

# 2010 BCSECCOM 109

February 12, 2010

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-102 *Mutual Funds* and from the requirements of the *Securities Act* (Ontario) - An issuer wants relief from the investment restrictions contained in subsection 2.1(1) of National Instrument 81-102 *Mutual Funds* prohibiting a mutual fund from investing more than 10% of the net assets of the fund, taken at market value at the time of the transaction, in securities of any one issuer - The foreign debt securities to be acquired by the issuer will be fully guaranteed by either foreign governments or certain development banks identified in NI 81-102; the debt securities must be highly rated government debt securities

## Applicable British Columbia Provisions

National Instrument 81-102, s. 2.1

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 Global Inflation Linked Bond Pooled Fund  
(the Fund)

Decision

## Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under

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the securities legislation of the Jurisdictions (the Legislation) for an exemption under section 19.1 of National Instrument 81-102 *Mutual Funds* (NI 81-102) from the investment restrictions contained in subsection 2.1(1) of NI 81-102, which prohibits a mutual fund from investing more than 10% of the net assets of the fund, taken at market value at the time of the transaction, in the securities of any issuer (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 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 Terms defined in 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 Filer:
- 1. the Filer is a company amalgamated under the laws of Canada and is registered as an adviser in the category of portfolio manager under applicable securities legislation in each of the provinces of Canada, with the exception of Prince Edward Island (the Reporting Jurisdictions);
  - 2. the Filer is not a “reporting issuer” within the meaning of applicable securities legislation in the Reporting Jurisdictions;
  - 3. the Fund is a “mutual fund” within the meaning of applicable securities legislation and is established as a trust under the laws of British Columbia;
  - 4. the Fund is a “reporting issuer” within the meaning of applicable securities legislation in each of the Reporting Jurisdictions; units of the Fund are qualified for distribution in each of the Reporting Jurisdictions under a

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simplified prospectus and annual information form filed with the applicable securities regulatory authorities in each of the Reporting Jurisdictions;

5. the Filer is the manager and primary investment advisor of the Fund. The Filer has appointed a sub-advisor (the Sub-Advisor) that is responsible for the investment decisions of the Fund;
6. the fundamental investment objective of the Fund is to generate income by investing primarily in inflation-protected fixed income securities issued by governments and corporations around the world;
7. currently, the Fund's investment strategy is to invest in inflation linked bonds using the Barclay's Capital World Government Inflation-Linked Bond Index (the Index) as a guide to structuring the Fund and selecting investments; the Sub-Advisor will use the Index only as a guide and is not required to make the same investments as are in the Index; the Sub-Advisor seeks to generate returns in excess of the Index by employing several alpha sources including country allocation, duration management, yield curve positioning and security selection; both the strategy and the Index are currency hedged;
8. the Index is among the most commonly used indices used to measure the aggregate performance of global inflation linked bonds and provides a broad based measure of global inflation linked bond markets;
9. the Index is currently comprised of over 90 inflation linked bond issues that vary by quality, sector or region; as at December 8, 2009, the composition of the Index was as follows:

<u>Country</u>	<u>Rating</u>	<u>Weight</u>
United States	AAA	37.81%
United Kingdom	AAA	23.21%
Canada	AAA	2.75%
Australia	AAA	0.69%
France	AAA	14.95%
Germany	AAA	2.97%
Sweden	AAA	2.26%
Japan	AA	4.97%
Italy	A	8.94%
Greece	A	1.46%

10. the Filer would like the Fund to have the flexibility to invest up to:

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- (a) 35% of the Fund's net assets, taken at market value at the time of purchase, in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by a permitted supranational agency (as defined in NI 81-102) or governments other than the government of Canada, the government of a jurisdiction or the government of the United States of America and are rated "AAA" by Standard & Poor's, or have an equivalent rating by one or more other approved credit rating organizations; and
- (b) 20% of the Fund's net assets, taken at market value at the time of purchase, in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by a permitted supranational agency (as defined in NI 81-102) or governments other than the government of Canada, the government of a jurisdiction or the government of the United States of America and are rated "AA" by Standard & Poor's, or have an equivalent rating by one or more other approved credit rating organizations,

(such evidences of indebtedness, Foreign Government Securities);

- 11. subsection 2.1(1) of NI 81-102 prohibits the Fund from purchasing a security of an issuer, other than a "government security" within the meaning of NI 81-102 or a security issued by a clearing corporation, if immediately after the purchase more than 10% of the net assets of the fund, taken at market value at the time of the purchase, would be invested in securities of the issuer; and
- 12. the Foreign Government Securities are not "government securities" within the meaning of NI 81-102.

### 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 provided that:

- (a) the Fund may only invest up to:
  - (i) 35% of the Fund's net assets, taken at market value at the time of purchase, in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies (as defined in NI 81-102) or governments other than the government of Canada, the

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government of a jurisdiction or the government of the United States of America and are rated “AAA” by Standard & Poor’s, or have an equivalent rating by one or more other approved credit rating organizations; and

- (ii) 20% of the Fund’s net assets, taken at market value at the time of purchase, in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies (as defined in NI 81-102) or governments other than the government of Canada, the government of a jurisdiction or the government of the United States of America and are rated “AA” by Standard & Poor’s, or have an equivalent rating by one or more other approved credit rating organizations;
- (b) subparagraphs (i) and (ii) above shall not be combined for any one issuer;
- (c) the securities that are purchased under this Decision are traded on a mature and liquid market;
- (d) the acquisition of the securities purchased under this Decision is consistent with the fundamental investment objectives of the Fund;
- (e) the simplified prospectus of the Fund discloses any additional risks associated with the concentration of the net assets of the Fund in securities of fewer issuers, such as the potential additional exposure to the risk of default of the issuer in which the Fund has so invested and the risks, including foreign exchange risks, of investing in the country in which that issuer is located; and
- (f) the simplified prospectus of the Fund discloses, in the investment strategy section, the details of the Exemption Sought along with the conditions imposed and the type of securities covered by this Decision.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission