

# 2010 BCSECCOM 645

November 26, 2010

## **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-102 *Mutual Funds*, s. 5.5(10)(b) - A mutual fund manager seeks approval of proposed fund mergers under the approval requirements in NI 81-102 - The continuing fund's investment objectives will either be substantially similar to those of the terminating fund, or include a component of the fundamental investment objective of the terminating fund in the continuing funds' objectives; the funds' independent review committee approved the merger; unitholders will vote on the proposed mergers; terminating fund unitholders will receive alternate prospectus-level disclosure; the tax consequences of the merger are as beneficial to unitholders as if the merger was on a tax-deferred basis; unitholders can redeem their investment after the merger with similar redemption fees - Future fund mergers comply with the pre-approved merger requirements in NI 81-102 except that the Manager will provide alternate prospectus level disclosure instead of the prospectus and financial statements for the terminating funds

## **Applicable British Columbia Provisions**

National Instrument 81-102 *Mutual Funds*, s. 5.5(10)(b)

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 Investment Funds (Canada) Inc.  
(the Filer)

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and

In the Matter of  
HSBC LifeMap<sup>®</sup> MM Moderate Conservative Portfolio  
HSBC LifeMap<sup>®</sup> MM Balanced Portfolio  
HSBC LifeMap<sup>®</sup> MM Growth Portfolio  
HSBC LifeMap<sup>®</sup> MM Aggressive Growth Portfolio  
(together, the Terminating Funds)

## Decision

### **Background**

- ¶ 1 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) granting:
- (a) approval under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (NI 81-102) to merge the HSBC LifeMap<sup>®</sup> MM Moderate Conservative Portfolio into the HSBC LifeMap<sup>®</sup> Moderate Conservative Portfolio, to merge the HSBC LifeMap<sup>®</sup> MM Balanced Portfolio into the HSBC LifeMap<sup>®</sup> Balanced Portfolio, to merge the HSBC LifeMap<sup>®</sup> MM Growth Portfolio into the HSBC LifeMap<sup>®</sup> Growth Portfolio and to merge the HSBC LifeMap<sup>®</sup> MM Aggressive Growth Portfolio into the HSBC LifeMap<sup>®</sup> Aggressive Growth Portfolio (the Current Mergers); and
  - (b) approval under paragraph 5.5(1)(b) of NI 81-102 of any merger, after the date of this decision, of mutual funds managed by the Filer or an affiliate that meet all of the criteria for pre-approval of mergers under section 5.6 of NI 81-102 except for the financial statement delivery requirement and the simplified prospectus delivery requirement of sub-paragraph 5.6(1)(f)(ii) of NI 81-102 (the Future Mergers).

(collectively, the Approvals Sought)

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

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Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia 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**

- ¶ 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.

### **Representations**

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

#### *The Filer*

1. the Filer is a corporation organized under the *Canada Business Corporations Act* with its head office located in Vancouver, British Columbia; the Filer is the manager, trustee, promoter and principal distributor of each of the Terminating Funds and the HSBC LifeMap<sup>®</sup> Moderate Conservative Portfolio, the HSBC LifeMap<sup>®</sup> Balanced Portfolio, the HSBC LifeMap<sup>®</sup> Growth Portfolio, and the HSBC LifeMap<sup>®</sup> Aggressive Growth Portfolio (collectively, the Continuing Funds); the Filer is not in default of securities legislation in any of the provinces and territories of Canada;

#### *The Funds*

2. the Terminating Funds and the Continuing Funds (collectively, the Funds) are open-ended mutual fund trusts established under the laws of the Province of British Columbia pursuant to an amended and restated master declaration of trust dated December 17, 2009; the units of the Funds are currently qualified for continuous distribution in every province of Canada, except for Prince Edward Island, under a simplified prospectus and annual information form dated December 16, 2009, as amended September 27, 2010;
3. each of the Funds is a reporting issuer under applicable Canadian securities legislation and subject to the requirements of NI 81-102; each of the Funds is not on the list of defaulting reporting issuers maintained under applicable Canadian securities legislation and is not in default of applicable securities legislation in any jurisdiction;
4. each of the Funds adheres to the standard investment restrictions and practices contained in NI 81-102;

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5. each Fund calculates the net asset value of its units at the close of trading on each valuation day (normally 1:00 p.m. Vancouver time) in accordance with the principles established in NI 81-102; for each of the Funds, a valuation day is any day that the Toronto Stock Exchange is open for business, or such other day as the Filer may determine from time to time;

### *The Mergers*

6. the merging Funds have complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the making of the decision to proceed with the Current Mergers by the board of directors of the Filer; copies of the press release, material change report and amendments to the simplified prospectus and annual information form of the Terminating Funds in respect of the Current Mergers have been filed on SEDAR under project numbers 01638721, 01639253, and 01499797;
7. subject to receipt of required unitholder and regulator or securities regulatory authority approvals, the Current Mergers will be effective on or about December 10, 2010;
8. the fundamental investment objectives and strategies of each of the Continuing Funds are substantially similar to those of their corresponding Terminating Fund;
9. the fee structures of each of the Continuing Funds are substantially similar to the fee structures of their corresponding Terminating Fund, except that the Continuing Funds charge a lower management fee to unitholders than the Terminating Funds, as noted in subparagraph 10(e) below;
10. the Filer believes that the Current Mergers will be beneficial to the Terminating Funds and their unitholders for the following reasons:
  - (a) unitholders of the Terminating Funds may have the potential to enjoy increased economies of scale with respect to operating costs and administrative expenses as part of a larger Continuing Fund;
  - (b) by merging the Terminating Funds instead of terminating them (which is one option that would be considered by the Filer if the Current Mergers were not approved) there will be a savings for the Terminating Funds in brokerage charges associated with the liquidation of the Terminating Funds' portfolio on a wind-up; the unitholders of the Terminating Funds will not be responsible for the costs associated with the Current Mergers;

