

2.1.9 I.G. Investment Management Inc. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation and replacement of decision granting investment fund managers and mutual funds subject to NI 81-102 relief from the related issuer investment restrictions and management company reporting requirements of the Legislation in respect of the mutual funds’ investments in closed-end pooled funds in which a substantial securityholder of the investment fund managers has a significant interest – New decision expands scope of the relief to all investment funds, including non-redeemable investment funds, subject to NI 81-102 that are managed by the investment fund managers – Relief subject to conditions, including independent review committee approval and annual reporting of the particulars of any investments made in reliance on the relief – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(c)(ii), 111(4), 113, 117(1)1, 117(1)4, 117(2), 144.

February 4, 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
I.G. INVESTMENT MANAGEMENT INC.
MACKENZIE FINANCIAL CORPORATION
COUNSEL PORTFOLIO SERVICES INC.
(the Filers)

AND

THE INVESTMENT FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) (i) revoking the Original Decision (as defined below) granted to the Filers (the **Revocation**), and (ii) granting an exemption to iProfile U.S. Equity Private Pool (the **Pool**) and any other existing or future mutual funds or non-redeemable investment funds

that are subject to National Instrument 81-102 *Investment Funds (NI 81-102)* and of which one of the Filers is the manager (collectively with the Pool, the **Investment Funds**), from the following provisions in the Legislation (together with the Revocation, the **Requested Relief**):

- (a) the requirements in the Legislation which prohibit an Investment Fund from knowingly making or holding an investment in an issuer in which a substantial securityholder of the Investment Fund, its management company or its distribution company, has a significant interest (the **Related Issuer Investment Restrictions**);
- (b) the requirements in the Legislation which require a management company to file a report within 30 days after the month end of (i) every transaction of purchase or sale of securities between an Investment Fund and any related person or company and (ii) every transaction in which an Investment Fund is a joint participant with one or more related persons or companies (the **Management Company Reporting Requirements**).

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

- (a) the Ontario Securities Commission in the principal regulator for the application; and
- (b) the Filers have provided notice that section 4.7(1)(c) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick, and Newfoundland and Labrador (together with the Jurisdiction, 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:

Original Decision

1. On June 18, 2021, the Filers obtained an exemption on behalf of the Investment Funds other than non-redeemable investment funds (the **Mutual Funds**) from the Related Issuer Investment Restrictions and Management Company Reporting Requirements which enabled the Pool and each Mutual Fund to invest in a Northleaf Fund (as defined below) (the **Original Decision**).

2. The Original Decision did not contemplate at the time obtaining relief for non-redeemable investment funds. The Filers request that the Original Decision be revoked and replaced with this decision such that the Requested Relief may be granted to the Investment funds, which include Mutual Funds and non-redeemable investment funds.

IGIM

3. IGIM is a corporation continued under the laws of Ontario. It is the trustee, portfolio adviser, and manager of certain Investment Funds, including the Pool.

4. IGIM is registered as a portfolio manager and investment fund manager in Manitoba, Ontario, Quebec, and Newfoundland and Labrador and as a portfolio manager in British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, the Northwest Territories, Nunavut and Yukon.

5. IGIM and the Investment Funds of which it is the investment fund manager are not in default of any of the requirements of securities legislation in any of the Jurisdictions.

6. IGIM is an indirect, wholly owned subsidiary of IGM Financial Inc. (“**IGM**”). Power Corporation of Canada (“**Power**”) owns approximately 65% of IGM. Therefore, Power is a substantial securityholder of IGIM for purposes of s.110(2)(b) of the Act.

7. The portfolio management department of IGIM has implemented information barriers between it and the other Filers and between it, Power and Power’s subsidiaries.

Mackenzie

8. Mackenzie is a corporation formed under the laws of Ontario. It is the trustee, manager and portfolio adviser of certain Investment Funds.

9. Mackenzie is registered as a portfolio manager, investment fund manager, exempt market dealer and commodity trading manager in Ontario. Mackenzie is registered as a portfolio manager, investment fund manager and exempt market dealer in Quebec and Newfoundland and Labrador. Mackenzie is also registered as a portfolio manager and exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon.

10. Mackenzie and the Investment Funds of which it is the investment fund manager are not in default of any of the requirements of securities legislation of any of the Jurisdictions.

11. Mackenzie is an indirect, wholly owned subsidiary of IGM. As such, Power is a substantial securityholder of Mackenzie under the Legislation.

12. While the portfolio management departments of Mackenzie and Counsel operate independently, formal information barriers have not been implemented between them. However, information barriers have been implemented between them and IGIM and between them, Power and Power’s subsidiaries.

Counsel

13. Counsel is a corporation formed under the laws of Ontario. It is the trustee, manager and portfolio adviser of certain Investment Funds.

14. Counsel is registered as a commodity trading manager, investment fund manager and portfolio manager in Ontario. Counsel is registered as an investment fund manager in Quebec and Newfoundland and Labrador.

15. Counsel and the Investment Funds of which it is the investment fund manager are not in default of any of the requirements of securities legislation in any of the Jurisdictions.

16. Counsel is an indirect, wholly owned subsidiary of IGM. As such, Power is a substantial securityholder of Counsel under the Legislation.

Lifeco

17. Great-West Lifeco Inc. (“**Lifeco**”) is an indirect subsidiary of Power. As of the date of this Application, Power indirectly owns approximately 70% of Lifeco. Power’s direct or indirect ownership interest of its subsidiaries is referred to as the “**Power Ownership Percentage**” of the applicable subsidiary in this Application. As such, Power is deemed to own beneficially an amount equal to the Power Ownership Percentage of any voting securities owned by Lifeco pursuant to the Legislation.

Northleaf

18. Northleaf Capital Group Ltd. (together with its subsidiaries, “**Northleaf**”) is a global private markets investment firm with more than US\$16 billion in private credit, private equity and infrastructure commitments under management on behalf of more than 100 institutional investors. Northleaf is led by an experienced group of professionals, who collectively have significant experience in structuring, investing and managing global private markets investments and in evaluating, negotiating, structuring and executing complex financial transactions.

19. On October 28, 2020, affiliates of Power, namely Mackenzie and Lifeco, entered into a strategic relationship with Northleaf whereby Mackenzie and

Lifeco jointly acquired a 49.9% non-controlling voting interest and 70% economic interest in Northleaf.

20. None of the Filers, their respective directors, officers, employees and agents is a “responsible person” of Northleaf or a Northleaf Fund (as defined below) within the meaning of subsection 13.5(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Similarly, none of Northleaf, its respective directors, officers, employees and agents is a “responsible person” of a Filer or an Investment Fund.

The Pool

21. The Pool is a mutual fund subject to NI 81-102.
22. IGIM is the trustee, portfolio adviser, and manager of the Pool.
23. The Pool distributes its securities under a simplified prospectus and annual information form prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (“**NI 81-101**”).
24. The Pool is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of securities legislation in any of the Jurisdictions.
25. The Pool’s investment objective is to provide long-term capital growth by investing primarily in U.S. equities.
26. The Pool’s investment strategies permit it to invest up to 10% of its net assets in a diversified portfolio of privately-held companies. This limit is consistent with the classification by the Pool of these investments as illiquid assets for purposes of NI 81-102.
27. The Pool’s independent review committee (“**IRC**”) established under National Instrument 81-107 *Independent Review Committee for Investment Funds* (“**NI 81-107**”) has reviewed the investment by the Pool in NCO (as defined below) pursuant to subsection 5.3(1) of NI 81-107 and the IRC has provided a positive recommendation in respect of the investment by the Pool. At the time of the review by the IRC and the investment by the Pool, Power had an indirect beneficial interest less than 10% in NCO as a result of its Power Ownership Percentage of Lifeco and, therefore, approval under clause 5.2(1)(b) of NI 81-107 was not required. If the Requested Relief is granted, approval from the IRC pursuant to clause 5.2(1)(b) of NI 81-107 will be sought if the Pool makes additional investments in NCO, which it anticipates doing. The Filers will proceed on the basis that any proposed investment by the Pool in any Northleaf Fund (as defined below) requires the approval of the IRC prior to the Pool committing to the investment.

