



Citation: 2013 BCSECCOM 109

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**Headnote**

Multilateral Instrument 11-102 – *Passport System* – Securities Act s. 48 Adviser – Exemption from s. 34(b) requirement to be registered as an adviser – A person who resides outside of BC wants to advise BC residents – The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person.

**Applicable Legislative Provisions**

Securities Act, R.S.B.C. 1996, c. 418, s. 34(b) and 48

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  
State Street Global Advisors, Ltd.  
(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 the adviser registration requirement contained in the Legislation to be registered as an adviser does not apply to advisory services provided to the Filer by State Street Bank and Trust Company and SSgA Funds Management, Inc., which act as sub-

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advisers to the Filer (the Sub-advisers) by providing portfolio management services for the benefit of the Filer and its clients (Clients), including segregated accounts and pooled funds managed by the Filer (the Exemption 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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (together with the Jurisdiction, the Filing Jurisdictions).

### **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.

In addition, in this decision, the following terms have the following meanings:

- (a) NI 31-103 means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*; and
- (b) U.S. Advisers Act means the *United States Investment Advisers Act of 1940*.

### **Representations**

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

1. The Filer is a corporation incorporated under the federal laws of Canada with its head office located in Montreal, Québec.
2. The Filer is registered under securities legislation as a portfolio manager and exempt market dealer in Québec, Ontario and each of the Filing Jurisdictions. The Filer is also registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador, as a derivatives portfolio manager in Québec and as a commodity trading counsel and manager under the *Commodity Futures Act* (Ontario) and as an adviser under the *Commodity Futures Act* (Manitoba).



3. The Filer is not in default of securities legislation in any of the jurisdictions of Canada.
4. While the Autorité des marchés financiers (AMF) is ordinarily the principal regulator for the Filer, exemptive relief is not required in Québec or Ontario (the jurisdiction with which the Filer has the next most significant connection) and the British Columbia Securities Commission has been chosen as the principal regulator for the application on the basis that it is the jurisdiction in which the Filer is seeking exemptive relief and with which the Filer has the most significant connection outside of Québec and Ontario.
5. The Filer and State Street Bank and Trust Company (SSBTC) are wholly owned subsidiaries of State Street Corporation.
6. SSBTC provides advice in respect of securities to institutional clients and SSgA Funds Management, Inc. (SSGA FM), an affiliate of SSBTC, provides advice to institutional clients in respect of futures, options on futures and swaps.
7. The head office of each of the Sub-advisers is in Boston, Massachusetts. The Sub-advisers are qualified to provide portfolio management services under applicable laws in the jurisdiction where the Sub-advisers' head office is located. The Sub-advisers will not be residents of Canada.
8. SSBTC is a bank regulated in the conduct of its investment advisory business by the U.S. Federal Reserve Board and the Commonwealth of Massachusetts Commissioner of Banks and is a bank within the meaning of the U.S. Advisers Act. As such, it is not subject to the U.S. Advisers Act as the definition of an "Investment Adviser" under the U.S. Advisers Act, excludes "a bank, or any bank holding company as defined in the Bank Holding Act of 1956".
9. SSBTC has taken all necessary steps in Québec, Ontario and the Filing Jurisdictions to be able to offer its services, and currently does offer its services, to Canadian permitted clients (within the meaning of NI 31-103) in respect of foreign securities (within the meaning of NI 31-103) in reliance on the exemption for international advisers in section 8.26 of NI 31-103.
10. SSGA FM is registered as an Investment Adviser under the U.S Advisers Act and with the United States Commodity Futures Trading Commission as a Commodity Trading Adviser and provides trading advice services to its clients in respect of futures, options on futures and swaps traded on a U.S. exchange and/or with a U.S. counterparty.



11. The Sub-advisers currently act as sub-advisers to the Filer in the provinces of Québec and Ontario with respect to securities.
12. The Sub-advisers are not required to register as an adviser under the securities legislation of Québec as the terms of the Investment Management Agreements (as defined below) and the Sub-advisory Agreements (as defined below) with the Filer bring the Sub-advisers within the general exemption from registration granted by the AMF on December 18, 2009, with effect on December 28, 2009.
13. The Sub-advisers are not required to register as an adviser under the securities legislation of Ontario as the terms of the Investment Management Agreements and the Sub-advisory Agreements with the Filer bring the Sub-advisers within the exemption from registration in section 7.3 of Ontario Securities Commission Rule 35-502 – *Non-Resident Advisers*.
14. The Filer proposes to offer portfolio management services to Clients resident in the Filing Jurisdictions who will require the use of the expertise of the Sub-advisers.
15. Each Client has, or will, enter into an investment management agreement (Investment Management Agreement) with the Filer which:
  - (a) provides the Filer with complete discretionary authority to purchase and sell securities on behalf of the Client, and
  - (b) authorizes the Filer to retain portfolio managers to invest all or a portion of the assets in a Client's account (Portfolio).
16. The Filer has entered, or will enter, into an agreement (Sub-Advisory Agreement) with each Sub-adviser that sets out the obligations and duties of each party in connection with the investment services provided to the Clients, and provides the Sub-advisers with discretionary authority over the Portfolios.
17. A Client must obtain all advice and information and give all instructions and directions through the Filer and may meet with the Sub-advisers only if an advising representative of the Filer registered in the Filing Jurisdiction where the Client is resident, is present at all times.
18. Clients are charged by the Filer for the portfolio management services under the Investment Management Agreement, and the Filer is responsible for the fees payable to the Sub-advisers.



19. The Filer has assumed, or will assume, responsibility to Clients for any loss arising out of the failure of a Sub-adviser:
- (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client for whose benefit the portfolio management services are to be provided; or
  - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances
- (collectively, Assumed Obligations),
- and the Filer has or will acknowledge that it cannot be relieved by Clients from this responsibility.
20. The Sub-advisers providing portfolio management services with respect to the assets of Clients would be considered to be acting as an “adviser” within the meaning of the Legislation, and in the absence of the Exemption Sought, would be required to register as an adviser under the Legislation.

#### **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 Exemption Sought is granted provided that:

- (a) the Filer is registered in good standing under the Legislation in a category that permits it to provide portfolio management services;
- (b) the obligations and duties of a Sub-adviser are set out in a written agreement between the Sub-adviser and the Filer;
- (c) the Filer agrees to be responsible to each Client for the Assumed Obligations and that the Filer cannot be, and at no time is, relieved by the Client from the Filer’s responsibility for the Assumed Obligations;
- (d) the Sub-advisers will not have any direct contact with a Client in connection with the provision of portfolio management services unless a representative of the Filer, duly registered as an advising representative in the jurisdiction where the Client is resident, is present at all times, either in person or by telephone;



- (e) the Sub-advisers are legally permitted to provide discretionary portfolio management services under the applicable laws of the foreign jurisdiction in which the Sub-advisers' head office is located; and
- (f) for each Filing Jurisdiction, this decision will terminate 90 days after the coming into force of any rule, regulation or blanket order or ruling under the securities legislation of the Filing Jurisdiction that provides an equivalent exemption.

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