The Ontario Securities Commission

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The Ontario Securities Commission carries out the powers, duties and functions given to it pursuant to the *Securities Commission Act, 2021* (S.O. 2021, c. 8, Sched. 9).

The Ontario Securities Commission exercises its regulatory oversight function through the administration and enforcement of Ontario's *Securities Act* (R.S.O. 1990, c. S.5) and *Commodity Futures Act* (R.S.O. 1990, c. C.20), and administration of certain provisions of the *Business Corporations Act* (R.S.O. 1990, c. B.16).

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A.1.1 Nicholas Agar and Paul Ungerman – ss. 127(1), 127.1

FILE NO.: 2024-1

IN THE MATTER OF
NICHOLAS AGAR AND
PAUL UNGERMAN

NOTICE OF HEARING
Subsection 127(1) and section 127.1 of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: January 26, 2024, at 10:00 am

LOCATION: By videoconference

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Capital Markets Tribunal to approve the Settlement Agreement dated January 10, 2024, between Staff of the Commission, Nicholas Agar and Paul Ungerman in respect of the Statement of Allegations filed by Staff of the Commission dated January 10, 2023.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Tribunal in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Tribunal par écrit dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 12th day of January, 2024.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

Please visit capitalmarketstribunal.ca or contact the Registrar at registrar@capitalmarketstribunal.ca.

IN THE MATTER OF
PAUL UNGERMAN AND
NICHOLAS AGAR

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990 c S.5)

A. OVERVIEW

1. This case arises from the illegal offering and misleading promotion of crypto securities to Ontario investors. In promoting the Axia Project's (defined below) offerings of crypto security tokens, Nicholas Agar ("**Agar**") and Paul Ungerman ("**Ungerman**", together the "**Founders**" or "**Respondents**") enticed investors by making misleading or untrue statements that represented Axia to be a safe and sophisticated investment opportunity. Investors in both Ontario and around the world suffered significant financial losses. Companies that issue misleading or untrue statements in their promotional materials deprive investors of the ability to make informed investment decisions. Retail investors can be particularly vulnerable as they may not have a complete understanding of crypto securities.

2. The Respondents also made misleading and untrue statements to the Ontario Securities Commission ("**OSC**" or the "**Commission**") that prevented the early detection of their unlawful conduct. This matter should serve as a warning that all persons who deal in crypto securities with Ontario investors, wherever the business is domiciled, cannot circumvent compliance with, or evade enforcement of, Ontario securities law by moving their operations offshore and/or misleading the Commission about the nature and extent of their operation.

3. Beginning in or around April 2018, and continuing to at least October 2022 (the "**Solicitation Period**"),[1] Ungerman and Agar, and the entities they controlled (together the "**Axia Project**" or "**Axia**"), created crypto assets called "LinkCoin" and later "Axia Aion Network Token" and later "Axia Aion Network ERC 777 Token" and later "Axia ERC 20 Token" and finally "Axia Network Coin" or "AXC Coin" (collectively, the "**Axia Coin**") – which are securities – and sold millions of dollars' worth of them to Ontarians. Throughout the Solicitation Period, Axia raised a total of approximately US$41 million from investors worldwide, of which more than US$9 million was raised from approximately 215 Ontario investors.

4. Ungerman and Agar (together, the "**Founders**" or "**Respondents**") disseminated promotional materials which contained misleading or untrue statements, including misleading or untrue statements that Axia held over US$29 billion dollars' worth of audited "hard" or "real-world" assets (e.g., real property, precious minerals and gems) in a reserve to support the value of the Axia Coin. In fact, the existence, ownership and value of the assets had not been verified and the conditions for transfer of the assets to Axia Project were never satisfied. They also took a significant amount of compensation in fiat currency, contrary to explicit and repeated representations that they would not draw any form of fiat currency compensation from the Axia Project.

5. No prospectus was filed by any Axia Entity (defined below) with respect to the distribution of the Axia Coin. None of Ungerman, Agar or their companies obtained the necessary registration with the Commission to engage in trading activities regarding the Axia Coin. By selling the Axia Coin to investors without complying with those requirements, the Founders and the Axia Entities deprived investors of important safeguards in place to protect them and maintain confidence in Ontario's capital markets.

6. Finally, in early 2020, the Founders made misleading and untrue statements about the nature of their business activities, contrary to s 122(1)(a) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"). These misleading statements prevented early detection of the Respondents' unlawful conduct and thus interfered with the Commission's ability to enforce compliance with Ontario securities laws and protect Ontario investors.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission ("**Enforcement Staff**") makes the following allegations of fact:

A. The Axia Project Overview

7. Agar and Ungerman are individuals residing in Ontario.

8. In 2018, the Founders started the Axia Project with a vision of creating a decentralized blockchain network on which participants could store and transfer value and that would provide utility on an online platform with access to applications and services using the Axia Coin as digital currency (the "**Axia Ecosystem**").

[1] All activities described occurred during the Solicitation Period unless otherwise indicated.

9. Initially, the Founders operated the Axia Project through an Ontario company. Axia Operations Ltd. ("**Axia Operations**") was incorporated under the Ontario *Business Corporations Act*, in or around February 2018. At the time of incorporation, the company's name was Linkcoin Ltd., but its name was changed to Axia Operations in or around November 2018. Axia Operations was dissolved in or around February 2022. The Founders were the sole shareholders, directors and officers of Axia Operations.

10. Beginning in or around early 2019, the Founders moved the Axia Project offshore. In total, the Founders created or acquired, or caused to be created or acquired, approximately thirty entities worldwide that were involved in the Axia Project, with several Axia entities involved in promotional activities for the Axia Project (the "**Axia Entities**"). During the Solicitation Period, the Founders were the legal or *de facto* controlling minds, directly or indirectly, of the Axia Entities and the Axia Project as a whole.

11. Once the Axia Project moved offshore, the Founders developed a governance structure whereby a foundation entity oversaw the operations of the other Axia Entities, including the promotion, generation, distribution and sale of the Axia Coin. All funds raised from the sale of the Axia Coin were held by various Axia Entities on behalf of the foundation entity, and the foundation would direct the Axia Project's use of funds. Over the course of the Axia Project, Axia had multiple foundation entities, including Axia Capital Ltd. in the Cayman Islands, Axia Foundation Inc. in the Commonwealth of Dominica and Axia Network Foundation in the Cayman Islands (collectively, the "**Foundation**").

12. Under the supervision of the Foundation, an issuer entity was responsible for the issuance of Axia Coin for distribution. Over the course of the Axia Project, Axia had two issuer entities, both incorporated in the British Virgin Islands ("**BVI**"), Axia Issuer Inc. and AXC Issuer Corp., (together, the "**Issuer**").

13. Another BVI company, Axia Systems Inc. ("**Axia Systems**"), was responsible for software and technological services to the entire Axia Project, including the maintenance of the "**Axia Websites**":

    i. From in or around December 2019 to mid-2020, the Axia Project maintained a website with the URL axiacoin.com.

    ii. From in or around August 2020 to January 2022, the Axia Project maintained a website with the URL axiacoin.org.

    iii. Finally, beginning January 2022, the Axia Project has maintained a website with the URL axia.global.

14. Each of the Axia Websites was owned by Ungerman, through his wholly-owned company BXB Family Corp., and maintained by Axia Systems with support from the other Axia Entities.

15. Each of the Axia Websites was freely accessible to any user of the internet; there was no password requirement or similar portal restricting public access. The Axia Websites were accessible to investors in Ontario.

B. The Sale of Axia Coin

16. The Founders directed the creation of the Axia Coin, a blockchain digital token that has been traded on third party exchanges, with promises of listings on further exchanges, and purported or future utility on the Axia Ecosystem. The Founders developed the idea for the Axia Coin and were the directing minds of the Axia Project. The Founders established, or arranged for the establishment of, the Axia Entities to carry out the software development and deployment activities required to issue Axia Coin and accept proceeds of sales of Axia Coin.

17. The particulars of the Axia Coin being developed and offered to Ontario investors changed over the course of the Project:

    i. The digital currency was initially called LinkCoin, but in November 2018 the Founders changed the name of the digital currency to Axia Coin or AXC.

    ii. Beginning in early 2019, Axia partnered with Aion Foundation (**"Aion"**) to develop and launch its token on the Aion blockchain network that it was developing, later called the Open Application Network. In December 2019, the Axia Ecosystem mobile application was released. Although Axia Coin was not issued at that time, early investors could view the number of Axia Coins to which they were entitled in the application.

    iii. In January 2021, the first version of Axia Coin was issued as a token built on the Open Application Network ("**Axia ERC 777 Tokens**"). Axia ERC 777 Tokens were delivered to early-stage investors who opened accounts with Axia Capital Bank Ltd., a licensed bank governed under the laws of the Commonwealth of Dominica ("**Axia Bank**"). Early-stage investors were required to complete a know-your-client ("**KYC**") process to open their accounts, but as part of this KYC process, Axia did not collect any information pertaining to investors' or their spouses' net income, financial assets and liabilities. Axia ERC 777 Tokens were held in "cold storage" custody

by a service provider to Axia Bank. Holders could see the balances of their Axia ERC 777 Tokens through the mobile application but could not transfer the tokens to a wallet outside the Axia Ecosystem.

iv. In mid-January 2021, the core developers of the Open Application Network announced that they were abandoning development of that network, and the Founders then moved the Axia Project to the Ethereum Network. In March 2021, all Axia ERC 777 Tokens were replaced with ERC 20 Tokens ("**Axia ERC 20 Tokens**"). This conversion occurred within holders' accounts at Axia Bank and through the mobile application.

v. On or about April 9, 2022, the Axia Project launched its mainnet network and all Axia ERC 20 Tokens were converted into a new digital coin maintained on the new network.

18. The Founders, through the Axia Entities, facilitated the sale of Axia Coin and/or future entitlements to Axia Coin in three different offerings (together, the "**Offerings**"):

i. Simple Agreements for Future Tokens (the "**SAFTS**"); between April 2018 and September 2019, twenty-four Ontario investors entered into SAFTs with Axia Operations in exchange for future tokens and options to purchase future tokens. Axia Operations raised approximately US$2.5 million through SAFTs with Ontario investors.

ii. Token Subscription Agreements ("**Subscription Agreements**"); between May 2020 and September 2021, approximately thirty-nine Ontario residents invested a total of approximately US$2 million in the Axia Project through Subscription Agreements with the Issuer.

iii. Axia Bank Sale; between June 2021 and October 2022, Ontario investors were able to purchase Axia Coin from the Issuer through Axia Bank. Axia Bank holds a banking licence in the Commonwealth of Dominica. At all material times, Ungerman was the sole shareholder and director of the Axia Bank. On behalf of the Axia Project, Axia Bank onboarded token purchasers and credited Axia Coin into the purchasers' Axia Bank accounts. Approximately 157 Ontario investors purchased approximately US$4.6 million worth of Axia Coin through Axia Bank.

19. In total, Axia raised over US$9 million from approximately 215 Ontario investors during the Solicitation Period.

20. Each of the Offerings was a distribution of a security.

21. On or about October 5, 2022, Axia announced the suspension of all Axia Coin sales pending a review of the Axia Project by the third-party governance and compliance firm with the support of forensic accounting professionals.

22. On or about March 10, 2023, Axia announced that the review of the Axia Project was complete and Axia was beginning efforts to wind down the project. The wind-down process is ongoing. Axia subsequently announced a clarification that the decision to wind down was based on a recommendation by the third-party governance and compliance firm. The recommendation was driven primarily by the Axia Project's potential compliance issues related to various applicable legal and regulatory regimes.

23. Of the approximately US$41 million dollars raised worldwide, less than US$10 million remains for distribution to investors as part of the wind down.

C. Promotion of Axia Coin as an Investment

24. During the Solicitation Period, the Founders continuously disseminated or caused to be disseminated promotional materials with respect to the Axia Coin in a variety of ways, including by:

i. Distributing white papers directly to investors and prospective investors;

ii. Distributing multiple versions of white papers through the Axia Websites;

iii. Sending email announcements to subscribers for the Axia Websites and/or Axia Coin holders;

iv. Issuing press releases through third parties;

v. Making posts on social media platforms, such as Telegram and Medium, including through third parties;

vi. Hosting meetings with prospective investors to promote the Axia Coin and Axia Project; and

vii. Engaging and paying significant amounts to third parties for their services identifying and soliciting purchasers of Axia Coin.

25. The Founders actively and regularly promoted Axia Coin as a means to profit or obtain increased value. The Founders solicited investors both in person and online, making representations that the Axia Coin had the potential to increase in value over time.

26. The Founders promoted unique "tokenomics" that purported to give the Axia Coin increasing value over time. Initially, the Axia Coin was promoted as deflationary (referring to a finite coin supply that Axia claimed would never increase) and stable (because of its purported asset support or backing, discussed in greater detail below). The concept of coin burning was introduced in or around August 2021 and the Founders promoted the Axia Coin as the first ever "hyper-deflationary" (diminishing supply and asset support or backing) digital currency.

27. Throughout the Solicitation Period, promotional materials, including project descriptions and blogs on the Axia Websites and white papers distributed or caused to be distributed by the Founders on behalf of the Axia Project represented that these "tokenomics" created or increased Axia Coin value and made the Axia Coin a "safe haven" for purchasers. The Founders made or caused to be made statements in Axia promotional materials that the Axia Coin provided an "unmatched" value proposition in the global marketplace and would become the "preferred global medium of exchange" and/or the "new reserve currency for the world".

28. Promotional materials also represented that demand for Axia Coin would rise and Axia Coin would be tradeable on a trading platform to be built on the Axia network (AXchange) – which never became operational – as well as through third party crypto asset exchanges. The Axia ERC 20 Token was eventually listed on two third-party crypto asset exchanges (KuCoin and Bitmart) between July 2021 and March 2022. Although the Founders made or caused to be made representations that the Axia Coin would be listed on other exchanges and/or re-listed on KuCoin following the launch of the mainnet Axia network, the Axia Coin was never re-listed on KuCoin or listed for trading on any other exchanges.

D. The Asset Reserve Misleading or Untrue Statements

29. One of the Axia Coin's key "tokenomics" features that the Respondents promoted, was its purported asset reserve. Indeed, throughout the Axia Project, the Founders promoted the Axia Coin as the world's first asset supported or backed global crypto currency. The asset supported feature was represented to create or deliver "unprecedented" or "fundamental" value for the Axia Coin.

30. However, during the Solicitation Period, the Respondents made, or caused to be made, materially misleading or untrue statements in promotional materials regarding the asset-backing feature of the Axia Coin, including statements that stated or otherwise suggested that made representations concerning the Axia Coin's purported asset-backing feature including:

    i. The Axia Project had established a proprietary "Asset Acquisition Algorithm", "transaction link" and/or other technology to automate Axia's asset purchasing strategy and maintain Axia's asset base, through which asset acquisitions and holdings would be recorded on blockchain and visible to investors in real time;

    ii. The Axia Project had established an "Axia Reserve" which held over US$29 billion worth of audited tangible assets including precious metals, gemstones, real estate, art and more; and

    iii. In early 2022, the Axia Reserve was being replaced with the "Axia Treasury" that would serve the same purpose as the Axia Reserve.

31. In reality,

    i. No automated or public asset acquisition or reporting on blockchain: No assets were acquired or maintained via any algorithm. No asset holdings or acquisitions were maintained by any automated or smart contract process. No asset acquisitions or holdings were reported on any blockchain.

    ii. No Axia Reserve: The Axia Reserve was never properly established, and no assets were transferred to any Reserve. The approximate US$29 billion worth of assets referred to assets purportedly contributed by twelve third-party "**Asset Contributors**" pursuant to various trust agreements entered into with the Issuer between November 2019 and September 2021 (the "**Trust Agreements**"). The Founders did not, however, conduct or cause to be conducted adequate due diligence to verify the existence, ownership or value of the assets. Nor did they engage any accredited third party to conduct an audit of the purported assets. Moreover, the conditions of transfer of the assets to Axia were not met, and Axia never held legal or beneficial title to any of the assets contemplated under the Trust Agreements. The Founders abandoned the Axia Reserve concept no later than October 2021, but did not announce the abandonment of the Axia Reserve concept until December 31, 2021;

    iii. No Axia Treasury. No formal structure or accounting was established for the Axia Treasury and no purported Axia Treasury funds were separated from operating funds. Although the Founders made or caused to be made representations describing the Axia Treasury with substantially similar and, at times, identical language as the

Axia Reserve, the concept behind the purported Axia Treasury was fundamentally different from the Axia Reserve concept that it was supposedly replacing. In particular:

i. The value of the Axia Treasury was limited to, at best, Axia's cash and digital asset position. In January 2022, when the Founders represented that the Axia Treasury was established, Axia's total global cash position, before any reductions for operating costs, was less than US$14 million; and

ii. Despite making representations during the Solicitation Period that stablecoins, such as USDT and USDC, were "massive" or "extreme" investment risks, beginning in December 2021 the Founders converted, attempted to convert, or caused to be converted or attempted to be converted, approximately US$10 million of funds from the sale of Axia Coins to USDT and USDC for the purported Axia Treasury. Of this, US$3 million – representing over 20% of Axia's cash position at the time – was lost in failed transactions with two entities that did not deliver USDT or USDC as agreed. The Founders did not disclose these transactions or stablecoin holdings to investors.

E. Undisclosed Payments to Founders

32. During the Solicitation Period, the Founders made, or caused to be made, misleading or untrue statements in promotional materials, stating or otherwise suggesting that none of the Founders or senior members of the Project team would take any form of fiat currency compensation from the Project.

33. Contrary to these representations, the Founders authorized the payment of and received over CA$368,686.19 in fiat compensation in "Director's Fees" from the Axia Project. In addition, the Founders made or authorized over CA$500,000 in fiat compensation to other senior members of the Axia Project team.

34. Additionally, in or about August 2022, Axia Foundation Inc. advanced US$1.2 million to Agar's legal counsel, in trust, further to a legal indemnity in favour of Agar (the "**Indemnity Funds**"). The Founders authorized, on behalf of the Foundation, the payment of the Indemnity Funds. The Indemnity Funds have been applied to pay for legal fees and disbursements of Agar's counsel to date, with the balance still held in trust.

F. The Founders' Misleading Statements to the Ontario Securities Commission

35. On April 29, 2020, the Case Assessment Branch of the Ontario Securities Commission ("**Case Assessment**") wrote to Axia Operations seeking information and records about Axia Operation's business activities. The Founders responded in a letter dated May 11, 2020. In their May 11, 2020 letter, the Founders misled Case Assessment as follows:

i. In response to Case Assessment's request for a detailed description of all business activities, the May 11, 2020 letter described the development of a single communications application as the only business activity, and further stated that Axia was only in the conceptual stage. The Founders omitted any reference to Axia Operation's other extensive business activities to that date including having raised around US$2.5 million through sale of SAFTs, having partnered and worked with third parties to develop and custody the Axia Coin, having engaged numerous marketing and investor relations service provides for the promotion of the Axia Coin and Axia Project to investors, having undertaken efforts to move the Axia Project offshore, and having entered into Trust Agreements contemplating the transfer of billions of dollars worth of purported assets for the Axia Reserve.

ii. In response to Case Assessment's request for a copy of the white paper and particulars of all proceeds raised in connection with the white paper, the Founders stated that the white paper had not been released to the public and no proceeds had been raised. In reality, Axia Operations had been distributing a white paper to investors and prospective investors since in or around April 2018 and had already raised around US$2.5 million.

iii. In response to Case Assessment's request for particulars about the real assets that were described on Axia's website as backing its Coin, the Founders claimed that the references on Axia's website to assets were in respect of potential future initiatives that had not yet been determined. In reality, the Founders had begun efforts to establish the Axia Reserve in 2019 and, by May 11, 2020, had signed Trust Agreements with at least four Asset Contributors contemplating the transfer of purportedly nearly US$11 billion worth of assets.

iv. In response to Case Assessment's request for a detailed description of Axia Operation's relationship with the Open Application Network, the Founders wrote that the Open Application Network was "under consideration" for the network on which to release the Axia Coin. In reality, Axia Operations had already entered into a partnership with Opening Application Network beginning in or around August 2018 and technical token development on the Open Application Network had begun in or around November 2018. Axia Operations and Open Application Network memorialized their partnership in a signed written agreement dated March 8, 2019. By the May 11, 2020 letter, Axia had already expended considerable resources on work under that partnership.

36. The Founders thereby breached subsection 122(1)(a) of the Act because they made statements that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be state or that was necessary to make the statements not misleading.

G. Unregistered Trading

37. None of Axia Operations, the Foundation, the Issuer or the Founders were registered with the Commission in any capacity under the Act. No exemptions from the registration requirement were available to any of Axia Operations, the Foundation, the Issuer or the Founders under Ontario securities law.

38. Based on the conduct described above, the Founders and their companies – Axia Operations, the Foundation, and the Issuer – continuously engaged in, or held themselves out as engaging in, the business of trading in Axia Coin without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.

H. Illegal Distribution

39. Each of the Offerings were trades in securities not previously issued and were therefore distributions.

40. No preliminary prospectus or prospectus was filed for the distribution of the Axia Coin. The Founders did not take adequate, if any, steps to determine whether investors qualified as accredited investors. Many did not. The investments did not qualify for any other exemption from the prospectus requirements set out in section 53 of the Act and none of the Founders or their entities filed reports of exempt distribution, including Form 45-106F1, with the OSC.

41. By engaging in the conduct described above, Axia Operations, the Foundation, the Issuer and the Founders engaged in a distribution of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the prospectus requirement, contrary to section 53 of the Act.

I. Authorizing, Permitting, or Acquiescing in Breaches of Ontario Securities Law

42. The Founders, as legal or *de facto* directors and officers of Axia Operations, the Foundation, the Issuer and Axia Systems, authorized, permitted or acquiesced in the conduct described above. As a result, Ungerman and Agar are deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

43. Enforcement Staff alleges the following breaches of Ontario securities law and conduct contrary to the public interest:

i. The Founders, Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., and Axia Systems made statements that they know or ought to have known that that (a) were materially misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, and (b) would reasonably be expected to have a significant effect on the market price or value of the Axia Coin, contrary to section 126.2 of the Act;

ii. Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., Ungerman and Agar engaged in, and held themselves out as engaging in, the business of trading in securities without being registered to do so and without an applicable exemption from the registration requirement contrary to subsection 25(1) of the Act;

iii. Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., Ungerman and Agar engaged in distributions of securities without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement contrary to section 53 of the Act;

iv. Ungerman and Agar authorized, permitted or acquiesced in Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., and Axia Systems' non-compliance with Ontario securities law, contrary to section 129.2 of the Act;

v. The Founders made four statements to Case Assessment that were misleading, untrue and/or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to section 122(1)(a) of the Act; and

vi. The Founders engaged in conduct that is contrary to the public interest.

44. These allegations may be amended, and further and other allegations may be added as counsel may advise, and the Capital Markets Tribunal (the **"Tribunal"**) may permit.

D. ORDERS SOUGHT

45. Enforcement Staff requests that the Tribunal make an order pursuant to subsection 127(1) and 127.1 of the Act to approve the settlement agreement entered into by Ungerman and Agar with respect to the matters set out herein.

DATED this 10th day of January, 2024

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A.2
Other Notices

A.2.1 Nova Tech Ltd and Cynthia Petion

FOR IMMEDIATE RELEASE
January 10, 2024

NOVA TECH LTD AND
CYNTHIA PETION,
File No. 2023-20

TORONTO – The Tribunal issued its Reasons and Decision in the above-named matter.

A copy of the Reasons and Decision dated January 9, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 TeknoScan Systems Inc. et al.

FOR IMMEDIATE RELEASE
January 11, 2024

TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM,
File No. 2022-19

TORONTO – The Tribunal issued an Order in the above named matter.

A copy of the Order dated January 11, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
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A.2.3 TeknoScan Systems Inc. et al.

FOR IMMEDIATE RELEASE
January 12, 2024

TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM,
File No. 2022-19

TORONTO – The previously scheduled days of February 13, 15 and 16, 2024 will not be used for the merits hearing in the above-named matter. The merits hearing will commence on January 29, 2024 and continue on January 30 and 31, February 20, 21, 22, 23, 26, 27, 28 and 29, and April 2, 3, 4, 5, 8 and 9, 2024 at 10:00 a.m. on each day.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.4 Nicholas Agar and Paul Ungerman

FOR IMMEDIATE RELEASE
January 12, 2024

NICHOLAS AGAR AND
PAUL UNGERMAN,
File No. 2024-1

TORONTO – The Tribunal issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission, Nicholas Agar and Paul Ungerman in the above-named matter.

The hearing will be held on January 26, 2024 at 10:00 a.m.

A copy of the Notice of Hearing dated January 12, 2024 and Statement of Allegations dated January 10, 2024 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.5 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
January 16, 2024

GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO,
File No. 2022-8

TORONTO – The Tribunal issued its Reasons and Decision in the above-named matter.

A copy of the Reasons and Decision dated January 15, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
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A.3
Orders

A.3.1 TeknoScan Systems Inc. et al.

