



Citation: 2021 BCSECCOM 129

## Settlement Agreement

### HSBC Global Asset Management (Canada) Limited

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and HSBC Global Asset Management (Canada) Limited (GAM Canada) agree as follows:

#### **Agreed Statement of Facts**

##### ***Background***

1. GAM Canada is a British Columbia registered portfolio manager, investment fund manager, and exempt market dealer that has been registered with the Commission since 1981. It is one of a number of different subsidiaries and affiliates in 64 countries and territories that make up the HSBC Group.
2. During the relevant period, GAM Canada was the Manager, Trustee, primary Investment Advisor, and Registrar for 25 HSBC branded, prospectus based, mutual funds with combined assets of approximately \$11 billion (the Funds). The Funds' Simplified Prospectus stated that 14 of the Funds were suitable for investors with long-term investment time horizons.
3. HSBC Investment Funds (Canada) Inc. was the principal distributor of the Funds. Unaffiliated third-party dealers (TPDs) also distributed the Funds. The TPDs were authorized, pursuant to distribution agreements (Dealer Agreements), to buy and sell units of the Funds on behalf of their own clients, who became unitholders, when they acquired units of the Funds.
4. In 2012, GAM Canada and other entities within the HSBC Group began to implement a set of financial crime compliance global standards (the Global Standards). The Global Standards required each of HSBC's business lines of Global Banking, Commercial Banking, Private Banking, Retail Banking and Wealth Management, to develop a consistent governance framework and oversight worldwide. TPDs were required to be aligned to the requirements and processes set out in the Global Standards.

##### ***Misconduct***

##### **Redemption of select units**

5. Considering the implementation of Global Standards, in 2014, GAM Canada determined that certain TPDs (the Identified Dealers) no longer aligned with its overall strategic focus. It therefore decided to terminate the Dealer Agreements it had



with the Identified Dealers, in accordance with the terms and conditions of those agreements. Concurrent with those terminations, GAM Canada required the clients of the Identified Dealers (the Impacted Unitholders) to redeem their Fund units (the Required Redemptions).

6. The termination of Dealer Agreements and Required Redemptions took place in two tranches in 2014 and 2016. The majority of redemptions occurred in the first tranche and all redemptions had been completed by June 2016. The total market value of the Required Redemptions was approximately CAD \$21.9 million in 1,042 accounts at 51 TPDs. The Impacted Unitholders held less than 0.60% of the outstanding units of the Funds.
7. GAM Canada provided the Identified Dealers with at least 60 days' notice of the termination of the Dealer Agreements and the Required Redemptions. It relied on the Identified Dealers to inform the Impacted Unitholders about the Required Redemptions and to redeem the units before the termination of the Dealer Agreements. In those cases where they did not redeem by the termination date, GAM Canada redeemed the units and deposited all proceeds from the redemptions into each Impacted Unitholder's TPD account.

#### Impact on Unitholders

8. The Required Redemptions deprived Impacted Unitholders of the option to continue to hold the security that they purchased. This was unfair to those who had purchased the Funds relying on GAM Canada's disclosure that they were suitable for investors with long term investment time horizons.
9. The Required Redemptions may have also caused financial harm to certain Impacted Unitholders who:
  - (a) incurred investment losses when the redemptions crystallized unrealized losses that might have been avoided if the units were held longer term;
  - (b) incurred unanticipated tax consequences from capital gains triggered by the redemptions in non-registered accounts;
  - (c) lost investment opportunities because they were not invested for a period of time before being made aware of the redemptions; and
  - (d) faced potential re-acquisition costs to acquire suitable replacement securities.
10. As a result of the above activity, GAM Canada failed to deal fairly with the Unitholders, and therefore contravened section 14 of the Securities Rules.



***Factors relevant to settlement***

11. GAM Canada did not profit or receive an economic advantage from the Required Redemptions. Rather, its actions were initiated in good faith with a view to advancing the Global Standards which GAM Canada believed to be in the best interests of the Funds.
12. GAM Canada cooperated with British Columbia Securities Commission staff during and after the compliance examination and agreed to make early admissions with respect to the above-noted misconduct.
13. GAM Canada has committed to identifying the Impacted Unitholders who suffered financial harm as a result of the Required Redemptions and paying damages to those Impacted Unitholders (the Impacted Unitholder Compensation).

***Undertaking***

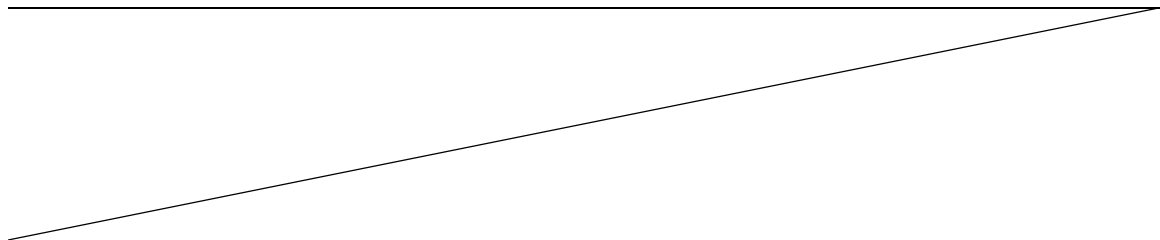
14. GAM Canada undertakes to pay a total of \$1,050,000 in respect of settlement of this matter as follows:
  1. GAM Canada will immediately pay \$350,000 to the British Columbia Securities Commission (Commission).
  2. GAM Canada will set aside \$700,000 to pay the Impacted Unitholder Compensation. It has identified approximately \$625,000 in Impacted Unitholder Compensation to be paid to approximately 750 accounts, and will, on or before December 31, 2021, report to the Commission how much Impacted Unitholder Compensation it has paid and the balance of the funds set aside, but not paid for Impacted Unitholder Compensation, will be paid to the Commission.

***Public Interest***

15. In light of all the circumstances, including the undertakings provided by GAM Canada in paragraph 14, it is not in the public interest to issue orders under section 161 of the *Act* against GAM Canada.

***Waiver***

- ¶ 2 GAM Canada waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.





**Counterpart**

¶ 3 This Settlement Agreement may be signed in counterpart and all such counterparts of signed copies, whether delivered electronically or otherwise, shall be read or construed together as if they formed one originally executed document.

¶ 4 April , 2021

*2021.04.19 17:30:11 -04'00'*  
*Marc Cevey Chief Executive*  
*Officer*  
*HSBC Global Asset*  
*Management (Canada) Ltd.*

¶ 5 \_\_\_\_\_  
HSBC Global Asset Management  
(Canada) Limited  
(per \_\_\_\_\_ )  
                  Signing Authority )

\_\_\_\_\_ )  
Witness Signature )

\_\_\_\_\_ )  
Witness Name (please print) )

\_\_\_\_\_ )  
\_\_\_\_\_ )  
Address )

\_\_\_\_\_ )  
Occupation )

¶ 6 April , 2021

*Peter J Brady*  
*Apr 21 2021 10:08 AM -07:00*

¶ 7 Peter J. Brady  
Executive Director