

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 81-102 *Investment Funds* - An investment fund manager seeks relief on behalf of a group of mutual funds from the restriction in section 4.1(1) of NI 81-102 to permit the funds to invest in equity securities in a distribution involving a related dealer in a jurisdiction outside of Canada during the distribution or within 60 days after the distribution – The Filer provided data demonstrating market necessity for the exemption for jurisdictions outside of Canada; Filer has formal policies and procedures in place to mitigate potential conflicts of interest that have been approved by the independent review committee (IRC) pursuant to NI 81-107; the IRC of the fund must approve the transaction in accordance with the requirements of subsection 5.2(2) of NI 81-107; the conditions in the exemption order are consistent with the conditions of section 4.1(4) of NI 81-102 for similar offerings in Canada.

Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, subsection 4.1(1) and section 19.1.

January 24, 2025

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
JPMorgan Asset Management (Canada) Inc.

and

In the Matter of
the Funds
(as defined below)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer on behalf of existing mutual funds and any additional or future mutual funds to which National Instrument 81-102 *Investment Funds* (NI 81-102) applies (each, a Fund and, collectively, the Funds) for which the Filer, or an affiliate or successor of the Filer, acts as the investment fund manager and/or the portfolio adviser for a decision under the

securities legislation of the Jurisdictions (the Legislation) for relief from the restriction in subsection 4.1(1) of NI 81-102 (the Restriction) to permit the Funds to make an investment in a class of equity securities (Securities) of an issuer during the period of a distribution (a Distribution) of the Securities or during the period of 60 days after the Distribution (the 60-Day Period), notwithstanding that an associate or an affiliate of the Filer acts as an underwriter in the Distribution (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 each of the other provinces and territories of Canada, 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*, NI 81-102, National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) and MI 11-102 have the same meaning if used herein, unless otherwise defined. Certain other defined terms have the meanings given to them in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation formed by amalgamation pursuant to a certificate of amalgamation, dated August 3, 2004, as amended by a certificate of amendment dated February 24, 2005, under the laws of Canada;
 - 2. the Filer is registered as an investment fund manager in British Columbia, Newfoundland and Labrador, Ontario and Québec and an exempt market dealer and portfolio manager in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec and Saskatchewan. The head office of the Filer is in Vancouver, British Columbia;
 - 3. the Filer, or an affiliate or successor of the Filer, is or will be the investment fund manager and/or principal portfolio adviser of each of the Funds; the principal portfolio adviser of a Fund may, from time to time, hire one or more related or unrelated sub-advisers to provide investment advisory services to the Fund;
 - 4. each of the Funds is or will be an open-ended mutual fund trust or corporation established under the laws of the Province of British Columbia or another province or territory of Canada; certain of the Funds may be an index mutual fund pursuant to paragraph (a) of that definition in section 1.1 of NI 81-102 (each, an Index Fund and, collectively, the Index Funds);
 - 5. the securities of each of the Funds are or will be qualified for distribution pursuant to a prospectus or a simplified prospectus and a fund facts or an ETF facts has or will be

prepared and filed in accordance with the securities legislation of one or more provinces or territories of Canada; each of the Funds is or will be a reporting issuer in each of the provinces or territories of Canada in which its securities are distributed;

