

2.1.5 Evolve Funds Group Inc.

than the Jurisdiction (together with the Jurisdiction, the **Jurisdictions**).

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An alternative mutual fund that uses leverage to invest in a portfolio consisting of six issuers listed on the NASDAQ, granted relief from the concentration restriction in NI 81-102, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1.1) and 19.1.

December 9, 2021

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO  
(the Jurisdiction)

AND

IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF  
APPLICATIONS  
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF  
EVOLVE FUNDS GROUP INC.  
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Evolve Enhanced FANGMA ETF (the **Fund**), for a decision (the **Exemption Sought**) under the securities legislation of the principal regulator (the **Legislation**) relieving the Fund from section 2.1(1.1) of National Instrument 81-102 *Investment Funds (NI 81-102)*, in order to permit the Fund to purchase securities of an issuer, enter into a specified derivatives transaction or purchase an index participation unit even though, immediately after the transaction, more than 20% of the net asset value (**NAV**) of the Fund would be invested, directly or indirectly, in securities of any issuer (the **Concentration Relief**).

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

- (a) the Ontario Securities Commission is the principal regulator for the application; and
- (b) the Filer has provided notice that subsection 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

Interpretation

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.

Representations

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

*The Filer*

1. The Filer is a corporation incorporated under the laws of Canada, with its head office located in Toronto, Ontario.
2. The Filer will be the promoter, trustee and manager of the Fund and is registered as: (i) a portfolio manager in Ontario and (ii) an investment fund manager in Newfoundland and Labrador, Ontario and Quebec.
3. The Filer or an affiliate or associate of the Filer is, or will be, the investment fund manager of the Fund.

*The Fund*

4. The Fund will be an exchange traded mutual fund governed by the laws of a Jurisdiction of Canada and a reporting issuer under the laws of the Jurisdictions.
5. The Fund will also be an “alternative mutual fund”, as such term is defined in NI 81-102.
6. The Filer will file a preliminary long form prospectus on behalf of the Fund with the securities regulatory authority in each of the Jurisdictions.
7. The Fund will be subject to NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities.
8. The Fund will be subject to National Instrument 81-107 *Independent Review Committee for Investment Funds (NI 81-107)*.
9. The Units of the Fund will (subject to satisfying a designated exchange’s (the Designated Exchange) original listing requirements) be listed on the Designated Exchange.
10. The investment objective of the Fund will be to seek to replicate, to the extent reasonably possible and before fees and expenses, a 1.25 times multiple of the performance of the Solactive FANGMA Equal Weight Index Canadian Dollar Hedged, or any successor thereto (the **Index**).

11. The Fund will use leverage in order to seek to achieve its investment objective. Leverage will be created through the use of cash borrowings or as otherwise permitted under applicable securities legislation for alternative mutual funds.
12. The investment objective and investment strategy of the Fund, as well as the risk factors associated therewith, including concentration risk, are and will be disclosed in the prospectus of the Fund, as may be amended from time to time.
13. The constituent securities of the Index are the equity securities (the **Shares**) of Alphabet Inc., Amazon Inc., Apple Inc., Meta Platforms Inc. (formerly Facebook Inc.), Netflix Inc. and Microsoft Corp. (each, a **Company**).
14. The Index will rebalance the portfolio quarterly (an **Index Rebalance Date**). On an Index Rebalance Date, each Company will be assigned an equal weight of the Index.
15. The Fund will seek to achieve its investment objective by borrowing cash to invest in and hold a proportionate share of, or a sampling of the constituent securities of, the Index in order to track approximately 1.25x the performance of the Index. As an alternative to, or in conjunction with investing in and holding the constituent securities, the Fund may also invest in other securities, including other mutual funds or exchange traded funds managed by the Filer to obtain exposure to the constituent securities of the Index in a manner that is consistent with the Fund's investment objective. The Fund may also hold cash and cash equivalents or other money market instruments in order to meet its obligations. It is anticipated that the Fund will obtain its exposure to the Shares primarily by investing in the Evolve FANGMA Index ETF in accordance with Section 2.5 of NI 81-102.
16. The maximum aggregate exposure of the Fund to cash borrowing, short selling and specified derivatives will not exceed approximately 125% of its net asset value (**NAV**).
17. In order to ensure that a unitholder's risk is limited to the capital invested, the Fund's leverage ratio will be rebalanced in certain circumstances and when the leverage ratio breaches certain bands. Specifically, the Fund's leverage will be rebalanced back to 125% of the Fund's NAV within two business days (a **Leverage Rebalance Date** and together with an Index Rebalance Date, a **Rebalance Date**) of the Fund's leverage ratio moving 2% away from its target leverage ratio of 125% (i.e., if the leverage ratio is less than 123% or if the leverage ratio is greater than 127%).
18. Following a Rebalance Date, the Fund will generally acquire and/or dispose of the appropriate number of securities in order to track the portfolio weighting of the Index. As a result: (i) units of the Fund may be issued, or cash may be paid, in consideration for constituent securities making up the Index and to be acquired by the Fund, as determined by its portfolio adviser; and (ii) units may be exchanged in consideration for those securities that the portfolio adviser determines should be sold by the Fund, or cash may be paid as determined by the portfolio adviser. Generally, such transactions may be implemented by a transfer of constituent securities to the Fund that the portfolio adviser determines should be acquired by the Fund or a transfer of those securities that the portfolio adviser determines should be sold by the Fund.
19. Outside of a Rebalance Date, any investments by the Fund (owing, for example, to subscriptions received in respect of Units of the Fund), if any, will be such that securities are acquired up to the same weights as such securities exist in the Fund's portfolio, based on their relative market values, at the time of such investment.
20. Since the inception of the Index in 2012, the maximum weighting of any single Company in the Index represented 28.07% in the Index. On a leveraged basis of 125%, this maximum weighting would represent up to approximately 35% of the NAV of the Fund.
21. Accordingly, the Fund wishes to be able to invest in the Shares of the Companies, such that immediately after a purchase, more than 20 percent of its net assets may be invested in the Shares of one Company for the purposes of determining compliance with the Concentration Restriction.
22. The Shares are listed on the NASDAQ.
23. The Companies are among the largest public issuers in North America.