IN THE MATTER OF
TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM

File No. 2022-19

Adjudicators: Andrea Burke (chair of the panel)
James Douglas
Cathy Singer

January 11, 2024

ORDER

WHEREAS on January 10, 2024, the Capital Markets Tribunal held a hearing by videoconference and considered a motion filed by TeknoScan Systems Inc. (**TeknoScan**), Philip Kai-Hing Kung and Soon Foo (Martin) Tam for an order requiring the parties to participate in a confidential conference prior to the commencement of the merits hearing in this proceeding;

ON READING the materials filed by TeknoScan, Kung and Tam, and on hearing the submissions of the representatives for each party;

IT IS ORDERED, for reasons to follow, that the parties shall participate in a confidential conference pursuant to rule 20 of the *Capital Markets Tribunal Rules of Procedure and Forms,* to be held on a date and time agreed to by the parties and set by the Governance & Tribunal Secretariat.

“Andrea Burke”

“James Douglas”

“Cathy Singer”

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A.4
Reasons and Decisions

A.4.1 Nova Tech Ltd and Cynthia Petion – Rules 3, 6(4), 21(3), 23(6)(a), 27(1), 27(2), 27(3) and 28(5)(1) of the CMT Rules of Procedure and Forms

Citation: *Nova Tech Ltd (Re)*, 2024 ONCMT 1
Date: 2024-01-09
File No. 2023-20

IN THE MATTER OF
NOVA TECH LTD AND
CYNTHIA PETION

REASONS AND DECISION
(Rule 3 and Subrules 6(4), 21(3), 23(6)(a), 27(1), (2) and (3) and 28(5)(1) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators: M. Cecilia Williams (chair of the panel)
Jane Waechter

Hearing: In writing; final written submissions received November 9, 2023

Appearances: Brian Weingarten — For Staff of the Ontario Securities Commission

No one appearing for Nova Tech Ltd, or Cynthia Petion

REASONS AND DECISION

1. OVERVIEW

[1] Cynthia Petion is the sole beneficial owner, officer and director of Nova Tech Ltd. Staff of the Ontario Securities Commission allege that Petion and Nova Tech sold securities in Ontario without being registered to do so, sold those securities without filing a prospectus, and violated an earlier temporary cease trade order of the Tribunal.

[2] By order dated November 30, 2023,[1] we granted the following procedural relief to Staff:

a. this motion will take place without notice to Petion;

b. service of the Notice of Hearing and Statement of Allegations on Petion is waived;

c. notice and service of all future processes on Nova Tech and Petion is waived;

d. Staff are not required to fulfil certain disclosure obligations with respect to Nova Tech and Petion; and

e. the merits hearing will proceed in the respondents' absence.

[3] Our reasons for that decision follow.

2. PROCEDURAL HISTORY

[4] The Statement of Allegations and Notice of Hearing against Nova Tech and Petion were issued on August 24 and 25, 2023 respectively.

[5] Staff have detailed their efforts to serve these originating documents on both Nova Tech and Petion in the following affidavits:

a. Affidavit of Service of Rita Pascuzzi affirmed September 20, 2023,[2] and

b. Affidavit of Attempted Service of Rita Pascuzzi affirmed November 9, 2023.[3]

1 (2023), 46 OSCB 9790
2 Exhibit 1, Affidavit of Service of Rita Pascuzzi affirmed September 20, 2023 (**Pascuzzi September Affidavit**)
3 Exhibit 2, Affidavit of Attempted Service of Rita Pascuzzi affirmed November 9, 2023 (**Pascuzzi First November Affidavit**)

[6] Staff filed another affidavit of Rita Pascuzzi affirmed November 21, 2023 which details their service efforts for this motion.[4]

3. ANALYSIS

3.1 Hearing in writing

[7] Staff asked that this motion be heard in writing. Under rule 23(6) of the *Capital Markets Tribunal Rules of Procedure and Forms* (the **Rules**) the Tribunal may order that a hearing is conducted in writing if:

a. the only purpose of the hearing is to deal with procedural matters; or

b. the Panel is satisfied that there is a good reason to conduct the hearing as a written hearing.

[8] This hearing meets both criteria to take place in writing – the requested relief is procedural in nature, and there is good reason to conduct the hearing in writing given that Nova Tech and Petion have not participated in this proceeding to date, as described below.

3.2 Notice of this Motion for Petion

[9] Staff asked that this motion be heard without notice to Petion. Rule 28(5)(a) of the Rules provides that a party may make a motion without notice if the nature or circumstances of the motion make service "impractical or unnecessary".

[10] Staff made numerous efforts to serve Petion and Nova Tech with their motion record, memorandum of fact and law, and book of authorities for this motion, as described in the Pascuzzi Second November Affidavit. Staff sent a link to these three records to five email addresses associated with the respondents and sent hard copies of the documents by courier to four addresses that they demonstrated were connected to the respondents.[5] The couriered packages were signed for at two of the addresses, although one of these packages was never claimed from building security and subsequently returned to FedEx.[6]

[11] Staff has sufficiently demonstrated their attempts to serve Petion. It would be impractical in the circumstances to require Staff to serve Petion with this motion as she has not responded to any of Staff's various efforts. Petion has also been difficult to serve with the Notice of Hearing and Statement of Allegations, as described in paragraph 17 below. We expect any further service efforts would produce similar outcomes, and that further service efforts would be a waste of time and resources for Staff.

[12] Petion's elusiveness and seeming disinterest in participating in this proceeding also makes it unnecessary to serve this motion on her.

[13] As a result, we are satisfied that timely and efficient adjudication of the allegations against Petion will be promoted by having this motion proceed without notice to her.

3.3 Service of originating documents on Petion

[14] Staff asked for an order waiving service of the Notice of Hearing and Statement of Allegations on Petion.

[15] Subsection 6(1) of the *Statutory Powers Procedure Act*[7] (**SPPA**) requires that a party receive "reasonable notice" of a hearing. The SPPA also gives tribunals the power to determine their own procedures and practices, both by making orders in a proceeding and by establishing procedural rules that are consistent with the SPPA.[8] This Tribunal's Rules were made under the authority of the SPPA.

[16] Rule 6(4) of the Rules gives the Tribunal discretion to grant an order waiving service that would otherwise be required. Discretion may be exercised under rule 6(4) where the evidence demonstrates that Staff have "exhausted all reasonable efforts" to effect service on the party.[9]

[17] Staff made numerous efforts to serve Petion with the Notice of Hearing and Statement of Allegations, as described in the Pascuzzi September Affidavit and the Pascuzzi First November Affidavit. In particular, the Statement of Allegations and Notice of Hearing were delivered to three email addresses associated with Petion and couriered to two of Petion's last known residences.[10] The couriered packages were signed for by an occupant of the residence.[11] Delivery was also unsuccessfully attempted twice at an additional residence in Panama associated with Petion.[12] Staff did wide-ranging

4 Exhibit 3, Affidavit of Service of Rita Pascuzzi affirmed November 21, 2023 (**Pascuzzi Second November Affidavit**)
5 Pascuzzi Second November Affidavit at paras 2-7
6 Pascuzzi Second November Affidavit at paras 5-6
7 RSO 1990, c S.22
8 SPPA, s 25.0.1
9 *Threegold Resources Inc (Re)*, 2021 ONSEC 15 at paras 11 and 12; *Lehman Brothers & Associates Corp (Re)*, 2011 ONSEC 36 at para 34
10 Pascuzzi September Affidavit at paras 2-3, 6-7
11 Exhibits 9 and 11 referred to in the Pascuzzi September Affidavit
12 Pascuzzi First November Affidavit at paras 2-4

searches to locate Petion, including reviewing email and address information used by other regulators (in St. Vincent and the Grenadines, the US and Panama) who have dealt with Petion or are similarly attempting to reach Petion.

[18] The Pascuzzi September Affidavit confirms that Petion is the sole director, officer and beneficial owner of Nova Tech.[13]

[19] We are satisfied that Staff have exhausted all reasonable efforts to locate Petion and to serve her in this proceeding. Staff's service efforts, as set out in the Pascuzzi September Affidavit, quite possibly made it to Petion's attention and could have supported an order validating service. Instead, Staff asked that we waive service, and we are satisfied that it is appropriate to exercise our discretion as they requested. We find that it would be pointless to require further efforts to serve Petion with the Notice of Hearing and Statement of Allegations.

3.4 Relief from future service on the respondents and proceeding in their absence

[20] Staff asked that we relieve them from any obligation to serve future processes on the respondents and asked that we hold the merits hearing in the respondents' absence.

[21] In support of their request, Staff rely on rules 6(4) and 21(3) of the Rules, together with s. 7(1) of the SPPA. Rule 21(3) permits the Tribunal to proceed in the absence of a party who has been served with the Notice of Hearing but does not attend the hearing, and state that the party is not entitled to any further notice. Section 7(1) of the SPPA is similarly worded but requires notice of the proceeding rather than service.

[22] As to Nova Tech, the Notice of Hearing was served on Nova Tech as described in the Pascuzzi September Affidavit.[14] Nova Tech did not attend the first appearance and did not send a representative. As a result, rules 6(4) and 21(3) are engaged - Nova Tech is not entitled to service of any further process, and the hearing on the merits can proceed in Nova Tech's absence.

[23] Rule 21(3) provides authority to order that a proceeding occur in the absence of a party. Rule 21(3) is premised on the party being served with the Notice of Hearing and not attending. In Petion's case, we have waived service of the Notice of Hearing. That waiver of service extends to rule 21(3). Based on the facts and reasoning in paragraphs 14 to 19, we found that there is simply no benefit to having Staff continue with futile service efforts. The same rationale for waiving service of the usual documents on an elusive and unresponsive party supports having a hearing on the merits taking place in the absence of that party.

3.5 Disclosure Relief

[24] Pursuant to rule 3 of the Rules, Staff asked for relief from their upcoming disclosure obligations in rules 27(1), (2) and (3). Rule 3 provides the Tribunal with a general power to waive any of the requirements under the Rules at any time on such terms as the Tribunal considers appropriate to further the objectives of the rules, namely, to ensure that proceedings before the Tribunal are conducted in a "just, expeditious, and cost-effective manner".[15]

[25] Given that we have ordered that Petion and Nova Tech are not entitled to receive further service of process and that the hearing on the merits may occur in their absence, it follows that Staff should not be required to provide the respondents with disclosure, witness lists and summaries, or a hearing brief. It would be both unnecessarily time consuming and costly to provide these disclosures to parties who have shown no interest in participating in the hearing on the merits. We find that waiving these disclosure obligations will ensure the just, expeditious and cost-effective hearing of this matter under rule 3.

4. CONCLUSION

[26] We are satisfied that Staff's service and disclosure obligations owed to the respondents ought to be waived in this proceeding, and the merits hearing will proceed in the respondents' absence.

Dated at Toronto this 9th day of January, 2024

"M. Cecilia Williams"

"Jane Waechter"

13 Pascuzzi September Affidavit at para 3
14 Pascuzzi September Affidavit at paras 2-6

A.4.2 Go-To Developments Holdings Inc. et al. – Rules 22(4), 29(1) of the CMT Rules of Procedure and Forms

Citation: *Go-To Developments Holdings Inc (Re)*, 2024 ONCMT 2
Date: 2024-01-15
File No. 2022-8

IN THE MATTER OF
GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO

REASONS AND DECISION
(Rules 22(4) and 29(1) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicator:	M. Cecilia Williams (chair of the panel)	
Hearing:	By videoconference, October 19, 2023	
Appearances:	Erin Hoult Johanna Braden Braden Stapleton	For Staff of the Ontario Securities Commission
	Melissa MacKewn Dana Carson Asli Deniz Eke	For Oscar Furtado

REASONS AND DECISION

1. OVERVIEW

[1] These are my reasons for finding that Oscar Furtado's health issues met the test of "exceptional circumstances" and that the merits hearing scheduled to start on November 3, 2023 should be adjourned to July 8, 2024. I held the hearing of Furtado's motion for an adjournment and other related relief in public, with the parties' agreement, despite Furtado's initial request that part of the hearing occur without the public present. These reasons also cover my decision that certain information in the medical evidence Furtado filed to support his motion shall remain confidential.

2. BACKGROUND

[2] This is Furtado's third motion to adjourn the merits hearing due to health issues. He also asked for orders:

a. adjourning the dates set in the Tribunal's July 20, 2023 order for the parties to complete the remaining steps before the merits hearing;[1]

b. extending the time for the delivery of a further and better witness summary from Furtado; and

c. hearing part of the motion without the public present and keeping certain information in the motion record confidential.

[3] Staff did not oppose the adjournment. The Receiver took no position on the motion.

[4] I heard Furtado's motion on October 19, 2023. I granted the adjournments and extensions the same day for reasons to follow. I reserved my decision about the appropriate redactions, if any, to the medical evidence filed in support of the adjournment.