The Investment Funds

28. Each Investment Fund is or, once established, will be an investment fund subject to NI 81-102.
29. Each Investment Fund has or will have a Filer as its trustee, portfolio adviser, and manager, as applicable.
30. Each Investment Fund that is a mutual fund distributes or will distribute its securities under a simplified prospectus (the “**SP**”) prepared in accordance with NI 81-101. An Investment Fund that is a non-redeemable investment fund distributes or will distribute its securities under a prospectus (together with the SP, a “**Prospectus**”) in conformity with the Legislation.
31. Each Investment Fund is or will be a reporting issuer in each of the Jurisdictions and is not or will not be in default of any of the requirements of securities legislation in any of the Jurisdictions.
32. Each Investment Fund is or will be permitted by NI 81-102 to invest in illiquid assets, which includes the Northleaf Funds, up to the limit prescribed in NI 81-102 or as may otherwise be permitted through exemptive relief. The Prospectus of each Investment Fund discloses or will disclose in its investment strategies (i) the permitted limit for investment in illiquid assets applicable to that Investment Fund, (ii) that the Investment Fund may invest up to that permitted limit in illiquid assets, measured at the time of investment, which may include securities of a Northleaf Fund, and (iii) describe the Investment Fund’s relationship to the Northleaf Fund.
33. Any proposed investment by an Investment Fund in a Northleaf Fund, including NCO, requires a review by, and the approval of, the IRC of the Investment Fund prior to such Investment Fund committing to the investment.

The Northleaf Funds

34. Northleaf Capital Opportunities (“**NCO**”) is a closed-end pooled fund managed by Northleaf that seeks to provide investors with access to direct investments in mid-market private equity assets with a focus on appropriate risk-adjusted returns. NCO pursues a flexible strategy and targets non-control investments across the capital structure, including (i) structured capital investments consisting of preferred equity and higher returning debt securities and (ii) common equity investments.
35. Northleaf seeks to be an active investor engaged with management of the companies in which NCO invests (“**Portfolio Investments**”) to maintain an active ongoing governance role for the duration of NCO’s investment. This includes, in certain circumstances, Northleaf having representation, as a voting member or observer, on the board of

- directors (or similar) of NCO's Portfolio Investments.
36. Northleaf also expects to often play an active role in determining the timing and manner of Portfolio Investment exits, including through voting or observer roles on portfolio company boards of directors (or similar), and in some cases Northleaf will have contractual rights to force a liquidity event of a Portfolio Investment.
37. NCO is not an "investment fund" under the Act because, while it does not seek legal control of its Portfolio Investments, it makes investments on the basis that it will be actively involved in the management of the companies in which it invests.
38. In addition to NCO, Northleaf currently or in future may offer other private markets funds that are not investment funds due to the nature of the investment strategy as an active investor engaged with management of the companies in which the fund invests (the "**Northleaf PE Funds**"). Northleaf also offers private credit funds, that originate loans in the private credit market, and which are also not investment funds ("**Northleaf PC Funds**"). For purposes of this Application, a "**Northleaf Fund**" is a Northleaf PE Fund or a Northleaf PC Fund.
39. NCO is organized using a series of partnerships resident in and formed under the laws of Ontario. While other Northleaf Funds are also expected to be organized using a series of partnerships and/or trusts resident in and formed under the law of Ontario, they may utilize other structures that are beneficial to investors.
40. NCO has a term of 10 years from the date of final closing, plus two possible extensions of one year each in Northleaf's discretion and further extensions approved by NCO's third-party investors. The final closing must occur within 18 months of the initial closing, which occurred in Q4 of 2020.
41. NCO draws capital from its investors up to the amount of their capital commitments.
42. Any investment in a Northleaf Fund by the Pool or any Investment Fund is or will be an illiquid asset for purposes of NI 81-102.
43. Lifeco, through a subsidiary, has invested in NCO. As at the time of this Application, Lifeco's capital commitment to NCO is in an amount such that the Power Ownership Percentage of NCO is and will remain less than 10% of NCO's aggregate committed capital, but, if the Requested Relief is granted, Lifeco, through one or more subsidiaries, intends to increase its investment in NCO such that the Power Ownership Percentage of NCO would be greater than 10% of NCO's aggregate committed capital. Such an interest would be deemed to be a significant interest under the Legislation and would also result in NCO being considered a "related person or company" to an Investment Fund under the Legislation.
44. The Filers have been advised that Lifeco intends to make similar investments in other Northleaf Funds in which the Investment Funds may invest.
45. The Pool is invested in NCO. The Investment Funds may, if consistent with their Investment objectives and strategies, also seek to invest in NCO and/or other Northleaf Funds.
46. The existing investment by the Pool in NCO (together with any future investments by the Pool in NCO) will at all times be in an amount that constitutes less than 10% of all capital commitments to NCO and less than 10% of the net assets of the Pool.
47. The portfolio manager of the Pool has engaged in due diligence on Northleaf and NCO, as it would with any investment made by the Pool, negotiated terms that are at least as favourable to the Pool as market terms and conditions, and determined that an investment in NCO is in the best interests of the Pool. Similarly, each Investment Fund that invests in a Northleaf Fund will engage in due diligence on Northleaf and the Northleaf Fund, negotiate terms that are at least as favourable to the Investment Fund as market terms and conditions, and determine that such an investment is in the best interests of the Investment Fund.
48. Neither Power nor Lifeco has influence over the portfolio management decisions made by the Filers.
49. Under section 6.2 of NI 81-107, each Investment Fund is or would be permitted to invest in securities of a Northleaf Fund subject to compliance with two conditions: (i) the IRC of the Investment Fund would have to approve the investment under subsection 5.2(2) of NI 81-107 and (ii) the purchase of the securities would have to be made on an exchange. The first condition is or will be met in the case of an investment by an Investment Fund in a Northleaf Fund, as stated in representation 25 above. The second condition is not met because Northleaf Funds are not and will not be reporting issuers and therefore interests in Northleaf Funds are not and will not be listed or traded on an exchange.
50. Absent the Requested Relief, the Pool, specifically, and the Investment Funds, generally, would be prohibited by the Related Issuer Investment Restrictions from investing in NCO and other Northleaf Funds if Power, through Lifeco or any other Power subsidiary, obtains a beneficial interest of more than 10% in NCO or any other Northleaf Fund indirectly through the applicable Power Ownership Percentage. This is because Power is deemed to be a substantial security holder of each

