Citation: 2024 BCSECCOM 402

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 issuer wants relief from the investment restrictions contained in subsection 2.1(1) of National Instrument 81-102 Investment 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 mutual fund is the Canadian version of the underlying US ETF, the mutual fund is unlikely to achieve the same investment portfolio without investing in the underlying US ETF, the US ETF will comply with key provisions of U.S. securities law and NI 81-102, the portfolio managers for the mutual fund and underlying US ETF will have the appropriate registrations in Canada and the USA

A mutual fund seeks relief from the restrictions in 2.5(2)(a) and (c) of NI 81-102 to permit the fund to invest up to its entire net asset value in a US ETF – The mutual fund is the Canadian version of the underlying US ETF, the mutual fund is unlikely to achieve the same investment portfolio without investing in the underlying US ETF, the US ETF will comply with key provisions of U.S. securities law and NI 81-102, the portfolio managers for the mutual fund and underlying US ETF will have the appropriate registrations in Canada and the USA

National Instrument 41-101, Part 19 - Underwriter's Certificate Relief – Requirement under section 5.9 of NI 41-101 to include an underwriter's certificate in the ETF's prospectus - The designated brokers and authorized dealers do not provide the same services in connection with a distribution of the ETF's securities as would typically be provided by an underwriter in a conventional underwriting, will not be involved in the preparation of the fund prospectus, will not perform any review or independent due diligence as to the content of the fund prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the Filer in connection with the distribution of ETF securities

National Instrument 62-104, Part 6 Take-Over Bids -Exemption from the formal take-over bid requirements - Take-over bid relief – NI 62-104 for the purchases of listed securities of the ETFs in the normal course through the facilities of a marketplace in Canada - It is not possible for one of more securityholders to exercise control or direction over the ETF, the number of outstanding ETF Securities will always be in flux as a result of the ongoing issuance and redemption of listed securities by each ETF, and there is no incentive to acquire control or offer to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect its net asset value

Applicable Legislative Provisions
National Instrument 41-101 *General Prospectus Requirements,* sections 5.9 and 19.1.

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2 and section 6.1.

National Instrument 81-102 *Investment Funds*, subsection 2.1(1), paragraphs 2.5(2)(a) and 2.5(2)(c), and section 19.1.

September 11, 2024

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
JP Morgan 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 JPMorgan Income ETF (Canadian JPIE) and JPMorgan Ultra-Short Income ETF (Canadian JPST, and together with Canadian JPIE, the Top Funds), each an exchange-traded mutual fund (ETF) subject to National Instrument 81-102 *Investment Funds* (NI 81-102), together with such other ETFs as the Filer (for all purposes herein, Filer also shall include an affiliate or successor of the Filer, unless the context otherwise requires) may manage in the future (together with the Top Funds, the JPM ETFs and individually a JPM ETF) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) granting:

(a) an exemption for the Filer and each JPM ETF from the requirement to include a certificate of an underwriter in a JPM ETF's prospectus (the Underwriter's Certificate Requirement);

(b) an exemption for a person or company purchasing JPM ETF Securities (as defined below) in the normal course through the facilities of a Marketplace (as defined below) from the Take Over Bid Requirements (as defined below)

(paragraphs (a) and (b) together, the JPM ETF Relief)

(c) an exemption for the Top Funds from subsection 2.1(1) of NI 81-102 to permit the Top Funds to purchase securities of the U.S. Underlying Funds (as defined below) even though, immediately after the transaction, more than 10% of each Top Fund's respective net asset value (NAV), would be invested in securities of the U.S. Underlying Funds;

(d) an exemption for the Top Funds from paragraph 2.5(2)(a) of NI 81-102 to permit the Top Funds to purchase securities of the U.S. Underlying Funds even though they are not subject to NI 81-102; and

(e) an exemption for the Top Funds from paragraph 2.5(2)(c) of NI 81-102 to permit the Top Funds to purchase securities of U.S. Underlying Funds even though they are not reporting issuers in an Applicable Jurisdiction (as defined below)

(paragraphs (c), (d) and (e), the U.S. Underlying Fund Relief)

(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 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 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. The following terms used in this decision have the following meanings:

Affiliate Dealer means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

Authorized Dealer means a registered dealer that has entered into an agreement with the manager of a JPM ETF authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more JPM ETFs on a continuous basis from time to time.

