

**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 seeks relief from the illiquid asset concentration limits in section 2.4 of NI 81-102 - The securities will be eligible for resale under the registration exemption in Rule 144A of the US Securities Act; the securities will not be illiquid assets under part (a) of the definition in NI 81-102; the securities will be traded on a mature and liquid market; investors will be provided with disclosure of the relief provided.

**Applicable Legislative Provisions**

National Instrument 81-102 *Investment Funds*, paragraph 2.4 and section 19.1.

August 26, 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.  
(the Filer)

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 all current and future investment funds that are, or will be, managed by the Filer or an affiliate of the Filer and to which National Instrument 81-102 Investment Funds (NI 81-102) applies (each, a JPM Fund and collectively, the JPM Funds) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for relief from the restrictions that apply to purchasing or holding illiquid assets under section 2.4 of NI 81-102 to permit:

- (a) a JPM Fund to purchase fixed income securities that, at the time of purchase, qualify for, and may be traded pursuant to, the exemption from the registration requirements of the Securities Act of 1933, as amended (the US Securities Act), as set out in Rule 144A of the US Securities Act (Rule 144A) for resales of certain fixed income securities (144A Securities) to Qualified Institutional Buyers (as defined below), in excess of 10% of the

JPM Fund's net asset value if the JPM Fund is a mutual fund and in excess of 20% of the JPM Fund's net asset value if the JPM Fund is a non-redeemable investment fund;

- (b) a JPM Fund to hold 144A Securities for a period of 90 days or more, in excess of 15% of the JPM Fund's net asset value if the JPM Fund is a mutual fund and in excess of 25% of the JPM Fund's net asset value if the JPM Fund is a non-redeemable investment fund; and
- (c) a JPM Fund to not be required to take steps to reduce the JPM Fund's holdings of 144A Securities to (i) 15% of the JPM Fund's net asset value if the JPM Fund is a mutual fund and its holdings of 144A Securities exceeds 15% of the JPM Fund's net asset value, or (ii) 25% of the JPM Fund's net asset value if the JPM Fund is a non-redeemable investment fund and its holdings of 144A Securities exceeds 25% of the JPM Fund's net asset value (collectively, 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 the 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 all of the provinces and territories of Canada other than the Jurisdictions (together with the Jurisdictions, the Applicable Jurisdictions); and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulator in Ontario.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 Definitions, MI 11-102 and NI 81-102 have the same meaning if used in this decision, unless otherwise defined. In addition to the defined terms used in this decision, capitalized terms used herein have the following meanings:

IRC means the applicable independent review committee of each of the JPM Funds.

Qualified Institutional Buyer has the same meaning given to such term in §230.144A of the US Securities Act.

Registered Securities means securities that have been registered with the United States Securities and Exchange Commission.

Rule 144 means Rule 144 of the US Securities Act.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer on behalf of itself and the JPM Funds:

### *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 in the category of 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 of the Filer is, or will be, the investment fund manager of the JPM Funds and the Filer, an affiliate of the Filer or a third-party portfolio manager retained by the Filer is, or will be, the portfolio manager of the JPM Funds.
4. The Filer is not in default of securities legislation in any of the Applicable Jurisdictions.

### *The JPM Funds*

5. Each JPM Fund is, or will be, an investment fund organized and governed by the laws of an Applicable Jurisdiction or the laws of Canada.
6. NI 81-102 will apply to each JPM Fund unless the JPM Fund has obtained an exemption from NI 81-102 granted by the securities regulatory authorities.
7. No existing JPM Fund is in default of securities legislation in any of the Applicable Jurisdictions.

### *Definition of Illiquid Assets in NI 81-102 and 144A Securities*

8. Pursuant to section 1.1 of NI 81-102, an illiquid asset is defined as:
  - (a) a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the investment fund; or
  - (b) a restricted security held by an investment fund.
9. Rule 144A provides an exemption from the registration requirements of the US Securities Act for resales of unregistered securities to Qualified Institutional Buyers. Rule 144A also requires that there must be adequate current public information about the issuing company before the sale can be made.
10. The definition of a Qualified Institutional Buyer under §230.144A of the US Securities Act includes entities that, in the aggregate, own and invest on a discretionary basis at least USD\$100 million in securities of issuers that are not affiliated with such entity.