6. the Filer is or will be a dealer manager (as such term is defined in NI 81-102) with respect to the Funds and each of the Funds is or will be a dealer managed investment fund (as such term is defined in NI 81-102);
7. the Filer and each of the existing Funds are not in default of securities legislation in any of the Jurisdictions or the other provinces or territories of Canada;
8. an independent review committee (the IRC) has been or will be appointed for each of the Funds under NI 81-107;
9. the Filer is currently an associate or affiliate of certain dealers that act as underwriters in Distributions (the Current Related Dealers);
10. each of the Filer, related sub-advisers and the Current Related Dealers is an associate or affiliate of JPMorgan Chase & Co. and its subsidiaries (collectively, JPMorgan) and are collectively one of the world's largest banking and financial services organizations;
11. the Current Related Dealers carry on their investment banking businesses in countries and regions outside of Canada (Foreign Jurisdictions); the Current Related Dealers are prominent underwriters in a number of markets, both in terms of the number of Distributions they underwrite and the dollar value of the securities underwritten; in addition, certain Current Related Dealers may act as the sole underwriter in Distributions in certain Foreign Jurisdictions;
12. from time to time there may be additional dealers that are or become affiliates or associates of the Filer and act as underwriters in Distributions (each, a Future Related Dealer and collectively with the Current Related Dealers, the Related Dealers);
13. in circumstances where a Related Dealer acts as an underwriter in a Distribution of Securities, the Restriction will generally prevent a Fund from investing in the Securities being offered during the Distribution and during the 60-Day Period; however, pursuant to subsection 4.1(4) of NI 81-102, the Funds will not be restricted by the Restriction from investing in Securities of a reporting issuer, in accordance with subsection 4.1(4) of NI 81-102, if certain conditions are met, including that the IRC of the Funds has approved the transaction in accordance with subsection 5.2(2) of NI 81-107;
14. as the issuers will not be reporting issuers in any province or territory of Canada in connection with a Distribution in a Foreign Jurisdiction, the Funds cannot rely on the exemption from the Restriction contained in subsection 4.1(4) of NI 81-102; however, the issuer of the Distribution will be, or will concurrently with the closing of the Distribution become, a public issuer in the Foreign Jurisdiction and the Filer will otherwise comply with subparagraphs 4.1(4)(a), (b) and (c) of NI 81-102 when purchasing Securities;
15. in recent years, there have been numerous Distributions in Foreign Jurisdictions in which a Current Related Dealer acted as an underwriter and in which the Funds would not have been permitted to purchase Securities during the Distribution or during the 60-Day Period because the issuer of the securities was not a reporting issuer and, accordingly, subsection

4.1(4) of NI 81-102 cannot be relied upon;

16. the issue for the Funds is significant; the global footprint of JPMorgan, including the significant number of Related Dealers and the prominence of their investment banking activities in Foreign Jurisdictions, is expected to significantly hinder the ability of the Funds to participate in Distributions in Foreign Jurisdictions;
17. in addition, the existing Funds invest exclusively in U.S. equities, and the future Funds the Filer anticipates launching will invest in U.S. or global equities; there are a significant number of Distributions in Foreign Jurisdictions, and in particular the U.S., where a Related Dealer is participating as an underwriter; as a result, the Funds are expected to be directly impacted, competing with each other for limited investment opportunities, as well as with other competitor retail investment funds;
18. the Funds are expected to be negatively impacted by not being able to purchase Securities, during a Distribution or in the 60-Day Period, in a Foreign Jurisdiction; forgoing participation in these investment opportunities represents a significant opportunity cost for the relevant Funds, as they would be unable to access certain investment opportunities as a result of the coincidental participation of a Related Dealer in the relevant transaction, particularly when there is a regulatory and governance framework in place to oversee participation in similar transactions;
19. the significant opportunity cost referred to above is two-fold; first, Securities issued in a Distribution are frequently underpriced to ensure that all Securities are sold in the Distribution and the Securities often trade at a significantly higher price shortly after public trading begins; because the Funds are prevented from purchasing Securities in the Distribution and during the 60-Day Period, they will not be able to profit from any price increases during that period; second, Distributions are a source of liquidity for the Funds; a portfolio manager of a Fund may obtain a block of Securities in a Distribution in one trade, at a competitive price; whereas if a portfolio manager were to purchase a similar size block of Securities in the secondary market, this may take time (often several trades over several days) and prices may rise in the process (often solely due to limited liquidity in the market and the trading activity undertaken by the portfolio manager to purchase a large block of Securities);
20. the Restriction is also expected to be detrimental for the Funds as their position in an issuer will be diluted if the Funds are prevented from supplementing existing positions when issuers whose securities the Funds already hold are raising capital by distributing additional securities (for instance, pursuant to a rights offering); in addition, while Funds that are not index mutual funds as defined in NI 81-102 do not have investment objectives that require those Funds to track the performance of an index, the performance of those Funds is benchmarked against an index; the Restriction may prevent those Funds from maintaining either their strategic percentage holdings in a given issuer relative to their overall portfolio holdings or their percentage holdings in a given issuer relative to the benchmark index holdings;
21. further, the Index Funds will have investment objectives that require the Funds to track the performance of an index; the Index Funds achieve their investment objective by investing directly in Securities that are represented by the applicable index in substantially the same proportion as those securities are represented in the index; the Restriction will almost certainly prevent the Index Funds from investing directly in Securities that are represented

