

January 31, 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
1832 ASSET MANAGEMENT L.P.
AGF INVESTMENTS INC.
BMO ASSET MANAGEMENT INC.
CIBC ASSET MANAGEMENT INC.
CI INVESTMENTS INC.
FRANKLIN TEMPLETON INVESTMENTS CORP.
GUARDIAN CAPITAL LP
HORIZONS ETFS MANAGEMENT (CANADA) INC.
INVESCO CANADA LTD.
MACKENZIE FINANCIAL CORPORATION
MANULIFE INVESTMENT MANAGEMENT LIMITED
PIMCO CANADA CORP.
RBC GLOBAL ASSET MANAGEMENT INC.
TD ASSET MANAGEMENT INC.

(collectively, the Filers, and each, a Filer)

DECISION

The principal regulator in the Jurisdiction has received an application from the Filers on behalf of all current and future investment funds that are, or will be, managed by such Filer or an affiliate of such Filer and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that grants exemptive relief to the Funds that:

(a) the purchases by a Fund that is a Qualified Institutional Buyer (as defined below) at the time of purchase, of those fixed income securities that qualify for, and may be traded pursuant to, the exemption from the registration requirements of the *Securities Act of 1933*, as amended (the **US Securities Act**), as set out in Rule 144A of the US Securities Act (**Rule 144A**) for resales of certain fixed income securities (**144A Securities**) to Qualified Institutional Buyers, are exempt from part (b) of the definition of an "illiquid asset" in section 1.1 of NI 81-102; and

(b) a Fund's holdings of 144A Securities purchased as a Qualified Institutional Buyer are excluded from consideration as an "illiquid asset" for the purpose of the restrictions in section 2.4 of NI 81-102 (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 the application; and

b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon, as applicable, in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon (together with Ontario, the **Jurisdictions**).

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. In addition to the defined terms used in this decision, capitalized terms used herein have the following meanings:

IRC means the applicable independent review committee of each of the Funds.

Qualified Institutional Buyer has the same meaning given to such term in §230.144A of the US Securities Act.

Registered Securities means securities that have been registered with the United States Securities and Exchange Commission.

Rule 144 means Rule 144 of the US Securities Act.

REPRESENTATIONS

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

The Filers

1. The head office of each Filer is located in Ontario.
2. Each Filer is registered in the category of investment fund manager and portfolio manager in relevant Jurisdictions.
3. Each Filer, or an affiliate of the Filer is, or will be, the investment fund manager of the Funds and the Filer, an affiliate of the Filer or a third-party portfolio manager retained by the Filer is, or will be, the portfolio manager of the Funds.
4. Each Filer is not in default of securities legislation in any of the Jurisdictions.

The Funds

5. Each Fund is, or will be, an investment fund organized and governed by the laws of a Jurisdiction or the laws of Canada.
6. Each Fund is, or will be, governed by the provisions of NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.
7. No existing Fund is in default of securities legislation in any of the Jurisdictions.

Definition of Illiquid Assets in NI 81-102 and 144A Securities

8. Pursuant to section 1.1 of NI 81-102, an "illiquid asset" is defined as:
 - (a) a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the investment fund; or
 - (b) a restricted security held by an investment fund.
9. Rule 144A provides an exemption from the registration requirements of the US Securities Act for resales of unregistered securities by and to a Qualified Institutional Buyer. Rule 144A also requires that there must be adequate current public information about the issuing company before the sale can be made.
10. The definition of a Qualified Institutional Buyer under §230.144A of the US Securities Act includes several types of entities, but in general, such entities must, in the aggregate, own and invest on a discretionary basis at least USD\$100 million in securities of issuers that are not affiliated with such entity.
11. While issuers themselves cannot rely on Rule 144A, as Rule 144A provides an exemption for resales of unregistered securities, the existence of Rule 144A allows financial intermediaries to purchase unregistered securities from issuers and resell them to Qualified Institutional Buyers in transactions that comply with Rule 144A without registering such securities.
12. Pursuant to the terms of the US Securities Act, public resales of 144A Securities to non-Qualified Institutional Buyers must be conducted in reliance upon other available exemptions, such as Rule 144. Rule 144 allows a seller to sell 144A Securities to a purchaser who does not qualify as a Qualified Institutional Buyer after a prescribed period of time (ranging from six months to one year after issuance), if certain other reporting requirements of the issuer are satisfied.
13. Despite the foregoing, 144A Securities are immediately freely tradable among Qualified Institutional Buyers in accordance with Rule 144A without regard to any holding periods. 144A Securities may also be sold to and purchased by non-Qualified Institutional Buyers after registration of the securities, or pursuant to another exemption from registration under the US Securities Act, if any exemption is available at that time.
14. Because public resales of 144A Securities are subject to certain holding periods notwithstanding that Qualified Institutional Buyers may purchase 144A Securities in accordance with Rule 144A

which does not require a holding period, they may be considered restricted securities for the purposes of the part (b) definition of an "illiquid asset" under section 1.1 of NI 81-102, and each Fund's holdings of 144A Securities would be subject to the limits on holdings of illiquid assets in section 2.4 of NI 81-102 (the **Illiquid Asset Restrictions**).