Basket of Securities means, in relation to the JPM ETF Securities of a JPM ETF, a group of securities or assets representing the constituents of the JPM ETF.

Designated Broker means a registered dealer that has entered into an agreement with the manager of a JPM ETF to perform certain duties in relation to the JPM ETF, including the posting of a liquid two-way market for the trading of the JPM ETF Securities on a Marketplace.

ETF Facts means a prescribed summary disclosure document required in respect of one or more classes or series of JPM ETF Securities being distributed under a prospectus.

Investment Company Act means the U.S. Investment Company Act of 1940, as amended from time to time.

JPIE means JPMorgan Income ETF, a U.S. ETF the securities of which are listed on the NYSE Arca.

JPM ETF Security means a listed security of a JPM ETF.

JPST means JPMorgan Ultra-Short Income ETF, a U.S. ETF the securities of which are listed on the NYSE Arca.

Legislation means the securities legislation of the BCSC and OSC.

Marketplace means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* that is in Canada.

Other Dealer means a registered dealer that is not an Authorized Dealer, Designated Broker or Affiliate Dealer.

Prescribed Number of JPM ETF Securities means the number of JPM ETF Securities determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Prospectus Delivery Requirement means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

Securityholders means beneficial or registered holders of JPM ETF Securities.

Take-Over Bid Requirements means the requirements of NI 62-104 relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in each Applicable Jurisdiction.

U.S. means the United States of America.

U.S. Underlying Funds means JPIE and JPST and each successor ETF to these ETFs.

Representations

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

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 under the securities legislation in British Columbia, Newfoundland and Labrador, Ontario and Québec and is also registered as 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 British Columbia;

3. the Filer is or will be the manager and portfolio manager of each of the JPM ETFs;

4. the Filer has applied, or will apply, to list the JPM ETF Securities on a Marketplace; and

5. the Filer is not in default of the securities legislation in any of the Applicable Jurisdictions;

A. *<u>JPM ETF Relief</u>*

The JPM ETFs

6. the JPM ETFs are or will be either trusts or corporations or classes thereof governed by the laws of a Jurisdiction; each JPM ETF is or will be a reporting issuer in the Jurisdiction(s) in which its securities are distributed;

7. subject to any exemptions that have been, or may be, granted by the applicable securities regulatory authorities, each JPM ETF will be an open-ended mutual fund subject to NI 81-102 and Securityholders of each JPM ETF will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102;

8. the JPM ETF Securities will be listed on a Marketplace;

9. the Filer has filed, or will file, a long form prospectus prepared and filed in accordance with NI 41-101, subject to any exemptions that may be granted by the applicable securities regulatory authorities;

10. JPM ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus; JPM ETF Securities may generally only be subscribed for or purchased directly from the JPM ETF (Creation Units) by Authorized Dealers or Designated Brokers; generally, subscriptions or purchases may only be placed for a Prescribed Number of JPM ETF Securities (or a multiple thereof) on any day when there is a trading session on a Marketplace; Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of JPM ETF Securities on a Marketplace;

11. in addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling JPM ETF Securities of the same class or series as the Creation Units in the secondary market; Other Dealers may also be engaged in purchasing and selling JPM ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.

12. each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of JPM ETF Securities to be issued, a Basket of Securities and/or cash in an amount sufficient so that the value of the Basket of Securities and/or cash delivered is equal to the NAV of the JPM ETF Securities subscribed for next determined following the receipt of the subscription order; in the discretion of the Filer, the JPM ETF may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the NAV of the JPM ETF Securities subscribed for next determined following the receipt of the subscription order;

13. Designated Brokers and Authorized Dealers will not receive any fees or commissions from the Filer or a JPM ETF in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or a JPM ETF may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units;

14. upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker may be contractually required to subscribe for Creation Units of a JPM ETF for cash in an amount not to exceed a specified percentage of the NAV of the JPM ETF or such other amount established by the Filer;

15. each JPM ETF will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for JPM ETF Securities for the purpose of maintaining liquidity for the JPM ETF Securities;

16. except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, JPM ETF Securities generally will not be able to be purchased directly from a JPM ETF. Investors are generally expected to purchase and sell JPM ETF Securities, directly or indirectly, through dealers executing trades through the facilities of a Marketplace; JPM ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains;

17. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their JPM ETF Securities may generally do so by selling their JPM ETF Securities on a Marketplace, through a registered dealer, subject only to customary brokerage commissions; a securityholder that holds a Prescribed Number of JPM ETF Securities or multiple thereof may exchange such JPM ETF Securities for Baskets of Securities and/or cash in the discretion of the Filer; securityholders may also redeem JPM ETF Securities for cash at a redemption price equal to 95% of the closing price of the JPM ETF Securities on a Marketplace on the date of redemption, subject to a maximum redemption price of the applicable NAV per JPM ETF Security.

