

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* –

1996 *Securities Act* s. 84 – *Prospectus Delivery Relief* - A registered dealer, or a fund manager on behalf of a registered dealer, wants relief from the requirement to deliver a prospectus - The dealer offers a model portfolio service; the dealer retains the portfolio manager to invest client monies in accordance with the client's selected model portfolio; clients receive express disclosure that the portfolio manager will be providing discretionary investment management services in connection with rebalancing activities and additional investments; for existing asset classes, the portfolio manager selects new funds with investment objectives and strategies that are consistent with that asset class; the portfolio manager agrees to exercise its power and carries out its duties and obligations in relation to the model portfolio service fairly, honestly and in good faith; the dealer reassesses on a periodic basis whether the selected model portfolio remains suitable for each client invested in it; no management fees are charged to the funds in the model portfolio

National Instrument 81-101 *Mutual Fund Prospectus Disclosure* – s.6.1 – *Fund Facts Document Delivery Relief* - A registered dealer, or a fund manager on behalf of a registered dealer, wants relief from the requirement to deliver a fund facts document (Fund Facts) - Specifically, the Filers seek relief in connection with portfolio rebalancing transactions and additional investments conducted pursuant to its model portfolio service, from the requirement in section 3.2.01 of NI 81-101 to deliver the most recently filed Fund Facts (i) for subsequent purchases of securities of a selected fund due to rebalancing transactions; (ii) where a fund was previously included as part of a selected model portfolio, was subsequently reduced to a 0% allocation, and is being purchased again with the selected model portfolio (“re-purchase scenario”); and (iii) where a fund not included as part of a selected model portfolio is added to and purchased for the selected model portfolio as part of an existing asset class comprising the portfolio (“existing asset class scenario”)- Investors that invest in a model portfolio service will (i) before initial investment, receive the fund facts for the funds that may comprise the selected model portfolio; (ii) receive the applicable fund facts for a new fund not included as part of a selected model portfolio that is added to and purchased for the selected as part of an existing asset class concurrently with delivery of the quarterly account statement sent to the client following the purchase; (iii) receive a notice that they will not receive a fund facts document with subsequent purchases of existing funds in the model portfolio unless they request delivery, that they do not have a withdrawal right for subsequent purchases of existing funds but continue to have a misrepresentation right, and that they may terminate their investment at any time; and (iv) receive an annual notice indicating how to request the fund facts document

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 84

National Instrument 81-101 *Mutual Fund Prospectus Disclosure* s. 6.1

July 11, 2018

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 Investment Funds (Canada) Inc.
(HIFC)

and

In the Matter of
HSBC Global Asset Management (Canada) Limited
(AMCA, and together with HIFC, the Filers)

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each the Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filers from:

- (a) in each Jurisdiction, the requirement (the Fund Facts Delivery Requirement) contained in section 3.2.01 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) to send or deliver the most recently filed fund facts document (the Fund Facts) for the applicable class or series of securities of a mutual fund in the manner prescribed therein (the Fund Facts Delivery Exemption Sought); and
- (b) in British Columbia, the requirement (the Prospectus Delivery Requirement) under the Legislation to send the latest prospectus filed or required to be filed, and any amendment to that prospectus filed or required to be filed, in the manner prescribed therein (the Prospectus Delivery Exemption Sought),

in respect of purchases of securities of the Funds (defined below) made pursuant to the Product (defined below) (i) as part of the Auto Rebalancing Activities (defined below), (ii) as part of the

Strategic and Tactical Rebalancing Activities (defined below), or (iii) in connection with Additional Investments (defined below).

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 in respect of the Fund Facts Delivery Exemption Sought;
- (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, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the Other Jurisdictions) in respect of the Fund Facts Delivery Exemption Sought; and
- (c) the decision in respect of the Fund Facts Delivery Exemption Sought is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

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 in respect of the Prospectus Delivery Exemption Sought; and
- (b) the Filer has provided notice that section 4.7(1) of MI 11-102 is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, and Newfoundland and Labrador in respect of the Prospectus Delivery Exemption Sought.

Interpretation

- ¶ 2 Terms defined in NI 81-101, 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 Filers:

The Filers

1. HIFC is a corporation organized under the laws of Canada; HIFC is registered in each of the provinces of Canada, except Prince Edward Island, as a dealer in the category of mutual fund dealer and is a member of the Mutual Fund Dealers' Association of Canada;
2. the head office of HIFC is in Vancouver, British Columbia;
3. AMCA is a corporation organized under the laws of Canada; AMCA is registered as an investment fund manager, a portfolio manager and an exempt market dealer in British Columbia, Ontario, Newfoundland and Labrador and Québec, as a portfolio manager and an

exempt market dealer in Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia, and as an exempt market dealer in the Northwest Territories;

4. the head office of AMCA is in Vancouver, British Columbia;
5. HIFC is a wholly owned subsidiary of AMCA, and AMCA is a wholly owned subsidiary of HSBC Bank Canada;
6. except as described in representation 25 below, neither HIFC nor AMCA are in default of securities legislation in any jurisdiction of Canada;
7. in decisions of the British Columbia Securities Commission and the Ontario Securities Commission each dated December 23, 2011, AMCA was granted relief from the dealer registration requirement in relation to certain trades in securities made in connection with the Product and HIFC was granted relief from the adviser registration requirement in relation to certain activities carried out by AMCA in connection with the Product;

HSBC World Selection Portfolio Service

8. HIFC's registered dealing representatives offer investments under the HSBC World Selection Portfolio service (the Product) to their clients;
9. the Product consists of a number of model portfolios, which together occupy successive portions of the risk-return spectrum from conservative, income-maintenance investing to aggressive growth investing; each model portfolio is comprised of securities of a selection of mutual funds (Funds);
10. if a client is interested in the Product, the client completes a risk rated profile form questionnaire (the Form) that produces a score/client risk profile and recommends a suitable model portfolio based on the client's risk profile; the Form is used by HIFC as a "know your client" form, to obtain information that enables HIFC to consider the client's financial circumstances, investment knowledge, investment objectives, time horizon and risk tolerance, and thereby assist in determining an appropriate model portfolio for the client; based on the score of the Form and information provided in the Form, HIFC recommends one of the model portfolios (explained below) as suitable for the client; the client can either select the recommended or an alternative model portfolio;
11. if a client decides to invest using the Product, the client receives a description of the model portfolio selected by the client (the Selected Model Portfolio); the description provides information on the Selected Model Portfolio's Asset Classes (defined below), Permitted Ranges (defined below) and Benchmark Weights (defined below); the client also receives the Fund Facts for the funds that may comprise the Selected Model Portfolio, including (i) all Funds that are included as part of the Selected Model Portfolio at the time of account opening, and (ii) any fund previously included as part of the Selected Model Portfolio that the Filers reasonably expect may be re-purchased as a New Fund (defined below) under the

Re-purchase Scenario (defined below); the client then completes an account application and enters into an account agreement (Account Agreement) with HIFC;

12. the Account Agreement authorizes HIFC to retain AMCA to invest client monies in accordance with the terms of the Account Agreement and the client's Selected Model Portfolio; clients receive express disclosure that AMCA will be providing discretionary investment management services in connection with the Auto Rebalancing Activities, Strategic and Tactical Rebalancing Activities and Additional Investments; clients also receive express disclosure that their relationship is with HIFC and not AMCA, and that HIFC and not AMCA is responsible for determining or confirming the suitability of each client's Selected Model Portfolio;
13. under the terms of the agreement between HIFC and AMCA in relation to the Product, AMCA agrees to exercise its power and carries out its duties and obligations in relation to the Product fairly, honestly and in good faith, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
14. consistent with its ongoing suitability obligations, HIFC reassesses whether the Selected Model Portfolio remains suitable for each client invested in the Product on a periodic basis;
15. the Account Agreement can be terminated by a client at any time by providing written notice to HIFC;

The Model Portfolios

16. each model portfolio is comprised of different asset classes (the Asset Classes) which are determined by AMCA in its sole discretion; the current Asset Classes that may comprise a model portfolio are cash, fixed income, domestic equity, foreign equity and other; AMCA sets a permitted range for each Asset Class (Permitted Range), being a minimum and maximum percentage of the model portfolio that can be allocated to investments of a particular Asset Class; in addition to determining the Asset Classes and Permitted Range for each model portfolio, AMCA also determines the benchmark weight (Benchmark Weight) for each Asset Class, representing the target percentage weight within the Permitted Range, and adjusts that percentage at its discretion;
17. the model portfolios are currently comprised of units of the HSBC Pooled Funds; the model portfolios may, from time to time, include units of the HSBC Mutual Funds and/or securities of other mutual funds (defined above as Funds); the HSBC Pooled Funds and the HSBC Mutual Funds are both families of mutual funds managed by AMCA; each of the HSBC Pooled Funds and HSBC Mutual Funds used in connection with the Product will be qualified under a simplified prospectus that has been filed in one or more of the Jurisdictions and the Other Jurisdictions and will be subject to National Instrument 81-102 Investment Funds (NI 81-102); similarly, any other Fund that is used in connection with the Product will be qualified under a simplified prospectus that has been filed in one or more of the Jurisdictions and the Other Jurisdictions and will be subject to NI 81-102;

18. investments comprising a model portfolio may be changed at any time at the discretion of AMCA and in certain circumstances (as further explained below), without prior notice to the affected clients, provided the model portfolio continues to meet its investment objectives and risk tolerance; this includes adding or removing a Fund from the model portfolio, changing the percentage weight assigned to a Fund in the model portfolio and changing the Benchmark Weight for an Asset Class; in addition, the Asset Classes and Permitted Range within a model portfolio may be changed, provided the affected clients receive 60 days' advance written notice of the change and such change is consistent with the applicable investment objectives and risk tolerance (the Asset Class/Permitted Range Change Notice);

Client Account Trades

19. a client's account will be periodically rebalanced through a series of purchase and redemption trades effected by AMCA; if the percentage weight of at least one of the Asset Classes in the Selected Model Portfolio exceeds or falls below the Permitted Range, AMCA will carry out the trades on behalf of all clients invested in the Selected Model Portfolio to bring the Asset Classes of the Selected Model Portfolio within the Permitted Range; these trades are referred to herein as the Auto Rebalancing Activities;
20. in addition to the Auto Rebalancing Activities described above, AMCA will formally review the model portfolios on a periodic basis (currently annually) and will monitor the model portfolios on some other more frequent periodic basis (currently monthly), and may make changes to the model portfolios to ensure consistency with their respective stated objectives and risk tolerance and to take advantage of market conditions and trends; changes to a model portfolio may involve changes to the Benchmark Weight for an Asset Class, changes to the Funds comprising the model portfolio (including the addition of one or more Funds not previously included in the model portfolio) and changes to the weight of each Fund in the model portfolio; all changes carried out by AMCA as described above will be done on discretionary basis and in a manner consistent with the stated objectives of the model portfolios; in connection with its responsibilities under the Product, AMCA will carry out the purchase and redemption trades in the Funds that are necessary and incidental in connection with modifying the model portfolios; these activities are referred to herein as the Strategic and Tactical Rebalancing Activities;
21. clients may, from time to time, contribute additional funds to their accounts with HIFC for investment in Funds through the Product; amounts so contributed will be applied by AMCA towards the purchase of additional securities of the Funds on a discretionary basis consistent with the Selected Model Portfolio (Additional Investments);
22. Auto Rebalancing Activities, Strategic and Tactical Rebalancing Activities, and Additional Investments may involve (a) the purchase of additional securities of Funds held in the client's account at the time of the purchase, and/or (b) the purchase of securities of Funds not held in the client's account at the time of the purchase (Funds not held in the client's account at the time of the purchase, New Funds);
23. the purchase of securities of a New Fund may occur in the following circumstances:

- (a) where a Fund was previously included as part of a Selected Model Portfolio but was subsequently reduced to a 0% allocation within the Selected Model Portfolio and is being purchased again within the Selected Model Portfolio (a Re-purchase Scenario);
 - (b) where a Fund not then included as part of a Selected Model Portfolio is added to and purchased for the Selected Model Portfolio as part of an existing Asset Class comprising the portfolio (an Existing Asset Class Scenario); and
 - (c) where a Fund not then included as part of a Selected Model Portfolio is added to and purchased for the Selected Model Portfolio in connection with the addition of a new asset class to the portfolio (a New Asset Class Scenario);
24. HIFC provides each client with the applicable Fund Facts for any New Fund that is purchased on behalf of the client under the New Asset Class Scenario, concurrently with delivery of the related Asset Class/Permitted Range Change Notice to the client;
25. since May 30, 2016, the Fund Facts Delivery Requirement has required pre-sale delivery of the applicable Fund Facts to a client where securities of a New Fund are purchased by AMCA on behalf of the client pursuant to the Product; notwithstanding the foregoing, in one circumstance in July 2016 where AMCA purchased securities of a New Fund on behalf of certain clients pursuant to the Product as part of Strategic and Tactical Rebalancing Activities and in connection with a Re-purchase Scenario, the applicable Fund Facts for the Fund was not provided to the clients prior to the purchase of the securities of the New Fund; instead, the applicable Fund Facts was provided to the clients by HIFC with the clients' next quarterly account statement following the purchase; this approach was taken on the basis that the clients' accounts are discretionarily managed and therefore delivery of the Fund Facts to the clients in accordance with the Fund Facts Delivery Requirement is not required;

