

2.1.2 CIBC Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from paragraph 2.8(1)(d) and subparagraph 2.8(1)(f)(i) of NI 81-102 to permit funds, when they open or maintain a long position in a forward contract, standardized future or when they enter into or maintain a swap position and during the periods when the funds are entitled to receive payments under the swap, to use as cover an option to sell an equivalent quantity of the underlying interest of the forward, standardized future or swap – Relief subject to conditions, including a limit on a fund’s purchase of options, including options purchased or written to cover derivative positions for non-hedging purposes, to no more than 10% of the Fund’s NAV.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.8(1)(d) and 2.8(1)(f)(i) and 19.1.

March 15, 2022

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
CIBC ASSET MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of all existing and future mutual funds managed by the Filer or an affiliate of the Filer that are subject to National Instrument 81-102 *Investment Funds (NI 81-102)*, other than money market funds as defined in NI 81-102 (collectively, the **Funds** and individually, a **Fund**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption, pursuant to section 19.1 of NI 81-102, from the requirements in paragraph 2.8(1)(d) and subparagraph 2.8(1)(f)(i) of NI 81-102 (the **Cover Requirements**) in order to permit each Fund, when it:

- (i) opens or maintains a long position in a debt-like security that has a component that is a long position in a forward contract

or in a standardized future or forward contract, or

- (ii) enters into or maintains a swap position and during the periods when the Fund is entitled to receive payments under the swap,

to use as cover, a right or obligation to sell an equivalent quantity of the underlying interest of the standardized future, forward or swap (the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that paragraph 4.7(1)(c) 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 (together with Ontario, the **Jurisdictions**).

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.

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 is registered as a portfolio manager in all Jurisdictions, as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a commodity trading manager in Ontario, and as a derivatives portfolio manager in Québec.
3. The Filer, or an affiliate of the Filer, is or will be, the investment fund manager of each Fund.
4. The Filer or an affiliate may act as portfolio manager of the Funds or may appoint one or more portfolio managers for the Funds or sub-advisors to provide the Filer with investment advice in respect of a Fund’s investments.
5. To the extent that a Fund may invest in futures or options on futures, the Filer has appointed, or will appoint, a portfolio manager or sub-advisor that is duly registered under the *Commodities Futures Act* (Ontario) or any successor thereto (the **CFA**) or that has obtained an exemption from, or relies on an

exemption from the applicable registration requirements under the CFA.

6. Neither the Filer nor the existing Funds are in default of securities legislation in any Jurisdiction.

Funds

7. Each Fund is, or will be, a mutual fund to which NI 81-102 applies, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.
8. Securities of the Funds are, or will be, offered by a prospectus filed in the Jurisdictions and, accordingly, each Fund is, or will be, a reporting issuer in the Jurisdictions.
9. The investment objective and investment strategies of each Fund are, or will be, set out in the Fund's prospectus. Where specified in its investment strategies, a Fund may invest in specified derivatives in order to seek exposure to securities or markets and/or may also use derivatives to hedge against potential loss.
10. When specified derivatives are used for non-hedging purposes, each Fund that is permitted to use derivatives is, or will be, subject to the Cover Requirements.

Exemption Sought

11. Paragraph 2.8(1)(d) and subparagraph 2.8(1)(f)(i) of NI 81-102 do not permit covering a long position in a debt-like security that has a component that is a long position in a forward contract, or in a standardized future or forward contract, or a position in a swap for a period when a Fund is entitled to receive payments under the swap, in whole or in part, with a right or obligation to sell an equivalent quantity of the underlying interest of the forward, future or swap. Accordingly, these sections of NI 81-102 do not permit the use of put options or short forward, future or swap positions to cover long forward, future or swap positions.
12. By not recognizing the hedging properties of options for long positions evidenced by standardized futures or forwards or in respect of swaps where a Fund is entitled to receive payments from the counterparty, NI 81-102 effectively imposes the requirement to over-collateralize, since the maximum liability to the Fund under the scenario described above is equal to the difference between the market value of the long position and the exercise price of the option. Over-collateralization imposes a cost on a Fund.
13. Paragraph 2.8(1)(c) of NI 81-102 permits a mutual fund to write a put option and to cover it by holding a right or obligation to sell an equivalent quantity of the underlying interest of the written put option. This position has similar risks to a debt-like security that has a component that is a long position in a forward contract, or a standardized future or forward

contract, as contemplated by paragraph 2.8(1)(d) or a swap as contemplated by subparagraph 2.8(1)(f)(i). Therefore, the Filer submits that the Funds should be permitted to cover a long position in a future, forward or swap with a put option or an offsetting short position.