- Filer under the Legislation and the management company of each Investment Fund is or will be a Filer.
51. Absent the Requested Relief, the Pool and the Investment Funds would be required by the Related Issuer Investment Restrictions to divest their investments in NCO or any other Northleaf Fund if Power attains, directly or indirectly through the applicable Power Ownership Percentage, a beneficial interest of more than 10% in NCO or a Northleaf Fund since, in such case, Power would be deemed to have a significant interest in NCO or the applicable Northleaf Fund.
52. Absent the Requested Relief, the Filers would be required by the Management Company Reporting Requirements to file a report of (i) every transaction of purchase or sale of securities between an Investment Fund and a Northleaf Fund and (ii) every transaction in which an Investment Fund is a joint participant with one or more Northleaf Funds, within 30 days of the month end in which the transaction occurred.
53. Pursuant to National Instrument 81-106 Investment Fund Continuous Disclosure (**NI 81-106**), each Investment Fund prepares and files interim and annual management reports of fund performance (**MRFPs**) that disclose any transactions involving a related party, including the identity of that related party, the relationship to the Investment Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount, and any ongoing commitments to the related party.
54. It is costly and time consuming for the Filers to also provide the reports required by the Management Company Reporting Requirements, which are substantially similar to the information required by NI 81-106 to be disclosed in the MRFPs, on a monthly and segregated basis for the Investment Fund.
- (c) Each Filer, as the investment fund manager of an Investment Fund, complies with section 5.1 of NI 81-107 and the Filer and the IRC comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the Investment Fund's transactions in securities of a Northleaf Fund;
- (d) No later than the time the Investment Fund files its annual financial statements, and no later than the 90th day after the end of each financial year of the Investment Fund, the Filers file with the securities regulatory authority or regulator the particulars of any investments made in reliance on the Requested Relief.

“Cathy Singer”
Commissioner
Ontario Securities Commission

“Mary Anne De Monte-Whelan”
Commissioner
Ontario Securities Commission

Application File #: 2022/0020

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 Requested Relief is granted, provided that:

- (a) The purchase or holding of securities of a Northleaf Fund is consistent with, or necessary to meet, the investment objectives and strategies of an Investment Fund;
- (b) At the time of entering into any commitment of capital to a Northleaf Fund, the IRC of the Investment Fund has approved the transaction in accordance with subsection 5.2(2) of NI 81-107;