**Rationale for Investment**

24. The Filer notes that, in respect of the Fund, its strategy to acquire securities of an applicable Company will be transparent, passive and fully disclosed to investors. The Fund will not invest in securities other than the Shares (or securities designed to gain exposure to the Shares as described herein). In addition, in respect of the Fund, the names of the Companies to be invested in will be listed in the Fund's prospectus. Consequently, unitholders of the Fund will be fully aware of the risks involved with an investment in the securities of the Fund.
25. Given the composition of the Index and the proposed composition of the Fund's portfolio, it would be impossible for the Fund to achieve its investment objective and pursue its investment strategy without obtaining relief from the Concentration Restriction.

26. The units of the Fund will be highly liquid securities, as designated brokers act as intermediaries between investors and the Fund, standing in the market with bid and ask prices for the units of the Fund to maintain a liquid market for the units of the Fund. The majority of trading in units of the Fund will occur in the secondary market.
27. If required to facilitate distributions or pay expenses of the Fund, the Shares will be sold pro-rata across the Fund's portfolio according to their relative market values at the time of such sale.
28. Future subscriptions proceeds from the sale of units of a Fund, if any, will be used to acquire Shares of each Company up to the same portfolio weights as the exist in the Fund's portfolio, based on their relative market values at the time of such subscription.
29. In view of the Filer, the Fund is also similar to a "fixed portfolio investment fund", as such term is defined in NI 81-102, in that it will: (a) have fundamental investment objectives that include holding and maintaining a fixed (i.e. equal) weighting of publicly traded equity securities of one or more issuers, the names of which are disclosed in its prospectus; and (b) trade the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus. The Fund will not be a "fixed portfolio investment fund" as it is an alternative mutual fund and will be in continuous distribution.
30. The Filer further notes that a "fixed portfolio investment fund" is exempt from the Concentration Restrictions, provided purchases of securities are made in accordance with its investment objectives.
31. The Exemption Sought is sought to permit the Fund to purchase Shares or enter into specified derivatives transactions in connection therewith such that, immediately after the transaction, more than 20 percent of its net assets would be invested in the Shares of one Company for the purposes of determining compliance with the Concentration Restriction (the **Proposed Transactions**).
32. In addition, the Fund has been structured as an "alternative mutual fund" for purposes of NI 81-102, which is associated with investment funds that already permit higher levels of concentration under Section 2.1 of NI 81-102.
33. Neither the Filer or the Fund is in default of any of its obligations under securities legislation in any of the Jurisdictions.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that:

- (a) the Proposed Transactions are in accordance with the investment objectives and investment strategies of the Fund to replicate, to the extent reasonably possible and before fees and expenses, a 1.25 multiple of the performance of the Index;
- (b) the Fund's investment strategies disclose that, following a Rebalance Date, the Fund will invest in the Companies in equal weights. Outside of a Rebalance Date, any investments by the Fund, if any, will be such that securities of each Company are acquired up to the same weights as the Shares exist in the Fund's portfolio, based on their relative market values at the time of such investment;
- (c) the Fund's investment strategies disclose the frequency of the rebalancing of the Fund's portfolio; and
- (d) the final prospectus of the Fund includes: (i) disclosure regarding the Exemption Sought under the heading "Exemptions and Approvals"; and (ii) a risk factor regarding the concentration of the Fund's investments in the Companies and the risks associated therewith.

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Ontario Securities Commission

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### Decision

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