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December 23, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203
Process for Exemptive Relief Applications in Multiple Jurisdictions
1996 Securities Act s. 48 – Exemption order by commission or executive director
- exemption from s.34(a) requirement to be registered as a dealer to trade securities – a registered adviser requires relief from the dealer registration requirement so that it can directly trade securities for a registered dealer’s clients - a registered adviser has contracted with a registered dealer to provide discretionary investment services to the dealer’s clients - the client agrees that the dealer can retain the adviser to invest the client’s money as described in a model portfolio created by the adviser, including re-balancing from time to time so that the client’s portfolio stays true to the pre-established parameters of the model portfolio - the pre-established parameters cannot be changed without notice to the client - the dealer conducts know-your client reviews and provides suitability advice - the dealer will at all times be ultimately responsible to the client for the rebalancing activities undertaken by the adviser - the trades carried out by the adviser will be reflected in the dealer’s records and subject to oversight by the Mutual Fund Dealers Association (MFDA) - the MFDA Investor Protection Corporation (IPC) coverage will apply to the investments held in the client’s account with the dealer on the same terms as other mutual fund investments

Applicable British Columbia Provisions

1996 Securities Act s. 48 – Exemption order by commission or executive director
1996 Securities Act s.34(a) – Dealer registration requirement

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

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In the Matter of
HSBC Global Asset Management (Canada) Limited
(the Filer)

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 under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption relieving the Filer from the dealer registration requirement (the **Exemption Sought**) in respect of any trades in securities of the Funds (as defined below) in accordance with the investment decisions made by the Filer in its Auto Rebalancing Activities (as defined below) and Strategic and Tactical Rebalancing Activities (as defined below) in connection with the Product (as defined and described below) distributed by HSBC Investment Funds (Canada) Inc. (**HIFC**).

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 Filers have 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.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation continued under the laws of Canada, with its head office in Vancouver, British Columbia; the Filer is currently registered under applicable securities legislation in British Columbia as an investment fund manager and is registered in each of the provinces of Canada, except Prince Edward Island, as an adviser in the category of

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- portfolio manager and as a dealer in the category of exempt market dealer;
2. the Filer is not in default of securities legislation in any jurisdiction;
 3. 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 (the “**MFDA**”);
 4. the Filer and HIFC are affiliated entities;
 5. HIFC’s registered dealing representatives propose to offer investments in the “HSBC World Selection Portfolio” service (the “**Product**”) to their clients;
 6. the Product consists of a number of model portfolios, which together occupy successive portions of the investing spectrum from conservative, income-maintenance investing to aggressive growth investing. Each model portfolio is comprised of mutual funds. The model portfolios will be principally comprised of units of the HSBC Pooled Funds and HSBC Mutual Funds, each being a family of mutual funds managed by the Filer;
 7. any of the HSBC Pooled Funds or HSBC Mutual Funds that are used in connection with the Product will be qualified under a simplified prospectus that has been filed in one or more of the Jurisdictions; similarly, any other mutual fund that is used in connection with the Product (collectively with the HSBC Pooled Funds and HSBC Mutual Funds, the “**Funds**”) will be qualified under a simplified prospectus that has been filed in one or more of the Jurisdictions;
 8. if a client is interested in the Product, the client completes a risk rated profile form questionnaire (the “**Form**”) that produces a score and recommends a suitable model portfolio; 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 as suitable for the client; the client can either select the recommended or an alternative model portfolio;

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9. the client receives a description of the model portfolio selected by the client (the “**Selected Model Portfolio**”) in the Form; the description provides information on the Selected Model Portfolio’s Asset Classes (as defined below), Permitted Ranges (as defined below) and Benchmark Percentages (as defined below); the client also receives the simplified prospectus for the Funds which provides information about all of the Funds that may be used to comprise the Selected Model Portfolio; the client then completes an account application and enters into an account agreement (“**Account Agreement**”) with HIFC; the account application must be approved by the applicable Branch Manager of HIFC before the account is opened;
10. the client agrees to pay HIFC a quarterly fee outlined in the Account Agreement; fees could be changed from time to time, provided clients are given at least 60 days’ advance written notice; fees will be calculated based on the net asset value of assets held in each client’s account, subject to a minimum amount;
11. HIFC pays the Filer a management fee pursuant to an advisory agreement between HIFC and the Filer (the “**Advisory Agreement**”), no management fees will be charged by the Filer directly to the Funds or to the clients, in relation to the series or class of units of the Funds that are available under the Product; no sales charges or commissions will be payable by the client in respect of any Auto Rebalancing Activities (as defined below) or Strategic and Tactical Rebalancing Activities (as defined below), and each Fund will pay its own operating expenses; as a result, there will be no duplication of any fees between HIFC and the Filer; investors in the Funds who acquire units of the Funds outside the Product will not bear expenses attributable to the Product; HIFC will at all times be ultimately responsible to the client for the Auto Rebalancing Activities (as defined below) and the Strategic and Tactical Rebalancing Activities (as defined below) undertaken by the Filer;
12. the Account Agreement authorizes HIFC to retain the Filer, pursuant to the Advisory Agreement, to invest client monies in accordance with the terms of the Selected Model Portfolio; clients will receive express disclosure that the Filer will be providing discretionary investment management services in connection with the Auto Rebalancing Activities (as defined below) and Strategic and Tactical Rebalancing Activities (as defined below);