[5] The 10-day merits hearing into Furtado's and related entities' alleged misconduct was scheduled to start in August 2023 and continue in November 2023. The Tribunal granted Furtado's first request for an adjournment on June 22, 2023, in part to allow Furtado to obtain further treatment from a psychiatrist.[2] Rather than granting Furtado's request for an indefinite delay to the start of the merits hearing, the Tribunal vacated the hearing dates in August. The panel for that motion scheduled the merits hearing to commence on November 3, 2023.

[6] The Tribunal heard Furtado's second motion for an indefinite adjournment for health reasons and for late disclosure by Staff on October 2, 2023. Although Furtado had been under the care of a psychiatrist in the intervening period, he did

1 (2023) 46 OSCB 6371
2 *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 35 (***Go-To Developments Adjournment Motion #1***)

not file a report from that doctor. Evidence on that motion included an affidavit from Furtado and a letter from his treating physician that reported the conclusion from the psychiatrist's report. The Tribunal, in that instance, concluded that the evidence failed to meet the threshold of exceptional circumstances and denied the motion.[3]

3. ISSUES

[7] The issues I had to address were:

a. Should I adjourn the merits hearing? and

b. Should I order that the entire independent medical report remain confidential?

[8] I did not have to decide whether to hold part of the motion hearing in private. As I had read the motion materials before the hearing, I agreed with Furtado that it would be sufficient for my purposes for him only to identify the conclusion drawn in the medical evidence material rather than provide the details of his symptoms and diagnosis. The hearing, therefore, continued in public.

4. ADJOURNMENT MOTION

4.1 Law with respect to Adjournments

[9] Rule 29(1) of the Tribunal's *Rules of Procedure and Forms* (the **Rules**) provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment satisfies the panel that there are exceptional circumstances requiring an adjournment.[4] The standard set out in rule 29(1) is a "high bar" that reflects the important objective set out in rule 1, that Tribunal proceedings be conducted in a just, expeditious and cost-effective manner.[5]

4.2 Parties' positions and my analysis

[10] Furtado submitted that he continues to face significant health issues, and he is not currently fit to prepare for or attend the merits hearing. The allegations against Furtado are serious and, as the only defence witness that may testify in response to those allegations, the principles of natural justice and procedural fairness make it imperative that he be fit to prepare for and testify at the merits hearing.

[11] For this motion, Furtado obtained an independent medical examination conducted by Dr. J. Sadavoy, a qualified psychiatrist in Ontario (the **Specialist**). Dr. Sadavoy's report, dated October 14, 2023, indicates that he had access to all of Furtado's medical records and that he conducted a full, detailed examination.

[12] Furtado asked the Specialist to address two questions in his report:

a. Does Furtado's current state of health permit him to instruct counsel and prepare for, attend and participate in the merits hearing scheduled to begin on November 3, 2023? and

b. If the Specialist determined that Furtado was not able to participate, attend, and instruct counsel, could he provide an opinion as to when Furtado's health may be improved so that he will be able to do so?

[13] Furtado submitted that he meets the test of exceptional circumstances. The Specialist's conclusion is consistent with the evidence provided by Dr. Shroff, Furtado's treating physician. Dr. Shroff's letter filed in connection with the first motion to adjourn concluded that Furtado required six months to be medically able to proceed. It is also consistent with a letter from Dr. Shroff filed in the second motion to adjourn, which referred to the opinion of another unnamed psychiatrist that Furtado required six months to be able to proceed. In addition, Furtado submitted his own affidavit evidence setting out the very difficult symptoms he has been dealing with for a significant period.

[14] Staff submitted that the exceptional circumstances test for adjournments is important to ensure the Tribunal runs effectively and fairly. In addition, Staff submitted that I should view Staff's non-objection to the motion in this instance as an accommodation in the unique circumstances of this case.

[15] Staff submitted that the Specialist's report does not fully address their concerns. Staff received the Specialist's report on Sunday, four days before this motion. Staff submitted that if there had been more time, Staff's first step would have been to explore with Furtado the possibility of accommodations to allow him to participate in the hearing. However, Staff faced the practical reality of having ten hearing days set for the merits hearing and no room to add dates for any such accommodations.

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3 *Go-To Developments Holdings Inc (Re),* 2023 ONCMT 44 at para 26 (***Go-To Developments Adjournment Motion #2***)

4 Rules, r 29(1)

5 *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (**Money Gate**) at para 54; *First Global Data Ltd (Re)*, 2022 ONCMT 23 (**First Global Data**) at para 7

[16] Staff's non-objection to the adjournment is also without prejudice to any position Staff might take in the future with respect to any further requests from Furtado to adjourn, including with respect to the sufficiency of the Specialist's report.

[17] The Receiver confirmed that it did not participate in the discussions between Staff and Furtado about this motion and was not taking a position regarding the adjournment.

[18] I concluded that the evidence before me established that there were exceptional circumstances warranting the requested adjournment.

[19] Furtado has established a sound and compelling evidentiary basis for the requested adjournment. Although the Specialist did not appear before me, Staff did not contest his expertise. The Specialist's report persuaded me that Furtado required time to be able to prepare for and participate in the merits hearing meaningfully.

[20] The Specialist's resume indicated that he is a qualified medical practitioner in Ontario with a specialty in psychiatry. He has an active clinical practice in that discipline in addition to a variety of academic, research and leadership roles. The Specialist has had experience evaluating adult patients of all ages and determining their capacity to competently carry out specific tasks, including the ability to participate in legal proceedings and instruct counsel. The Specialist has also submitted numerous expert reports on mental capacity and testified on such matters. The Specialist submitted that courts in Ontario and Alberta have accepted the Specialist as a medical expert in psychiatry.

[21] In his report, the Specialist acknowledged his duty to provide an opinion that is fair, objective, and nonpartisan and that this duty prevails over any obligation he owed to Furtado, who had engaged him.

[22] The Specialist concluded that Furtado is experiencing impairments that may allow him to instruct counsel on specific key issues but would result in him being overwhelmed and unable to instruct counsel when integrating substantial amounts of information and reasoning through problems. Also, the Specialist concluded that while Furtado can attend the proceedings, his participation will be limited due to the same impairments.

[23] In terms of the prognosis, the Specialist concluded that Furtado requires further examination and testing and that he requires six months or more to be "clarified and to stabilize."

[24] The fact that this is Furtado's third request for an adjournment does not weigh against granting the relief he seeks. Furtado sought the first adjournment well before the merits hearing, which allowed him time to receive treatment from a psychiatrist and would have resulted in the hearing concluding shortly after the originally scheduled dates.[6] The panel, considering the second adjournment, concluded that the lack of direct evidence from the psychiatrist who had treated Furtado for three months meant Furtado had failed to establish that there were exceptional circumstances in that instance.[7] Furtado submitted that, when issues arose with the psychiatrist he was seeing, there was insufficient time to arrange for a referral to another psychiatrist or to arrange an independent medical examination before bringing the second adjournment motion; he therefore, filed the information he had available to him at the time.

[25] The allegations against Furtado are serious and he may be the only responding witness. Procedural fairness dictates that, in these circumstances, the merits hearing be adjourned to give Furtado the opportunity to prepare and participate meaningfully in the merits hearing.

[26] I conclude that exceptional circumstances exist in this instance to warrant a delay to the start of the merits hearing to July 8, 2024 and continue for, at the parties' request, fifteen days until July 26, 2024.

[27] I now turn to Furtado's request that the Specialist's entire report remain confidential.

5. CONFIDENTIALITY REQUEST

5.1 Law with respect to confidential records

[28] Rule 22(4) provides that a panel may order that part of an adjudicative record remain confidential if it determines that avoiding disclosure of intimate financial or personal matters or other matters outweighs adherence to the principle that adjudicative records should be open to the public. The test for determining whether portions of the adjudicative record should remain confidential is the same as determining if a hearing should be held in confidence.

[29] The Tribunal's *Practice Guideline* states that personal information relevant to the resolution of the matter is generally not treated as confidential.

[30] Court and Tribunal proceedings are presumptively open to the public. The constitutional guarantee of freedom of expression protects court openness. The test for discretionary limits on court openness, set by the Supreme Court of

6 *Go-To Developments Adjournment Motion #1* at para 34
7 *Go-To Developments Adjournment Motion #2* at para 26

Canada in *Sherman Estate v Donovan*[8] is directed at maintaining the presumption while offering sufficient flexibility to protect other public interests that may arise.[9]

[31] Given the fundamental nature of the open justice principle, there's a high threshold for a confidentiality order. The Tribunal has adopted the following requirements for confidentiality orders:

a. court openness poses a serious risk to an important public interest;

b. the order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

c. as a matter of proportionality, the benefit of the order outweighs its negative effects.[10]

[32] Protection of privacy may be an "important public interest" where the information at issue reveals core aspects of a person's life, disclosure of which would result in an affront to their dignity.[11]

[33] To overcome the presumption of openness, the onus is on Furtado to establish that there is a serious risk that, without a confidentiality order, he will suffer "an affront to his dignity" by the disclosure of his intimate personal matters during the hearing.[12]

[34] I now turn to the parties' positions and my analysis.

5.2 Parties' positions and my analysis

[35] Furtado requested that Dr. Sadavoy's entire report, including his resume attached to the report as an exhibit, remain confidential as it contained personal information about Furtado and others that went to their personal dignity. Furtado indicated that he had reached an agreement with Staff to this effect.

[36] I asked Furtado why certain sections of the Specialist's report that did not contain his personal information should remain confidential. Those sections included the questions posed to the Specialist, his conflict assessment, his authority for the report, his acknowledgement of the expert's duty, his credentials, and his resume.

[37] Furtado submitted that he had not given any thought to these sections, given the agreement with Staff for the Specialist's report to remain confidential, but that he did not have any concerns with those sections being public.

[38] Staff submitted that it had agreed that the physical report from Dr. Sadavoy not be available to the public. Staff agreed that there was no reason the sections I referred Furtado to in the report should not be public. Staff submitted, however, that even though the Specialist's report itself is not available publicly, it does not mean that I cannot or should not refer to the details that I think are important in my reasons for decision.

[39] Referring to the test established in *Sherman Estate,*[13] and demonstrated in the recent Tribunal cases in *Ali (Re)*[14] and *Odorico (Re)*, Staff submitted that in balancing the need for public transparency against individual privacy interests, it is important that the reasons for decision be very clear and detailed so all interested parties can understand the basis for what remains confidential and what is public. Staff submitted that while the substance of the Specialist's report may remain confidential, I should refer to some of the details in the report so that the public can understand the basis for my decision.

[40] The Receiver confirmed that it was not taking a position about whether or to what extent the Specialist's report should remain confidential. As a matter of law, however, the Receiver submitted that *Sherman Estate* should be interpreted to require as minimally invasive redaction as possible to protect the privacy concerns. The Receiver submitted that the stakeholders in the receivership proceeding will be interested and have a right to know beyond what *Sherman Estate* properly redacts from the Specialist's report.

[41] Recent Tribunal decisions, including two earlier *Go-To Developments Holdings Inc.* decisions,[15] have concluded that the appropriate balance between the public interest in preserving a respondent's dignity and the public interest in open

8 2021 SCC 25 (***Sherman Estate***)
9 *Sherman Estate* at para 30
10 *Sherman Estate* at para 38, *Odorico (Re)*, 2023 ONCMT 10 at para 36 (***Odorico***) at para 36
11 *Sherman Estate* at paras 32-35, *Odorico* at paras 37-38
12 *Odorico* at para 37, referring to *Sherman Estate*
13 *Sherman Estate* at para 38
14 2023 ONCMT 30 (***Ali***)
15 *Go-To Developments Adjournment Motion #1* at para 52; *Go-To Developments Adjournment Motion #2* at para 54.

hearings is achieved by redacting language from documents that deals with specific symptoms, diagnosis and treatment, the public disclosure of which could reasonably be considered to result in an affront to his dignity.[16] I agree.

[42] Applying that balance to the Specialist's report, I conclude that in addition to the sections referred to in paragraph 36 of a general nature, additional portions of the Specialist's report that do not disclose Furtado's specific symptoms, diagnosis and treatment but give context to the doctor's assessment, including the conclusions reached, remain public.

6. CONCLUSION

[43] For the reasons above, I adjourned the merits hearing to July 8, 2024. The hearing will continue for 15 days until July 26. I also set new dates for the exchange of materials by the parties, for Furtado to deliver a new and amended witness summary and for a final interlocutory attendance before the merits hearing.[17]

[44] I also concluded that portions of the Specialist's report should be redacted as indicated in Schedule A to these reasons.

