

# DECISION DOCUMENT

June 29, 2012

**In the Matter of the  
Securities Legislation of  
Manitoba and Ontario  
(the "Jurisdictions")**

**and**

**In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions**

**and**

**In the Matter of  
I.G. Investment Management, Ltd. ("IGIM") and  
Investors Mortgage and Short Term Income Fund (the "Fund")  
(collectively as, the "Filers")**

## Decision

### Background

The securities regulatory authority or regulator in each of the Jurisdictions ("Decision Makers") has received an application from the Filers for a decision under the securities legislation of the Jurisdictions ("Legislation") for an exemption, pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* ("NI 81-102"), from subsections 2.3(b) and (c) of NI 81-102, provided that the Fund complies with National Policy Statement No. 29 - *Mutual Funds Investing in Mortgages* ("NP 29") except for section III(2.1)(f), which prohibits a mutual fund from investing in mortgages for an amount more than 75% of the fair market value of the property securing the mortgages (the "75% LTV Requirement"), except under certain circumstances set out in such section (the "Exemption Sought").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) The Manitoba Securities Commission is the principal regulator ("Principal Regulator") for this application;

(b) The Filers have provided notice that section 4.7(1) of Multi-Lateral Instrument 11-102 - *Passport System* ("MI 11-102") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and the North West Territories; 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**

Defined terms contained in National Instrument 14-101 - *Definitions* ("NI 14-101"), National Instrument 81-101- *Mutual Fund Prospectus Disclosure* ("NI 81-101"), NI 81-102, National Policy 11-203 - *Process for Exemptive Relief Applications in Multiple Jurisdictions* ("NP 11-203") and Multilateral Instrument 11-102 - *Passport System* ("MI 11-102"), have the same meaning in this decision unless they are otherwise defined in this decision.

### **Representations**

This decision is based on the following facts represented by the Filers:

1. IGIM is a corporation continued under the laws of Ontario.
2. IGIM is the manager and trustee of, and portfolio advisor to, the Fund. Investors Group Trust Co. Ltd. ("IGTC") was the original trustee of the Fund, and in 2007 was succeeded by IGIM.
3. IGIM is registered as a portfolio manager in Manitoba, Ontario, and Quebec and as an investment fund manager in Manitoba. IGIM is also registered as an advisor under *The Commodity Futures Act* in Manitoba. IGIM's head office is in Winnipeg, Manitoba and, accordingly, Manitoba is the principal regulator.
4. The Fund is an open end mutual fund originally organized as a trust and is a reporting issuer under the legislation of each of the Jurisdictions.
5. Units of the Fund are currently being offered to the public under a simplified prospectus dated June 30, 2011.
6. Retail units of the Fund are distributed by Investors Group Financial Services Inc. and Investors Group Securities Inc. through Investors Group consultants or an Investors Group Securities Inc. Trade Centre.
7. IGIM, as manager of the Fund, has agreed to repurchase, or cause to be repurchased, from the Fund any mortgage the Fund has purchased from it, or from IGTC, or from any of its affiliates, which mortgage is non-compliant with the applicable loan to value ratio ("LTV Ratio"), in default, or not a valid first mortgage (the "IGIM Guarantee").
8. Subsections 2.3(b) and (c) of NI 81-102 prohibit a mutual fund from purchasing a mortgage, other than a guaranteed mortgage, and from purchasing a guaranteed mortgage if, immediately after the purchase, more than 10% of the mutual fund's net asset value would be made up of guaranteed mortgages.

9. Section 20.4 of NI 81-102 provides an exemption from subsections 2.3(b) and (c) thereof to any mutual fund existing at the time NI 81-102 was adopted that has a fundamental investment objective to permit it to invest in mortgages in accordance with NP 29. The Fund first commenced distribution of its units on or about August, 1973.

10. The investment objective of the Fund is to provide a consistent level of current income by investing primarily in short-term debt securities and mortgages on improved real estate in Canada. To achieve the Fund's investment objective it has assembled and intends to continue to assemble a diversified portfolio of insured and non-insured mortgages.

