

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Closed-end investment fund exempted from the prospectus requirement in connection with the sale of units repurchased from existing security holders pursuant to market purchase programs and units surrendered by security holders pursuant to redemption programs, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c.S-4, sections 110 and 144

Citation: Re Sustainable Agriculture & Wellness *Dividend Fund*, 2021 ABASC 125

Date: 20210806

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

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

and

In the Matter of
Sustainable Agriculture & Wellness *Dividend Fund* (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement to file a prospectus (the **Prospectus Requirement**) in connection with the distribution of units of the Filer (the **Units**) that have been repurchased by the Filer pursuant to the Purchase Programs (as defined below) or redeemed by the Filer pursuant to the Redemption Programs (as defined below) in the period prior to a Conversion (as defined below) (the **Exemption Sought**).

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

- (a) the Alberta 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 British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon, and
- (c) this 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*, National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is an unincorporated closed-end investment trust established under the laws of Alberta.
2. The Filer is not considered to be a “mutual fund” as defined in the Legislation because the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer.
3. The Filer is a reporting issuer in each of the provinces of Canada and is not in default of securities legislation in any jurisdiction of Canada.
4. The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**). As of July 30, 2021 the Filer had 5,160,000 Units issued and outstanding.
5. Middlefield Limited (the **Manager**), which is incorporated under the *Business Corporations Act* (Alberta), is the manager and the trustee of the Filer.
6. Subject to applicable law, which may require approval from the holders of the Units (the **Unitholders**) or regulatory approval, the Manager may (a) merge or otherwise combine or consolidate the Filer with any one or more other funds managed by the Manager or an affiliate thereof or (b) where it determines that to do so would be in the best interest of Unitholders, merge or convert the Filer into a listed exchange-traded mutual fund, an open-end mutual fund, a split trust fund, an alternative mutual fund, or another type of non-redeemable investment fund (each a **Conversion**).

Mandatory Purchase Program

7. The constating document of the Filer provides that the Filer, subject to certain exceptions and compliance with any applicable regulatory requirements, is obligated to purchase (the **Mandatory Purchase Program**) any Units offered on the TSX or such other exchange or market on which the Units are then listed and primarily traded (the **Exchange**) if, at any

time after the closing of the Filer's initial public offering, the price at which Units are then offered for sale on the Exchange is less than 95% of the net asset value of the Filer per Unit, provided that the maximum number of Units that the Filer is required to purchase pursuant to the Mandatory Purchase Program in any calendar quarter is 1.25% of the number of Units outstanding at the beginning of each such period.

Discretionary Purchase Program

8. The constating document of the Filer also provides that the Filer, subject to applicable regulatory requirements and limitations, has the right, but not the obligation, exercisable in its sole discretion at any time, to purchase outstanding Units in the market at prevailing market prices (the **Discretionary Purchase Program** and together with the Mandatory Purchase Program, the **Purchase Programs**).

Monthly Redemptions

9. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Monthly Redemption Program**) on the second last business day of each month in order to be redeemed at a redemption price per Unit equal to the Monthly Redemption Price per Unit (as defined in the Filer's long form prospectus dated May 18, 2021 (the **Prospectus**)).

Annual Redemption

10. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the Annual **Redemption Program**) on the second last business day of June in each year commencing in 2023 at a redemption price per Unit equal to the Redemption Price per Unit (as defined in the Prospectus).

Additional Redemptions

11. At the sole discretion of the Manager and subject to the receipt of any necessary regulatory approvals, the Manager may from time to time allow additional redemptions of Units (Additional **Redemptions** and collectively with the Monthly Redemption Program and the Annual Redemption Program, the **Redemption Programs**), provided that the holder thereof shall be required to use the full amount received on such redemption to purchase treasury securities of a new or existing fund promoted by the Manager or an affiliate thereof then being offered to the public by prospectus.

Resale of Repurchased Units or Redeemed Units

12. Purchases of Units made by the Filer under the Purchase Programs or Redemption Programs will be made pursuant to exemptions from the issuer bid requirements of applicable securities legislation.

13. The Filer wishes to resell, in its sole discretion and at its option, through one or more securities dealers and through the facilities of the Exchange, the Units repurchased by the Filer pursuant to the Purchase Programs (**Repurchased Units**), or redeemed pursuant to the Redemption Programs (**Redeemed Units**).
14. All Repurchased Units and Redeemed Units will be held by the Filer for a period of four months after the repurchase or redemption thereof by the Filer (the **Holding Period**), prior to any resale.
15. The resale of Repurchased Units and Redeemed Units will be effected in such a manner as not to have a significant impact on the market price of the Units.
16. Repurchased Units and Redeemed Units that the Filer does not resell within 12 months after the Holding Period (that is, within 16 months after the date of repurchase or redemption, as applicable) will be cancelled by the Filer.
17. During any calendar year, the Filer will not resell an aggregate number of Repurchased Units and Redeemed Units that is greater than 5% of the number of Units outstanding at the beginning of such calendar year.
18. Prospective purchasers of Repurchased Units or Redeemed Units will have access to the Filer's continuous disclosure, which will be filed on SEDAR.
19. The Legislation provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution and, as such, is subject to the Prospectus Requirement. In the absence of the Exemption Sought, any sale by the Filer of Repurchased Units or Redeemed Units would be a distribution that is subject to the Prospectus Requirement.

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 Exemption Sought is granted provided that

- (a) the Repurchased Units and Redeemed Units are otherwise sold by the Filer in compliance with applicable securities legislation, and through the facilities of and in accordance with the regulations and policies of the Exchange,
- (b) the Filer complies with paragraphs 1 through 5 of section 2.8(2) of National Instrument 45-102 *Resale of Securities* as if it were a selling security holder thereunder, and

(c) the Filer complies with the representations made in paragraphs 15, 16 and 17 above.

For the Commission:

“original signed by”

Stan Magidson
Chair

“original signed by”

Kari Horn
Vice-Chair