by the applicable index in substantially the same proportion as those securities are represented in the index and impede the ability of the Index Fund to meet its investment objective when the related Distribution occurs in a Foreign Jurisdiction;

22. the prejudice that will result for a Fund that is restricted from purchasing Securities is that the portfolio manager's discretion with respect to managing the portfolio is negatively impacted; if the portfolio manager cannot make appropriate commitments or expressions of interest in respect of Securities due to the participation of a Related Dealer in the Distribution, the portfolio manager is delayed in making appropriate decisions with respect to other Securities of a Fund; the portfolio manager would be delayed in that purchases may not be made in the 60-Day Period even though the portfolio manager would want to immediately acquire such Securities; the portfolio manager would then have to decide whether to make an investment in another issuer altogether until the 60-Day Period expires in respect of the Securities;
23. the Restriction also puts the Funds at a competitive disadvantage to most other Canadian funds since the Filer is among the few firms in Canada that have related party dealers that are active in the Distribution of Securities in Foreign Jurisdictions;
24. further, since the Funds are dealer managed investment funds, the Restriction is applicable even in circumstances where an unrelated sub-adviser is exercising discretion with respect to a purchase if a Related Dealer underwrites a Distribution of Securities in Foreign Jurisdictions;
25. when the Filer or its sub-advisers make a decision to purchase Securities in a Distribution, it is based only on factors unrelated to any involvement of a Related Dealer in the Distribution and free from any influence from a third-party dealer or Related Dealer; these factors generally include the Filer's or its sub-adviser's view of the issuer, the investment merits of the Distribution and the proposed use of the capital raised in the Distribution by the issuer; for certain Funds, investment decisions may be made based on fundamental issuer valuation models; in addition, investment decisions will also be made to ensure consistency with the overall investment objectives and investment strategies of the Funds; for certain Funds, investment decisions may be based on quantitative investment methodologies, such as strategies that involve rules-based investment decisions;
26. in almost all Distributions in respect of which a Related Dealer acts as an underwriter, the Related Dealer's involvement as an underwriter in the Distribution will not be known by the portfolio adviser or sub-adviser making particular investment decisions sufficiently long enough in advance to make an application for exemptive relief on a case-by-case basis; this is a particular issue where the sub-adviser is unrelated to the Filer;
27. the Filer and its sub-advisers expect to engage with Related Dealers and third-party dealers equally; despite the affiliation between the Filer and each Related Dealer, they operate independently of each other; in particular, the investment banking and related dealer activities of the Related Dealers and the investment portfolio management activities of the Filer on behalf of the Funds are separated by information barriers or ethical walls; accordingly, no information flows from one to the other concerning the above activities generally, except in the following or similar circumstances:
 - (a) in respect of compliance matters (for example, the Filer and a Related Dealer may communicate to enable the Filer to maintain an up to date restricted-issuer list to ensure

that the Filer complies with applicable securities laws);

- (b) in respect of normal-course dealer activities (for example, a Related Dealer is on the list of brokers that may execute normal course trades in securities in the secondary market);
- (c) the Filer or its sub-advisers, on behalf of the Funds as investors in JPMorgan Chase & Co. securities, may meet with JPMorgan Chase & Co. in respect of JPMorgan Chase & Co. securities in accordance with policies and procedures that govern such meetings; and
- (d) the Filer or its sub-advisers and a Related Dealer may share general market information such as discussion on general economic conditions, etc.

