

2011 BCSECCOM 362

June 15, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Exemption from the self dealing prohibitions in BCI 81-513, the related party prohibitions in NI 31-103 and Inter-fund trade requirements in NI 81-107 – An adviser wants relief from the self-dealing and related party transaction prohibitions to it or its affiliates to cause the mutual funds or managed accounts they advise or manage to transact with each other and other related parties.

Applicable Legislative Provisions

Securities Act R.S.B.C. 1996, c. 418, ss

In the Matter of
the Securities Legislation
of British Columbia and Ontario (the Jurisdictions)

and

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

and

In the Matter of
HSBC Global Asset Management (Canada) Limited (the Filer)

and

In the Matter of
the existing and future mutual funds managed or advised by the Filer or an affiliate of the Filer and to which National Instrument 81-102 *Mutual Funds* (NI 81-102) applies (each, a Fund and, collectively the Funds), and the fully managed accounts managed by the Filer or an affiliate of the Filer (each, a Managed Account and, collectively, the Managed Accounts)

Decision

2011 BCSECCOM 362

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for:
- (a) an exemption (the Principal Trade Related Account Relief) from the requirement (the Related Account Prohibition) that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security of any issuer from or to the investment portfolio of a responsible person (as defined in the Legislation), an associate of a responsible person or an investment fund for which the responsible person acts as an adviser (a Related Account), in order to permit a Fund or a Managed Account to purchase from or sell to a Related Person that is a principal dealer in the Canadian debt securities market (a Principal Dealer) debt securities of an issuer other than the federal or a provincial government (Non-Government Debt Securities) or debt securities issued or fully and unconditionally guaranteed by the federal or a provincial government (Government Debt Securities) in the secondary market (the Principal Dealer Trades);
 - (b) an exemption (the Inter-Fund Trade Related Account Relief) from the Related Account Prohibition and the requirement that a registered adviser must execute transactions between portfolios managed by the registered adviser or an associate of the registered adviser at current market price to permit the following purchases and sales (the Inter-Fund Trades):
 - (i) a Fund to purchase exchange-traded securities from or sell exchange-traded securities to another Fund at the last sale price, as defined in the Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the Last Sale Price) in lieu of the closing price, as required by section 6.1(2)(e) of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) because of the definition of "current market price" in section 6.1(1)(a)(i) of NI 81-107 (the Closing Sale Price);
 - (ii) a Managed Account to purchase securities from or sell securities to a Fund, where such Managed Account is not for a client that is a responsible person; and

2011 BCSECCOM 362

- (iii) where the transactions contemplated in (ii) involve exchange traded securities the transactions are permitted to occur at the Last Sale Price instead of the Closing Sale Price;
- (c) an exemption (the In Specie Transaction Related Account Relief) from the Related Account Prohibition to permit a Fund and a Managed Account to engage in *In Specie* Transactions (as described below);
- (d) an exemption (the Related Issuer Relief) from the requirement (the Related Issuer Prohibition) that prohibits a registered adviser from causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase a security of an issuer (a Related Issuer) in which a responsible person or an associate of the responsible person is an officer or director or where his or her own interest might distort his or her judgment, unless the specific fact is disclosed to the client and the written consent of the client to the purchase is obtained before the purchase, in order to permit the Funds to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a primary offering, and to permit the Funds to purchase and hold non-exchange traded debt securities issued by a Related Issuer in the secondary market;
- (e) an exemption (the Related Shareholder Relief) from the requirement (the Related Shareholder Prohibition) that prohibits a mutual fund from making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company (a Related Shareholder), in order to permit the Funds to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a primary offering, and to permit the Funds to purchase and hold non-exchange traded debt securities issued by a Related Shareholder in the secondary market;
- (f) an exemption (the Related Party Relief) from the requirement (the Related Party Prohibition) that prohibits a mutual fund from making or holding an investment in an issuer in which a Related Shareholder has a significant interest (a Related Party), in order to permit the Funds to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a primary offering, and to permit the Funds to purchase and hold non-exchange traded securities issued by a Related Shareholder in the secondary market; and

2011 BCSECCOM 362

- (g) an exemption (the Reporting Relief) from the requirement (the Reporting Requirement) that a mutual fund manager or a management company (depending on the jurisdiction) file a report within 30 days after each month end and in respect of each mutual fund to which it provides services, relating to every purchase or sale effected by such mutual fund through any related person or company (a Related Agent) with respect to which the Related Agent received a fee either from the mutual fund or from the other party to the transaction or both, in order that the Funds are not required to comply with the Reporting Requirement

(collectively, the Requested Relief).

