

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

National Instrument 41-101, Part 19 - An investment fund wants relief from the requirement in s. 3.1(2) to use the prescribed form of prospectus - A fund structure is offering both ETF and non-ETF mutual fund securities, any disclosure required in a standard ETF prospectus form that is not contemplated by a mutual fund's simplified prospectus will be included, an ETF facts document will be filed for the ETF securities, ETF securities investors will receive an ETF Facts document

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 the NEO Exchange or another 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

National Instrument 81-102, s.19.1 - An investment fund wants relief from the borrowing requirement in s.2.6(1)(a)(i) - The fund may only borrow from its custodian, the borrowing in respect of a distribution cannot exceed the portion of the distribution that represents amounts that are payable to the fund but have not been received by the fund from issuers of securities in the fund's portfolio and also cannot exceed five percent of the net assets of the fund, the borrowing is limited to a 45-day period, security interests granted in respect of the borrowing are consistent with industry practices and is only in respect of amounts owed as a result of the borrowing, the fund's final prospectus will disclose potential borrowing by the fund as well its purpose and risks

National Instrument 81-102, s.19.1 - A fund structure that offers series of both ETF securities and non-ETF mutual fund securities wants technical relief from the requirements in Parts 9, 10 and 14 - The fund will comply with Parts 9, 10 and 14 of NI 81-102 with regards to both its ETF securities and non-ETF mutual fund securities

Applicable Legislative Provisions

National Instrument 41-101 *General Prospectus Requirements*, subsection 3.1(2), and 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*, paragraph 2.6(1)(a), Parts 9, 10 and 14, and section 19.1.

July 6, 2023

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 Forstrong Global Asset Management Inc.
(the Filer)

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each, a Decision Maker) has received an application from the Filer on behalf of each proposed mutual fund (the Proposed Funds) and such other mutual funds (Mutual Funds) or alternative mutual funds (Alternative Mutual Funds) as are managed or may be managed by the Filer now or in the future that offer ETF Securities (as defined below) and Mutual Fund Securities (as defined below) (where the Mutual Funds and Alternative Mutual Funds are collectively referred to as the Future Funds, and, together with the Proposed Funds, the Funds, and, each, a Fund), for a decision under the securities legislation of the Jurisdictions (the Legislation) that exempts:

- (a) the Filer and each Fund from the requirement to prepare and file a long form prospectus for the ETF Securities in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (Form 41-101F2) provided that the Filer files: (i) a prospectus for the ETF Securities in accordance with the provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) and Form 81-101F1 (as defined below), other than the requirements pertaining to the filing of a fund facts document; and (ii) an ETF facts document in accordance with Part 3B of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) (the ETF Prospectus Form Requirement);
- (b) the Filer and each Fund from the requirement to include a certificate of the underwriter(s) in a Fund's prospectus in respect of each class or series of ETF Securities (the Underwriter's Certificate Relief);

- (c) a person or company purchasing ETF Securities in the normal course through the facilities of the Exchange (as defined below) or another Marketplace (as defined below) from the Take-over Bid Requirements (as defined below) (the Take-over Bid Relief);
- (d) each Fund that is not an alternative mutual fund from section 2.6(1)(a)(i) of National Instrument 81-102 *Investment Funds* (NI 81-102) to permit the Fund to borrow cash from the custodian of the Fund (the Custodian) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund (the Borrowing Relief); and
- (e) the Filer and each Fund from the provisions of Parts 9, 10, and 14 of NI 81-102 to permit the Fund to treat its ETF Securities and its Mutual Fund Securities as if such securities were separate funds in connection with their compliance with the provisions of Parts 9, 10, and 14 of NI 81-102 (the Sales and Redemptions 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 (BCSC) 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 each of the other provinces and territories of Canada other than the Jurisdictions; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in MI 11-102, National Instrument 14-101 *Definitions* (NI 14-101), NI 41-101, and NI 81-102 have the same meaning if used in this decision unless otherwise defined herein. 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, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase, and redeem Creation Units from one or more Funds on a continuous basis from time to time.

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

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with the Filer or an affiliate of the Filer on behalf of a Fund to perform certain duties in relation to the ETF Securities of the Fund, including the posting of a liquid two-way market for

the trading of the Fund's ETF Securities on the Exchange or another Marketplace.

ETF Facts means an ETF facts document prepared, filed, and delivered in accordance with Part 3B of NI 41-101.

ETF Securities means securities of an exchange-traded class or series of a Fund that are listed or will be listed on the Exchange or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Exchange means the Toronto Stock Exchange.

Form 81-101F1 means Form 81-101F1 *Contents of Simplified Prospectus*.

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

Mutual Fund Securities means securities of a non-exchange-traded class or series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

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

Prescribed Number of ETF Securities means, in relation to a Fund, the number of ETF Securities of the Fund 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 ETF Securities or Mutual Fund Securities of a Fund, as applicable.

Take-over Bid Requirements means the requirements of National Instrument 62-104 *Take-Over Bids and Issuer Bids* relating to take-over bids, including the requirement to file a report of a take-over bid in each Jurisdiction.