Underwriter's Certificate Requirement

18. Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting;

19. the Filer will generally conduct its own marketing, advertising and promotion of the JPM ETF;

20. the Authorized Dealers and Designated Brokers will not be involved in the preparation of a JPM ETF's prospectus, will not perform any review or any independent due diligence as to the content of a JPM ETF's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the JPM ETFs or the Filer in connection with the distribution of JPM ETF Securities; the Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem JPM ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of JPM ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in JPM ETF Securities;

21. in addition, neither the Filer nor the JPM ETFs will pay any fees or commissions to the Designated Brokers and Authorized Dealers; as the Designated Brokers and Authorized Dealers will not receive any remuneration from the Filer or a JPM ETF in connection with distributing JPM ETF Securities and as the Authorized Dealers will change from time to time, it is not practical to provide an underwriter's certificate in the prospectus of the ETF Funds;

Take-Over Bid Requirements

22. as equity securities that will trade on a Marketplace, it is possible for a person or company to acquire such number of JPM ETF Securities so as to trigger the application of the Take-Over Bid Requirements; however:

    (a) it will be difficult for one or more Securityholders to exercise control or direction over a JPM ETF, as the constating documents of each JPM ETF will provide that there can be no changes made to such JPM ETF which do not have the support of the Filer;

    (b) it will be difficult for the purchasers of JPM ETF Securities to monitor compliance with the Take-Over Bid Requirements because the number of outstanding JPM ETF Securities will always be in flux as a result of the ongoing issuance and redemption of JPM ETF Securities by each JPM ETF; and

    (c) the way in which the JPM ETF Securities will be priced deters anyone from either seeking to acquire control of, or offering to pay a control premium for, outstanding JPM ETF Securities because pricing for each JPM ETF Security will generally reflect the NAV of the JPM ETF Securities;

23. the application of the Take-Over Bid Requirements to the JPM ETFs would have an adverse impact on the liquidity of the JPM ETF Securities because they could cause the Designated Brokers, Authorized Dealers and other large Securityholders to cease trading JPM ETF Securities once the Securityholder has reached the prescribed

threshold at which the Take-Over Bid Requirements would apply; this, in turn, could serve to provide conventional mutual funds with a competitive advantage over the JPM ETFs;

B. *U.S. Underlying Fund Relief*

The Top Funds

24. the Top Funds will be actively managed ETFs governed by the laws of the province of British Columbia;

25. the Filer intends to launch the Top Funds essentially as the Canadian versions of the U.S. Underlying Funds;

26. J.P. Morgan Investment Management Inc. (JPMIM; for all purposes herein, JPMIM also shall include an affiliate or successor of JPMIM, unless the context otherwise requires) acts as the portfolio advisor for the U.S. Underlying Funds and will act as portfolio sub-advisor to the Top Funds; JPMIM is registered with the United States Securities and Exchange Commission (the SEC) under the U.S. Investment Advisers Act of 1940;

27. the investment objectives, investment strategies, investment restrictions and risk factors applicable to Canadian JPIE will be substantially the same as those applicable to JPIE, except that Canadian JPIE will be permitted to achieve these objectives by investing substantially all of its assets in JPIE shares;

28. the investment objectives, investment strategies, investment restrictions and risk factors applicable to Canadian JPST will be substantially the same as those applicable to JPST, except that Canadian JPST will be permitted to achieve these objectives by investing substantially all of its assets in JPST shares.;

29. it is currently expected that each Top Fund may seek to hedge substantially all of its U.S. dollar currency exposure back to the Canadian dollar;

30. the portfolio managers at JPMIM currently responsible for overseeing each U.S. Underlying Fund’s portfolio and investments are currently expected to be the same as the portfolio managers responsible for overseeing each Top Fund’s portfolio and investments, in JPMIM’s capacity as sub-advisor to the Top Funds;

31. affiliates of JPMorgan Chase Bank, N.A., the custodian and transfer agent for the U.S. Underlying Funds, will act as the Top Funds’ custodian and transfer agent;