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

- (a) the British Columbia 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 Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (the Non-Principal Jurisdictions); 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

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.
The term Related Person will be used to refer to a Related Account, Related Issuer, Related Shareholder, Related Party, or Related Agent depending on the prohibition or relief referred to.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. The Filer is a corporation organized under the laws of Canada, with a head office located in Vancouver, British Columbia.
 2. The Filer is registered under applicable securities legislation in each province of Canada, other than Prince Edward Island, an adviser in the category of portfolio manager and in Ontario as a dealer in the category of exempt market dealer.

2011 BCSECCOM 362

3. Each Fund is or will be an open-ended mutual fund established under the laws of one of the Jurisdictions or the Non-Principal Jurisdictions.
4. Each of the Funds is or will be a reporting issuer under the laws of one or more of the provinces of Canada.
5. Securities of each Fund are or will be qualified for sale in one or more Canadian jurisdictions under a simplified prospectus and annual information form filed in accordance with applicable securities legislation.
6. The Filer and each of the Funds are not in default of the securities legislation in any jurisdiction.
7. The Filer, or an affiliate of the Filer, is or will be the manager and/or principal portfolio adviser of the Funds and the portfolio manager of each Managed Account.
8. A Fund may be an associate of the Filer, or of an affiliate of the Filer, that is a responsible person in respect of another Fund.
9. A Fund may be an associate of the Filer, or of an affiliate of the Filer, that is the portfolio adviser of a Fund or a Managed Account.
10. A responsible person, or an associate of a responsible person, of the Filer may be an officer or director of a Related issuer.
11. A Related Person of a Fund or a Managed Account may be a Principal Dealer in Non-Government Debt Securities or Government Debt Securities.
12. The purchase of Non-Government Debt Securities and Government Debt Securities from a Related Person of the Funds in the secondary market is subject to the Related Account Prohibition.
13. There is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Funds and the Managed Accounts, and frequently the only source of Non-Government Debt Securities and Government Debt Securities for a Fund or a Managed Account is a Related Person.
14. The investment strategies of each Fund that relies on the Principal Trade Related Account and Related Issuer Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy, pending the purchase of other securities.

2011 BCSECCOM 362

15. The Filer wishes to cause each Fund to purchase securities from or sell securities to another Fund or Managed Account.
16. The Filer wishes to cause each Managed Account to purchase securities from or sell securities to another Managed Account or Fund.
17. The Filer wishes to deliver securities to a Fund in respect of subscriptions by a Managed Account of securities of a Fund and may wish to receive securities from a Fund in respect to a redemption of securities of a Fund by a Managed Account (such transactions *In Specie* Transactions).
18. The Filer wishes to cause a Managed Account to engage in *In Specie* Transactions with a Fund in respect of the purchase or redemption of securities of a Fund by a Managed Account.
19. Effecting *In Specie* Transactions between the Funds and the Managed Accounts will allow the Filer to manage each asset class more effectively and reduce transaction costs for the client and the Fund. For example, *In Specie* Transactions reduce market impact costs, which can be detrimental to the client and/or the Fund(s). *In Specie* Transactions also allow a portfolio manager to retain within its control institutional-size blocks of securities that otherwise would need to be broken and re-assembled.
20. The securities transferred under an *In Specie* Transaction will be valued on the same valuation day on which the unit purchase price or redemption price of a Fund is determined. With respect to the purchase of securities of a Fund, the securities transferred to a Fund under an *In Specie* Transaction in satisfaction of the purchase price of those securities will be valued as if the securities were portfolio assets of the Fund, as contemplated by subsection 9.4(2)(b)(iii) of NI 81-102. With respect to the redemption of securities of a Fund, the securities transferred to a Managed Account in satisfaction of the redemption price of those securities will have a value equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price of the securities of the Fund, as contemplated by subsection 10.4(3)(b) of NI 81-102.
21. The only cost which will be incurred by a Fund or Managed Account for an *In Specie* Transaction is a nominal administrative charge levied by the custodian of the Fund in recording the trade and any commission charged by the dealer executing the trade.
22. The Funds require the relief sought in order to pursue their investment objectives and strategies effectively.

2011 BCSECCOM 362

23. Pursuant to section 6.2 of NI 81-107 and concurrent relief under NI 81-102, the Funds are permitted to purchase exchange traded securities of a Related Person.
24. Securities issued by a Related Person that are not listed and traded on an exchange may be appropriate securities for a Fund or Managed Account to purchase, sell or hold.
25. A Related Person (in particular, HSBC Bank Canada) may be an issuer of highly rated commercial paper and other debt securities; the Filer considers that the Funds should have access to such securities for the following reasons:
 - (a) there is currently and has been for several years a very limited supply of highly rated corporate debt; to limit the supply available to the Funds even further by removing debt issued by a Related Person puts the Funds at a competitive disadvantage and may increase the cost a Fund pays for available securities;
 - (b) diversification is reduced to the extent that a Fund is limited with respect to investment opportunities; and
 - (c) to the extent that a Fund is trying to track or outperform a benchmark it is important for the Fund to be able to purchase any securities included in the benchmark; debt securities of a Related Person are included in most of the Canadian debt indices.
26. The Filer is seeking the Related Issuer Relief, the Related Shareholder Relief and the Related Party Relief to permit the Funds to purchase and hold non-exchange traded debt securities issued by a Related Person.
27. Each non-exchange traded debt security purchased by a Fund pursuant to the Requested Relief that is a security issued by a Related Person will have been given, and will continue to have, an approved credit rating (as defined in NI 81-102) by an approved credit rating organization (as defined in NI 81-102).
28. Where a Fund purchases a non-exchange traded debt security in a primary offering pursuant to the Requested Relief, the terms of the primary offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.
29. If a Fund's purchase of non-exchange traded securities issued by a Related Person involves an inter-fund trade with another fund to which NI 81-107

2011 BCSECCOM 362

applies, the provisions of section 6.1(2) of NI 81-107 will apply to such transaction.

30. An independent review committee (IRC) in accordance with the requirements under NI 81-107 has or will be appointed for each Fund.
31. The mandate of the IRC of a Fund will include: approving purchases and sales of securities between a Fund and another Fund or a Managed Account; approving purchases and sales of Non-Government Debt Securities and Government Debt Securities from or to a Related Person that is a Principal Dealer in the secondary market; and approving purchases by a Fund of securities of a Related Issuer. The IRC of the Funds will be composed in accordance with section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in section 3.9 of NI 81-107. Further, the IRC of the Funds will not approve purchases of securities of a Related Issuer or purchases and sales of Non-Government Debt Securities or Government Debt Securities from a Related Person that is a Principal Dealer in the secondary market, unless it has made the determination set out in section 5.2(2) of NI 81-107.
32. The investment management agreement or other documentation in respect of a Managed Account will contain the authorization of the client for the portfolio manager to purchase securities from or sell securities to a Fund, and to purchase and sell Non-Government Debt Securities and Government Debt Securities from a Related Person that is a Principal Dealer in the secondary market.
33. Where the Filer or its affiliates or associates act as a portfolio adviser to the Funds, they have discretion to allocate the brokerage transactions of each Fund in a manner that they believe to be in the Fund's best interests. The purchase or sale of securities effected through a Related Person reflects the business judgment of the Filer or its affiliates and associates uninfluenced by considerations other than the best interests of the Funds. The transactions will be on terms and conditions comparable to those offered by unrelated brokers or dealers.
34. The annual information forms or prospectuses of the Funds will disclose on the date which is the earlier of:
 - (a) the date when an amendment to the simplified prospectus or annual information form of a Fund is filed, and

2011 BCSECCOM 362

- (b) the date on which the initial or renewal simplified prospectus or annual information form is receipted,

that the portfolio adviser, or sub-advisor as applicable, may allocate brokerage business of the Funds to a Related Person, provided that such transactions are made on terms and conditions comparable to those offered by unrelated brokers and dealers;

35. The Funds prepare and file interim and annual management reports of fund performance (MRFPs) that disclose any transactions involving Related Persons, including the identity of the Related Person, its relationship to the Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount and any ongoing commitments to the Related Person; a discussion of portfolio transactions with a Related Person must include the dollar amount of commission, spread or any other fee that the Fund paid to any Related Party in connection with the transaction;
36. The Filer is seeking the Reporting Relief in respect of the Funds, because, in the absence of the Reporting Relief, the Funds would be obliged to prepare a report of any purchase or sale of securities by a Fund that is effected through a Related Person and file the report with the securities regulatory authority or regulator in the Jurisdictions and the Non-Principal Jurisdictions within 30 days of the end of the month in which the transactions occurs; it would be costly and time consuming to provide the information required by the Reporting Requirement on a monthly and segregated basis for each Fund.
37. At the time of any transaction contemplated in this decision, the Filer will have in place policies and procedures to enable the Funds to engage in the transactions contemplated by the decision with the Managed Accounts.
38. The Filer has determined that it would be in the interests of the Funds and the Managed Accounts to receive the Requested Relief.

Decision

- ¶ 4 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 Requested Relief is granted provided that:

1. with respect to the Principal Trade Related Account Relief:
- (a) the purchase or sale is consistent with the investment objective of each Fund;

2011 BCSECCOM 362

- (b) the IRC of each the Funds has approved the transaction in accordance with section 5.2(2) of NI 81-107;
 - (c) the manager of the Fund complies with the conflict of interest matter requirements of section 5.1 of NI 81-107;
 - (d) the manager of each of the Funds and the IRC of each of the Funds comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
 - (e) a purchase is not executed at a price which is higher than the available ask price of the security and a sale is not executed at a price which is lower than the available bid price;
 - (f) the bid and ask price of the Non-Government Debt Security or Government Debt Security are readily available, as provided in commentary 7 to section 6.1 of NI 81-107;
 - (g) the purchase or sale is subject to applicable "market integrity requirements" as defined in NI 81-107;
 - (h) the Funds keep the written records required by section 6.1(2)(g) of NI 81-107; and
 - (i) if the transaction is by a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;
2. with respect to the Inter-Fund Trade Related Account Relief as it applies to a purchase or sale of exchange traded securities by a Fund to another Fund, the requirements of Section 6.1 of NI 81-107 apply except that for purposes of paragraph (e) of subsection 6.1(2) of NI 81-107 the current market price of the security may be the Last Sale Price;
3. with respect to the Inter-Fund Trade Related Account Relief, the Filer or its affiliate refers a transaction that involves a Fund to the IRC in the manner contemplated by Section 5.1 of NI 81-107 and the IRC of the Fund complies with Section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the transaction;
4. in the case of an Inter-Fund Trade between a Fund and a Managed Account:
- (a) the purchase or sale of securities is consistent with the investment objectives of the Fund and the Managed Account;

2011 BCSECCOM 362

- (b) the IRC of the Fund has approved the transaction on behalf of the Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (c) the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction, and
 - (d) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange traded securities the current market price of the security may be the Last Sale Price;
5. with respect to *In Specie* Transactions in connection with the purchase of units of a Fund by a Managed Account:
- (a) the IRC of the Fund has approved the *In Specie* Transaction in respect of the Fund in accordance with section 5.2(2) of NI 81-107;
 - (b) the Filer or its affiliate, as manager of the Fund, and the IRC of the Fund, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an *In-Specie* Transaction;
 - (c) the Filer or its affiliate obtains the prior written consent of the client of the relevant Managed Account before it engages in any *In-Specie* Transactions;
 - (d) the Fund would at the time of payment be permitted to purchase the securities;
 - (e) the securities are acceptable to the Filer or its affiliate as portfolio manager of the Fund and consistent with the Fund's investment objectives;
 - (f) the value of the securities sold to the Fund is at least equal to the issue price of the securities of the Fund for which they are payment, valued as if the securities were portfolio assets of that Fund;
 - (g) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Fund and the value assigned to such securities; and
 - (h) the Fund keeps written records of all *In Specie* Transactions during a financial year of the Fund, reflecting details of the securities delivered to the Fund and the value assigned to such securities, for five years