Fund Facts and Prospectus Delivery

26. in accordance with the Fund Facts Delivery Requirement, a dealer must, unless the dealer has previously done so, deliver to a purchaser of a security of a fund the most recently filed fund facts for the applicable security of the fund before the dealer accepts an instructions from the purchaser for the purchase of the security;
27. in accordance with the Prospectus Delivery Requirement, a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution in respect of which a prospectus is required must, subject to regulations, send to the purchaser the latest prospectus filed or required to be filed, with respect to the security, and any amendment to that prospectus, filed or required to be filed (i) before entering into the written confirmation of the agreement of purchase and sale resulting from the order or subscription, or (ii) not later than midnight on the second business day after entering into the agreement;
28. under NI 81-101, the Prospectus Delivery Requirement does not apply if the Fund Facts Delivery Requirement is complied with;

29. in the absence of the Fund Facts Delivery Exemption Sought and the Prospectus Delivery Exemption Sought, HIFC or AMCA may be required to deliver the most recently filed Fund Facts in accordance with the Fund Facts Delivery Requirement or, if the Fund Facts Delivery Requirement is not complied with, may be required to send a prospectus (and any amendment thereto) in accordance with the Prospectus Delivery Requirement, in respect of the purchase of securities of a Fund (i) as part of the of the Auto Rebalancing Activities, (ii) as part of the Strategic and Tactical Rebalancing Activities, and (iii) in connection with Additional Investments;

Decision

¶ 4 Each of the Decision Makers is satisfied that, in respect of the Fund Facts Delivery Exemption Sought, the decision meets the test set out in the Legislation for the Decision Maker to make the decision. The principal regulator is satisfied that, in respect of the Prospectus Delivery Exemption Sought, the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the Decision Makers under the Legislation is that the Fund Facts Delivery Exemption Sought is granted, and the decision of the principal regulator under the Legislation is that the Prospectus Delivery Exemption Sought is granted, in each case provided that:

- (a) HIFC provides each client with the applicable Fund Facts for the Funds that may comprise the Selected Model Portfolio before the client's initial investment through the Product;
- (b) prior to investing, clients receive express disclosure in their Account Agreement that AMCA will be providing discretionary investment management services in connection with the Auto Rebalancing Activities, Strategic and Tactical Rebalancing Activities and Additional Investments that involve the purchase and redemption of securities of the Funds from time to time consistent with the Selected Model Portfolio;
- (c) HIFC provides each client with the applicable Fund Facts for any New Fund that is purchased on behalf of the client under the Existing Asset Class Scenario, concurrently with delivery of the quarterly account statement sent to the client following the purchase;
- (d) each client that invests through the Product is sent or delivered a notice that states:
 - (i) that except as contemplated in paragraphs (a) and (c) above and representation 24, the client will not receive the Fund Facts for the Funds held in the Selected Model Portfolio from time to time, unless the client specifically requests them;
 - (ii) the client is entitled to receive upon request, at no cost to the client, the most recently filed Fund Facts for the Funds in the Selected Model Portfolio by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address;

- (iii) how to access the Fund Facts for the Funds in the Selected Model Portfolio electronically;
- (iv) except for New Funds that are purchased pursuant to the Existing Asset Class Scenario or the New Asset Class Scenario, the client will not have a right of withdrawal under applicable securities legislation for the purchase of securities of a Fund as part of the Auto Rebalancing Activities, the Strategic and Tactical Rebalancing Activities or Additional Investments where the applicable Fund Facts is not delivered to the client in accordance with the Fund Facts Delivery Requirement, but will continue to have a right of action if there is a misrepresentation in the prospectus or any document incorporated by reference into the prospectus; and
- (v) the client may terminate the Agreement at any time;
- (e) at least annually, each client will be advised in writing of how they can request the most recently filed Fund Facts;
- (f) the most recently filed Fund Facts will be sent or delivered to a client if the client requests it; and
- (g) no management fees are charged to the Funds.

Nigel Cave
Vice Chair
British Columbia Securities Commission