

**ALBERTA SECURITIES COMMISSION**

**ORDER**

**Citation: Re Desjardins Global Asset Management Inc., 2018 ABASC 136 Date: 20180820**

**Desjardins Global Asset Management Inc.**

**Background**

1. Desjardins Global Asset Management Inc. (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order under sections 191(2) and 213 of the *Securities Act* (Alberta) (the **Act**) exempting each Desjardins Québec Pooled Fund (as defined below) from:

- (a) the restrictions in sections 182(2)(a), (b) and (c)(ii) of the Act that prohibit a mutual fund from knowingly making an investment in a Related Issuer (as defined below);
- (b) the restriction in section 182(3) of the Act that prohibits a mutual fund, its management company or its distribution company from knowingly holding an investment described in (a) above;

((a) and (b), collectively the **Investment Restriction**); and

- (c) the requirements in sections 191(a) and (c) of the Act to file a report of: (i) every transaction of purchase of securities from, or sale of securities to, any related person or company; and (ii) every purchase or sale effected through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both (the **Filing Requirement**),

in order to permit the Desjardins Québec Pooled Funds to purchase:

- (a) NET Debt Securities (as defined below) in a Primary Offering (as defined below) or in the secondary market;
- (b) exchange-traded securities of Related Issuers in the secondary market; and
- (c) securities of the Underlying Funds (as defined below)

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

## **Interpretation**

2. Terms defined in the Act, National Instrument 14-101 *Definitions*, National Instrument 81-102 *Investment Funds (NI 81-102)*, National Instrument 81-107 *Independent Review Committee for Investment Funds (NI 81-107)* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* have the same meaning if used in this decision, unless otherwise defined herein. The following additional terms have the following meanings:

**CDI** means Capital Desjardins Inc.;

**Desjardins Québec Pooled Fund** means each existing mutual fund to which neither NI 81-102 nor NI 81-107 applies and any subsequently established mutual fund for which the Filer, or an affiliate of the Filer, acts, or will act, as investment fund manager or portfolio manager and to which neither NI 81-102 nor NI 81-107 applies;

**DII** means Desjardins Investment Inc.;

**DIM** means Desjardins Investment Management Inc.;

**FCDQ** means Fédération des Caisses Desjardins du Québec;

**NAV** means net asset value;

**NET Debt Securities** means non-exchange-traded debt securities of any Related Issuer;

**NI 81-102 Desjardins Fund** means each existing investment fund, including mutual funds and exchange-traded funds, to which NI 81-102 and NI 81-107 apply and any subsequently established investment fund, including mutual funds and exchange-traded funds for which the Filer or an affiliate of the Filer acts, or will act, as investment fund manager or portfolio manager and to which NI 81-102 and NI 81-107 apply;

**Primary Offering** means a primary distribution or treasury offering;

**Related Issuer** means: (i) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company; (ii) any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or (iii) an issuer in which any person or company that is a substantial security holder of the mutual fund, its management company or its distribution company, has a significant interest; and

**Underlying Fund** means related Desjardins Québec Pooled Funds and related NI 81-102 Desjardins Funds in which a Desjardins Québec Pooled Fund may want to invest.

## **Representations**

3. This decision is based on the following facts represented to the Commission by the Filer:

### *The Filer*

- (a) The Filer is a corporation incorporated under the *Business Corporations Act* (Québec).
- (b) The Filer's head office is located in Montréal, Québec.
- (c) The Filer is registered as a portfolio manager in every jurisdiction of Canada and as an exempt market dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia. The Filer is also registered as an investment fund manager in Alberta, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador. In addition, the Filer is registered as an adviser in Manitoba, as a commodity trading manager in Ontario, and as a derivatives portfolio manager in Québec.
- (d) The Filer is not in default of securities legislation in any jurisdiction of Canada.

### *FCDQ*

- (a) FCDQ is a financial services cooperative established under the *Act respecting financial services cooperatives* (Québec).
- (b) FCDQ, or an affiliate of FCDQ, including, among others, CDI has issued or may issue exchange-traded and non-exchange-traded debt securities as well as rated and non-rated debt securities.
- (c) FCDQ is not in default of securities legislation in any jurisdiction of Canada.

### *The Desjardins Québec Pooled Funds*

- (a) Each Desjardins Québec Pooled Fund is or will be a mutual fund established under the laws of Québec.
- (b) The Filer or an affiliate of the Filer currently acts, or will act, as investment fund manager or portfolio manager of the Desjardins Québec Pooled Funds.
- (c) The securities of each of the Desjardins Québec Pooled Funds are, or will be, distributed on an exempt basis pursuant to available prospectus exemptions from the prospectus requirement in Alberta. None of the Desjardins Québec Pooled Funds is or will be a reporting issuer in Alberta.

- (d) None of the Desjardins Funds is in default of securities legislation in any jurisdiction of Canada.

*Substantial Security Holders and Significant Interests*

- (a) The Filer, along with DIM, which currently acts as investment fund manager and portfolio manager for certain of the Desjardins Québec Pooled Funds, and DII, which currently acts as investment fund manager for certain of the NI 81-102 Desjardins Funds, are all members of the same group of entities which fall under the FCDQ umbrella and are each wholly-owned subsidiaries of FCDQ. As such, FCDQ is a substantial security holder of each of the Filer, DIM and DII.
- (b) FCDQ also has a significant interest in CDI.
- (c) A Desjardins Québec Pooled Fund may, alone or together with one or more other Desjardins Québec Pooled Funds, be a substantial security holder of, among others, FCDQ and CDI.
- (d) In the future and pursuant to the Exemption Sought, the amounts invested from time to time in an Underlying Fund by one or more of the Desjardins Québec Pooled Funds may exceed 20% of the outstanding voting securities of any single Underlying Fund. Accordingly, each Desjardins Québec Pooled Fund could, either alone or together with another Desjardins Québec Pooled Fund, become a substantial security holder of an Underlying Fund.
- (e) In addition, the fund-of-fund structure may, in the future and pursuant to the Exemption Sought, result in a Desjardins Québec Pooled Fund investing in an Underlying Fund where a substantial security holder of the Desjardins Québec Pooled Fund or the Filer, or an affiliate of any of them, has a significant interest.

*Regulatory restrictions on investments in securities of Related Issuers and in securities of the Underlying Funds*

- (a) As a result of the Investment Restriction, each Desjardins Québec Pooled Fund is restricted from making and holding an investment in exchange-traded securities of Related Issuers and NET Debt Securities or securities of an Underlying Fund.
- (b) In addition, as a result of the Filing Requirement, the Filer, or an affiliate of the Filer acting as the management company of the Desjardins Québec Pooled Funds, would have to file a report of the following matters within 30 days from the end of the month in which the matter occurs:
  - (i) every transaction of purchase or sale of securities made between the Desjardins Québec Pooled Funds and a Related Issuer, including an Underlying Fund; and

- (ii) every purchase or sale effected by the Desjardins Québec Pooled Funds through any related person or company with respect to which the related person or company received a fee either from the Desjardins Québec Pooled Funds or from the other party to the transaction or from both.

*Investments in NET Debt Securities and exchange-traded securities*

- (a) Certain Related Issuers of the Filer and Desjardins Québec Pooled Funds are significant issuers of securities and debt instruments.
- (b) Where the NET Debt Security is purchased by a Desjardins Québec Pooled Fund in a Primary Offering pursuant to the Exemption Sought:
  - (i) the NET Debt Security will:
    - (A) be a non-exchange-traded security, other than an asset backed commercial paper security;
    - (B) be issued by a Related Issuer, with a term to maturity of 365 days or more; and
    - (C) will have, at the time of purchase, a designated rating by a designated rating organization; and
  - (ii) the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record disclosed in a prospectus, offering memorandum, press release or other public document.
- (c) Where the NET Debt Security is purchased by a Desjardins Québec Pooled Fund in the secondary market pursuant to the Exemption Sought and not in a Primary Offering, the debt security will have, at the time of purchase, a designated rating by a designated rating organization.
- (d) If the Desjardins Québec Pooled Funds were reporting issuers under applicable securities legislation, they would be permitted to make and hold investments in exchange-traded securities of Related Issuers by complying with the requirements of section 6.2 of NI 81-107.
- (e) Although the Desjardins Québec Pooled Funds are not, or will not be, subject to NI 81-107, each of the Desjardins Québec Pooled Funds will have an independent review committee (**IRC**) appointed in a manner consistent with the requirements of NI 81-107, the mandate of which shall be limited to questions relating to the purchase of NET Debt Securities and the purchase of exchange-traded securities of Related Issuers by the Desjardins Québec Pooled Funds. The IRC of a Desjardins Québec Pooled Fund has been, or will be, composed in accordance with section 3.7 of NI 81-107 and will comply with the standard of care set out in section 3.9 of

NI 81-107. The IRC of a Desjardins Québec Pooled Fund will not approve a purchase of NET Debt Securities or a purchase of exchange-traded securities of a Related Issuer subject to its mandate unless the IRC has made the determination set out in section 5.2(2) of NI 81-107.

- (f) If the IRC of a Desjardins Québec Pooled Fund becomes aware of an instance where the Filer or an affiliate of the Filer, as manager of the Desjardins Québec Pooled Fund, did not comply with the terms of this order or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Desjardins Québec Pooled Fund will, as soon as practicable, notify in writing the Autorité des marchés financiers (Québec).

*Investments in the securities of Underlying Funds*

- (a) Because the Desjardins Québec Pooled Funds are not, or will not be, reporting issuers, the exemption from the Investment Restriction provided in section 2.5(7) of NI 81-102 is not available to the Desjardins Québec Pooled Funds.
- (b) Investment by the Desjardins Québec Pooled Funds in the Underlying Funds (the **Fund-on-Fund Structure**) will be in the best interests of the Desjardins Québec Pooled Funds and help them achieve their investment objective on a diversified basis and obtain broad exposure to the asset classes in which each proposes to invest. Investing directly in the securities held by the Underlying Funds is a less desirable option owing to the increased costs and inefficiencies that are associated with such direct investing. Investment by the Desjardins Québec Pooled Funds in the Underlying Funds will also increase the asset base of the Underlying Funds, enabling the Underlying Funds to further diversify their portfolios and achieve economies of scale.
- (c) Each Desjardins Québec Pooled Fund will manage its investments in an Underlying Fund with discretion to buy and sell securities of the Underlying Fund, and to alter its holdings in any Underlying Fund in which it invests, in accordance with the Desjardins Québec Pooled Fund's investment objectives,.
- (d) An investment by a Desjardins Québec Pooled Fund in an Underlying Fund will be effected at a NAV per security of the applicable class or series of the applicable Underlying Fund, as calculated in accordance with part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)*.
- (e) An Underlying Fund will primarily hold exchange-traded securities and will not hold more than 10% of their assets in illiquid assets.
- (f) The portfolio assets of a Desjardins Québec Pooled Fund that invests in an Underlying Fund, and the portfolio assets of an Underlying Fund, will be held by a qualified custodian in accordance with NI 31-103.

- (g) No Underlying Fund will be a top fund in a Fund-on-Fund Structure.
- (h) Securities of a Desjardins Québec Pooled Fund that is a top fund in a Fund-on-Fund Structure, and the corresponding Underlying Funds, have, or will have, matching redemption dates and matching valuation dates.
- (i) Investors in a Desjardins Québec Pooled Fund will be entitled to receive from the Filer, on request and free of charge, a copy of any offering memorandum or other disclosure document and, once available, the annual and semi-annual financial statements, for all Underlying Funds in which the Desjardins Québec Pooled Fund invests its assets.
- (j) Investors in a Desjardins Québec Pooled Fund will also be provided with annual financial statements of the Desjardins Québec Pooled Fund in accordance with applicable securities legislation, including an auditor's report.

*Reasons supporting the Exemption Sought*

- (a) If the Exemption Sought is not granted, the Desjardins Québec Pooled Funds (and indirectly their investors) will be denied an attractive investment opportunity that is available to investors in other Canadian investment funds and may be prejudiced if they are unable to purchase or hold any exchange-traded securities of Related Issuers, NET Debt Securities or securities of Underlying Funds, the holding of which is consistent with their investment objective.
- (b) Each Desjardins Québec Pooled Fund's reliance on the Exemption Sought will be compatible with its investment objective and strategies.
- (c) Transactions executed in reliance on the Exemption Sought will be based upon the business judgment of responsible persons uninfluenced by considerations other than the best interest of the applicable Desjardins Québec Pooled Fund. This principle is reflected in the policies and procedures that have been and will be implemented and approved by the IRC for dealing with investments in Related Issuers.

**Decision**

- 4. The Commission orders under sections 191(2) and 213 of the Act that the Exemption Sought is granted:
  - (a) to permit each Desjardins Québec Pooled Fund to purchase NET Debt Securities provided that:
    - (i) the investment is made in accordance with, or is necessary to meet, the investment objective of the Desjardins Québec Pooled Fund;

- (ii) the Desjardins Québec Pooled Fund maintains an IRC that is appointed in a manner consistent with section 3.7 of NI 81-107 and conducts itself in a manner that complies with the standard of care set out in section 3.9 of NI 81-107 as if NI 81-107 applied to the Desjardins Québec Pooled Fund;
- (iii) at the time of the purchase, the IRC of the Desjardins Québec Pooled Fund has approved the transaction in accordance with subsection 5.2(2) of NI 81-107;
- (iv) the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, complies with section 5.1 of NI 81-107 and the investment fund manager and the IRC of the Desjardins Québec Pooled Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with each transaction;
- (v) the NET Debt Security has, at the time of the purchase, a designated rating by a designated rating organization;
- (vi) in the case of NET Debt Securities to be purchased in a Primary Offering:
  - (A) the size of the Primary Offering is at least \$100 million;
  - (B) at least two purchasers who are independent, arm's length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 Underwriting *Conflicts*, collectively purchase at least 20% of the Primary Offering;
  - (C) no Desjardins Québec Pooled Fund participates in the Primary Offering if, following its purchase, the Desjardins Québec Pooled Fund, together with related Desjardins Québec Pooled Funds, will hold more than 20% of the securities issued in the Primary Offering;
  - (D) no Desjardins Québec Pooled Fund participates in the Primary Offering if, following its purchase, the Desjardins Québec Pooled Fund would have more than 5% of its net assets invested in NET Debt Securities; and
  - (E) the price paid for the securities by a Desjardins Québec Pooled Fund in the Primary Offering is no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering;



- (vii) in the case of NET Debt Securities to be purchased in the secondary market:
    - (A) the price payable for the security is not more than the ask price of the security;
    - (B) the ask price of the security is determined as follows:
      - (I) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
      - (II) if the purchase does not occur on a marketplace,
        - a. the Desjardins Québec Pooled Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or
        - b. if the Desjardins Québec Pooled Fund does not purchase the security from an independent, arm's length seller, the Desjardins Québec Pooled Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;
    - (C) the transaction involving the purchase of NET Debt Securities complies with any applicable market integrity requirements;
  - (viii) on or before the 90<sup>th</sup> day after the end of each financial year of a Desjardins Québec Pooled Fund, the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, files with the securities regulatory authority or regulator the particulars of any investments made in reliance on this order; and
  - (ix) the IRC of the Desjardins Québec Pooled Fund complies with section 4.5 of NI 81-107 in connection with any instance that it becomes aware that the Filer or its affiliate, as manager of the Desjardins Québec Pooled Funds, did not comply with any of the conditions of this decision;
- (b) to permit each Desjardins Québec Pooled Fund to purchase exchange-traded securities of Related Issuers in the secondary market provided that:
- (i) the investment is made in accordance with or is necessary to meet the Desjardins Québec Pooled Fund's investment objective;

