

2010 BCSECCOM 664

December 2, 2010

Headnote

Securities Act s. 48 Investment Fund Manager – Exemption from s.34(c) requirement to be registered as an investment fund manager - A person wants relief from the requirement to register as an investment fund manager in BC - The person will only act as an investment fund manager for a brief period of time - The person will be overseen by its parent, who has applied for registration and meets the requirements to act as an investment fund manager - The parent's insurance will cover liabilities arising from investment fund manager activities conducted by the person - The parent will indemnify and assume any liabilities arising out of the person acting as an investment fund manager - The parent has adequate financial resources to cover any liabilities that may arise out of the person acting as an investment fund manager

Applicable British Columbia Provisions

Securities Act, ss. 34 and 48 or the Act

Exemption Order

HSBC Global Asset Management (Canada) Limited

Section 48 of the *Securities Act*, R.S.B.C. 1996, c.18

Background

- ¶ 1 HSBC Global Asset Management (Canada) Limited (the Filer) has applied for an exemption pursuant to section 48 of the Securities Act (British Columbia) (the Act) from the investment fund manager registration requirement in section 34 of the Act (the Registration Requirement). The exemption is required to permit a new wholly-owned subsidiary of the Filer (Subco) to act as the investment fund manager of the HSBC Mutual Funds (the Funds). Subco will only act as an investment fund manager of the Funds from the time another subsidiary of the Filer, HSBC Investment Funds (Canada) Inc. (HIFC), assigns its right to act as investment fund manager and trustee of the Funds to Subco and for a brief period (the Requested Relief) to facilitate the transfer of investment fund manager and trustee responsibilities of the Funds from HIFC to the Filer on a tax deferred basis.

Representations

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

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1. The Filer is a corporation organized under the laws of Canada, with its head office in Vancouver, British Columbia.
2. The Filer is currently registered under applicable securities legislation in each province of Canada, other than Prince Edward Island, as an adviser in the category of portfolio manager, and in Ontario as a dealer in the category of exempt market dealer.
3. The Filer acts as the manager and principal portfolio adviser of the HSBC Pooled Funds, a family of mutual funds offered to the public pursuant to a prospectus filed with applicable securities regulators in each of the provinces of Canada, other than Prince Edward Island.
4. HIFC is a corporation organized under the laws of Canada, with its head office in Vancouver, British Columbia. HIFC is a wholly-owned subsidiary of the Filer.
5. HIFC is currently registered under applicable securities legislation in each province of Canada, other than Prince Edward Island, as a dealer in the category of mutual fund dealer.
6. HIFC acts as the trustee, investment fund manager and principal distributor of the Funds, a family of mutual funds offered to the public pursuant to a prospectus filed with applicable securities regulators in each of the provinces of Canada, other than Prince Edward Island.
7. The Funds are the only investment funds for which HIFC currently acts as an investment fund manager.
8. Both the Filer and HIFC were acting as an investment fund manager on September 28, 2009, and applied for registration in British Columbia as an investment fund manager prior to September 28, 2010 and have not had such registration refused. Accordingly, both the Filer and HIFC are permitted to act as investment fund managers.
9. To the best of the Filer's knowledge, both the Filer and HIFC meet the requirements to be registered as investment fund managers.
10. For business reasons, it is desirable to cause the Filer to become the investment fund manager and trustee of the Funds. To facilitate the transfer of these responsibilities on a tax-deferred basis, it is necessary as a temporary interim step to have Subco assume the responsibilities for a brief period.

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11. Subco will be a new corporation organized under the laws of Canada, with its head office in Vancouver, British Columbia. Subco will not obtain registration under applicable securities legislation in any jurisdiction in Canada in any category. Subco will not carry on any business other than acting as the investment fund manager and trustee of the Funds for a brief period to facilitate the transfer of investment fund manager and trustee responsibilities from HIFC to the Filer.
12. To effect the transfer of investment fund manager and trustee responsibilities from HIFC to the Filer, the Filer, HIFC and Subco intend to enter into the following sequence of transactions:
 - (a) HIFC will enter into an agreement under which it assigns its right to act as trustee and investment fund manager of the Funds to Subco, in exchange for redeemable retractable preference shares (the Shares) issued by Subco to HIFC.
 - (b) Subco will act as investment fund manager and trustee of the Funds for a brief period, expected to be approximately fifteen minutes.
 - (c) Subco will redeem the Shares and as payment of the redemption price for the Shares, issue to HIFC a promissory note in an amount equal to the redemption amount of the Shares.
 - (d) Subco will assign all of its property and undertaking, including an assignment of its rights to act as investment fund manager and trustee of the Funds, to the Filer in connection with the liquidation and dissolution of Subco.
13. The Filer and Subco will enter into one or more agreements under which the Filer will:
 - (a) agree to provide any reasonable assistance needed for Subco to carry out the investment fund manager and trustee responsibilities for the Funds; and
 - (b) indemnify Subco for any liabilities that arise during the time Subco acts as the investment fund manager and trustee of the Funds.

In connection with the liquidation and dissolution of Subco, the Filer will assume and agree to pay and satisfy all liabilities, obligations, claims, demands, costs and expenses of Subco.

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14. The Filer will indemnify Subco for any liabilities arising during the time in which it acts as investment fund manager and trustee of the Funds. In addition, on Subco's liquidation and dissolution, the Filer will assume all of Subco's liabilities and obligations including for any liabilities arising during the time in which it acts as investment fund manager and trustee of the Funds.
15. The Filer has adequate financial resources to cover any liabilities that may arise out of Subco acting as an investment fund manager.
16. The insurance maintained by the Filer will cover liabilities arising from investment fund manager activities conducted by Subco.
17. The Filer has determined that the amount of the insurance maintained by the Filer is appropriate taking into account the addition of the assets of the Funds as assets under management of the Filer.
18. In the absence of the Requested Relief, Subco would be required to obtain registration in British Columbia as an investment fund manager for the brief period during which Subco will act as investment fund manager and trustee of the Funds in connection with the transactions set out above.

Decision

- ¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders that the Requested Relief is granted under section 48 of the Act. This decision will terminate on the earlier of:

- (a) seven days after HIFC assigns its right to act as investment fund manager and trustee of the Funds to Subco; and
- (b) 180 days from the date of this decision.

Sandra Jakab
Director, Capital Markets Regulation
British Columbia Securities Commission