

**Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief from paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to allow funds to continue to hold units of underlying pooled fund that is not a reporting issuer that were acquired under previous relief that is being revoked and replaced – funds to dispose of units of underlying pooled fund if underlying pooled fund ceases to comply with Parts 2, 4 and 6 of NI 81-102 or Part 14 of NI 81-106

**Applicable Legislative Provisions**

National Instrument 81-102 *Investment Funds*, subparagraph 2.5(2)(a)(i), paragraph 2.5(2)(c), and section 19.1

**Citation: Re ATB Investment Management Inc., 2022 ABASC 111**

**Date: 20220819**

In the Matter of  
the Securities Legislation of  
Alberta and Ontario (**the Jurisdictions**)

and

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

and

In the Matter of  
ATB Investment Management Inc. (**the Filer**)

and

Compass Conservative Balanced Portfolio, Compass Balanced Portfolio, Compass Balanced Growth Portfolio, Compass Growth Portfolio, Compass Maximum Growth Portfolio, and ATBIS U.S. Equity Pool (**the Top Funds**)

Decision

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer on behalf of the Top Funds for a decision under the securities legislation of the Jurisdictions (**the Legislation**)

- (a) revoking the Prior Alberta Decisions (as defined below); and

- (b) replacing the Prior Alberta Decisions with a decision providing an exemption from subparagraph 2.5(2)(a)(i) and paragraph 2.5(2)(c) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each Top Fund to continue to hold units of BlackRock CDN US Equity Index Fund (the **Underlying Pooled Fund**)

(collectively, the **Exemption Sought**).

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

- (a) the Alberta Securities Commission is the principal regulator for the application;
- (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 each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (together with Alberta and Ontario, the **Proposed Jurisdictions**); and
- (c) this 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* or 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 and the Top Funds*

1. The Filer is a corporation with its head office located in Edmonton, Alberta.
2. The Filer is registered as a portfolio manager in each of Alberta, British Columbia, Nova Scotia, Ontario and Saskatchewan and as an investment fund manager in each of Alberta, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan.
3. The Filer is the manager of each Top Fund.
4. Each Top Fund is a “mutual fund”, as such term is defined under the *Securities Act* (Alberta) (the **Act**).
5. Each Top Fund has a simplified prospectus and fund facts document prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and units of each Top Fund are, or are proposed to be, qualified for distribution in the Proposed Jurisdictions (with the exception of Québec).
6. Each Top Fund is, or is proposed to be, a reporting issuer under the securities legislation of the Proposed Jurisdictions (with the exception of Québec) and is subject to NI 81-102.

7. Neither the Filer nor the Top Funds is in default of securities legislation in any of the Proposed Jurisdictions, but for the fact that units of certain Top Funds are held by a limited number of investors in Ontario without these Top Funds obtaining an exemption from NI 81-102 in Ontario to permit these Top Funds to invest in units of the Underlying Pooled Fund in such jurisdiction.

#### *Prior Decisions*

8. Pursuant to a decision dated November 30, 2004 (the **2004 Decision**), the Filer was granted exemptive relief in Alberta from (then) subsections 2.1(1), 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit certain mutual funds and any future mutual funds managed by the Filer, including the Top Funds, to invest in certain pooled funds that are not subject to NI 81-102.
9. Pursuant to a decision dated December 7, 2005, the Filer was granted exemptive relief in British Columbia and Saskatchewan from (then) subsections 2.1(1), 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit certain mutual funds and any future mutual funds managed by the Filer, including the Top Funds, to invest in certain pooled funds that are not subject to NI 81-102.
10. Pursuant to the provisions of subsection 4.8(1)(c) of MI 11-102, the Filer provided notice to the Alberta Securities Commission on September 19, 2016 (the **2016 Notice**, and, together with the 2004 Decision, the **Prior Alberta Decisions**), as principal regulator, that the Filer intended to rely upon the 2004 Decision in each of Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut.
11. The Filer is seeking to revoke and replace the Prior Alberta Decisions with this decision so that the Filer may rely on a single decision that grants relief for the Top Funds to continue to hold units of the Underlying Pooled Fund in all Proposed Jurisdictions.

#### *Investment Objectives of the Top Funds*

12. The investment objective of Compass Conservative Balanced Portfolio is to provide investors with long-term capital appreciation and some income while reducing short-term volatility by investing in a balanced portfolio of fixed income and equity securities, with a bias towards fixed income securities.
13. The investment objective of Compass Balanced Portfolio is to provide investors with long-term capital appreciation while reducing short-term volatility by investing in a balanced portfolio of fixed income and equity securities.
14. The investment objective of Compass Balanced Growth Portfolio is to provide investors with long-term capital appreciation by investing in a balanced portfolio of equity and fixed income securities, with a bias towards equity securities.

15. The investment objective of Compass Growth Portfolio is to provide investors with long-term capital appreciation by investing in a diversified portfolio of primarily equity securities, with some fixed income securities to reduce volatility.
16. The investment objective of Compass Maximum Growth Portfolio is to provide investors with long-term capital appreciation by investing in a diversified portfolio of equity securities.
17. A significant portion or even all of the assets of each of Compass Conservative Balanced Portfolio, Compass Balanced Portfolio, Compass Balanced Growth Portfolio, Compass Growth Portfolio and Compass Maximum Growth Portfolio may consist of securities of other mutual funds, including exchange traded funds, and the Underlying Pooled Fund, that provide it with exposure to investments that are consistent with its investment objectives and strategies.
18. The investment objective of ATBIS U.S. Equity Pool is to seek to achieve long-term capital growth primarily by investing in, or gaining exposure to, equity securities of issuers in the United States. Up to 100% of its assets may consist of securities of other mutual funds, including exchange traded funds, and the Underlying Pooled Fund.

*The Underlying Pooled Fund*

19. The Underlying Pooled Fund is a “mutual fund”, as such term is defined under the Act.
20. The Underlying Pooled Fund is not a reporting issuer in any of the Proposed Jurisdictions and is therefore not subject to NI 81-102, with the exception of section 2.5.1 of NI 81-102.
21. Units of the Underlying Pooled Fund are available for purchase by investors who qualify pursuant to an exemption from the prospectus requirement, such as those that meet the definition of an “accredited investor” as set forth in National Instrument 45-106 *Prospectus Exemptions*, which includes the Top Funds.
22. BlackRock Asset Management Canada Limited (**BlackRock**) is the manager of the Underlying Pooled Fund and is not related to the Filer.
23. The investment objective of the Underlying Pooled Fund is to achieve a return equal to the total return of the S&P 500 Total Return Index on an unhedged basis. This objective is achieved by investing primarily in equity, debt and short-term money market instruments and derivative securities either directly or through investments in other funds, including funds managed by BlackRock or any affiliate.
24. The investment strategies and restrictions of the Underlying Pooled Fund are consistent with NI 81-102, and, to the knowledge of the Filer, BlackRock manages the Underlying Pooled Fund in accordance with NI 81-102, as if it were applicable.
25. The investment objectives and strategies of each Top Fund permit the Top Fund to hold units of the Underlying Pooled Fund, subject to being granted the Exemption Sought.

*Investments by the Top Funds in the Underlying Pooled Fund*

26. Each Top Fund currently holds less than 15% of its net asset value (**NAV**) in units of the Underlying Pooled Fund.
27. The Top Funds currently have unrealized capital gains from their investments in the Underlying Pooled Fund.
28. The Exemption Sought is being sought in order to allow the Top Funds to continue to hold units of the Underlying Pooled Fund until such time as the portfolio manager of the applicable Top Fund determines that it is in the best interests of the Top Fund to dispose of such investment.
29. Each Top Fund will not purchase additional units of the Underlying Pooled Fund, but rather, to the extent the portfolio manager desires a Top Fund to obtain investment exposure similar to that offered by the Underlying Pooled Fund, the Top Fund will purchase securities of other investment funds in compliance with the restrictions set out in section 2.5 of NI 81-102.

*Impact on the Top Funds*

30. An investment by a Top Fund in the Underlying Pooled Fund does not expose the Top Fund to any greater risk than, and provides similar investment exposure as, an investment in an investment fund that is subject to NI 81-102.
31. In the absence of the Exemption Sought, the Filer would not be able to qualify units of the Top Funds in Ontario without disposing of all investments held by the Top Funds in the Underlying Pooled Fund. The Top Funds will incur costs and trigger significant taxable gains that would flow through to investors related to the disposition of these investments and the resulting re-investment of the assets of the Top Funds in other investment funds or individual securities.
32. Each investment held a Top Fund in the Underlying Pooled Fund is made in accordance with the investment objectives and strategies of the Top Fund.
33. With the exception of the Exemption Sought to continue to hold units of the Underlying Pooled Fund, the Top Funds otherwise comply fully with section 2.5 of NI 81-102 in their investments in the Underlying Pooled Fund.
34. The Top Funds provide all applicable disclosure mandated for mutual funds investing in other mutual funds, including disclosure in quarterly portfolio holding reports, financial statements and fund facts documents.

*Management of the Underlying Pooled Fund*

35. Pursuant to the Prior Decisions, the Top Funds have invested in units of the Underlying Pooled Fund for some time and the portfolio manager of the Top Funds is comfortable with the investment style and approach used by BlackRock in managing the Underlying Pooled Fund.
36. The portfolio of the Underlying Pooled Fund consists primarily of highly liquid, publicly traded securities.
37. To the knowledge of the Manager, the Underlying Pooled Fund does not utilize leverage, does not short sell and otherwise complies with the investment restrictions in NI 81-102 as though such restrictions would apply to the Underlying Pooled Fund, including the illiquid assets restriction in section 2.4 of NI 81-102 and the investments in other investment funds restriction in section 2.5 of NI 81-102.
38. Units of the Underlying Pooled Fund are valued and redeemable on the same dates as units of the Top Funds. A redemption by a Top Fund of units of the Underlying Pooled Fund will be effected based on the Underlying Pooled Fund's NAV, less any transaction costs allocated to the Top Fund by BlackRock, which is calculated in accordance with Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that

- (a) each Top Fund will not purchase additional units of the Underlying Pooled Fund;
- (b) the Top Funds dispose of their investment in the Underlying Pooled Fund as quickly as is commercially reasonable, if the Filer determines that the Underlying Pooled Fund no longer complies with Parts 2, 4 and 6 of NI 81-102 or Part 14 of NI 81-106; and
- (c) the prospectus of the Top Funds discloses, or will disclose in the next renewal or amendment thereto following the date of this decision, and each subsequent renewal or amendment, the fact that the Top Funds may continue to hold units of the Underlying Pooled Fund.

"original signed by"

Denise Weeres

Director, Corporate Finance

Alberta Securities Commission