28. further, in circumstances where an unrelated sub-adviser has been appointed, there is clear separation between the investment decisions being made on behalf of the Funds and the investment banking and related dealer activities of the Related Dealers;

29. each of the Funds relying on the Exemption Sought will follow the following policies and procedures:

- (a) the Filer and its sub-advisers will each prepare a monthly certificate that includes details of Securities purchased on behalf of the Funds in reliance on the Exemption Sought and the standing instructions of the IRC, which, among other things, will confirm that such purchases have met the requirements of subsection 5.2(2) of NI 81-107;
 - (i) the Filer will prepare quarterly reports to the IRC in respect of the purchases identified in the certificates contemplated in paragraph (a) above; the reports will include:
 - (ii) a written analysis with respect to each such purchase, including: a description of the issuer; the reason for the investment; the particular Funds involved; the number of Securities purchased or sold; and Fund holdings and weight of the issuer relative to the overall holdings in the Fund at the start and the end of each reporting period;
 - (iii) confirmation that the purchases met the requirements of subsection 5.2(2) of NI 81-107;
 - (iv) confirmation that there were no NI 81-102 compliance issues or material valuation, trading or settlement issues in connection with the purchases; and
 - (v) confirmation that the purchases were effected in accordance with the approval or standing instructions of the IRC.
- (b) the IRC will receive regular presentations from the Filer to review and discuss purchases made on behalf of the Funds in reliance on the Exemption Sought and the standing instructions of the IRC; and
- (c) the Filer will provide an annual report to the IRC summarizing its compliance with the policies and procedures applicable to the purchase of Securities on behalf of the Funds in reliance on the Exemption Sought and the approval or standing instructions of the IRC.

30. the Funds will not be required or obligated to purchase any Securities under a Distribution or during the 60-Day Period;
31. the investment by a Fund in the Securities purchased in a Distribution or during the 60-Day Period will be made in furtherance of the Fund's investment objective(s) and will be consistent with its investment objectives and strategies;
32. at the time of purchase by a Fund, the Securities will be Securities of a public issuer in a Foreign Jurisdiction (or an entity that will become a public issuer in a Foreign Jurisdiction at the time of purchase of the Securities by the Fund);
33. a Distribution in respect of which the Exemption Sought is requested will be made by means of a prospectus, or similar public offering document (a Public Offering), or by means of a private placement (a Private Placement) in the Foreign Jurisdiction in which the Distribution is taking place; the Securities issued in the Distribution will be listed on a stock exchange;
34. the Filer has implemented policies and procedures and will obtain the approval of or standing instructions from the IRC of the Funds in order to rely on subsection 4.1(4) of NI 81-102;
35. the Filer has discussed this matter with the IRC in anticipation of the Funds receiving the Exemption Sought and the IRC has indicated that it would give its approval (subject to complying with the terms and conditions of the Exemption Sought) to permit the Funds to make investments in reliance on the Exemption Sought in accordance with policies and procedures similar to those applicable to situations where investments are made in reliance on subsection 4.1(4) 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 investment by a Fund in Securities purchased in a Distribution or during the 60-Day Period is made in furtherance of the Fund's investment objective(s) and is consistent with its investment objective(s) and strategies;
- (b) the IRC of the Fund approves the investment in accordance with the requirements of subsection 5.2(2) of NI 81-107;
- (c) the Securities purchased by the Fund are distributed by means of a prospectus or similar public offering document or an exemption from the Foreign Jurisdiction's equivalent of the prospectus requirement in the Foreign Jurisdiction in which the Distribution is taking place;
- (d) any Related Dealer that is involved as an underwriter in a Distribution is regulated in respect of its underwriting activities in the Foreign Jurisdiction in which the Distribution is taking place;

- (e) the Securities issued in the Distribution will be listed on an exchange;
- (f) if the Securities are acquired during the 60-Day Period, they are acquired on an exchange; and
- (g) no later than the time the Funds file their annual financial statements, the Filer includes the particulars of each investment made by the Funds in reliance on the Exemption Sought during their most recently completed financial year in the report of purchases of securities underwritten by a related party in accordance with subsection 4.1(4)(c) of NI 81-102 filed on SEDAR+.

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British Columbia Securities Commission