Reasons for the Exemption Sought

15. Each Filer is of the view that certain 144A Securities provide an attractive investment opportunity for the Funds managed by it. Due to the part (b) definition of an "illiquid asset" under section 1.1 of NI 81-102, the Funds may be unable to pursue these investment opportunities without risking a breach of the Illiquid Asset Restrictions.
16. The ability of Qualified Institutional Buyers to freely trade 144A Securities pursuant to Rule 144A has substantially reduced the discounts and illiquidity that were present in unregistered offerings historically. The market for 144A Securities consists of a very deep pool of Qualified Institutional Buyers.
17. The most liquid 144A Securities have traded with comparable volumes to the most liquid corporate debt Registered Securities over the past few years. The segment of the U.S. investment grade corporate bond market that is made up of 144A Securities has grown substantially over the past 15 years. The segment of the U.S. high-yield corporate bond market that is made up of 144A Securities has also grown significantly over the past decade.
18. Daily market quotations are obtained in the same way through fixed income market platforms for 144A Securities as they are for Registered Securities. Real-time price quotes and market trade data are available for 144A Securities. Many fixed income trades including 144A Securities, are reported within minutes into the Trade Reporting and Compliance Engine, a program initially developed by the National Association of Securities Dealers, Inc. (now the Financial Industry Regulatory Authority, Inc.) that provides for the reporting of over-the-counter transactions pertaining to eligible fixed income securities, including 144A Securities, thus meeting market integrity requirements.
19. A Fund that qualifies as a Qualified Institutional Buyer at the time it purchases 144A Securities may trade those 144A Securities to another Qualified Institutional Buyer without further restriction (i.e. not subject to any holding period). Typically, a Fund would sell 144A Securities to other brokers or dealers that are Qualified Institutional Buyers themselves, who would then on-sell the securities to other Qualified Institutional Buyers.
20. A Fund is not required to maintain its Qualified Institutional Buyer status in order to be able to resell its holdings of 144A Securities to another Qualified Institutional Buyer at any time.
21. In the course of determining the potential liquidity of a security, each Filer uses a consistent list of factors. These factors may include, but would not be limited to, market volatility, trending credit quality, current valuation, maturity, size of the tranche or offering, the applicable underwriters, the status of well-covered credit or first-time issuer, index eligibility, and in the case of 144A Securities, whether the security falls under "144A for life" status.

22. Each Filer is of the view that it has the tools, resources and expertise necessary to assess issuances of 144A Securities and to evaluate the creditworthiness of issuers on a per issuance basis. Each Filer has the ability to conduct sufficient analysis and should have the opportunity to invest in 144A Securities, and for the foregoing reasons, considers 144A Securities to be liquid investments that are not "restricted securities" under part (b) of the section 1.1 definition of an "illiquid asset" in NI 81-102.
23. The purpose of the Illiquid Asset Restrictions is to govern a core investment fund principle: investors should be able to redeem mutual fund securities and, where applicable, non-redeemable investment fund securities on demand. Considering that 144A Securities trade in an active institutional market, each Filer is of the view that 144A Securities can be liquid relative to a Fund's need to satisfy redemptions. The result of the current part (b) definition of an "illiquid asset" in NI 81-102 is that all 144A Securities may be rendered illiquid, whereas 144A Securities may be more liquid than other types of securities that meet the liquidity criteria set out in NI 81-102.
24. Formally exempting 144A Securities from the section 1.1, part (b) definition of an "illiquid asset" in NI 81-102 will not result in a Fund being unable to satisfy redemption requests. Investing in 144A Securities may actually be more beneficial to the Funds than various other securities in which the Funds may invest, and the liquidity determination regarding any such 144A Securities should be made on the actual trading liquidity of the security and not simply based on the manner in which the security was offered into the market.
25. Each Filer maintains investor protection policies and procedures that address liquidity risk, and uses a combination of risk management tools, which may include (i) IRC approved governance policies that have been adopted to protect investors in the Funds, (ii) internal portfolio manager notification requirements of significant cash flows into the Funds, (iii) ongoing liquidity monitoring of each Fund's portfolio, (iv) real time cash projection reporting for the Funds, and (v) the consideration of factors set out in paragraph 21 above in order to assess the potential liquidity of a security.
26. If a Fund no longer meets the requirements for qualifying as a Qualified Institutional Buyer, then the Filer will arrange to immediately restrict any further purchases of 144A Securities until such time as the Fund regains its status as a Qualified Institutional Buyer.
27. The Filers are each of the view that, if 144A Securities were deemed to be illiquid assets, which may have the effect of prohibiting the Funds from accessing and investing in 144A Securities, the Funds and their investors would lose out on potential investment opportunities in the fixed income space. Given the expectation for long-term depressed interest rates compared to historical levels, the Filers are of the view that every basis point counts towards the total return opportunity of fixed income investors and investors would benefit from an expanded investment universe.
28. The Filers are each of the view that it would not be prejudicial to the public interest to grant the Exemption Sought to the Funds.

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) a Fund that purchases 144A Securities is a Qualified Institutional Buyer at the time of purchase;
- (b) the 144A Securities purchased pursuant to the Exemption Sought are not illiquid assets under part (a) of the section 1.1 definition of an "illiquid asset" in NI 81-102;
- (c) the 144A Securities purchased pursuant to the Exemption Sought are traded on a mature and liquid market; and
- (d) the prospectus of each Fund relying on the Exemption Sought discloses, or will disclose in the next renewal of its prospectus following the date of this decision, the fact that the Fund has obtained the Exemption Sought.

"Darren McKall"

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

Application No. 2021/0744

Sedar Nos: 3335817, 03336344, 03346300, 03347149, 03337239, 03337766, 03335232,
03350210, 03350192, 03336334