11. While issuers themselves cannot rely on Rule 144A, as Rule 144A provides an exemption for resales of unregistered securities, the existence of Rule 144A allows financial intermediaries to purchase unregistered securities from issuers and resell the securities to Qualified Institutional Buyers in transactions that comply with Rule 144A without registering such securities.
12. As part of such Rule 144A distributions, financial intermediaries and other holders of the securities also routinely resell the securities to purchasers outside of the United States pursuant to Rule 904 of Regulation S (Reg. S Purchasers) without registering such securities to the extent the note indenture facilitates such Regulation S sales (which is typical in the market except for some limited offerings). The securities sold under Regulation S are represented by a separate global note (the Reg. S Global Note) from the global note representing securities sold under the Rule 144A exemption (the 144A Global Note), but the securities represented by the Reg. S Global Note can be resold to Qualified Institutional Buyers in the same manner as the securities represented by the 144A Global Note. The securities represented by the Reg. S Global Note and the 144A Global Note are fungible and of equal value; at any time, any holder of such securities may transfer such securities to a U.S. Qualified Institutional Buyer or to a non-U.S. Reg. S Purchaser, and accordingly the securities have the same value and are fungible upon transfer. All such securities are referred to as 144A Securities in this decision and the Filer confirms that these 144A Securities have the same liquidity in the hands of the Fund or of any other holder regardless of whether they are represented by the Reg. S Global Note or the 144A Global Note.
13. Pursuant to the terms of the US Securities Act, public resales of 144A Securities (including securities represented by a 144A Global Note or a Reg. S Global Note) to non-Qualified Institutional Buyers must be conducted in reliance upon other available exemptions, such as Rule 144 or Regulation S. Rule 144 allows a seller to sell 144A Securities to a purchaser who does not qualify as a Qualified Institutional Buyer after a prescribed period of time (ranging from six months to one year after issuance), if certain other reporting requirements of the issuer are satisfied.
14. Despite the foregoing, 144A Securities are immediately freely tradable among Qualified Institutional Buyers in accordance with Rule 144A without any holding periods. 144A Securities may also be sold to and purchased by non-Qualified Institutional Buyers at any time after registration of the securities, or pursuant to another exemption from registration under the US Securities Act, if any exemption is available at that time.
15. Because Rule 144A restricts resale of 144A Securities to investors that are not Qualified Institutional Buyers and are also not non-U.S. persons for a period of time or until certain conditions are satisfied, they are restricted securities for the purposes of the part (b) definition of an illiquid asset under section 1.1 of NI 81-102, and each JPM Fund's holdings of 144A Securities would be subject to the limits on holdings of illiquid assets in section 2.4 of NI 81-102 (the Illiquid Asset Restrictions).

### *Reasons for the Exemption Sought*

16. The Filer is of the view that certain 144A Securities provide an attractive investment opportunity for the JPM Funds and that, from time to time, it will be desirable for the JPM Funds to hold 144A Securities in excess of the Illiquid Asset Restrictions. As 144A Securities are illiquid assets under section 1.1 of NI 81-102, the JPM Funds are unable to pursue these investment opportunities without breaching the Illiquid Asset Restrictions.
17. The ability to freely trade 144A Securities pursuant to Rule 144A has substantially reduced the discounts and illiquidity that were present in unregistered offerings historically. The market for 144A Securities consists of a very deep pool of Qualified Institutional Buyers (as well as to non-U.S. persons if the relevant note indenture permits sales under Regulation S).
18. The most liquid 144A Securities have traded with comparable volumes to the most liquid corporate debt registered securities over the past few years. The segment of the U.S. investment grade corporate bond market that is made up of 144A Securities has grown substantially over the past 15 years. The segment of the U.S. high-yield corporate bond market that is made up of 144A Securities has also grown significantly over the past decade.
19. Daily market quotations are obtained in the same way through fixed income market platforms for 144A Securities as they are for registered securities. Real-time price quotes and market trade data are available for 144A Securities. Many fixed income trades including 144A Securities, are reported within minutes into the Trade Reporting and Compliance Engine, a program initially developed by the National Association of Securities Dealers, Inc. (now the Financial Industry Regulatory Authority, Inc.) that provides for the reporting of over-the-counter transactions pertaining to eligible fixed income securities, including 144A Securities, thus meeting market integrity requirements.
20. A JPM Fund that purchases 144A Securities (including as a Reg. S Purchaser of a security that is represented by a Reg. S Global Note) may trade those 144A Securities to any Qualified Institutional Buyer without further restriction (i.e. not subject to any holding period). Typically, a JPM Fund would sell 144A Securities to other brokers or dealers that are Qualified Institutional Buyers themselves, who would then on-sell the securities to other Qualified Institutional Buyers.
21. A JPM Fund is not required, at any time, have or to maintain Qualified Institutional Buyer status in order to be able to resell its holdings of 144A Securities to Qualified Institutional Buyers at any time.
22. In the course of determining the potential liquidity of a security, the Filer or its sub-advisor may use several factors including, but not limited to, market volatility, trending credit quality, current valuation, maturity, size of the tranche or offering, the applicable underwriters, the status of well-covered credit or first-time issuer, index eligibility, and in the case of 144A Securities, whether the security falls under 144A for life status (i.e. an offering that is not registered with the SEC and may, therefore, be considered less liquid than a 144A offering with registration rights). As a result, the Filer is of the view that it or its sub-advisor can determine whether a given 144A Security would have sufficient liquidity and market transparency such that it would not qualify as an illiquid asset under part (a) of the section