Dated at Toronto this 15th day of January, 2024

"M. Cecilia Williams"

16 *Sherman Estate* at para 30; *Odorico* at paras 40-43; *Ali* at para 51.
17 (2023), 46 OSCB 8653

Schedule A

List of Redactions to the report of Dr. J. Sadavoy dated October 14, 2023

- Page 2, under “Materials reviewed”:
  - Item 3;
  - Item 4;
  - In Item 5, the words following “Shroff”;
  - Item 6;
  - In Item 8, the words following “Henry”;
  - In Item 9a, the words following “Physician)”;
  - In Item 9b, the words following “Dentist)”;
  - In Item 12, the words after “from” to the hyphen;
- Page 3, continuing under the heading “Materials reviewed”:
  - In Item 14, the words after Furtado to the start of the words in parentheses;
  - In Item 16, the words from the start of the sentence to the word “Complete”;
- Page 4
  - Under “Identifying data” the words after “Furtado was” to the end of the sentence; and in the third sentence the words after “married” to the end of the sentence;
  - Under “Education and occupation” in the second paragraph, the last two sentences;
  - Under “Health practitioners” the name at the start of the second bullet point;
- Page 5, under “Physical health”:
  - In the third sentence, the words following “symptoms” to “leading”;
  - The fourth sentence;
  - In the sixth sentence, the words following “investigated for” to the end of sentence;
  - The seventh sentence;
- Page 5 under “Recent Psychiatric History”, the entire section after the first sentence;
- Pages 6, 7, 8, 9, 10, 11 and 12 – all the content on these pages;
- Page 13 all the content up to the title “Conclusions”;
- Page 13, under “Conclusions:
  - Under “Summary”:
    - In the second sentence, the words after “began,” to the end of the sentence;
    - In the fourth sentence, the words after “success” to the end of the sentence;
    - The last two words on page 13
- Page 14, continuing under the heading “Summary”:
  - The words from the start of the page to the end of the first sentence;
  - The words following “notably, his” to “became disrupted”;

- The last sentence;

- Page 14, under “Analysis of Diagnostic Picture”:
  - The first two paragraphs;
  - In the third paragraph, the words after “contributors to” to “aspects”;
  - The fourth and fifth paragraphs;
- Page 15, the first three lines at the start of the page;
- Page 15, under “Opinion”:
  - Under “1.”:
    - the words following “impaired in key” to “which disrupt”;
    - the words following “limited because of” to “and associated”;
  - Under “2. Prognosis”:
    - in the second sentence, the words following “worked up for his” to the end of the sentence;
    - the lines following “complete effectively” in the fifth sentence to “Taking all these”;
    - the words following “if his” to “proves to be”;
    - the words following “related to any” to “problem, this”.

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Notice and Request for Comment – Proposed Amendments to National Instrument 81-102 Investment Funds Pertaining to Crypto Assets

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*
PERTAINING TO CRYPTO ASSETS

January 18, 2024

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing, for a 90-day comment period, proposed amendments (the **Proposed Amendments**) to National Instrument 81-102 *Investment Funds* (**NI 81-102**) and proposed changes (the **CP Changes**) to Companion Policy 81-102CP *Investment Funds* (**81-102CP**) (collectively referred to as the **Proposed Amendments and CP Changes**). The Proposed Amendments and CP Changes pertain to reporting issuer investment funds that seek to invest directly or indirectly in crypto assets (**Public Crypto Asset Funds**).

Substance and Purpose

The Proposed Amendments and CP Changes are intended to provide greater regulatory clarity with respect to certain key operational matters regarding these investments, such as:

- Criteria regarding the types of crypto assets that Public Crypto Asset Funds are permitted to purchase, use or hold;
- Restrictions on investing in crypto assets by Public Crypto Asset Funds or other types of reporting issuer investment funds; and
- Requirements concerning custody of crypto assets held on behalf of a Public Crypto Asset Fund.

The Proposed Amendments and CP Changes will codify practises of existing Public Crypto Asset Funds, developed mainly through the prospectus review process, as well as codifying exemptive relief previously granted to existing Public Crypto Asset Funds. The Proposed Amendments and CP Changes will provide investment fund managers greater regulatory clarity concerning investments in crypto assets. We think this can facilitate new product development in the space while also ensuring that appropriate risk mitigation measures are built directly into the investment fund regulatory framework.

Background

The Proposed Amendments are a key phase of the CSA's implementation of a regulatory framework for Public Crypto Asset Funds (the **Project**). The Project's objective is to review existing requirements, provide guidance, and then implement a regulatory framework relating to Public Crypto Asset Funds that ensures adequate investor protection and mitigates potential risks while providing greater regulatory clarity for product development and management. The Project is a recognition by the CSA that the existing regulatory framework in NI 81-102 needs to be adapted to properly account for the unique aspects of crypto assets as an investment product for publicly distributed investment funds.

The Project is being carried out in three phases.

Phase 1 – CSA Staff Notice

Phase 1 of the Project entailed communicating information to stakeholders on areas we believe required greater guidance regarding CSA staff expectations, and new developments relating to Public Crypto Asset Funds. Phase 1 was completed with the publication of CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers* (the **Staff Notice**) on July 6, 2023.[1]

The Staff Notice provided guidance to stakeholders and outlined CSA staff's views and expectations regarding the operations of Public Crypto Asset Funds within the current framework of NI 81-102, including:

- Providing an overview of the Public Crypto Asset Funds market and clarifying the application of existing securities regulatory requirements to them;
- Discussing key findings from previous reviews conducted by CSA staff, and
- Communicating CSA staff expectations for stakeholders with respect to various matters related to Public Crypto Asset Funds, including key considerations for investing in crypto assets, expectations regarding custody of crypto assets on behalf of Public Crypto Asset Funds, issues concerning staking and other similar yield-generating activities, and reminding registrants of their know-your-product, know-your-client and suitability obligations concerning these types of funds.

Phase 2 – The Proposed Amendments

The Proposed Amendments and CP Changes are part of the second phase of the Project. As discussed in greater detail below, the purpose of this phase of the Project is to build on the guidance in the Staff Notice by focusing on targeted amendments that reflect priority issues regarding investment funds investing in crypto assets. This phase seeks to codify policies and practises of existing Public Crypto Asset Funds, many of which were developed and adopted through the prospectus review process and were also cited in the Staff Notice. Also, where appropriate, the Proposed Amendments seek to codify routinely granted exemptive relief for these products.

Phase 3 – Consultation Paper and Possible Future Amendments

Phase 3 of the Project will involve a public consultation concerning a broader and more comprehensive regulatory framework for funds investing in crypto assets.

Summary of Proposed Amendments

The following is a description of the Proposed Amendments and CP Changes.

Proposed Amendments to NI 81-102

(i) Part 1 – Definitions

"*alternative mutual fund"*

We are proposing to amend the definition of "alternative mutual fund" to also include a mutual fund that invests in crypto assets. This change is consistent with alternative mutual funds being permitted to have greater exposure to certain alternative asset classes or investment strategies compared to other types of mutual funds. This is also consistent with how Public Crypto Asset Funds currently offered in Canada as mutual funds are currently structured.

(ii) Part 2 – Investments

Section 2.3 – Restrictions Concerning Types of Investments

Restrictions on investing in crypto assets

We are proposing to amend the investment restrictions in section 2.3 to permit only alternative mutual funds and non-redeemable investment funds to buy, sell, hold or use crypto assets directly. This restriction would also apply to investing indirectly in crypto assets through specified derivatives. Mutual funds, other than alternative mutual funds, will only be permitted to invest in crypto

[1] See CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers*, available at https://www.osc.ca/en/securities-law/instruments-rules-policies/8/81-336/csa-staff-notice-81-336-guidance-crypto-asset-investment-funds-are-reporting-issuers.

assets by investing in underlying alternative mutual funds or non-redeemable funds that invest in crypto assets, subject to the fund of fund restrictions in subsection 2.5(2) of NI 81-102.

Additionally, we are proposing to limit the types of crypto assets that alternative mutual funds and non-redeemable investment funds can invest in. Specifically, we are proposing to restrict investment funds subject to NI 81-102 to investing only in crypto assets that are listed for trading on, or are the underlying interest for a specified derivative where that specified derivative trades on, an exchange that has been recognized by a securities regulatory authority in Canada. This proposed requirement reflects the concerns raised in the Staff Notice about determining the suitability of a crypto asset as a portfolio holding of a Public Crypto Asset Fund, such as market integrity and price discovery.[2]

As an additional restriction, Public Crypto Asset Funds would be prohibited from buying or holding crypto assets that are not fungible. Non-fungible assets, such as collectibles, may have characteristics that are incompatible with investment fund products offered to retail investors. For example, the non-fungibility of an asset generally creates additional liquidity and valuation risks, and the current regulatory framework may not have the parameters needed to mitigate these risks. Additionally, the markets for non-fungible crypto assets may have heightened risks regarding liquidity and valuation. Nonetheless, we welcome submissions regarding whether there are circumstances where it would be appropriate to allow investment funds to invest in crypto assets that are not fungible and whether there are specific regulatory parameters that should be outlined in the regulatory framework for investment funds to allow for this.

Section 2.12 – Securities Loans, Section 2.13 – Repurchase Transactions, and Section 2.14 – Reverse Repurchase Transactions

We are proposing to prohibit the use of crypto assets in securities lending, repurchase transactions or reverse transactions, as the loaned securities, transferred securities or collateral posted in connection with these transactions, as applicable. While we believe that the market characteristics of most crypto assets make them impractical for these types of transactions in an investment fund, we think it is important to remove any regulatory ambiguity.

Section 2.18 – Money Market Funds

We are proposing to clarify that a "money market fund" as defined in section 2.18 cannot buy or hold crypto assets. This is consistent with restrictions in section 2.18 of NI 81-102 that prohibit money market funds from engaging in activities or holding assets that are associated with alternative mutual funds and is intended to eliminate any regulatory ambiguity.

(iii) Part 6 – Custodianship of Portfolio Assets

We are proposing to include provisions specifically applicable to custodians and sub-custodians that hold crypto assets on behalf of an investment fund (a **Crypto Custodian**). These provisions primarily codify practises and policies in existing Public Crypto Asset Funds concerning custody, which act to mitigate some of the unique risks associated with funds holding these assets in their portfolios and are consistent with, and include:

(a) a requirement, under section 6.5.1, for a Crypto Custodian to keep crypto assets in offline storage (usually referred to as "cold wallet" storage), except as needed to facilitate purchases and sales or other portfolio transactions in the fund. This is consistent with what is considered best practices of custody of crypto assets when they are not needed to facilitate transactions,

(b) a requirement, under subsection 6.6(3.1), for a Crypto Custodian to maintain insurance regarding crypto assets it custodies for an investment fund that a reasonably prudent person would maintain. Recognising that commercial practises may vary and that there may be a need for flexibility, we are not proposing to require a specific type of insurance or minimum dollar amount to meet this standard, and

(c) amendments to section 6.7 that would require a Crypto Custodian to obtain, on an annual basis, a report prepared by a public accountant assessing the Crypto Custodian's internal management and controls relating to security, availability, processing integrity, confidentiality and privacy controls. An example of this would be a Service Organization Control (**SOC**) report prepared in accordance with the American Institute of Chartered Public Accountants although that will not be prescribed under the Proposed Amendments. The Crypto Custodian would be required to deliver that report to the fund. The annual compliance report to be prepared by a fund's Crypto Custodian under subsection 6.7(2) would also include a requirement to confirm that it provided the report.

[2] In the Staff Notice, CSA staff expressed their view that the presence of a regulated futures market for a crypto asset provides support for the proper valuation of a Public Crypto Asset Fund that invests in that crypto asset, along with other operational benefits. CSA staff generally consider that the presence of a regulated futures market for a particular crypto asset offers an additional regulated market facility which provides a liquid market and promotes greater price discovery towards valuing fund assets and for disposing of the crypto asset to satisfy redemption requests. It may also better support the ability of authorized dealers and market makers to properly carry out their market making duties in respect to Public Crypto Asset Funds. CSA staff also noted that the presence of a regulated futures market for a given crypto asset generally correlates with institutional support for that particular crypto asset.

(iv) Part 9 – Sale of Securities of a Mutual Fund

We are proposing to codify exemptive relief that has been granted to existing Public Crypto Asset Funds that permit them to accept crypto assets as subscription proceeds under subsection 9.4(2). The relief was granted primarily to facilitate the functioning of exchange-traded mutual funds (**ETFs**), by allowing their designated brokers and other market makers to exchange crypto assets (specifically bitcoin or ether, in the case of the exemptive relief orders) they hold for "creation units" of the ETFs. Such arrangements are typical for ETFs that hold traditional assets. The exemptive relief addresses a technical issue in the existing provision which only allows a mutual fund to accept securities as subscription proceeds in lieu of cash. Paragraph 9.4(2)(c) would clarify that a mutual fund can accept crypto assets that are not securities as subscription proceeds under similar conditions, namely that:

- The mutual fund is permitted to purchase the applicable crypto asset, the crypto asset is acceptable to the fund's portfolio advisor and it is consistent with the fund's investment objectives, and
- The value of the crypto asset accepted as subscription proceeds is at least equal to the issue price of the securities of the mutual fund for which they are payment with the value calculated as if the crypto asset was a portfolio asset of the fund.

This will permit future Public Crypto Asset Funds that are ETFs to facilitate similar market making functions without the need for exemptive relief.

Proposed Changes to 81-102CP

Section 2.01 – Guidance on "Crypto Assets"

We are proposing to add guidance relating to what we will generally consider to be crypto assets for the purposes of investment funds regulation. We believe the proposed guidance is consistent with terminology used in prior CSA publications and with the general understanding of what constitutes a crypto asset by market participants.

Section 3.3.01 – Investing in crypto assets

We are proposing to add section 3.3.01 which will provide guidance clarifying that the proposed requirement that funds only invest in crypto assets that are either listed for trading, or are the underlying interest in specified derivatives that are listed for trading, on a "recognized exchange" is not intended to restrict funds to only acquire crypto assets through a recognized exchange. In other words, funds can continue to acquire crypto assets from sources such as crypto asset trading platforms so long as the crypto asset the fund invests in meets the necessary criteria set out in subsection 2.3(1.3) of NI 81-102.

Section 8.1 – Custody Standard of Care

We are proposing to add subsection 8.1(2) which will expand on the guidance for meeting the standard of care requirement set out in section 6.6 of NI 81-102 in the context of Crypto Custodians. It includes guidance on what could be considered best practises for Crypto Custodians and primarily reflects current practices of Crypto Custodians of existing Public Crypto Asset Funds, which were also described in the Staff Notice. The guidance provided in this section includes:

- ensuring the Crypto Custodian has the requisite expertise to custody crypto assets;
- the use of segregated wallets or omnibus wallets visible on the blockchain, so long as the books and records of the Crypto Custodian confirm the fund's ownership of the crypto assets;
- the use of multi-signature technology to limit the risk of a single point failure;
- the use of strong passwords, multi-factor authentication and encryption of client information to limit the risk of hacking, and
- the maintenance of robust cyber and physical security practices to ensure greater security of the crypto assets.

We are also proposing to add subsection 8.1(4) which will clarify the CSA's expectations regarding the proposed requirement in subsection 6.6(3.1) for Crypto Custodians to obtain insurance with respect to crypto assets in its custody. It clarifies that this requirement is not intended to prescribe a minimum amount of insurance but rather sets out a "reasonably prudent" standard for determining whether the insurance is sufficient, taking into account different factors. It also reminds investment fund managers of their obligations to understand the material terms and conditions of such insurance, consistent with their fiduciary obligations to the investment fund.

Section 8.3

We are proposing to add subsection 8.3(2), which addresses the requirement that a Crypto Custodian obtain an assurance report of its processes relating to security and other measures pertaining to its custody obligations. It clarifies that the CSA will consider a Crypto Custodian obtaining a SOC-2 Type 2 Report, prepared in accordance with the framework developed by the American Institute of Chartered Public Accountants (a **SOC-2 Type 2**), to be the type of report that is contemplated for the purposes of complying with the requirements in section 6.7 of NI 81-102.

(v) Transition/Coming into Force

Subject to the nature of comments we receive on the Proposed Amendments, as well as any applicable regulatory requirements, we are proposing that, if approved, the Proposed Amendments would come into force approximately 90 days after the final publication date.

Local Matters

Annex C is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Request for Comments

We are soliciting comments on the Proposed Amendments and CP Changes. While we welcome comments on any aspect of the Proposed Amendments and CP Changes, we have also identified specific issues for which we seek comment, which we have listed below:

Guidance on "crypto asset"

1. We are seeking feedback as to whether the guidance in the CP Changes provides sufficient clarity in understanding the type of assets that will be considered crypto assets for the purpose of NI 81-102.

Restrictions on investing in crypto assets

2. The Proposed Amendments contemplate restricting publicly distributed investment funds to only holding fungible crypto assets. We are seeking feedback on whether this is a reasonable restriction in light of the risks that are generally associated with holding non-fungible crypto assets in an investment context. If not, please be specific as to why you think the scope of permitted crypto assets should be expanded to include non-fungible crypto assets and what investor protection measures are appropriate for Public Crypto Asset Funds to hold these types of assets.

3. The Proposed Amendments also contemplate restricting publicly distributed investment funds to holding crypto assets that trade on, or are reference assets for specified derivatives that trade on, a "recognized exchange". This reflects market integrity concerns with certain crypto asset markets and is intended to limit funds to holding those crypto assets for which spot prices can be derived through regulated sources that reflect institutional support and promote price discovery, which is not dissimilar to how more traditional fund portfolio assets trade. We are seeking feedback as to whether this is a reasonable qualifying criterion. If not, please provide feedback on what criteria may be more appropriate for determining when a crypto asset should be deemed an appropriate investment for an investment fund directed at retail investors.

Custody

4. The Proposed Amendments include a requirement that custodians or sub-custodians that hold crypto assets on behalf of an investment fund obtain an annual assurance report prepared by a public accountant that assesses the design and effectiveness of various internal controls and policies concerning their obligations to custody crypto assets. The CP Changes clarify that obtaining a SOC-2 Type 2 will be considered to comply with the requirement, without prescribing that specific report. We are seeking feedback regarding other assurance reports that may be comparable to a SOC-2 Type 2 that we should also consider sufficient for complying with this requirement. We are also seeking feedback regarding the appropriate scope of any reporting to be provided under this requirement.

Broader Consultation

5. We are seeking comments on other issues or considerations relating to investment funds that invest in crypto assets that the CSA should also be considering. This feedback will help inform the broader consultations for the third phase of the Project.

Please submit your comments in writing, by email, on or before **April 17, 2024**.

Please address your submission to the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumers Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities Service Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Please send your comments only to the addresses below. Your comments will be forwarded to the other CSA members.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Me Philippe Lebel

Secrétaire et directeur général des affaires juridiques,
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Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments will be posted on the websites of the Ontario Securities Commission, the Autorité des marchés financiers, the Alberta Securities Commission and the British Columbia Securities Commission. Therefore, submissions should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Questions

Please refer your questions to any of the following CSA staff:

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Contents of Annexes

The text of the Proposed Amendments is contained in the following annexes to this Notice and is available on the websites of members of the CSA:

Annex A – Proposed Amendments to National Instrument 81-102 *Investment Funds*

Annex B – Proposed Changes to Companion Policy 81-102CP *Investment Funds*

Annex C – Ontario Rule-Making Authority

Annex D – Cost-Benefit Analysis

ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

1. ***National Instrument 81-102 Investment Funds is amended by this instrument.***

2. ***Section 1.1 is amended in the definition of "*alternative mutual fund*" by adding*** ", crypto assets" ***before*** "or specified derivatives"***.***

3. ***Section 2.3 is amended***

(a) in subsection (1) by adding the following paragraph:

(j) purchase, sell, use or hold a crypto asset or a specified derivative of which the underlying interest is a crypto asset.***,***

(b) by adding the following subsections:

(1.3) Paragraph (1)(j) does not apply to an alternative mutual fund with respect to the purchase, sale, use or holding of a crypto asset if

(a) the crypto asset is fungible, and

(b) either of the following apply:

(i) the crypto asset trades on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada;

(ii) the crypto asset is the underlying interest of a specified derivative that trades on an exchange recognized by a securities regulatory authority in a jurisdiction of Canada.

(1.4) Paragraph (1)(j) does not apply to an alternative mutual fund with respect to the fund entering into a specified derivative transaction that trades on an exchange that is recognized by a securities regulatory authority in a jurisdiction of Canada.***, and***

(c) in subsection (2) by adding the following paragraphs:

(d) purchase, sell, use or hold a crypto asset unless it is a crypto asset referred to in subsection (1.3);

(e) enter into a specified derivative transaction the underlying interest of which is a crypto asset, unless it is a specified derivative referred to in subsection (1.4).***.***

4. ***Subsection 2.12(1) is amended by adding the following item:***

13. Neither the loaned securities nor the collateral delivered to the investment fund includes a crypto asset.***.***

5. ***Subsection 2.13(1) is amended by adding the following item:***

12. No securities transferred by the investment fund as part of the transaction are crypto assets.***.***

6. ***Subsection 2.14(1) is amended by adding the following item:***

10. No securities transferred as part of the transaction are crypto assets.***.***

7. ***Subsection 2.18(2) is replaced with the following:***

(2) Despite any other provision of this Instrument, a mutual fund that describes itself as a "money market fund" must not use a specified derivative, sell securities short or purchase, sell, use or hold a crypto asset.***.***

8. ***Part 6 is amended by adding the following section:***

6.5.1 Holding of Portfolio Assets that are Crypto Assets

Despite subsections (3) and (4) of section 6.5, a custodian or a sub-custodian that holds portfolio assets that are crypto assets must hold the private cryptographic keys to those assets in offline storage unless required to facilitate a portfolio transaction of the investment fund.***.***

9. ***Section 6.6 is amended by adding the following subsection:***

(3.1) The custodian or sub-custodian of an investment fund that holds portfolio assets that are crypto assets must maintain insurance with respect to those crypto assets, of a type and amount that a reasonably prudent person would maintain***.***

10. ***Section 6.7 is amended***

(a) by adding the following subsections:

(1.1) The custodian or sub-custodian of an investment fund that holds portfolio assets that are crypto assets must, on a periodic basis not less frequently than annually and within 60 days after the end of its most recently completed financial year, obtain a report prepared by a public accountant that expresses a reasonable assurance opinion concerning the design and operational effectiveness of the service commitments and system requirements set for the custodian or sub-custodian relating to security, availability, confidentiality, processing integrity and privacy controls with respect to its custodial or sub-custodial obligations during its most recently completed financial year.

(1.2) A custodian or sub-custodian referred to in subsection (1.1) must deliver a copy of the report referred to in subsection (1.1) to the investment fund, promptly after receipt***., and***

(b) in subsection (2) by deleting "and***" at the end of paragraph (b), replacing "***.***" with "***; and***" at the end of paragraph (c) and adding the following paragraph:***

(d) whether the custodian or each sub-custodian, as applicable, of an investment fund that holds portfolio assets that are crypto assets has delivered a copy of the report referred to in subsection (1.2)**.**

11. ***Subsection 9.4(2) is amended by replacing "." at the end of subparagraph (b)(iii) with "***;***" and adding the following paragraph:***

(c) by making good delivery of crypto assets if

(i) the mutual fund is an alternative fund,

(ii) the crypto assets are not securities,

(iii) the mutual fund would at the time of payment be permitted to purchase those crypto assets,

(iv) the crypto assets are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund's investment objectives, and

(v) the value of the crypto assets is at least equal to the issue price of the securities of the mutual fund for which they are payment, valued as if those crypto assets were portfolio assets of the mutual fund***.***

Effective date

12. (1) This Instrument comes into force on [●].

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [●], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX B

PROPOSED CHANGES TO
COMPANION POLICY 81-102 *INVESTMENT FUNDS*

1. ***Companion Policy 81-102 Investment Funds is changed by this Document.***

2. ***Section 2.01 is changed by adding the following subsection:***

(4) The term "crypto asset" is not defined in the Instrument, but for the purposes of the Instrument, the Canadian securities regulatory authorities will generally consider a crypto asset to include any digital representation of value that uses cryptography and distributed ledger technology, or a combination of similar technology, to create, verify and secure transactions.**.**

3. ***Part 3 is changed by adding the following section:***

3.3.01 Investing in Crypto Assets

Subsection 2.3(1.3) of the Instrument provides an exception to the general prohibition on mutual funds investing in crypto assets in paragraph 2.3(1.2)(j) to permit alternative mutual funds to invest in crypto assets provided the crypto asset is either (a) listed for trading or (b) is the underlying interest in a specified derivative that is listed for trading, on an exchange that has been recognized by a securities regulatory authority in Canada. Subsection 2.3(2) provides a similar exception for non-redeemable investment funds. For greater clarity, this is not intended to restrict investment funds to only purchasing crypto assets through a recognized exchange. It is meant to be the criteria to determine whether a fund can invest in a particular type of crypto asset. Funds will continue to be permitted to acquire crypto assets from other sources, such as crypto asset trading platforms, provided the crypto asset qualifies under the criteria set out in subsection 2.3(1.3) and subject to any other existing requirements that may impact how an investment fund acquires its portfolio assets.**.**

4. ***Section 8.1 is changed:***

(a) by renumbering it as subsection "8.1(1)***", and***

(b) by adding the following subsections:

(2) The Canadian securities regulatory authorities expect that custodians and sub-custodians responsible for the custody of portfolio assets that are crypto assets implement policies and procedures that address the unique risks concerning safeguarding of crypto assets compared to other asset types. We would expect these policies and procedures to include:

(a) having specialist expertise and infrastructure relating to the custody of crypto assets;

(b) storing private cryptographic keys in segregated wallets or in an omnibus wallet visible on the blockchain so that unique public and private keys are maintained on behalf of an investment fund, so long as in each case the custodian or sub-custodian's books and records clearly reflect the investment fund's ownership of the crypto assets held by it;

(c) using hardware devices to hold private cryptographic keys that are subject to robust physical security practices, with effective systems and processes for private key backup and recovery;

(d) using signing approaches, such as the use of multi-signature technology, that minimise single point of failure risk;

(e) maintaining robust systems and practices for the receipt, validation, review, reporting and execution of instructions from the investment fund;

(f) maintaining website security measures that include two-factor authentication, strong password requirements that are cryptographically hashed, encryption of user information and other state-of-the-art measures to secure client information and protect the custodian and sub-custodian's website from hacking attempts;

(g) maintaining robust cyber and physical security practices for their operations, including appropriate internal governance and controls, risk management and business continuity practices.