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- (c) the Current Mergers will eliminate the administrative and regulatory costs of operating the Terminating Funds as separate mutual funds;
  - (d) each of the Continuing Funds will have a portfolio of greater value, allowing for increased portfolio diversification opportunities; and
  - (e) for all series of the Terminating Funds a lower management fee is charged to unitholders of the corresponding series of the Continuing Funds after the Current Mergers;
11. the Filer referred the Current Mergers to the independent review committee of the Funds (the IRC) for its recommendation, and after reasonable inquiry, the IRC considered the conflict issues arising from the Current Mergers and determined that the Current Mergers achieve a fair and reasonable result for the Funds; the IRC has provided its positive recommendation of the Current Mergers;
  12. the result of each Current Merger will be that unitholders in each Terminating Fund will cease to be unitholders of a series of the Terminating Fund and will become unitholders of an equivalent series of the applicable Continuing Fund;
  13. the portfolios and other assets of each Terminating Fund are currently, or will be at the effective date of the Current Mergers, acceptable to the portfolio adviser and consistent with the fundamental investment objectives of the applicable Continuing Fund;
  14. unitholders of the Terminating Funds will be asked to approve the Current Mergers as required by subsection 5.1(f) and section 5.2 of NI 81-102 at special meetings of unitholders of the Terminating Funds to be held on or about November 26, 2010 in accordance with section 5.4 of NI 81-102;
  15. the management information circular and written notice of unitholder meeting (together, the Merger Materials) required to be sent to unitholders of the Terminating Funds under section 5.4 of NI 81-102 in connection with the Current Mergers were mailed to unitholders of the Terminating Funds on or about October 28, 2010 and were subsequently filed on SEDAR; the Merger Materials contained all the information and documents necessary for the unitholders of the Terminating Funds to consider the Current Mergers, including:
    - (a) a full description of the applicable Current Mergers including the procedures for implementing it and consequences of the proposed Current

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Merger, including its fee consequences and its tax consequences for the Terminating Fund and for investors in the Terminating Fund;

(b) the proposed implementation date, a full description of the applicable Continuing Fund including Part A and Part B of the simplified prospectus of the applicable Continuing Fund, a full description of the similarities and differences between the Terminating Funds and the Continuing Funds and a summary of the IRC's decision with respect to the applicable Current Merger; and

(c) a prominent statement that unitholders may obtain, free of charge, a copy of the annual information form and the most recent annual and interim financial statements that have been made public of applicable Continuing Fund by calling the Filer's toll-free telephone number, by visiting the Filer's website or by visiting the SEDAR website at [www.sedar.com](http://www.sedar.com);

16. the Merger Materials provide sufficient information about the Current Mergers to permit investors to have made an informed decision about the Current Mergers;
17. upon receipt of a request from a unitholder of a Terminating Fund for the annual information form or financial statements of the applicable Continuing Fund, the Filer will make best efforts to fulfill the request before the unitholder meeting held to approve the applicable Current Merger;
18. the Funds will bear none of the costs and expenses associated with the Current Mergers, including all brokerage expenses incurred in respect of any required sale of portfolio assets of the Terminating Funds; these costs and expenses will be borne by the Filer;
19. the unitholders of a Terminating Fund will continue to have the right to redeem their units of the Terminating Fund up to the close of business on the last business day before the effective date of the Current Mergers;
20. no sales charges will be payable in connection with the purchase by the Terminating Funds of units of the Continuing Funds;
21. as soon as reasonably possible following the Current Mergers, the Terminating Funds will be wound up;
22. the Filer has concluded that pre-approval of the Current Mergers under section 5.6 of NI 81-102 is not available for the following reasons:

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- (a) the Current Mergers will be completed on a taxable basis and not as a “qualifying exchange” or as a tax deferred transaction, and so the pre-approval criteria set out in subsection 5.6(1)(b) of NI 81-102 may not be satisfied; and
  - (b) the Merger Materials will not include the current simplified prospectus and the most recent annual and interim financial statements that have been made public for the Continuing Funds, and so the pre-approval criteria set out in subsection 5.6(1)(f)(ii) of NI 81-102 would not be satisfied;
23. the Filer has complied, and will continue to comply, with all applicable legal and regulatory requirements in effecting the Current Mergers, including obtaining all requisite unitholder approvals for the Current Mergers;

### **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 Approvals Sought are granted in respect of the Current Mergers and Future Mergers (the Mergers) provided that:

- (a) the information circular sent to unitholders in connection with a Merger provide sufficient information about the Merger to permit unitholders to make an informed decision about the Merger;
- (b) the material sent to unitholders of a terminating fund in connection with a Merger include a tailored simplified prospectus comprised of:
  - (i) Part A of the current simplified prospectus of the applicable continuing fund, and
  - (ii) Part B of the current simplified prospectus of the applicable continuing fund.
- (c) the management information circular sent to unitholders in connection with a Merger prominently disclose that unitholders can obtain, free of charge, the most recent interim and annual financial statements that have been made public of the applicable continuing fund by calling the Filer’s toll-free number, by visiting the Filer’s website, or by visiting the SEDAR website at [www.sedar.com](http://www.sedar.com);

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- (d) upon request by a unitholder of a terminating fund for the financial statements of the applicable continuing fund, the Filer will make its best efforts to fulfill the request in a timely manner so that the unitholder can make an informed decision regarding the applicable Merger; and
- (e) each applicable terminating fund and the applicable continuing fund with respect to a Merger has an unqualified audit report in respect of its last completed financial period.

This Decision, as it relates to the jurisdiction of the Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in paragraph 5.5(1)(b) of NI 81-102.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission