

## Headnote

Multilateral Instrument 11-102 *Passport System* - Securities Act s. 79- Exemption from s.31(2) requirement to be registered as an adviser - A person who resides outside NS wants to advise NS residents. - The person is hired under a written agreement with a NS registered adviser to provide advice to the NS registrant and its NS clients; the person is registered or qualified to provide the advice in the jurisdiction in which it resides; under a written agreement with its NS clients, the NS registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person.

## Applicable Legislative Provisions

*Securities Act*, R.S.N.S. 1989, c. 418, as amended, ss. 31(2) and 79

December 14 , 2010

**In the Matter of  
the Securities Legislation of  
Nova Scotia  
(the Jurisdiction)**

**and**

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

**and**

**In the Matter of  
Aviva Investors Canada Inc.  
(the Filer)**

**Decision**

## Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting “affiliated” portfolio managers of the Filer (the **Sub-Advisers**) from the

adviser registration requirement under the Legislation in order to allow the Sub-Advisers to provide investment advisory and portfolio management services to the Filer for the benefit of certain clients of the Filer who are resident in the Jurisdiction (the **Exemption Sought**).

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

- (a) the Nova Scotia Securities Commission (the **Commission**) is the principal regulator for this application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Prince Edward Island and Saskatchewan (together with Nova Scotia, the **Filing 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.

For purposes of this decision, “affiliate” and any derivation thereof shall mean any entity that is controlled, directly or indirectly, by the ultimate parent company of the Filer.

### **Representations**

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

1. The Filer is a corporation organized under the laws of Ontario, Canada, and has its principal office and place of business in Toronto, Ontario, Canada;
2. The Filer is registered in good standing as a portfolio manager and an exempt market dealer in the Filing Jurisdictions, Ontario and Quebec;
3. The Commission is the principal regulator for the Exemption Sought because:
  - (a) the Exemption Sought is not required in Ontario, where the Filer’s head office is located, because an exemption is available under section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**); and
  - (b) Nova Scotia is the jurisdiction with which the Filer has the most significant connection outside of Ontario, being the jurisdiction where its potential non-Ontario Canadian clients as at the date of this decision are located;
4. The Filer provides investment advisory and portfolio management services to institutional clients or other “accredited investors” within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* (each, a **Client** and collectively, the **Clients**) resident in the Filing Jurisdictions;

5. Each Sub-Adviser is an affiliate of the Filer. Each Sub-Adviser is registered or otherwise qualified under applicable laws in the foreign jurisdiction in which its head office is located to provide investment advisory and portfolio management services in respect of securities. The Sub-Advisers are not residents of Canada;
6. The Filer enters into investment management agreements (the **IMAs**) with the Clients to provide investment advice on a discretionary basis that authorize the Filer to engage a Sub-Adviser to provide portfolio management services, including on a discretionary basis, to the Filer in respect of the Clients, and authorize the Filer to delegate its discretionary authority over all or a portion of the Client's assets to one or more Sub-Advisers;
7. The Filer retains Sub-Advisers who have the personnel and expertise to manage the assets of a Client in a manner that is consistent with the investment objectives and strategies of the Client;
8. In retaining Sub-Advisers, the Filer complies with section 7.3 of OSC Rule 35-502 as follows:
  - (a) the obligations and duties of a Sub-Adviser in connection with the investment advisory and portfolio management services provided to each Client (the **Proposed Sub-Advisory Services**) are set out in a written agreement between the Sub-Adviser and the Filer;
  - (b) the Filer agrees with the Client to be responsible for any loss that arises out of the failure of the Sub-Adviser:
    - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client; or
    - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**); and
  - (c) the Filer cannot be relieved by the Client from its responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations;
9. The Filer will advise each Client that:
  - (a) the Sub-Adviser is not registered as an adviser under the securities legislation of the applicable Filing Jurisdiction;
  - (b) the Sub-Adviser may not have the same proficiency requirements as other persons registered under the securities legislation of the applicable Filing Jurisdiction; and

- (c) the Client may not have the same protection that it would otherwise have if the Sub-Adviser were registered as an adviser under the securities legislation of the applicable Filing Jurisdiction;
10. The Filer makes enquiries with respect to each Client to determine the investment objectives and strategies of the Client, and to the suitability of proposed transactions for the Client, and to otherwise comply with the “know your client” and “suitability” obligations under the securities legislation of the applicable Filing Jurisdiction. The Filer provides this information to any Sub-Adviser who performs the Proposed Sub-Advisory Services;
  11. The Filer is responsible for providing each Client with all applicable reports, statements and other documentation that is required to be sent to the Client under the securities legislation of the applicable Filing Jurisdiction or under the IMA; and
  12. Each Sub-Adviser does not have any direct contact with a Client in connection with the provision of portfolio management services unless a representative of the Filer, duly registered as an adviser in the jurisdiction where the Client is resident, is present at all times, either in person or by telephone.

### **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) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer;
- (b) the Filer contractually agrees with each Client to be responsible for the Assumed Obligations and the Filer cannot be relieved by the Client from the Filer’s responsibility for the Assumed Obligations;
- (c) each Sub-Adviser is registered or otherwise qualified to provide investment advice and portfolio management services under the applicable laws of the foreign jurisdiction in which the Sub-Adviser’s head office is located;
- (d) the Filer is registered in good standing under the Legislation in a category that permits it to provide investment advisory and portfolio management services;
- (e) each Sub-Adviser does not have any direct contact with a Client in connection with the provision of portfolio management services unless a representative of the Filer, duly registered as an adviser in the jurisdiction where the Client is resident, is present at all times, either in person or by telephone; and

- (f) for each Filing Jurisdiction, this decision will terminate 90 days after the coming into force of any rule, regulation or blanket order or ruling under the securities legislation of the Filing Jurisdiction that provides an equivalent exemption.

"H. Leslie O'Brien"\_\_\_\_\_

H. Leslie O'Brien, Q.C.  
Chair  
Nova Scotia Securities Commission

"Sarah Bradley"\_\_\_\_\_

Sarah Bradley  
Vice Chair  
Nova Scotia Securities Commission