32. the Top Funds will distribute their securities pursuant to a long form prospectus prepared pursuant to NI 41-101 and Form 41-101F2 *Information Required in an Investment Fund Prospectus* (Form 41-101F2) and will be governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the Canadian securities regulatory authorities;

33. the Top Funds will be reporting issuers in each of the Applicable Jurisdictions;

34. the Top Funds will be subject to National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107);

35. the Top Funds are not in default of the securities legislation in any of the Applicable Jurisdictions;

The U.S. Underlying Funds

36. the U.S. Underlying Funds are actively managed exchange-traded funds subject to the Investment Company Act and each is an “investment fund” within the meaning of applicable Canadian securities legislation;

37. each of JPMIM and the U.S. Underlying Funds are regulated by the SEC; the regulatory oversight of JPMIM and the U.S. Underlying Funds by the SEC will be functionally equivalent to that of the Filer and the Top Funds, which will be primarily regulated by the BCSC;

38. the portfolio holdings of each of the U.S. Underlying Funds are available on their respective websites and are updated on a daily basis as of the close of business on the prior business day;

39. securities of each U.S. Underlying Fund are offered in their primary markets pursuant to a prospectus filed with the SEC which discloses material facts, similar to the disclosure requirements under Form 41-101F2;

40. the U.S. Underlying Funds are required to prepare a summary prospectus which provides disclosure that is substantially similar to the disclosure required to be included in the ETF Facts required by Form 41-101F4 Information Required in an ETF Facts Document;

41. the U.S. Underlying Funds are subject to continuous disclosure obligations which are substantially similar to the continuous disclosure obligations under National Instrument 81-106 *Investment Fund Continuous Disclosure*;

42. the U.S. Underlying Funds are required to update information of material significance in their respective prospectuses, to prepare an unaudited set of financial statements at least semi-annually, and to prepare management discussion of fund performance and an audited set of financial statements annually;

43. JPMIM owes its clients (including the U.S. Underlying Funds) a fiduciary duty under the U.S. Investment Advisers Act of 1940, which comprises a duty of care and a duty of loyalty; JPMIM must, at all times, serve the best interests of its clients, including the U.S. Underlying Funds;

44. the securities of the U.S. Underlying Funds are listed and traded on the NYSE Arca, a regulated exchange in the United States; the listing requirements of the NYSE Arca substantially address the same concerns as the listing requirements of Marketplaces in Canada;

45. the markets for securities of the U.S. Underlying Funds are sufficiently liquid because the U.S. Underlying Funds are large funds, with JPIE having US$1.00B in assets (as at January 31, 2024) and JPST having US$22.30B in assets (as at January 31, 2024); in addition, they are supported by authorized participants and market makers (each of whom are U.S. broker-dealers) which make the markets for the securities of the U.S. Underlying Funds and are incentivized to do so because of the arbitrage opportunities inherent in making such markets; accordingly, the Filer expects the Top Funds to be able to dispose of securities of the U.S. Underlying Funds through market facilities in order to raise cash, including to fund the redemption requests of their respective Securityholders from time to time;

JPIE

46. the investment objective of JPIE is to seek to provide income with a secondary objective of capital appreciation;

47. JPIE seeks to achieve its investment objectives by investing opportunistically among multiple debt markets and sectors that JPMIM believes will have high potential to produce income and have low correlations to each other in order to manage risk;

48. JPIE is not managed to a benchmark, which allows it to shift its allocations based on changing market conditions, which may result in investing in a single or in multiple markets and sectors;

49. JPIE has broad flexibility to invest in a wide variety of debt securities and instruments of any maturity. JPIE may invest in fixed and floating rate debt securities issued in both the U.S. and foreign markets, including emerging markets, and anticipates it will invest no more than 10% of its total assets in non-U.S. dollar denominated securities;

50. although JPIE has the flexibility to invest above 65% of its total assets in investments that are rated below investment grade (also known as “junk bonds” or “high yield securities”) or the unrated equivalent (which may include distressed debt), to take advantage of market opportunities, under normal market conditions, JPIE invests at least 35% of its total assets in investments that, at the time of purchase, are rated investment grade or the unrated equivalent;

51. JPIE may invest in (a) asset-backed securities, mortgage-related securities, mortgage-backed securities and sub-prime mortgaged-related securities, (b) inverse floaters and inverse interest-only securities, (c) structured investments and adjustable-rate mortgage loans, (d) securities issued by the U.S. government and its agencies and instrumentalities, (e) inflation-linked debt securities, (g) loan participations, assignments and commitments to purchase loans, and (h) convertible securities and preferred stock;

52. JPIE has flexibility to utilize derivatives, which will be used primarily for hedging, but may also be used as substitutes for securities in which JPIE can invest; such derivatives may include futures contracts, options, swaps (including interest rate and credit default swaps) and forward contracts;

53. JPIE may also invest in mortgage pass-through securities including securities eligible to be sold on the “to-be-announced” or TBA market (mortgage TBAs); JPIE may enter into dollar rolls, in which JPIE sells mortgage-backed securities including mortgage TBAs and at the same time contracts to buy back very similar securities on a future date. JPIE may also sell mortgage TBAs short;

54. as part of its principal investment strategy and for temporary defensive purposes, any portion of JPIE’s assets may be invested in cash and cash equivalents;

55. as at January 31, 2024, the NAV of JPIE was US$1.00B and JPIE held 1,222 individual positions across 14 industries;

56. given the size of JPIE, it is able to invest in a wide variety of debt securities, providing exposure to multiple debt markets, and resulting in a well-diversified portfolio; the Filer submits that Canadian JPIE would require substantial initial investment in order to properly articulate its investment strategy through a directly held portfolio, and because it will have significantly less assets than JPIE at inception, the Filer believes that if Canadian JPIE was to directly make investments in debt securities, it likely would not be able to achieve the portfolio diversification available to it by investing substantially all of its assets in JPIE;

57. furthermore, the Filer believes that it is expected that there will be pricing and efficiency benefits from Canadian JPIE investing in JPIE; JPIE benefits from more competitive pricing as a result of purchasing significantly larger volumes of debt securities, and therefore, by Canadian JPIE investing substantially all of its assets in shares of JPIE, the Filer believes that trading costs are expected to be lower for Canadian JPIE than Canadian JPIE could achieve through a directly held portfolio;

58. given the expected benefits that the Filer believes Canadian JPIE can achieve through direct investment in JPIE (being efficient exposure to a diversified pool of debt securities in multiple debt markets, with the benefit of more competitive pricing, greater liquidity and lower trading costs), Canadian JPIE would like to invest up to 100% of its net assets in JPIE;

JPST

59. the investment objective of JPST is to seek to provide current income while seeking to maintain a low volatility of principal;

60. under normal circumstances, JPST seeks to achieve its investment objective by investing at least 80% of its assets in investment grade, U.S. dollar denominated short-term fixed, variable and floating rate debt;

61. for purposes of JPST’s 80% policy, the investment grade U.S. dollar denominated short-term fixed, variable and floating rate debt securities in which JPST will invest will carry a minimum short-term rating of P-2, A-2 or F2 or better by Moody’s Investors Service Inc.

(Moody's), Standard & Poor's Corporation (S&P), or Fitch Ratings (Fitch), respectively, or the equivalent by another nationally recognized statistical rating organization, or a minimum long-term rating of Baa3, BBB- or BBB- by Moody's, S&P or Fitch, respectively, or an equivalent by another nationally recognized statistical rating organization at the time of investment, or if such investments are unrated, deemed by JPMIM to be of comparable quality at the time of investment.

62. JPST also may invest in securities rated below investment grade (i.e., high yield bonds, also called junk bonds or non-investment grade bonds) or the unrated equivalent;

63. JPST may invest in (a) corporate securities, (b) asset-backed securities (including sub prime securities and collateralized loan obligations), (c) mortgage-backed securities and mortgage related securities, (d) high quality money market instruments (such as commercial paper and certificates of deposit), (e) U.S. Treasury securities (including Separate Trading of Registered Interest and Principal of Securities), (f) securities issued or guaranteed by the U.S. government or its agencies and instrumentalities, (g) securities issued or guaranteed by foreign governments, (h) repurchase agreements, (i) when-issued securities, (j) delayed delivery securities, (k) forward commitments, (l) zero-coupon securities, and (m) privately placed securities;

64. under normal conditions, JPST will invest more than 25% of its assets in securities issued by companies in the banking industry; JPST may, however, invest less than 25% of its assets in the banking industry as a temporary defensive measure;

65. as part of its principal investment strategy and for temporary defensive purposes, any portion of JPST's total assets may be invested in cash, money market funds and cash equivalents;

66. as at January 31, 2024, the NAV of JPST was US$22.30B and JPST held 681 individual positions across 10 industries;