(3) For the purposes of section 6.5.1 of the Instrument the Canadian securities regulatory authorities generally consider offline storage to mean the storage of private cryptographic keys in a manner that prevents any connection to the internet.

(4) Subsection 6.6(3.1) of the Instrument requires the custodian or sub-custodian of an investment fund that holds crypto assets on behalf of the investment fund to maintain insurance with respect to its custody of crypto assets of a type and in an amount that a reasonably prudent person would maintain. The Canadian securities regulatory authorities expect this to include using their best judgement, consistent with their custodial or sub-custodial obligations and standard of care to the fund to determine whether the insurance maintained by the custodian or sub-custodian is sufficient or appropriate in the circumstances, including taking into account how the insurance compares to industry standards. The Canadian securities regulatory authorities also remind investment fund managers of the need to understand the material terms and amounts of such insurance coverage and make their own determination of whether they consider the insurance sufficient considering the relevant circumstances, consistent with their fiduciary obligation to the investment fund**.**

5. ***Section 8.3 is changed by renumbering it as subsection 8.3(1) and by adding the following subsection:***

(2) Subsection 6.7(1.1) of the Instrument requires a custodian or sub-custodian of an investment fund that holds portfolio assets of that investment fund that are crypto assets to obtain a report prepared by an external auditor to assess its internal management and controls. The provision does not specify the exact report that must be obtained. However, it is the view of the Canadian securities regulatory authorities that a Service Organization Control 2 Type II report, generally referred to as a "SOC-2 Type II" report, prepared in accordance with the framework developed by the American Institute of Chartered Public Accountants, will satisfy this requirement, though other comparable reports may also be considered from time to time**.**

6. These changes become effective on **[●]**.

ANNEX C

ONTARIO RULE-MAKING AUTHORITY FOR THE PROPOSED AMENDMENTS

The following provisions of the *Securities Act* (Ontario) (the Act) provide the Commission with authority to adopt the Proposed Amendments:

Paragraph 143(1)31 of the Act authorizes the Commission to make rules regulating investment funds and the distribution and trading of the securities of investment funds, including

- making rules prescribing permitted investment policy and investment practices for investment funds and prohibiting or restricting certain investments or investment practices for investment funds (subparagraph (ii));
- making rules prescribing requirements for investment funds in respect of derivatives (subparagraph (ii.1));
- making rules prescribing requirements governing the custodianship of assets of investment funds (subparagraph (iii));

Paragraph 143(1)34 of the Act authorizes the Commission to make rules regulating commodity pools.

Paragraph 143(1)49 of the Act authorizes the Commission to make rules permitting or requiring, or varying the Act to permit or require, methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by Ontario securities law.

ANNEX D

COST BENEFIT ANALYSIS

Background

- The current regulatory regime for publicly distributed investment funds does not fully account for the unique nature of crypto assets as an investment holding for investment funds.
- Much of the framework that has developed around investment funds holding these assets has been through the prospectus review process. Codifying this framework through rule amendments would provide greater clarity and consistency for market participants and investors.
- The proposed action is to introduce targeted amendments to National Instrument 81-102 *Investment Funds* (**NI 81-102**) that would specifically account for investment funds investing in crypto assets.

Stakeholders affected by the proposed Instrument/Rule

- Investment Fund Managers (**IFMs**) – any IFM of an investment fund that seeks to invest in crypto assets (**Impacted IFM**) would be affected by this proposal as it sets out the regulatory framework under which their investment funds could invest in this asset class. See the Appendix for a breakdown of the Canadian crypto asset investment fund market, as of June 30, 2023.
- Dealers – rules governing funds investing in crypto assets could impact the scope of products available for dealers to distribute. There are approximately 168 investment dealers that are able to distribute crypto asset investment funds.[1]
- Investors – any current or potential investors who may seek to hold investment funds will be impacted as the rules will have an impact on product selection.
- Service Providers – service providers to funds such as custodians and sub-custodians will be impacted by having a clear framework for how crypto assets are to be handled on behalf of an investment fund. There are currently 5 custodians and 3 sub-custodians who provide custodial services on behalf of crypto asset investment funds.

Anticipated costs and benefits

(a) Benefits to stakeholders

- IFMs – Impacted IFMs benefit from having clear and consistent rules around when an investment fund can invest in crypto assets. This allows for better planning and can encourage new product development and foster greater competition in this space. In addition, Impacted IFMs will benefit from cost and time savings as a result of not having to navigate an uncodified regulatory regime when seeking to launch a crypto asset investment fund. Furthermore, Impacted IFMs will also realize added benefits as previously granted exemptive relief in connection with crypto asset investment funds will be codified resulting in cost savings to the industry.[2]

Table 1 – Estimated cost savings per Impacted IFM that decides to issue an investment fund with crypto assets

Activity	Staff category	Hourly rate	Total hours per activity	Total cost per activity
Labour costs associated with applying for exemptive relief under current framework per Impacted IFM	External Lawyer	$243[3]	25	$6,075
Filing fee per Impacted IFM				$4,800
Total potential savings per Impacted IFM				**$10,875**

1 CIRO FY24 Q1 Quarterly Report Summary For the period April 1, 2023, to June 30, 2023.

2 There are approximately 8 IFMs who have received exemptive relief from subsection 9.4(2) of NI 81-102 that permits a crypto asset investment fund to accept crypto assets as subscription proceeds. The relief was granted primarily to facilitate the functioning of ETFs by allowing their designated brokers and other market makers to exchange crypto assets they hold for "creation units" of ETFs, similar to the functioning of ETFs that hold traditional assets.
There were approximately 126 IFMs registered in Ontario that offered prospectus-qualified funds as of December 31, 2022 (2023 OSC Investment Fund Survey). Although there are approximately 118 IFMs that currently do not offer crypto asset investment funds, we do not have a reasonable estimate of how many will choose to do so in the future. Likewise, it is not possible to estimate how many IFMs might seek exemptive relief in the future. Table 1 sets out the potential estimated cost savings on a per firm basis for illustrative purposes.

3 Estimate based on the national average hourly rate of $243.12 for a lawyer with approximately 2 to 5 years' experience. See Bruineman, Marg. "The right price: Canadian Lawyer's 2018 Legal Fees Survey shows some bright spots for law firms despite a highly competitive market" Canadian Lawyer, April 2018

- Dealers – potential wider scope of products in which to offer to clients for their investing needs.
- Investors – potentially greater product selection for their investing needs as evidence suggests crypto assets may offer potential diversification benefits to more traditional asset classes.[4] Also provides a means of investing in the crypto asset space through a regulated investment vehicle with the applicable regulatory safeguards.
- Service providers – a potential market for offering services relating to investment funds investing in crypto assets, such as custodians and sub-custodians.

(b) Costs to stakeholders

- IFMs – costs are expected to be nominal since the basic investment fund framework is substantially unchanged. Existing investment funds holding crypto assets will not be materially impacted since proposals are consistent with what they already do. Furthermore, any costs incurred would ***only*** be limited and applicable to Impacted IFMs that would seek to launch a crypto asset investment fund.[5]
- We estimate that each Impacted IFM will incur approximately $1,080[6] in initial costs associated with reviewing and learning about the proposed amendments to NI 81-102 and updating existing policies and procedures. The estimated costs are based on the following assumptions:
    - All Impacted IFMs will undertake the same activities and incur the same initial compliance costs. We do not anticipate any significant costs associated with IT/systems modification as a result of the proposed amendments.
    - We do not anticipate there will be any significant ongoing costs associated with the proposed amendments as the crypto asset investment fund industry is already operating with the proposed amendments.

Table 2 – Estimated initial compliance costs per IFM

Activity	**Staff category**	**Hourly rate[7]**	**Total hours per activity**	**Total cost per activity**
1. Learning about the regulation	Compliance Analyst	$60	2	$120
	Senior Compliance Analyst	$77	2	$150
	Chief Compliance Officer	$133	1	$130
2. Updating policies and procedures	Compliance Analyst	$60	3	$180
	Senior Compliance Analyst	$77	3	$230
	Chief Compliance Officer	$133	2	$270
			Total cost per firm	**$1,080**

- Dealers – no additional costs. Dealers are already obligated to engaged in “know your product” analysis with respect to any new investment fund offerings. Proposal does not change that.
- Investors – no direct cost impact. Investment funds will be offered and sold in the same distribution channels. However, investors may incur non-monetary opportunity costs associated with learning about crypto asset funds, but these costs would not be directly attributable to the proposed amendments.
- Service providers – proposed requirement to obtain an assurance opinion report, such as a SOC-2 Type 2 report, could impose costs on “new” potential custodians/sub-custodians holding crypto. However, this would be comparable to what is happening with existing investment funds, as all custodians/sub-custodians that service existing investment funds have a SOC-2 Type 2 report.

4 https://blogs.cfainstitute.org/investor/2022/11/16/how-do-cryptocurrencies-correlate-with-traditional-asset-classes/.
5 See footnote 2.
6 There were 126 IFMs registered in Ontario that offered prospectus-qualified funds as of December 31, 2022 (2023 OSC Investment Fund Survey) of which 8 IFMs have issued prospectus-qualified funds with crypto asset holdings.
7 All hourly rates are obtained from the Robert Half 2023 Salary Guide.

Summary comparison of costs and benefits

Benefits:

- Greater clarity for investment funds investing in crypto assets including a clearer path for launching product. Clearer rules can result in a more level playing field and encourage new entrants due to more regulatory certainty.
- Greater regulatory consistency and certainty – less reliance on prospectus review process to develop appropriate policies. Proposals largely codify existing practices.
- Stronger investor protection – rules have stronger force of law than staff comments on a prospectus review. Proposals are focused primarily on investor protection concerns such as custody and nature of assets that can be held.

Costs

- Costs are limited and applicable only to Impacted IFMs.
- Costs are minimal since the substantive regulatory framework is unchanged. Existing investment funds holding crypto assets will be unaffected since no new requirements are being introduced beyond what they already do.
- We estimate that each Impacted IFM will incur approximately $1,080 (Table 2) in initial costs associated with reviewing and learning about the proposed amendments to NI 81-102 and updating existing policies and procedures.
- Based on the estimated potential savings and initial compliance costs per IFM, the net benefit to each new IFM that decides to issue prospectus-qualified investment funds with crypto asset holdings is approximately $9,795[8] under the proposed amendments.

Impact of the proposed amendments on the OSC's mandate

- Given that the purpose of the proposed amendments is to codify existing practices that have developed through staff reviews of crypto asset funds, the amendments would further foster fair, efficient and competitive capital markets, and confidence in capital markets by ensuring there is clarity and consistency amongst IFMs who currently manage crypto asset investment funds and those who intend to in the future.
- The proposed amendments would also help foster capital formation as crypto asset IFMs would be provided with a regulatory framework that would reduce regulatory burden given that the staff prospectus review process would be more efficient and timelier.
- Lastly, the proposed amendments would contribute to the stability of the financial system and the reduction of systemic risk as they would establish a regulatory framework for the fund industry for a novel and evolving asset class such as crypto assets.

Description of alternatives considered

- The only alternative considered was status quo (i.e. no proposed amendments). We determined that the benefits of rules that also codify current practices and offer greater clarity, relative to the minimal costs were superior to status quo.

Appendices and references

Appendix – Canadian Crypto Asset Investment Fund Market Data as of June 30, 2023.

[8] This estimate nets the potential savings of approximately $10, 875 per IFM and potential initial compliance costs of $1,080 per firm.