Representations

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

The Filer

1. the Filer is a corporation formed under the laws of Canada with its head office located in Kelowna, British Columbia;

2. the Filer is registered as: (i) a portfolio manager under the laws of Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Ontario, Québec, Saskatchewan, and Yukon; (ii) an investment fund manager under the laws of British Columbia, Newfoundland and Labrador, Ontario, and Québec; and (iii) an exempt market dealer under the laws of Alberta, British Columbia, Ontario, and Québec;
3. the Filer is, or will be, the investment fund manager of each of the Funds;
4. the Filer is not in default of securities legislation in any jurisdiction of Canada;

The Funds

5. each Fund is, or will be, an open-ended mutual fund established as either a trust or a class of shares of a mutual fund corporation that is governed by the laws of a jurisdiction of Canada or the laws of Canada. Each Fund is, or will be, a reporting issuer in the jurisdictions of Canada in which its securities are distributed. Each Proposed Fund will offer Mutual Fund Securities and ETF Securities. Each Future Fund that relies on the Exemption Sought may offer Mutual Fund Securities and ETF Securities;
6. subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102;
7. the Filer has or will file a preliminary simplified prospectus in respect of Mutual Fund Securities and ETF Securities of the Proposed Funds, as well as fund facts documents in the form prescribed by Form 81-101F3 *Contents of Fund Facts Document* for each series of Mutual Fund Securities and ETF facts documents in the form prescribed by NI 41-101F4 *Information Required in an ETF Facts Document* for each series of ETF Securities of the Proposed Funds, with the securities regulatory authorities in each of the jurisdictions of Canada;
8. the Filer has or will apply to list any ETF Securities of the Funds on the Exchange or another Marketplace. The Filer will not file a final simplified prospectus for any of the Funds in respect of the ETF Securities until the Exchange or other applicable Marketplace has conditionally approved the listing of the ETF Securities;
9. each Fund will be a reporting issuer in the jurisdictions of Canada in which its securities are distributed;
10. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through appropriately registered dealers;
11. ETF Securities will be distributed on a continuous basis in one or more of the jurisdictions of Canada under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the Exchange or other Marketplace. Authorized Dealers or Designated Brokers subscribe for

Creation Units for the purpose of facilitating investor purchases of ETF Securities on the Exchange or another Marketplace;

12. in addition to subscribing for and re-selling their Creation Units, Authorized Dealers, Designated Brokers, and Affiliate Dealers will also generally be engaged in purchasing and selling 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 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;
13. each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of 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 net asset value of the Prescribed Number of ETF Securities next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds 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 net asset value of the Prescribed Number of ETF Securities next determined following the receipt of the subscription order;
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 Fund for cash in an amount not to exceed a specified percentage of the net asset value of the Fund or such other amount established by the Filer;
15. Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or a Fund 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;
16. each Fund 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 ETF Securities for the purpose of maintaining liquidity for the ETF Securities;
17. 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, ETF Securities generally will not be able to be purchased directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the Exchange or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains;
18. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the Exchange or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the Exchange or

other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security;

ETF Prospectus Form Requirement

19. the Filer believes it is more efficient and expedient to include all classes and series of Mutual Fund Securities and ETF Securities of each Fund in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true, and plain disclosure of all material facts relating to the securities of the Funds by permitting disclosure relating to all classes and series of securities to be included in one prospectus;
20. the Filer will ensure that any additional disclosure included in the simplified prospectus relating to the ETF Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes;
21. the Funds will comply with the provisions of NI 81-101 when filing any prospectus or amendment thereto;
22. the Funds will comply with Part 3B of NI 41-101 when preparing, filing, and delivering ETF Facts for the ETF Securities of the Funds;

Underwriter's Certificate Requirement

23. 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;
24. the Filer will generally conduct its own marketing, advertising, and promotion of the Funds to the extent permitted by its registrations;
25. authorized Dealers and Designated Brokers will not be involved in the preparation of a Fund's prospectus, will not perform any review or any independent due diligence as to the content of a Fund's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the Funds or the Filer in connection with the distribution of ETF Securities. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities;
26. in addition, neither the Filer nor the Funds 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 in connection with distributing 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(es) of the Funds;

Take-over Bid Requirements

27. as equity securities that will trade on the Exchange or another 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 Fund, as the constating documents of each Fund will provide that there can be no changes made to such Fund that do not have the support of the Filer;
 - (b) in respect of a Fund structured as a corporation or class thereof, it will not be possible for one or more Securityholders to exercise control or direction over the Fund as the Fund will be a class of non-voting shares of a mutual fund corporation (which only has those voting rights available under corporate law and those prescribed by NI 81-102, which, for greater certainty, will not include the right to vote in connection with the election of directors of such mutual fund corporation);
 - (c) it will be difficult for purchasers of ETF Securities of a Fund to monitor compliance with the Take-over Bid Requirements because the number of outstanding ETF Securities of the Fund will always be in flux as a result of the ongoing issuance and redemption of ETF Securities by such Fund;
 - (d) the way in which ETF Securities will be priced deters anyone from either seeking to acquire control or offering to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect the net asset value of the ETF Securities;
28. the application of the Take-over Bid Requirements to a Fund would have an adverse impact on the liquidity of the ETF Securities of the Fund because they could cause the Designated Brokers and other large Securityholders to cease trading ETF Securities once the Designated Brokers or other large Securityholders reach the prescribed threshold at which the Take-over Bid Requirements apply. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over a Fund.

