

Settlement Agreement

HSBC Investment Funds (Canada) Inc. and HSBC Private Wealth Services (Canada) Inc.

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and HSBC Investment Funds (Canada) Inc. (HIFC) and HSBC Private Wealth Services (Canada) Inc. (HPWS) (together the HSBC Entities) agree as follows:

Agreed Statement of Facts

Background

1. HIFC is registered with the BCSC as a mutual fund dealer and is a member of the Mutual Fund Dealers Association of Canada (MFDA). HIFC is also registered as a mutual fund dealer in the provinces of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, and Saskatchewan. HIFC has its head office at 3rd floor, 885 West Georgia Street, Vancouver, British Columbia. HIFC offers the HSBC Mural Funds, which currently include 26 mutual funds, of which 21 are multi-series funds that include an Investor Series and a Premium Series.
2. HPWS is registered with the BCSC as a portfolio manager. HPWS is also registered as a portfolio manager in the provinces of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, and Saskatchewan. HPWS has its head office at 3rd floor, 885 West Georgia Street, Vancouver, British Columbia. HPWS offers a discretionary portfolio management service.
3. In April 2015, following enquires from the BCSC and MFDA, the HSBC Entities reported to the BCSC, and HIFC also reported to the MFDA, that some inadequacies with internal controls and policies caused some clients to pay excess fees.
4. At the time of reporting, the HSBC Entities informed BCSC staff that each would pay appropriate compensation to affected clients. The HSBC Entities provided detailed compensation plans to the BCSC in June 2015 and, having received no objection, implemented the compensation plans.

Inadequacies of Internal Controls and Policies

5. HIFC reported that:

- (a) it has a policy, upon the occurrence of certain trigger events, to advise clients that their account holdings in an HSBC Mutual Fund qualify for the lower priced Premium Series investment funds;
- (b) through inadvertence, it failed to apply its policy to certain client accounts, resulting in those client accounts paying excess fees; and
- (c) these failures occurred because it did not have adequate controls and supervision in place.

6. HPWS reported that:

- (a) it has a policy to exclude client controlled securities when calculating the advisory fee on client accounts;
- (b) through inadvertence, its policy was not applied consistently resulting in a failure to exclude for valuation the client controlled securities in a small number of client accounts; and
- (c) as a result, certain client accounts were charged excess fees.

7. The HSBC Entities failed to comply with their obligations under securities legislation (the failures) when they failed to:

- (a) apply their internal policies consistently, with the result that some clients were charged excess fees. In this way, certain clients of the HSBC Entities were not treated fairly, contrary to section 14 of the Securities Rules; and
- (b) establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the HSBC Entities and individuals acting for them complied with securities legislation. As a result, the HSBC Entities acted contrary to section 11.1 of National Instrument 31-103.

Client Impact

8. To address the failures:

- (a) HIFC has compensated 4,651 client accounts for a total of \$7,076,651.35; and

(b) HPWS has compensated 10 client accounts for a total of \$10,100.84.

Mitigating Factors

9. The HSBC Entities:

- (a) cooperated fully with staff in the course of their review and requests for information;
- (b) voluntarily admitted their procedural failures and inconsistencies in administering their internal controls and systems;
- (c) immediately implemented a compensation plan, and engaged an independent third party to determine the appropriate compensation by client account; and
- (d) took corrective action to address the failures by enhancing procedures, controls and supervision designed to prevent re-occurrence of the issues.

10. BCSC staff have found no evidence of dishonest conduct by the HSBC Entities.

Public Interest

11. The HSBC Entities' conduct described in this Settlement Agreement is contrary to the public interest.

12. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

Undertakings

13. The HSBC Entities undertake:

- (a) To pay \$300,000 to the British Columbia Securities Commission in respect of settlement of this matter which sum is due and payable immediately without further demand; and
- (b) To pay \$20,000 to the British Columbia Securities Commission in respect of costs of the settlement of this matter which sum is due and payable immediately without further demand.

Order

¶ 2 The Executive Director will issue an order (the Order) under section 161(1)(a) of the Act, that the HSBC Entities comply fully with the Act, the Securities Rules, and any applicable regulations.

Consent to Regulatory Orders

¶ 3 The HSBC Entities consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraph ¶2 above.

Waiver

¶ 4 The HSBC Entities waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

Counterpart

¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 June 7, 2016

¶ 7 “Betty Miao”)
HSBC Investment Funds (Canada) Inc.)
(Signing Authority))
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Betty Miao)
Print Signing Authority Name)
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“Madhu Sharma”)
Witness Signature)
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Madhu Sharma)
Witness Name (please print))
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Address)
885 West Georgia Street)
Vancouver BC)
)
Banker)
Occupation)

¶ 8 “Betty Miao”)
HSBC Private Wealth Services)
(Canada) Inc.)
(Signing Authority))
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Print Signing Authority Name)
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¶ 9 June 9, 2016

¶ 10 “Paul Bourque”
Paul C. Bourque, Q.C.
Executive Director