

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 81-102 *Investment Funds* – An investment fund manager seeks approval of a transaction, including a tax advantaged structure such as a qualifying disposition, under the approval requirements of section 5.5(1)(b) of NI 81-102 - Securityholders are provided with timely and adequate disclosure regarding the transaction; applicant’s independent review committee has provided its recommendation that the qualifying disposition will achieve a fair and reasonable result for the funds.

Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, s. 5.5(1)(b)

April 1, 2021

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

HSBC U.S. Equity Pooled Fund
(the Pooled Fund)

and

HSBC U.S. Equity Index Fund
(the Index Fund, and with the Pooled Fund, the 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, on behalf of the Funds, for a decision under the securities legislation of the Jurisdictions (the Legislation) approving, pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (NI 81-102), a transaction transferring assets from the Pooled Fund to the Index Fund by way of a Qualifying Disposition (as defined below) where the transaction will result in certain securityholders of the Pooled Fund becoming securityholders of the Index Fund (the Exemption 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 each of the other provinces and territories of Canada; 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* or MI 11-102 have the same meanings if used in this decision, unless otherwise defined herein.

Representations

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

The Filer and the Funds

1. the Filer is a corporation organized under the laws of Canada; the head office of the Filer is located in Vancouver, British Columbia;
2. the Filer is registered as an investment fund manager in British Columbia, Ontario, Québec, and Newfoundland and Labrador, as a portfolio manager in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland and Labrador, and as an exempt market dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, and the Northwest Territories;
3. the Filer is the investment fund manager and principal portfolio advisor of each of the Funds;
4. each of the Funds is an open-ended mutual fund trust established under the laws of the Province of British Columbia;

5. the securities of the Funds are qualified for distribution pursuant to a simplified prospectus and annual information form prepared and filed in accordance with the securities legislation of each jurisdiction of Canada;
6. each of the Funds is a reporting issuer under the applicable securities legislation of each jurisdiction of Canada;
7. the Pooled Fund qualifies as a mutual fund trust under the *Income Tax Act* (Canada) (the Tax Act);
8. the Index Fund is expected to qualify as a mutual fund trust under the Tax Act;
9. the Filer and each of the Funds is not in default of securities legislation in any jurisdiction of Canada;

The Proposed Qualifying Disposition

10. the Pooled Fund is currently offered exclusively to investors who have entered into a discretionary investment management agreement with the Filer or one of its affiliates;
11. the Filer has determined that it would be advantageous to reinvest the assets held by certain investors in units of the Pooled Fund (the Exchanging Unitholders) in units of the Index Fund in order to incorporate a passively managed index fund into the portfolios of the Exchanging Unitholders;
12. the Filer has discretionary authority to invest the assets of the Exchanging Unitholders in mutual funds managed by the Filer, including the Funds;
13. it is anticipated that simply redeeming the units of the Pooled Fund held by the Exchanging Unitholders and using the redemption proceeds to subscribe for units of the Index Fund (a Redemption Transaction) would cause the realization of significant capital gains by some of the Exchanging Unitholders and would result in significant transaction costs for the Pooled Fund and the Index Fund;
14. to avoid such consequences, the Filer intends to carry out a “qualifying disposition” from the Pooled Fund to the Index Fund under section 107.4 of the Tax Act (the Qualifying Disposition) which exempts a transfer of property between trusts from being a taxable event for the transferor trust and its unitholders (essentially allowing for a pro rata partition of a trust on a tax-deferred basis);
15. an Advance Income Tax Ruling (Ruling 2018-0778961R3 – *Partial transfer to new funds*) was issued by the Canada Revenue Agency (the CRA) in 2018 in connection with a transaction similar to the proposed Qualifying Disposition;

16. certain amendments to the amended and restated trust indenture for the HSBC Pooled Funds (the Trust Indenture) are required to permit the Filer to effect the Qualifying Disposition, which amendments will be implemented with notice to the unitholders of the HSBC Pooled Funds in accordance with the amendment provisions of the Trust Indenture prior to the date of the Qualifying Disposition;
17. the Filer believes that the Qualifying Disposition is in the best interests of Exchanging Unitholders and the Qualifying Disposition is not expected to have any material impact on the other unitholders of the Pooled Fund;
18. the consent of each Exchanging Unitholder will be provided by the Filer in accordance with its discretionary trading authority under its investment management or other agreement with each of the Exchanging Unitholders;
19. Exchanging Unitholders will receive notice of the allocation to the Index Fund and the Fund Facts of the Index Fund;
20. the steps to carry out the Qualifying Disposition are as follows:
 - (a) the Filer has subscribed for one unit in the Index Fund for nominal consideration;
 - (b) on the day (the Valuation Date) which is immediately prior to the day of the Qualifying Disposition (the Effective Date), the Pooled Fund will make payable to its unitholders a distribution in an amount equal to the net income of the Pooled Fund and any capital gains realized by the Pooled Fund in the period from December 16, 2020 (the first day of the current financial year of the Pooled Fund) to the Valuation Date;
 - (c) the asset value (Asset Value) of the Pooled Fund will be determined on the Effective Date;
 - (d) based on the Asset Value, the Pooled Fund will determine the relative value attributable to the units (the Exchange Units) that will be surrendered by Exchanging Unitholders in connection with the Qualifying Disposition (the Transfer Percentage);
 - (e) on the Effective Date, the Pooled Fund will transfer to the Index Fund the percentage of each asset held by the Pooled Fund equal to the Transfer Percentage; if and as necessary, the Pooled Fund will take advantage of the provisions of subsection 107.4(2.1) of the Tax Act to avoid the need to transfer a fractional share to the Index Fund where this will not be feasible; if there are assets held by the Pooled Fund that cannot be transferred at the Transfer Percentage and the Pooled Fund is not able to take advantage of the provisions of subsection 107.4(2.1) of the Tax Act for such assets, the Pooled Fund will consider disposing of these prior to the Effective Date such that the Transfer Percentage for such assets of the Pooled Fund will equal a whole number of shares;
 - (f) each Exchanging Unitholder will surrender their Exchange Units to the Pooled Fund for no consideration and those units will be cancelled;

- (g) the Index Fund will issue new units to the Exchanging Unitholders having the same attributes and value as the surrendered Exchange Units (the New Units); and
 - (h) the Index Fund will redeem the initial unit issued to the Filer for its nominal subscription price;
21. the Exchange Units represent a portion of the units in the Pooled Fund held by Exchanging Unitholders before the completion of the Qualifying Disposition; upon completion of the Qualifying Disposition, Exchanging Unitholders will continue to hold units of the Pooled Fund, as well as the New Units; and

Approval by the IRC

22. the Filer has referred the Qualifying Disposition to the Independent Review Committee (IRC) of the Funds pursuant to section 5.1 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) and the IRC has provided its recommendation that the Qualifying Disposition will achieve a fair and reasonable result for the Funds.

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 Exemption Sought is granted.

Peter J. Brady
Executive Director
British Columbia Securities Commission