

DECISION

Headnote

National Policy Statement 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions -- relief from certain specified derivatives and custodial requirements to permit mutual funds to enter into swap transactions that are cleared through a clearing corporation -- relief required as a result of new U.S. requirements to clear over-the-counter derivatives including swaps.

Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, ss. 2.7(1) and (4), 6.8(1), 19.1.

October 7, 2014

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.
(THE FILER)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief pursuant to Section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) exempting the Existing Funds (as defined below) and all current and future mutual funds managed by the Filer (together with the Existing Funds, each, an "Investors Group Fund" and collectively, the "Investors Group Funds") that enter into Cleared Swaps (as defined below) in the future from:

- (i) the requirement in Subsection 2.7(1) of NI 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;
- (ii) the limitation in Subsection 2.7(4) of NI 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that settles transactions made on a futures exchange listed in Appendix A to NI 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

(iii) the requirement in Subsection 6.1(1) of NI 81-102 to hold all portfolio assets of a mutual fund under the custodianship of one custodian in order to permit each Investors Group Fund to deposit cash and other portfolio assets directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) as margin,

with respect to Cleared Swaps (the **Requested Relief**):

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

- (a) the Manitoba Securities Commission is the principal regulator for this application,
- (b) the exemption is also sought in Ontario,
- (c) the Filer has provided notice that Subsection 4.7(2) of Multilateral 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 & Labrador, Yukon, Northwest Territories and Nunavut (together with Manitoba and Ontario, the **Jurisdictions**), and
- (d) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. Capitalized terms used in this decision have the following meanings:

“**CFTC**” means the U.S. Commodity Futures Trading Commission;

“**Cleared Swaps**” means the swaps that are, or will become, subject to a clearing determination issued by the CFTC, including fixed-to-floating interest rate swaps, basis swaps, forward rate agreements in U.S. dollars, the Euro, Pounds Sterling or the Japanese Yen, overnight index swaps in U.S. dollars, the Euro and Pounds Sterling and untranching credit default swaps on certain North American indices (CDX.NA.IG and CDX.NA.HY) and European indices (iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe HiVol) at various tenors;

“**Clearing Corporation**” means any of the Chicago Mercantile Exchange Inc., ICE Clear Credit LLC, LCH.Clearnet Limited and any other clearing organization that is permitted to operate in the Jurisdiction where the Investors Group Fund is located;

“**Dodd-Frank**” means the Dodd-Frank Wall Street Reform and Consumer Protection Act;

“**Existing Funds**” means Investors Canadian High Yield Income Fund and/or IG Putnam U.S. High Yield Income Fund;

“**Futures Commission Merchant**” means any futures commission merchant that is registered with the CFTC and is a member of a Clearing Corporation;

“**OTC**” means over-the-counter;

“**Portfolio Advisor**” means each of the Filer or an affiliate of the Filer, and each third party sub-advisor retained from time to time by the Filer, or an affiliate of the Filer, to manage all or a portion of the investment portfolio of one or more Investors Group Funds; and

“**U.S. Person**” has the meaning attributed thereto by the CFTC.