- (ii) the Desjardins Québec Pooled Fund maintains an IRC that is appointed in a manner consistent with section 3.7 of NI 81-107 and conducts itself in a manner that complies with the standard of care set out in section 3.9 of NI 81-107 as if NI 81-107 applied to the Desjardins Québec Pooled Fund;
  - (iii) at the time of the purchase, the IRC of the Desjardins Québec Pooled Fund has approved the transaction in accordance with subsection 5.2(2) of NI 81-107;
  - (iv) the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, complies with section 5.1 of NI 81-107, and the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, and the IRC of the Desjardins Québec Pooled Fund, complies with the terms of any standing instructions the IRC provides in connection with the purchase of securities of a Related Issuer in the manner contemplated by section 5.4 of NI 81-107;
  - (v) the purchase is made on a stock exchange on which such securities are listed and traded;
  - (vi) the transaction complies with any applicable market integrity requirements;
  - (vii) on or before the 90th day after the end of each financial year of a Desjardins Québec Pooled Fund, the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, files with the applicable securities regulatory authorities or regulators the particulars of any such investments; and
  - (viii) if the IRC of a Desjardins Québec Pooled Fund becomes aware of an instance where the Filer or an affiliate of the Filer, as manager of a Desjardins Québec Pooled Fund, did not comply with the conditions of this decision, the IRC of the Desjardins Québec Pooled Fund complies with the reporting obligation in section 4.5 of NI 81-107 as if NI 81-107 applied to the Desjardins Québec Pooled Fund;
- (c) to permit each Desjardins Québec Pooled Fund to purchase securities of an Underlying Fund provided that:
- (i) securities of each of the Desjardins Québec Pooled Funds are distributed on an exempt basis pursuant to available exemptions from the prospectus requirement in Alberta;
  - (ii) an investment by a Desjardins Québec Pooled Fund in an Underlying Fund is consistent with, or is necessary to meet, the investment objective of the Desjardins Québec Pooled Fund;

- (iii) an investment in an Underlying Fund by a Desjardins Québec Pooled Fund will be effected at a NAV per security of the applicable class or series of the applicable Underlying Fund calculated in accordance with Part 14 of NI 81-106;
- (iv) no Desjardins Québec Pooled Fund purchases or holds a security of an Underlying Fund unless, at the time of purchasing securities of the Underlying Fund, the Underlying Fund holds not more than 10% of its NAV in securities of other investment funds unless the Underlying Fund:
  - (A) is a clone fund;
  - (B) purchases or holds securities of a money market fund; or
  - (C) purchases or holds securities that are index participation units issued by an investment fund;
- (v) no management or incentive fees are payable by the Desjardins Québec Pooled Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Funds for the same service;
- (vi) no sales or redemption fees are payable by the Desjardins Québec Pooled Fund in relation to its purchases or redemptions of the securities of the Underlying Funds;
- (vii) the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, does not cause the securities of an Underlying Fund held by a Desjardins Québec Pooled Fund to be voted at any meeting of the holders of such securities, except that the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, may arrange for all of the securities that the Desjardins Québec Pooled Fund holds in an Underlying Fund to be voted by the beneficial owners of units of the Desjardins Québec Pooled Fund who are not the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, or an officer or director of the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund;
- (viii) when purchasing or redeeming securities of an Underlying Fund, the Filer or its affiliate, as manager of the Desjardins Québec Pooled Fund, shall conduct itself in a manner that complies with the standard of care set out in section 3.9 of NI 81-107 as if NI 81-107 applied to the Desjardins Québec Pooled Fund;

- (ix) the offering memorandum, or other disclosure document of a Desjardins Québec Pooled Fund, if available, will be provided to investors in a Desjardins Québec Pooled Fund prior to the time of investment, and will disclose:
- (A) that a Desjardins Québec Pooled Fund may purchase securities of the applicable Underlying Fund;
  - (B) that the Filer or its affiliate is the investment fund manager and portfolio manager of both the Desjardins Québec Pooled Fund and the Underlying Fund;
  - (C) that the Desjardins Québec Pooled Fund may invest all, or substantially all, of its assets in securities of an Underlying Fund;
  - (D) the fees, expenses and any performance or special incentive distributions payable by the Underlying Fund in which a Desjardins Québec Pooled Fund invests;
  - (E) the process or criteria used to select the Underlying Fund, if applicable;
  - (F) that investors are entitled to receive from the Filer, or its affiliate, as manager of the Desjardins Québec Pooled Fund, on request and free of charge, a copy of the offering memorandum or other similar disclosure documents of the Underlying Fund, if available, as well as the annual audited financial statements and interim financial reports relating to the Underlying Fund in which the Desjardins Québec Pooled Fund invests; and
  - (G) that investors in a Desjardins Québec Pooled Fund will be provided with annual financial statements of the Desjardins Québec Pooled Fund in accordance with applicable securities legislation, including an auditor's report.

**For the Commission:**

*“original signed by”*

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Tom Cotter  
Vice-Chair

*“original signed by”*

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Kari Horn  
Vice-Chair