14. As the investment fund manager of each Fund, the Filer or an affiliate of the Filer, supervises and oversees, or will supervise and oversee, any portfolio managers or sub-advisors in the use of derivatives as investments within the Funds, pursuant to policies and procedures which set out supervision and oversight processes to ensure that the use of derivatives is adequately monitored and derivatives risk is appropriately managed.
15. The prospectus of the Funds discloses, or will disclose, a summary of the applicable policies and procedures regarding the use of derivatives and the nature of the Exemption Sought.
16. Without the Exemption Sought, a Fund will not have the flexibility to enhance yield and to manage more effectively its exposure under specified derivatives.

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.

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

- (a) when a Fund enters into or maintains a swap position for periods when the Fund would be entitled to receive fixed payments under the swap, the Fund holds:
- (i) cash cover, in an amount that, together with margin on account for the swap and the market value of the swap, is not less than, on a daily mark-to-market basis, the underlying market exposure of the swap;
 - (ii) a right or obligation to enter into an offsetting swap on an equivalent quantity and with an equivalent term and cash cover that together with margin on account for the position is not less than the aggregate amount, if any, of the obligations of the Fund under the swap less the obligations of the Fund under such offsetting swap; or
 - (iii) a combination of the positions referred to in subparagraphs (i) and (ii) that is sufficient, without recourse to other assets of the Fund, to enable the Fund to satisfy its obligations under the swap;
- (b) when a Fund opens or maintains a long position in a debt-like security that has a component that is a long position in a forward contract, or in a

standardized future or forward contract, the Fund holds:

- (i) cash cover, in an amount that, together with margin on account for the specified derivative and the market value of the specified derivative, is not less than, on a daily mark-to-market basis, the underlying market exposure of the specified derivative;
 - (ii) a right or obligation to sell an equivalent quantity of the underlying interest of the future or forward contract, and cash cover that together with margin on account for the position, is not less than the amount, if any, by which the price of the future or forward contract exceeds the strike price of the right or obligation to sell the underlying interest; or
 - (iii) a combination of the positions referred to in subparagraphs (i) and (ii) that is sufficient, without recourse to other assets of the Fund, to enable the Fund to satisfy its obligations under the future or forward contract;
- (c) a Fund will not:
- (i) purchase a debt-like security that has an option component or an option, or
 - (ii) purchase or write an option to cover any positions under paragraphs 2.8(1)(b), (c), (d), (e) and (f) of NI 81-102, if immediately after the purchase or writing of such option, more than 10% of the net asset value of the Fund, taken at market value at the time of the transaction, would be made up of
 - (A) purchased debt-like securities that have an option component or purchased options, in each case, held by the Fund for purposes other than hedging, or
 - (B) options used to cover any positions under paragraphs 2.8(1)(b), (c), (d), (e) and (f) of NI 81-102;
- (d) this decision will terminate on the coming into force of any securities legislation relating to the use as cover of a right or obligation to sell an equivalent quantity of the underlying interest of the forward, standardized future or swap in compliance with section 2.8 of NI 81-102.

“Darren McKall”
 Manager, Investment Funds and Structured Products
 Ontario Securities Commission

Application File #: 2022/0109
 SEDAR #: 3347118

2.1.3 CIBC Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – investment funds that are fixed income funds granted relief from the concentration restriction in subsections 2.1(1) and 2.1(1.1) of NI 81-102 to invest in debt securities issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) beyond the limits permitted under NI 81-102 – Debt securities of Fannie Mae and Freddie Mac are implicitly guaranteed by the U.S. government – Fannie Mae and Freddie Mac are government sponsored entities in the U.S. and their securities are “government securities” under the U.S. Investment Company Act of 1940 – Fannie Mae and Freddie Mac have a U.S. government equivalent credit rating – exemptive relief granted from subsections 2.1(1) and 2.1(1.1) of NI 81-102, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), 2.1(1.1) and 19.1.

March 15, 2022

**IN THE MATTER OF
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- (a) the restriction contained in subsection 2.1(1) of NI 81-102 to permit each Fund that is a mutual fund, other than an alternative mutual fund, to purchase a security of an issuer, enter into a specified