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13. pursuant to the Advisory Agreement, the Filer undertakes to develop and manage the model portfolios; each model portfolio is comprised of different asset classes (the “**Asset Classes**”) which are determined by the Filer in its sole discretion; the Filer allocates each Asset Class a permitted range (“**Permitted Range**”), being a minimum and maximum percentage of the model portfolio that can be allocated to investments of a particular Asset Class; the Filer can change the Permitted Range or the Asset Classes of a model portfolio, including adding a new Asset Class, or both, if the client is provided at least 60 days’ advance written notice of the change; the Filer’s actions will be carried out with a view to ensuring that the model portfolio continues to abide by the stated objectives;
14. the Filer manages the model portfolios on a discretionary basis; in addition to determining the Asset Classes for each model portfolio, the Filer also determines the benchmark percentage (“**Benchmark Percentage**”) for each Asset Class, representing the target percentage within the Permitted Range, and adjusts that percentage at its discretion; the Filer also uses its discretion in choosing which Fund or Funds will be used for each Asset Class, provided the investment objective and strategies of any Funds are consistent with the Asset Class; the Filer’s actions will be carried out with a view to ensuring that the Selected Model Portfolio continues to abide by the stated objectives;
15. the client’s account will be periodically rebalanced through a series of purchase and redemption trades effected by the Filer; if the percentage weighting of at least one of the Asset Classes in the Selected Model Portfolio exceeds or falls below the Permitted Range, the Filer 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; additionally, a client account may be rebalanced if the percentage weighting of at least one Fund in a client account exceeds or falls below its target range; the Filer will carry out trades on behalf of that client account to bring the Funds in the client account back within their target range (and within the Permitted Range for the Asset Class); these trades are referred to herein as the “**Auto Rebalancing Activities**”;
16. in addition to the Auto Rebalancing Activities described above that are carried out by the Filer, the Filer will review all of the model portfolios on a periodic basis, currently at least annually, to ensure the model portfolios are consistent with their stated objectives and to make any changes to the Benchmark Percentage, the Funds and their weight in the model portfolios; the Filer will also review all of the model portfolios on a monthly basis and may change the weightings of the Funds within the model portfolios to

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take advantage of market conditions and trends; all changes carried out by the Filer as described above will be done on a fully discretionary basis and in a manner consistent with the stated objectives of the model portfolios; in connection with its responsibilities under the Product, the Filer will carry out the 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**”;

17. the trades carried out by the Filer as described above will be reflected in HIFC’s records and subject to oversight by the MFDA;
18. MFDA Investor Protection Corporation coverage will apply to the investments in the Funds held in the clients’ accounts with HIFC on the same terms as other mutual fund investments;
19. the client is provided with a simplified prospectus or other offering document required by securities legislation for the Funds prior to investing in any of the model portfolios; after investing in the Selected Model Portfolio, the client is provided with details of the Funds held in their account on a quarterly basis in the account statements; the account statement will also include information about how a client can obtain a copy of the current simplified prospectus or other offering document required by securities legislation for the Funds if the client requires further details;
20. in the absence of the Exemption Sought, the Filer would have to be registered under the Legislation as a dealer in the category of “mutual fund dealer” or “investment dealer” in order to carry out the trading activities permitted by the Exemption Sought;
21. in order to obtain registration under the Legislation as a mutual fund dealer, the Filer would be required to be a member of the MFDA, except in Quebec;
22. the MFDA has rules that govern its membership which would have the effect of precluding the Filer from being a member of the MFDA if it continues to conduct its principal business of acting as a portfolio manager.

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.

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The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

- (a) the Filer is at the time of the trade registered under the Legislation as an adviser in the category of portfolio manager; and
- (b) the Auto Rebalancing Activities and the Strategic and Tactical Rebalancing Activities will be made in accordance with the terms of the Selected Model Portfolios.

Sandra Jakab
Director, Capital Markets Regulation
British Columbia Securities Commission