Borrowing Requirement

29. section 2.6(1)(a)(i) of NI 81-102 prevents a mutual fund from borrowing cash or providing a security interest over its portfolio assets unless the transaction is a temporary measure to accommodate redemption requests or to settle portfolio transactions and does not exceed five percent of the net assets of the mutual fund. As a result, a Fund that is not an alternative mutual fund is not permitted under section 2.6(1)(a)(i) to borrow from the Custodian to fund distributions under its Distribution Policy (as defined below);
30. each Fund that is not an alternative mutual fund will make distributions on a monthly or annual basis or at such frequency as the Filer may, in its discretion, determine appropriate, may make additional distributions, and, in each taxation year, will distribute sufficient net income and net realized capital gains so that it will not be liable to pay income tax under Part I of the *Income Tax Act* (Canada) (the Tax Act), and for each Fund structured as a corporation or a class thereof, under Part IV of the Tax Act on taxable dividends from taxable Canadian corporations (collectively, the Distribution Policy);
31. amounts included in the calculation of net income and net realized capital gains of a Fund for a taxation year that must be distributed in accordance with its Distribution Policy sometimes include amounts that are owing to but have not actually been received by the Fund from the issuers of securities held in the Fund's portfolio (Issuers);

32. while it is possible for a Fund to maintain a portion of its assets in cash or to dispose of securities in order to obtain any cash necessary to make a distribution in accordance with its Distribution Policy, maintaining such a cash position or making such a disposition (which would generally be followed, when the cash is actually received from the Issuers, by an acquisition of the same securities) will impact the Fund's performance. Maintaining assets in cash or disposing of and reacquiring the same securities would preclude a portion of the net asset value of the Fund from being invested in accordance with its investment objective;
33. the Filer is of the view that it is in the interests of a Fund that is not an alternative mutual fund to have the ability to borrow cash from its Custodian and, if required by the Custodian, to provide a security interest over its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund from the Issuers. While such borrowing will have a cost, the Filer expects that such costs will be less than the reduction to the Fund's performance if the Fund had to hold cash instead of securities in order to fund the distribution;

Sales and Redemptions Requirements

34. parts 9, 10, and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Sales and Redemptions Relief, the Filer and the Funds would not be able to technically comply with those parts of NI 81-102; and
35. the Exemption Sought will permit the Filer and the Funds to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with Parts 9, 10, and 14 of NI 81-102. The Exemption Sought will enable each of the ETF Securities and Mutual Fund Securities to comply with Parts 9, 10, and 14 of NI 81-102, as appropriate, for the type of security being offered.

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.

1. The decision of the Decision Makers under the Legislation is that the Exemption Sought from the ETF Prospectus Form Requirement is granted, provided that the Filer will be in compliance with the following conditions:
 - a. the Filer files a simplified prospectus in respect of the ETF Securities in accordance with the requirements of NI 81-101 and Form 81-101F1, other than the requirements pertaining to the filing of a fund facts document;
 - b. the Filer includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1) in respect of the ETF Securities in each Fund's simplified prospectus; and
 - c. the Filer includes disclosure regarding this decision under the heading Additional Information in each Fund's simplified prospectus.

2. The decision of the Decision Makers under the Legislation is that each of the Underwriter's Certificate Relief and the Take-over Bid Relief is granted.
3. The decision of the Decision Makers under the Legislation is that the Borrowing Relief is granted, provided that each Fund that is not an alternative mutual fund will be in compliance with the following conditions:
 - a. the borrowing by the Fund in respect of a distribution does not exceed the portion of the distribution that represents, in the aggregate, amounts that are payable to the Fund but have not been received by the Fund from the Issuers and, in any event, does not exceed five percent of the net assets of the Fund;
 - b. the borrowing is not for a period longer than 45 days;
 - c. any security interest in respect of the borrowing is consistent with industry practice for the type of borrowing and is only in respect of amounts owing as a result of the borrowing;
 - d. the Fund does not make any distribution to Securityholders where the distribution would impair the Fund's ability to repay any borrowing to fund distributions; and
 - e. the final prospectus or amendment thereto of the Fund discloses the potential borrowing, the purpose of the borrowing and the risks associated with the borrowing.
4. The decision of the Decision Makers under the Legislation is that the Sales and Redemptions Relief is granted, provided that the Filer and each Fund will be in compliance with the following conditions:
 - a. with respect to its Mutual Fund Securities, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and
 - b. with respect to its ETF Securities, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

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