67. given the size of JPST, it is able to invest in a wide variety of short-term fixed, variable and floating rate debt securities, resulting in a well-diversified portfolio; the Filer submits that Canadian JPST would require substantial initial investment in order to properly articulate its investment strategy through a directly held portfolio, and because it will have significantly less assets than JPST at inception, the Filer believes that if Canadian JPST was to directly make investments in debt securities, it likely would not be able to achieve the portfolio diversification available to it by investing substantially all of its assets in JPST;

68. furthermore, the Filer believes that it is expected that there will be pricing and efficiency benefits from Canadian JPST investing in JPST; JPST benefits from more competitive pricing as a result of purchasing significantly larger volumes of debt securities, and therefore, by Canadian JPST investing substantially all of its assets in shares of JPST, the Filer believes that trading costs are expected to be lower for Canadian JPST than Canadian JPST could achieve through a directly held portfolio; and

69. given the expected benefits that the Filer believes Canadian JPST can achieve through direct investment in JPST (being efficient exposure to a diversified pool of short-term fixed, variable and floating rate debt securities, with the benefit of more competitive pricing, greater liquidity and lower trading costs), Canadian JPST would like to invest up to 100% of its net assets in JPST.

¶ 4 Reasons for Exemption Sought

A. <u>JPM ETF Relief</u>

Underwriter's Certificate Requirement

70. Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting;

71. the Filer will generally conduct its own marketing, advertising and promotion of the JPM ETFs;

72. the Authorized Dealers and Designated Brokers will not be involved in the preparation of a JPM ETF's prospectus, will not perform any review or any independent due diligence as to the content of a JPM ETF's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the JPM ETFs or the Filer in connection with the distribution of JPM ETF Securities; the Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem JPM ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of JPM ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in JPM ETF Securities;

73. in addition, neither the Filer nor the JPM ETFs will pay any fees or commissions to the Designated Brokers and Authorized Dealers; as the Designated Brokers and Authorized Dealers will not receive any remuneration from the Filer or a JPM ETF in connection with distributing JPM ETF Securities and as the Authorized Dealers will change from time to time, it is not practical to provide an underwriter's certificate in the prospectus of the JPM ETFs.

Take-Over Bid Requirements

74. as equity securities that will trade on a Marketplace, it is possible for a person or company to acquire such number of ETF Securities so as to trigger the application of the Take-Over Bid Requirements; however:

    (a) it will be difficult for one or more Securityholders to exercise control or direction over a JPM ETF, as the constating documents of each JPM ETF will provide that there can be no changes made to such JPM ETF which do not have the support of the Filer;

(b) it will be difficult for the purchasers of JPM ETF Securities to monitor compliance with the Take-Over Bid Requirements because the number of outstanding JPM ETF Securities will always be in flux as a result of the ongoing issuance and redemption of JPM ETF Securities by each JPM ETF; and

(c) the way in which the JPM ETF Securities will be priced deters anyone from either seeking to acquire control or offering to pay a control premium for outstanding JPM ETF Securities because pricing for each JPM ETF Security will generally reflect the NAV of the JPM ETF Securities.

75. the application of the Take-Over Bid Requirements to the JPM ETFs would have an adverse impact on the liquidity of the JPM ETF Securities because they could cause the Designated Brokers and other large Securityholders to cease trading JPM ETF Securities once the Securityholder has reached the prescribed threshold at which the Take-Over Bid Requirements would apply; this, in turn, could serve to provide conventional mutual funds with a competitive advantage over the JPM ETFs;

B. *U.S. Underlying Fund Relief*

76. The Filer believes that having the ability to invest up to 100% of each Top Fund's NAV in securities of the corresponding U.S. Underlying Fund is expected to provide the Top Funds with access to investment opportunities which, as described herein, the Top Funds would not be expected to be able to access on an equivalent and cost-efficient basis, which in turn is expected to allow the Top Funds to obtain more advantageous pricing and/or maintain significantly more diversified or tailored portfolios;

77. the Top Funds will not pay any management or incentive fees in connection with an investment in securities of the U.S. Underlying Funds which to a reasonable person would duplicate a fee payable by the U.S. Underlying Funds for the same service;

78. the investment universe in which JPMIM selects portfolio investments for each of the U.S. Underlying Funds will be the same investment universe in which JPMIM will be permitted to select portfolio investments for each of the Top Funds;

79. As the U.S. Underlying Funds are expected to always have more assets than each of the respective Top Funds, JPMIM is expected to be able to take advantage of investment opportunities given its ability to transact on a larger scale (i.e., the U.S. Underlying Funds are expected to be able to obtain more advantageous pricing and/or have the ability to purchase certain securities that would not otherwise be expected to be available to the Top Funds, given their expected size). Accordingly, the U.S. Underlying Fund securityholders are expected to have exposure to a portfolio of assets on a more cost-efficient basis and/or with greater diversification than the Filer believes the Top Funds would otherwise be expected to have in a directly held structure.