Representations

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

1. The Filer is a corporation continued under the laws of Ontario and is registered under securities legislation as an advisor in the category of portfolio manager in Ontario, Manitoba and Québec, and as an investment fund manager in Manitoba, Ontario, Québec and Newfoundland & Labrador. The Filer is also registered as an advisor under *The Commodity Futures Act* of Manitoba. The Filer's head office is in Winnipeg, Manitoba.
2. The Filer or an affiliate of the Filer, is, or will be, the portfolio advisor of the Investors Group Funds. A third party sub-advisor may be appointed as sub-advisor to all or a portion of the investment portfolio of certain of the Investors Group Funds.
3. Each Investors Group Fund is, or will be:
 - (a) a class of mutual fund shares issued by Investors Group Corporate Class Inc., a corporation established under and governed by the *Canada Business Corporations Act*, or
 - (b) a mutual fund trust established under a declaration of trust under the laws of the Province of Manitoba.
4. Securities of the Investors Group Funds are qualified for distribution in the Jurisdictions pursuant to Simplified Prospectuses, Annual Information Forms and Fund Facts.
5. Neither the Filer nor the Investors Group Funds are in default of securities legislation in any Jurisdiction.
6. The investment objective and investment strategies of each Investors Group Fund permit, or will permit, the Investors Group Fund to enter into derivative transactions, including swaps, with Canadian, U.S. or other international counterparties, which are in compliance with the derivative provisions in NI 81-102. The Portfolio Advisor for the Existing Funds considers swaps to be an important investment tool that is available to it to properly manage the portfolio of the Existing Funds. Although the Existing Funds do not currently enter into Cleared Swaps, the Portfolio Advisor for the Existing Funds intends to put in place the arrangements required to permit the Existing Funds to enter into Cleared Swaps.
7. Dodd-Frank requires that certain OTC derivatives, including swaps, between certain categories of market participants be cleared through a Futures Commission Merchant at a clearing organization recognized by the CFTC. Generally, where one party to a swap is a U.S. Person and the other party to the swap is a mutual fund, such as an Investors Group Fund, that swap must be cleared, absent an available exception.
8. In order to benefit from both the pricing benefits and reduced trading costs that a Portfolio Advisor may be able to achieve through its trade execution practices for its advised investments funds and other accounts and from the reduced costs associated with cleared OTC derivatives as compared to other OTC trades, the Filer wishes to have the Investors Group Funds have the ability to enter into Cleared Swaps.
9. In the absence of the Requested Relief, each Portfolio Advisor will need to structure the swaps entered into by the Investors Group Funds so as to avoid the clearing requirements of the CFTC. The Filer respectfully submits that this would not be in the best interests of the Investors Group Funds and their investors for a number of reasons as set out herein.
10. The Filer strongly believes that it is in the best interests of the Investors Group Funds and their investors to be able to execute OTC derivatives, including Cleared Swaps, with U.S. Persons (including U.S. swap dealers) to mitigate the legal, operational and back office risks faced by investors in the global swap markets.
11. A Portfolio Advisor may use the same trade execution practices for all of its advised investment funds and other accounts, including the Investors Group Funds. An example of these trade execution

practices is block trading, where large number of securities are purchased or sold or large derivative trades are entered into on behalf of a number of investment funds and other accounts advised by one Portfolio Advisor. These practices include the use of Cleared Swaps if such trades are executed with a U.S. swap dealer. If the Investors Group Funds are unable to employ these trade execution practices, then each affected Portfolio Advisor will have to create separate trade execution practices only for the Investors Group Funds and will have to execute trades for the Investors Group Funds on a separate basis. This will increase the operational risk for the Investors Group Funds, as separate execution procedures will need to be established and followed only for the Investors Group Funds. In addition, the Investors Group Funds will not be able to enjoy the possible price benefits and reduction in trading costs that a Portfolio Advisor may be able to achieve through a common practice for its advised funds and other accounts. In the Filer's opinion, best execution and maximum certainty can best be achieved through common trade execution practices, which, in the case of OTC derivatives, involve the execution of Cleared Swaps.

12. As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the Investors Group Funds. The Filer respectfully submits that the Investors Group Funds should be encouraged to comply with the robust clearing requirements established by the CFTC by granting them the Requested Relief.

13. The Requested Relief is analogous to the treatment currently afforded under NI 81-102 to other types of derivatives that are cleared, such as clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, the Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.

14. For the reasons provided above, the Filer submits that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that, in respect of the deposit of cash and portfolio assets as margin:

- (a) in Canada,
 - (i) the Futures Commission Merchant is a member of a SRO that is a participating member of CIPF; and
 - (ii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Investors Group Fund as at the time of deposit; and
- (b) outside of Canada,
 - (i) the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;
 - (ii) the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of \$50 million; and
 - (iii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Investors Group Fund as at the time of deposit.

This decision will terminate on the earlier of (i) the coming into force of any revisions to the provisions of NI 81-102 that address the clearing of OTC derivatives, and (ii) two years from the date of this decision.



Chris Besko
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Manitoba Securities Commission