2011 BCSECCOM 362

after the end of the financial year, the most recent two years in a reasonably accessible place;

6. with respect to *In Specie* Transactions in connection with the redemption of units of a Fund by a Managed Account:
 - (a) the IRC of the Fund has approved the *In Specie* Transaction in respect of the Fund in accordance with section 5.2(2) of NI 81-107;
 - (b) the Filer or its affiliate, as manager of the Fund, and the IRC of the Fund, comply with the requirements of section 5.4 of NI 81-107 for any standing instructions the IRC provides in respect of an *In-Specie* Transaction;
 - (c) the Filer or its affiliate obtains the prior written consent of the client of the relevant Managed Account to the payment of redemption proceeds in the form an *In-Specie* Transaction;
 - (d) the securities are acceptable to the Filer or its affiliate as portfolio manager of the Managed Account and consistent with the Managed Account's investment objectives;
 - (e) the value of the securities is at least equal to the amount at which those securities were valued in calculating the net asset value per unit of the Fund used to establish the redemption price;
 - (f) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Managed Account and the value assigned to such securities; and
 - (h) the Fund keeps written records of all *In Specie* Transactions during a financial year of the Fund, reflecting details of the securities delivered by the Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
7. with respect to the Related Issuer Relief, the Related Shareholder Relief and the Related Party Relief:
 - (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of each Fund;
 - (b) at the time of purchase the IRC of each Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;

2011 BCSECCOM 362

- (c) the manager of each of the Funds complies with section 5.1 of NI 81-107 and the manager and the IRC of each of the Funds comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) if the transaction occurs in the secondary market:
 - (i) the purchase is not executed at a price which is higher than the available ask price of the security;
 - (ii) the ask price of the security is determined as follows:
 - (A) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirement of the marketplace;
 - (B) if the purchase does not occur on a marketplace,
 - (1) a Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or
 - (2) if a Fund does not purchase the security from an independent, arm's length seller, such Fund must obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;
 - (iii) the transaction complies with any applicable market integrity requirements as defined in section 6.1(1)(b) of NI 81-107; and
 - (iv) no later than the time each of the Funds files its annual financial statements, the Filer, or an affiliate or associate of the Filer, files with the securities regulatory authority or regulator the particulars of any investments made in reliance on this relief;
- (e) If the transaction occurs in the primary market:
 - (i) the non-exchange traded debt securities are not asset backed commercial paper securities and have a term to maturity of 365 days or more;

2011 BCSECCOM 362

- (ii) the size of the primary offering is at least \$100 million;
 - (iii) at least two purchasers who are independent, arm's length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 *Underwriting Conflicts*, collectively purchase at least 20% of the primary offering;
 - (iv) no Fund shall participate in the primary offering if following its purchase the Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of the Related Issuer;
 - (v) no Fund shall participate in the primary offering if following its purchase the Fund together with related Fund will hold more than 20% of the securities issued in the primary offering;
 - (vi) the price paid for the securities by the Fund in the primary offering shall be no higher than the lowest price paid by any of the arm's-length purchasers who participate in the primary offering; and
 - (vii) no later than the time the Fund files its annual financial statements, the Filer, or an affiliate or associate of the Filer, files with the securities regulatory authority the particulars of such investments, and
8. with respect to the Reporting Relief:
- (a) the annual and interim Management Report of Fund Performance for each Fund discloses:
 - (i) the name of the Related Person;
 - (ii) the amount of fees paid to each Related Person; and
 - (iii) the person or company who paid the fees, if they were not paid by the Fund; and
 - (b) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Person:

2011 BCSECCOM 362

- (i) the name of the Related Person;
- (ii) the amount of fees paid to each Related Person; and
- (iii) the person or company who paid the fees.

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