80. a summary of key expected benefits to the Top Funds in investing in securities of the U.S. Underlying Funds include:

(a) the Top Funds would have access to specialized knowledge, expertise and/or analytical resources of JPMIM;

(b) expected pricing, diversification and/or efficiency benefits that would otherwise not be available to the Top Funds;

(c) greater liquidity than would be achieved purchasing a directly held portfolio of fixed income instruments; and

(d) securityholders of the Top Funds will have the ability to make their investments using Canadian dollars;

81. any risks associated with an investment in securities of the U.S. Underlying Funds are mitigated by the fact that:

(a) the U.S. Underlying Funds are subject to the Investment Company Act and oversight by the SEC, and JPMIM is subject to the Investment Advisers Act and oversight by the SEC, and

(b) the U.S. Underlying Funds will comply with sections 2.1 (concentration restriction), 2.2 (control restrictions), 2.3 (restrictions concerning types of investments), 2.4 (restrictions concerning illiquid assets), 2.6 (borrowing and other investment practices) and 2.6.1 (short sales) of NI 81-102;

82. the amount of loss that could result from an investment by the Top Funds in securities of the U.S. Underlying Funds will be limited to the amount invested by the Top Funds in the U.S. Underlying Funds;

83. an investment by the Top Funds in securities of the U.S. Underlying Funds will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Top Funds;

84. the securities of the U.S. Underlying Funds will not meet the definition of index participation unit as set out in NI 81-102, because the U.S. Underlying Funds will not:

(a) hold securities that are included in a specified widely quoted index in substantially the same proportion as those securities are reflected in that index; or

(b) invest in a manner that causes the U.S. Underlying Funds to replicate the performance of an index.

Decision

¶ 5 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator is that:

(a) the Exemption Sought from the Underwriter's Certificate Requirement is granted;

(b) the Exemption Sought from the Take-Over Bid Requirement is granted; and

(c) the Exemption Sought in respect of the U.S. Underlying Fund Relief is granted to each Top Fund, provided that:

   (i) the investments by a Top Fund in securities of a U.S. Underlying Fund are in accordance with the investment objectives of the Top Fund;

   (ii) the relevant U.S. Underlying Fund is an investment company subject to the Investment Company Act and oversight by the SEC, and there is no currently effective:

      (A) stop order issued by the SEC suspending the effectiveness of the registration statement of the relevant U.S. Underlying Fund under the U.S. Securities Act of 1933; or

      (B) order issued by the SEC suspending the effectiveness of the registration statement of the relevant U.S. Underlying Fund under the U.S. Securities Exchange Act of 1934;

   (iii) the relevant U.S. Underlying Fund will comply with sections 2.1 (concentration restriction), 2.2 (control restrictions), 2.3 (restrictions concerning types of investments), 2.4 (restrictions concerning illiquid assets), 2.6 (borrowing and other investment practices) and 2.6.1 (short sales) of NI 81-102;

   (iv) the portfolio manager of each Top Fund is the Filer, that is registered under the Securities Act (British Columbia) as a portfolio manager and the portfolio advisor of each U.S. Underlying Fund and sub-advisor of each Top Fund is JPMIM, that is registered with the SEC under the U.S. Investment Advisers Act of 1940 and subject to oversight by the SEC;

   (v) the relevant U.S. Underlying Fund will not, at the time securities of the U.S. Underlying Fund are acquired by the Top Fund, hold more than 10% of its NAV in securities of any other investment fund other than securities of a money market fund or a mutual fund that issues index participation units; and

(vi) the Top Fund will disclose in its prospectus following the date of this decision, in the investment strategy section, the fact that the Top Fund has obtained the Exemption Sought to permit investments in the U.S. Underlying Funds on the terms described in this decision.

Gordon Johnson
Vice-Chair
British Columbia Securities Commission