11. The Fund is subject to, and invests in mortgages as permitted by, NP 29.

12. The Fund has current relief dated June 6, 2006 ("2006 Relief"), from section III(2.1)(g) of NP 29 permitting the Fund to invest up to 40% of its net assets in residential mortgages having terms of maturity greater than 5 years, but not exceeding 10 years and to revise its fee structure.

13. The Fund also has current relief dated April 23, 2008 ("2008 Relief"), from section 4.2 of NI 81-102 to permit transactions in mortgages between IGTC and its affiliates, and the Fund, and exempting it from the monthly related party transaction reporting requirements under securities legislation.

14. Section III(2.1)(f) of NP 29 prohibits a mutual fund from investing in mortgages in an amount which is more than 75% of the fair market value of the property securing the mortgage, except when:

(a) such mortgage is insured under the *National Housing Act* (Canada) or any similar act of a province, or the excess over 75% is insured by an insurance company registered or licensed under the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Companies Act* (Canada) or insurance acts or similar acts of a Canadian province or territory,

(b) (the "75% LTV Ratio").

15. Currently IGTC is the mortgagee of all the mortgages contained in the Fund. IGTC is a trust company subject to the *Trust and Loan Companies Act* (Canada) (the "TLC Act").

16. Section III(2.1)(f) of NP 29 originally mirrored the prohibition in the TLC Act that restricted lending an amount above 75% of the LTV Ratio of the property securing the mortgage, unless covered by insurance. In April 2007 the TLC Act was amended to increase the LTV Ratio from 75% to 80% (the "80% LTV Ratio").

17. Subsection 418(1) of the current TLC Act provides that a company subject to the legislation shall not make a loan in Canada on the security of residential property in Canada for the purpose of purchasing, renovating or improving that property, or refinance such a loan, if the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior

claim against the property, would exceed 80 per cent of the value of the property at the time of the loan.

18. IGTC is the mortgagee of all of the mortgages the Fund currently acquires. Pursuant to subsection 418(1) of the TLC Act, IGTC is not required to obtain mortgage default insurance for properties that fall between 75.01 to 80% LTV range (the "NP 29 Restricted Range").

19. Due to NP 29, the Fund has to monitor its purchases of mortgages to ensure it does not invest in mortgages in the NP 29 Restricted Range. The Fund uses a manual process to exclude the NP Restricted Range mortgages, which results in increased efforts and costs.

20. In a low interest rate environment the pool of NP 29 Restricted Range mortgages would increase. Exclusion of the NP 29 Restricted Range mortgages limits the Fund's investment opportunities in a lucrative part of the market to the detriment of the Fund.

21. Absent the 75% LTV Ratio requirement in NP 29, the Fund would be permitted to invest in mortgages in the NP 29 Restricted Range, provided that such investments constitute a small percentage of the Fund, such that the Fund remains primarily invested in high quality mortgages on residential properties in Canada.

22. The IGIM Guarantee ensures that there is no borrower default risk to the Fund in permitting the Fund to invest in NP 29 Restricted Range mortgages.

23. Similar relief was provided to Scotia Securities Inc. and Scotia Mortgage Income Fund in an Ontario decision dated July 28, 2009 ("Scotia Decision").

24. Neither IGIM nor the Fund is in default under securities legislation in any province or territory of Canada.

## **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation of 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:

1. the Fund's fundamental investment objective permits the Fund to invest in mortgages in accordance with NP 29, and,

(a) a National Instrument replacing NP 29 has not come into force;

(b) the Fund complies with NP 29, except as amended by the Exemption Sought and the 2006 Relief;

2. this Decision shall terminate if the 80% LTV Ratio in the TLC Act is amended at any time.

**"R. B. Bouchard"**

**R.B. Bouchard**

**Director - Corporate Finance**

**The Manitoba Securities Commission**