

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – British Columbia Instrument 81-513 *Self-Dealing* – s.8 Fees on investment for mutual fund – A mutual fund manager seeks relief from the requirement for a mutual fund to disclose in a prospectus a fee paid to a related person of the mutual fund – The fund is a not a reporting issuer; investors in the fund are all accredited investors; the subscription agreement discloses the agreement to pay fees to a related person

s.9 Report of mutual fund manager - A mutual fund manager seeks relief from the requirement to file a report respecting trades with a related person - The fund is a not a reporting issuer; investors in the fund are all accredited investors; the subscription agreement discloses the material terms of the related party transaction; investors will receive disclosure when the investment made through the related party transaction terminates

Applicable Legislative Provisions

British Columbia Instrument 81-513 *Self-Dealing*

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

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

and

In the Matter of
JP Morgan Asset Management (Canada) Inc.
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that provisions of the Legislation that:

- (a) restrict a mutual fund from making an investment in consequence of which a related person of the mutual fund will receive a fee or other compensation unless the fee is paid under a contract that is disclosed in a preliminary prospectus or prospectus filed by the mutual fund and accepted by the executive director (the Disclosure Requirement) will not apply to the New Fund (defined below) or the Future Funds (defined below), in respect of the Advisory Fee (defined below) and Future Advisory Fees (defined below), respectively, and
- (b) require a mutual fund manager to file a report in the required form for each mutual fund to which the mutual fund manager provides services or advice respecting
 - (i) a purchase or sale of securities between the mutual fund and any related person; and
 - (ii) a transaction in which the mutual fund, by arrangement other than an arrangement relating to insider trading in portfolio securities, is a joint participant with one or more of its related persons, within 30 days after the end of the month in which the purchase, sale or transaction occurs (the Reporting Requirement) will not apply to the mutual fund manager of the New Fund or the Future Funds in respect of Seed Capital Investments (as defined below)

(collectively, the Exemptions Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (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 Saskatchewan, New Brunswick and Newfoundland and Labrador.

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 company incorporated under the laws of British Columbia, with its head office in Vancouver, British Columbia;

2. the Filer is registered under applicable securities legislation in each province and territory of Canada, other than Yukon, as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer, as well as in British Columbia in the category of investment fund manager;
3. the Filer is not a reporting issuer in any jurisdiction of Canada;
4. the Filer is not in default of securities legislation in any jurisdiction of Canada;

The Funds

5. the Filer will establish a mutual fund as a trust under the laws of British Columbia (the New Fund) that will invest in a class of securities of the JPMorgan Fund ICVC known as the JPM Strategic Bond Fund (the UK Fund) which are (a) referable to a separate portfolio of assets, and (b) are offered by way of a prospectus in the United Kingdom; the New Fund may also invest for hedging purposes in Canadian government bond futures traded on The Montreal Exchange and currency forward contracts in order to reduce the currency risk to Canadian investors;
6. from time to time the Filer may establish, manage and advise other mutual funds (the Future Funds) that may invest in investment funds managed by an affiliate of the Filer (together with the UK Fund, the Affiliated Underlying Funds);
7. the Filer will be the investment fund manager and portfolio manager of the New Fund and the Future Funds (collectively, the Funds and each a Fund);
8. the Funds will not be reporting issuers in any jurisdiction of Canada and therefore will not be subject to National Instrument 81-102 *Mutual Funds* and National Instrument 81-107 *Independent Review Committee for Investment Funds*;
9. neither the Disclosure Requirement nor the Reporting Requirement apply to the Funds in Canadian jurisdictions other than the Jurisdictions;

The Disclosure Requirement

10. the Filer will engage an affiliate, JPMorgan Asset Management (UK) Limited (JPM UK), the portfolio manager of the UK Fund, to act as sub-adviser to the New Fund;
11. JPM UK will be a related person of the New Fund for the purposes of the Disclosure Requirement;
12. JPM UK will receive an advisory fee as a consequence of the New Fund investing in the UK Fund (the Advisory Fee);

13. the Disclosure Requirement provides that a mutual fund must not make an investment in consequence of which a related person of the mutual fund will receive a fee or other compensation unless the fee is paid under a contract that is disclosed in a preliminary prospectus or prospectus filed by the mutual fund and accepted by the executive director;
14. the Filer is seeking relief from the Disclosure Requirement in respect of the New Fund because, in the absence of the Exemptions Sought, the New Fund would be prohibited from making an investment in the UK Fund unless it filed a preliminary prospectus or prospectus that discloses the agreement of the New Fund to pay the Advisory Fee to JPM UK;
15. the Filer also is seeking relief from the Disclosure Requirement in respect of Future Funds that will pay an advisory fee to a related person (the Future Advisory Fees);
16. securities of each Fund will be distributed in Canada to persons who would qualify as an accredited investor, as such term is defined in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) (accredited investors) in reliance on the accredited investor exemption in section 2.3 of NI 45-106, and the securities of each Fund will not be qualified for sale under a prospectus;
17. the Filer submits that since all subscribers to the Funds would be accredited investors, it would not be prejudicial to the public interest to disclose the agreement of the Fund to pay the Advisory Fee or Future Funds to pay the Future Advisory Fees in the applicable subscription agreement rather than in a preliminary prospectus or prospectus;

Reporting Requirement

18. an affiliate of the Filer, J.P. Morgan Investment Management Inc. (the Affiliate), will make a one-time seed capital investment in the Fund before soliciting investors in the New Fund; other affiliates of the Filer (the Future Fund Affiliates, and together with the Affiliate, the Affiliates) may make similar investments in Future Funds to facilitate the start up of the Future Funds (collectively, the Seed Capital Investments);
19. these Affiliates will be related persons of the Funds for the purposes of the Reporting Requirement; and
20. the Filer is seeking relief from the Reporting Requirement in respect of the Funds because, in the absence of the Exemptions Sought, the Filer will need to file a report of any purchase or sale of securities or joint participant transactions between the Fund and Affiliates in connection with the Seed Capital Investments, and file the report with the securities regulatory authority or regulator in the Jurisdictions within 30 days of the end of the month in which the transactions occur.

Decision

¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemptions Sought are granted provided that:

1. each Fund that is relying on the Exemptions Sought has a subscription agreement that discloses:
 - (a) the agreement to pay any fees to a related person as a consequence of that Fund investing in Affiliated Underlying Funds; and
 - (b) the purpose and terms of participation of any of the applicable Seed Capital Investments in place at the date the subscription agreement is signed by the person purchasing a Fund security, including the class or designation of the securities purchased, the date of the investment, the amount or number of securities purchased, the consideration paid and the name of the person making the applicable Seed Capital Investments(the Required Disclosure);
2. each Fund that is relying on the Exemptions Sought remains a non-reporting issuer;
3. all investors in a Fund that is relying on the Exemptions Sought are accredited investors at the time of purchase of the Fund's securities;
4. within 30 days after the end of the month in which the redemption of any Seed Capital Investment occurs, each Fund relying on the Exemptions Sought will provide disclosure to the security holders of the Fund of the terms of redemption of that Seed Capital Investment including the class or designation of the securities redeemed, the date of the redemption, the amount or number of securities redeemed, the consideration received, and the name of the person redeeming that Seed Capital Investment (the Redemption Disclosure); and
5. each Fund that is relying on the Exemptions Sought will provide the Required Disclosure and Redemption Disclosure to the regulator or securities regulatory authority of the Jurisdictions upon request.

Brent W. Aitken
Vice-Chair
British Columbia Securities Commission