

October 15, 2012

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW  
BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, PRINCE  
EDWARD ISLAND, 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  
CALDWELL INVESTMENT MANAGEMENT LTD.  
(the "Filer")

AND

IN THE MATTER OF  
CALDWELL GLOBAL FINANCIAL SERVICES FUND  
CALDWELL MEISELS CANADA FUND  
(each, a "Fund", or collectively, the "Funds")

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that each of the Funds is not a reporting issuer in each of the Jurisdictions (the "**Exemptive Relief 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. Each Fund is a mutual fund trust established under the laws of Ontario by a declaration of trust pursuant to which the Filer is the investment fund manager and trustee of each Fund.
2. Each Fund is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.
3. Effective June 25, 2012, the Filer completed the merger of each Fund as follows:
  - a. the merger of Caldwell Global Financial Services Fund into Caldwell Balanced Fund, and
  - b. the merger of Caldwell Meisels Canada Fund into Caldwell High Income Equity Fund

(collectively, the “**Mergers**”).

The Mergers received unanimous unitholder approval at the duly called unitholder special meetings of June 12, 2012. The OSC approved the Mergers on its own behalf and on behalf of the Canadian securities regulatory authorities in an order dated June 15, 2012 (the “**OSC Merger Order**”).

4. Upon completion of the Mergers, investors in the Funds ceased to be unitholders of that Fund and became unitholders of the applicable continuing fund. The only remaining unitholder of the Funds is the Filer who owns 100 units of each Fund (collectively, the “**Manager’s Units**”).
5. In accordance with the OSC Merger Order, to preserve the value of certain tax losses of the Funds (the “**Tax Losses**”), the Funds were not wound-up following the Mergers. As of December 31, 2011, the Tax Losses were valued at approximately \$7,110,004 for Caldwell Global Financial Services Fund and \$3,194,390 for Caldwell Meisels Canada Fund. Representation 28 of the OSC Merger Order provides the Filer’s representations regarding the future use of the Tax Losses.
6. The Funds have no liabilities. The only assets of the Funds are the Tax Losses and small cash amounts held by the Funds in respect of the Manager’s Units.
7. Since the effective date of the Mergers, the Funds have not distributed securities.

8. Technically, both Funds are still reporting issuers in the Jurisdictions and have continuous disclosure obligations pursuant to National Instrument 81-106 – *Investment Fund Continuous Disclosure* (“**NI 81-106**”). Specifically, pursuant to NI 81-106, the Funds were required to file interim financial statements and management reports of fund performance by August 29, 2012 (the “**Interim Reports**”).
9. The Filer, as the only unitholder of the Funds, had waived all rights to receive the Interim Reports.
10. As envisioned by paragraph 28(a) of the OSC Merger Order, and in light of the fact that the Filer is the only unitholder of the Funds and has waived all rights to receive the Interim Reports, the Funds have applied to cease to be reporting issuers in the Jurisdictions in order to avoid the expense of preparing and filing the Interim Reports. Specifically, the Funds:
  - (a) on August 15, 2012, applied to voluntarily surrender their reporting issuer status in British Columbia (the “**B.C. Surrender**”);
  - (b) on August 27, 2012, filed a Change in Legal Structure (together with the B.C. Surrender, the “**B.C. Application**”); and
  - (c) on August 27, 2012, under the simplified procedure set out in CSA Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer*, applied to cease to be a reporting issuer in the remaining Jurisdictions (together with the B.C. Surrender, the “**Simplified Procedure Application**”).
11. As a result of the B.C. Application, the Funds ceased to be reporting issuers in British Columbia effective June 25, 2012 and were removed from the reporting issuers list in British Columbia on August 28, 2012.
12. Despite best efforts on the part of the OSC, there was insufficient time for the OSC, as principal regulator, to review the Simplified Procedure Application and grant the relief requested therein by August 29, 2012, the date by which the Interim Reports were to be filed. As such, as of August 29, 2012, the Funds are in default of their continuous disclosure obligations with respect to the Interim Reports.
13. Except to the extent described in paragraph 12 immediately above, as of the date hereof, the Filer and the Funds are not in default of applicable securities legislation in any of the Jurisdictions or in British Columbia.
14. The Filer submits that the Exemptive Relief Sought is not prejudicial to the public interest for the following reasons:
  - (a) The Filer is the only unitholder of the Funds;
  - (b) The Filer has waived all rights to receive financial statements and management reports of fund performance;

- (c) The OSC Merger Order clearly anticipated, at paragraph 28(a), that Caldwell will apply for the Exemptive Relief Sought;
- (d) An unqualified auditors' report was filed in respect of each Fund for the most recently completed financial year; and
- (e) Except to the extent described in paragraph 12 above, as of the date hereof, the Filer and the Funds are not in default of applicable securities legislation in any of the Jurisdictions or in British Columbia.

**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 Makers under the Legislation is that the Exemptive Relief Sought is granted.

*“Mary Condon”*

*“Vern Krishna”*

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Title: Vice-Chair  
Ontario Securities Commission

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Title: Commissioner  
Ontario Securities Commission

## **Headnote**

National Policy 11-203 – *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Application for an order that the issuer is not a reporting issuer under applicable securities laws – Requested relief granted.

## **Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S-5, as am., ss. 1(10).