

2009 BCSECCOM 688

November 20, 2009

Headnote

Multilateral Instrument MI 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-101, s. 6.1 *Mutual Fund Prospectus Disclosure* - Securities Act s. 76 *Prospectus Requirements* – An issuer requires an extension of the lapse date of its funds’ simplified prospectus - An issuer proposes implementing changes to the names and investment strategies of certain of its funds and to the manner in which it uses the funds to manage the investments of its clients; in connection with those changes, the issuer proposes to cease offering certain of the funds under the simplified prospectus; this requires changes to the recordkeeping and trade processing systems used by the issuer with respect to the funds; the issuer also intends to offer new funds under the simplified prospectus; the issuer will prepare and file a new simplified prospectus and annual information form reflecting the proposed changes

Applicable British Columbia Provisions

National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, s. 2.5
Securities Act, R.S.B.C. 1996, c. 418, ss. 61, 76

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 HSBC Pooled Funds listed in Appendix “A”
(collectively, the Funds)

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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 (the Exemptive Relief Sought) under the securities legislation of the Jurisdictions (the Legislation) that:
- (a) the time limits for the renewal of the simplified prospectus (Simplified Prospectus) and annual information form (Annual Information Form) of the Funds dated November 21, 2008, with the exception of the HSBC MM Canadian Growth Equity Pooled Fund, HSBC MM U.S. Growth Equity Pooled Fund and HSBC MM International Growth Equity Pooled Fund (Ceasing Funds), be extended to those time limits that would be applicable if the lapse date of the simplified prospectus and annual information form was December 17, 2009; and
 - (b) the time limit for the distribution of securities of the Ceasing Funds under the Simplified Prospectus and Annual Information Form be extended to permit the continued distribution of securities of the Ceasing Funds until December 7, 2009.

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

- (a) the British Columbia Securities Commission is the principal regulator (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, 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 pursuant to Section 104(2)(c) of the *Securities Act* (Ontario).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined herein.

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Representations

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

1. the Filer is a corporation governed by the *Canada Business Corporations Act*, with its head office in Vancouver, British Columbia; the Filer is the manager and investment advisor of the Funds;
2. the Funds are open-ended mutual fund trusts established under the laws of British Columbia;
3. the Funds are reporting issuers under the laws of each of the provinces of Canada other than Prince Edward Island (collectively, the Reporting Jurisdictions); none of the Funds is in default of any of the requirements of securities legislation of the Reporting Jurisdictions;
4. securities of the Funds are currently qualified for distribution in each of the provinces of Canada other than Prince Edward Island under the Simplified Prospectus and Annual Information Form;
5. in each Jurisdiction, provided a pro forma simplified prospectus is filed 30 days prior to November 21, 2009, a final version of the simplified prospectus is filed by December 1, 2009, and a receipt for the simplified prospectus is issued by the securities regulatory authorities by December 11, 2009, units of the Funds may be distributed without interruption throughout this prospectus renewal period;
6. the Funds are currently sold only to investors as part of a discretionary management service provided by the Filer or its affiliates;
7. the Filer intends to implement changes to the names and investment strategies of certain Funds and to the manner in which it uses the Funds to manage the investments of its clients;
8. the Filer also intends to cease offering the Ceasing Funds under the Simplified Prospectus by December 7, 2009 (together with the changes in representation 7, the Proposed Changes);
9. the Proposed Changes require changes to the recordkeeping and trade processing systems used by the Filer with respect to the Funds and these changes are expected to be completed by December 7, 2009;
10. in addition the Filer intends to offer two new funds, the HSBC Global Inflation Linked Bond Pooled Fund and the HSBC Emerging Markets Pooled

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Fund (together, the New Funds); in order to provide the maximum possible time for the two new funds to qualify as “mutual fund trusts” under the *Income Tax Act* (Canada) the Filer intends to establish the New Funds on or after December 15, 2009;

11. in order to avoid any potential confusion on the part of investors in the Funds, the Filer intends to prepare a new Simplified Prospectus and Annual Information Form reflecting the Proposed Changes; the granting of the Exemptive Relief Sought would also allow the Filer to incorporate the New Funds into the new Simplified Prospectus, which would avoid the costs of having to qualify the New Funds under a separate simplified prospectus and then subsequently having to incur the additional cost associated with adding the New Funds to the Simplified Prospectus at the time of the next Simplified Prospectus renewal in December 2010;
12. in the absence of this order, section 2.5 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and section 62 of the *Securities Act* (Ontario) would require that the Funds file a final simplified prospectus and annual information form by December 1, 2009 and receive a final receipt by December 11, 2009;
13. since November 21, 2008, the date of the Simplified Prospectus and Annual Information Form, no undisclosed material change has occurred in respect of the Funds; accordingly, the Simplified Prospectus and Annual Information Form present up to date information regarding the Funds; the extension requested will not affect the currency or accuracy of the information contained in the Simplified Prospectus and Annual Information Form, and accordingly, would not be prejudicial to the public interest;
14. unless the Exemptive Relief Sought is granted, the Simplified Prospectus and Annual Information Form must be filed six days before the date of the Proposed Changes and fourteen days prior to the anticipated date for the establishment of the New Funds; requiring the Funds to file a simplified prospectus and annual information form and then amend the simplified prospectus and annual information form to reflect the Proposed Changes, and prepare a new simplified prospectus and annual information form in connection with the New Funds, within such a short period of time, would lead to increased costs borne by the Funds and the New Funds (and ultimately by investors in the Funds and the New Funds) and potentially lead to investor confusion.

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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 Exemptive Relief Sought is granted.

Andrew S. Richardson, CA
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British Columbia Securities Commission

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Appendix “A”

HSBC Pooled Funds

HSBC Canadian Money Market Pooled Fund
HSBC Mortgage Pooled Fund
HSBC Canadian Bond Pooled Fund
HSBC International Bond Pooled Fund
HSBC U.S. High Yield Bond Pooled Fund
HSBC Canadian Dividend Income Pooled Fund
HSBC Canadian Equity Pooled Fund
HSBC Canadian Small Cap Equity Pooled Fund
HSBC U.S. Equity Pooled Fund
HSBC International Equity Pooled Fund
HSBC MM Canadian Bond Pooled Fund
HSBC MM Canadian Value Equity Pooled Fund
HSBC MM Canadian Growth Equity Pooled Fund
HSBC MM Canadian Small Cap Equity Pooled Fund
HSBC MM U.S. Value Equity Pooled Fund
HSBC MM U.S. Growth Equity Pooled Fund
HSBC MM U.S. Small/Mid Cap Equity Pooled Fund
HSBC MM International Value Equity Pooled Fund
HSBC MM International Growth Equity Pooled Fund