel, Deputy-Director

The Manitoba Securities Commission