## 1.1 definition.

23. The Filer is of the view that it has the tools, resources and expertise necessary to assess issuances of 144A Securities and to evaluate the creditworthiness of issuers on a per issuance basis. The Filer or its sub-advisor have the ability to conduct sufficient analysis and should have the opportunity to invest in 144A Securities.
24. The purpose of the Illiquid Asset Restrictions is to govern a core investment fund principle: investors should be able to redeem mutual fund securities and, where applicable, non-redeemable investment fund securities on demand. Considering that 144A Securities trade in an active institutional market, the Filer is of the view that 144A Securities can be liquid relative to a JPM Fund's need to satisfy redemptions. The result of the current part (b) definition of an illiquid asset in NI 81-102 is that all 144A Securities may be deemed illiquid assets, whereas 144A Securities may be more liquid than other types of securities that meet the liquidity criteria set out in NI 81-102.
25. The Filer is of the view that granting the Exemption Sought will not result in a JPM Fund being unable to satisfy redemption requests. Investing in 144A Securities may actually be more beneficial to the JPM Funds than various other securities in which the JPM Funds may invest, and the liquidity determination regarding any such 144A Securities should be made on the actual trading liquidity of the security and any restrictions on the security and not simply based on the manner in which the security was offered into the market.
26. The Filer or its sub-advisor maintains investor protection policies and procedures that address liquidity risk, and uses a combination of risk management tools, which include (i) IRC approved governance policies that have been adopted to protect investors in the JPM Funds, (ii) internal portfolio manager notification of cash flows into the JPM Funds, (iii) ongoing liquidity monitoring of each JPM Fund's portfolio, (iv) daily cash projection for the JPM Funds, and (v) the consideration of factors set out in paragraph 22 above in order to assess the potential liquidity of a security.
27. If a JPM Fund is not permitted to freely resell 144A Securities to Qualified Institutional Buyers, then the Filer will arrange to immediately restrict any further purchases of 144A Securities until such time as the JPM Fund regains its ability to freely resell 144A Securities to a Qualified Institutional Buyer.
28. If the Filer determines that a 144A Security qualifies as an illiquid asset under part (a) of the section 1.1 definition in NI 81-102, then the Filer will restrict any further purchases of illiquid assets (including such 144A Security that meets the definition under part (a) of section 1.1 definition of NI 81-102) that are in excess of the thresholds set out section 2.4 of NI 81-102.
29. The Filer is of the view that if the JPM Funds continue to be unable to trade 144A Securities that are illiquid assets under part (b) of the definition but not under part (a), the JPM Funds and their investors would lose out on potential investment opportunities in the fixed income space. The Filer is of the view that every basis point counts towards the total return opportunity of fixed income investors and investors would benefit from an expanded investment universe.

**Decision**

¶ 4 Each Decision Maker 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 Maker under the Legislation is that the Exemption Sought is granted, provided that:

- (a) the 144A Securities purchased pursuant to the Exemption Sought are not illiquid assets under part (a) of the section 1.1 definition of an illiquid asset in NI 81-102;
- (b) the 144A Securities purchased pursuant to the Exemption Sought are traded on a mature and liquid market; and
- (c) the prospectus of each JPM Fund relying on the Exemption Sought discloses or will disclose in the next renewal of its prospectus following the date of this decision, the fact that the Fund has obtained the Exemption Sought.

Gordon Johnson  
Vice Chair  
British Columbia Securities Commission