Appendix

Canadian Crypto Asset Investment Fund Market Data – as of June 30, 2023

By Fund Structure

Fund Structure	No. of Funds	Net Assets (Millions)
Non-redeemable investment fund	2	$455
ETFs	11	$2,578
Open-ended mutual fund[1]	8	
Total	**21**	**$3,033**

By Crypto Asset Type

Crypto Asset	No. of Funds	Net Assets (Millions)
Bitcoin	10	$2,090
Ether	9	$943
Bitcoin and Ether	2	n/a
Total	**21**	**$3,033**

By Fund Strategy

Strategy	No. of Funds	Net Assets (Millions)
Direct Investment	12	$3,010
Fund of Fund	8[2]	
Investments in listed futures	1	$23
Total	**21**	**$3,033**

[1] The open-ended mutual funds invest their securities of one or more of crypto asset investment funds that are ETFs. As such, their net assets are part of the total assets under management for the ETFs listed above.

[2] The crypto asset investment funds that employ a fund of fund strategy invest their assets in one or more of the “direct investment” crypto asset investment funds structured as ETFs or Directly holding bitcoin or ether in a "buy and hold" strategy. The net assets of the “fund of fund” strategies are therefore included as part of the net asset of the “direct investment” funds.

B.1.2 Notice of Ministerial Approval of OSC Rule 33-509 Exemption From Underwriting Conflicts Disclosure Requirements

NOTICE OF MINISTERIAL APPROVAL OF
OSC RULE 33-509 EXEMPTION FROM UNDERWRITING CONFLICTS DISCLOSURE REQUIREMENTS

Ministerial Approval

On October 5, 2023, the Ontario Securities Commission (the **Commission**) made as a rule under the *Securities Act* (Ontario) OSC Rule 33-509 *Exemption from Underwriting Conflicts Disclosure Requirements* (the **Rule**) in Ontario.

The above material was published on October 5, 2023 in the Bulletin. See (2023), 46 OSCB 8004.

On or about November 28, 2023, the Minister of Finance approved the Rule.

The text of the Rule is published in Chapter 5 of this Bulletin.

Effective Date

The Rule has an effective date of February 17, 2024.

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B.2
Orders

B.2.1 Hammerhead Energy Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

Citation: *Re Hammerhead Energy Inc.*, 2024 ABASC 8

January 10, 2024

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA
AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
HAMMERHEAD ENERGY INC.
(the Filer)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the Alberta Securities Commission is the principal regulator for this application; and

(b) this order is the order 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* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

OSC File #: 2023/0657

B.2.2 Alpha Lithium Corporation

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Securities Act s. 88 Cease to be a reporting issuer in BC – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market – The issuer is not an OTC reporting issuer; the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country; the issuer is not in default of securities legislation

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

Citation: 2024 BCSECCOM 16

January 9, 2024

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA
AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
ALPHA LITHIUM CORPORATION
(the Filer)

ORDER

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta; and

(c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

¶ 3 **Representations**

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2023/0646

B.2.3 Manulife Investment Management Limited and Manulife EAFE Equity Fund

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for the Funds to cease to be reporting issuers under applicable securities law – relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 9, 2024

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
MANULIFE INVESTMENT MANAGEMENT LIMITED
(the Filer)

AND

MANULIFE EAFE EQUITY FUND
(the Fund)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Fund has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

a) the Ontario Securities Commission is the principal regulator for this application, and

b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Saskatchewan, Quebec, Nunavut, Yukon, Northwest Territories, British Columbia, Alberta, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Fund is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Fund, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Fund, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Fund has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Fund is not in default of securities legislation in any jurisdiction.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

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

Application File #: 2023/0609
SEDAR File #: 6059984

B.2.4 Allkem Limited

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 15, 2024

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
ALLKEM LIMITED
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

a) the Ontario Securities Commission is the principal regulator for this application, and

b) the Filer has provided notice that subsection 4C.5(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, Nova Scotia, Prince Edward Island, Québec and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024**/**0005

B.3
Reasons and Decisions

B.3.1 Bear Creek Mining Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirements otherwise applicable to the Filer as a reporting issuer who is not a venture issuer – Filer is cross listed on the TSX Venture Exchange and the Risk Capital segment (Segmento de Capital de Riesgo) of the Bolsa de Valores de Lima – The Risk Capital segment (Segmento de Capital de Riesgo) of the Bolsa de Valores de Lima imposes the requirements of the TSXV on the Filer – Relief granted subject to conditions, including that the Filer complies with the requirements of Canadian securities legislation applicable to a venture issuer and remains listed on the TSX Venture Exchange and the Risk Capital segment (Segmento de Capital de Riesgo) of the Bolsa de Valores de Lima.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, s. 19.1.
National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, s. 5.1.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 58-101 Disclosure of Corporate Governance Practices, s. 3.1.
Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, s. 9.1.

December 5, 2023

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
BEAR CREEK MINING CORPORATION
(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**) for an exemption from (collectively, the **Exemption Sought**):

(a) The requirements otherwise applicable to the Filer as a reporting issuer who is not a venture issuer in each of the following instruments, including the forms thereof (collectively, the **Instruments**):

i. National Instrument 41-101 *General Prospectus Requirements*;

ii. National Instrument 51-102 *Continuous Disclosure Obligations*;

iii. National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

iv. National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*;

v. National Instrument 52-110 *Audit Committees*; and

vi. National Instrument 58-101 *Disclosure of Corporate Governance Practices;*

(b) The formal valuation requirements in sections 4.3 and 5.4 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**); and

(c) The minority approval requirement in section 5.6 of MI 61-101 (the **Minority Approval Relief**).

Securities legislation imposes obligations for all reporting issuers. There are different obligations applicable to reporting issuers who are venture issuers and to those that are non-venture issuers. The Exemption Sought will permit the Filer to comply with the obligations applicable to venture issuers notwithstanding that the Filer does not meet the criteria in the definition of "venture issuer".

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

(a) The Ontario Securities 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 each of the provinces and territories of Canada other than Quebec.

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:

1. The Filer is incorporated under the *Business Corporations Act* (British Columbia) and its head office is located at Suite 3200, 733 Seymour Street, Vancouver BC V6B 5J3. The Filer is a precious metals producer with 100% ownership of its two material mineral properties – the Mercedes Mine in Mexico and the Corani Property in Peru.

2. The Filer is a reporting issuer in each province and territory of Canada, other than Quebec.

3. The Filer is authorized to issue an unlimited number of common shares without par value. As of September 8, 2023, the Filer had 171,365,386 common shares issued and outstanding.

4. The Filer's securities are listed on the TSX Venture Exchange (the **TSXV**) and the Lima Stock Exchange (Segmento de Capital de Riesgo de la Bolsa de Valores de Lima) in Peru (the **Lima Exchange**) under the symbol "BCM", the OTCQX under the symbol "BCEKF" and on the Open Market (also known as the Regulated Unofficial Market) segment of the Borse Frankfurt under the symbol "OU6".

5. The Filer's securities were first listed for trading on the Lima Exchange on November 1, 2010. The Filer delisted its securities from the Lima Exchange on August 27, 2013, due to lack of active trading and ongoing costs associated with maintaining the listing. On May 30, 2018, the Filer's securities were again listed for trading on the Lima Exchange.

6. The Filer is not in default of any of the requirements of the Legislation, except that from November 1, 2010 to August 27, 2013, and from May 30, 2018 until the date of this decision, the Filer has been in default of any applicable securities legislation requirements in New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, and Yukon (the **Default Jurisdictions**) that apply to reporting issuers that are not venture issuers by virtue of its listing on the Lima Exchange.

7. In the Instruments, the definition of "venture issuer" excludes a reporting issuer who, at the relevant time, has "any of its securities listed or quoted on any of the Toronto Stock Exchange, Aequitas NEO Exchange Inc., a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc" (the **Venture Issuer Definition**).

8. As the Lima Exchange is a marketplace and hence a "marketplace outside of Canada and the United States of America", the Filer did not from November 1, 2010 to August 27, 2013, and does not, subsequent to May 30, 2018, meet the criteria of the Venture Issuer Definition.

9. Prior to its original listing on the Lima Exchange, the Filer obtained relief from the securities regulators in each of British Columbia, Ontario, Alberta, Saskatchewan and Manitoba from the requirement in the definition of "venture issuer" in section 1.1 of each of National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*, National Instrument 52-110 *Audit Committees* and

National Instrument 58-101 *Disclosure of Corporate Governance Practices*, that a reporting issuer not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc (the **2009 Relief**). The Filer is now seeking to expand the 2009 Relief to apply to the Instruments in all the Jurisdictions, including in the Default Jurisdictions. The Filer is also seeking relief from the formal valuation requirements and minority approval requirements contained in MI 61-101 in the jurisdictions in which MI 61-101 has been adopted.

10. The Filer acknowledges that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the Filer from November 1, 2010 to August 27, 2013 and from May 30, 2018 until the date of this decision are not terminated or altered as a result of this decision.

11. The Lima Exchange has two main segments on which securities may be traded. The Filer's securities are listed on the junior segment of the Lima Exchange – the Risk Capital Segment of the Lima Exchange (Segmento de Capital de Riesgo de la Bolsa de Valores de Lima) (the **Risk Capital Segment**). The Risk Capital Segment is a junior segment and is a specialized market implemented by the Lima Exchange to provide junior mining companies the opportunity to obtain funding through the Peruvian capital markets. The listing of a security of an issuer on this segment is automatic (subject to submission and acceptance of the required application forms and sponsorship) if that issuer is already listed on certain stock exchanges, including the TSXV (the **Dual Listing Program**).

12. The Lima Exchange defers to the requirements of the issuer's primary stock exchange for issuers that list on the Risk Capital Segment through the Dual Listing Program. The Risk Capital Segment of the Lima Exchange is junior or equivalent to the TSXV in terms of its requirements and does not have any minimum listing, listing maintenance or continuous disclosure requirements for TSXV-listed issuers that are more onerous as compared with the TSX as it defers to the requirements of the TSXV with respect to TSXV-listed issuers, including the Filer. For a listing application, a TSXV-listed issuer must file a sponsorship report by a local broker dealer acting as a sponsor for the listing. In addition, an issuer must file all public disclosure documents filed in its home jurisdiction with the Lima Exchange. The Lima Exchange does not have any requirements for a mining issuer to hold a significant interest in a qualifying property, expenditure requirements or work program or exploration work limits.

13. The Lima Exchange requires the Filer to, and the Filer does and will continue to, comply with applicable laws and regulations of the Filer's home jurisdiction, including the policies of the TSXV.

14. The information that the Filer has provided regarding the Risk Capital Segment of the Lima Exchange and its status as a junior market for the purposes of review by staff of the Principal Regulator is accurate as of the date of this decision.

15. The Filer monitors the requirements of the Risk Capital Segment of the Lima Exchange on an ongoing basis, through both its Peruvian sponsor, Kallpa Securities Sociedad Agente De Bolsa S.A. (the **Peruvian Sponsor**) and its Chief Financial Officer, Paul Tweddle, who is designated as the Filer's representative with the Lima Exchange (the **Lima Representative**).

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 Filer complies with the conditions and requirements of Canadian securities legislation applicable to a reporting issuer that satisfies the Venture Issuer Definition, including the rules and policies of the TSXV;

(b) The representations listed in paragraphs 11 through 14 above continue to be true;

(c) The Filer will monitor the representations made in paragraphs 11 through 14 above on an ongoing basis through both its Peruvian Sponsor, Kallpa Securities Sociedad Agente De Bolsa S.A., and the Lima Representative, Paul Tweddle, including periodic reviews of the requirements of the Risk Capital Segment of the Lima Exchange and its status as a junior market, and inform the Principal Regulator of any material change affecting the truth of said representations;

(d) The Filer will inform the Principal Regulator of any material change regarding the Risk Capital Segment of the Lima Exchange in terms of its requirements, the minimum listing requirements, the listing maintenance requirements or any other changes which relate to its status as a junior market and inform the Principal Regulator of whether any such change impacts its status as a junior market;

(e) The Risk Capital Segment of the Lima Exchange is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market and that the representations listed in paragraphs 11 through 14 above continue to be true;

(f) The Filer continues to have its common shares listed on the TSXV;

(g) The Filer does not graduate from the Risk Capital Segment of the Lima Exchange to a more senior segment of the Lima Exchange;

(h) The Filer does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, Aequitas NEO Exchange Inc., a U.S. marketplace or a marketplace outside of Canada and United Stated of America other than the Lima Exchange, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Market Group plc;

(i) In the event an exemption under Canadian securities legislation applies to a requirement in the Instruments applicable to the Filer, and a condition to the exemption requires the issuer to be a venture issuer, the Filer may invoke the benefit of that exemption if the Filer meets the conditions required by the exemption except for the condition that the Filer be a venture issuer;

(j) In the event an exemption under Canadian securities legislation applies to a requirement applicable to the Filer as a reporting issuer who is not a venture issuer in the Instruments, and a condition to the exemption requires the issuer to not be a venture issuer, the Filer does not invoke the benefit of that exemption;

(k) For the purposes of the Minority Approval Relief, in addition to conditions (a) through (j) above, the Filer complies with the requirement to obtain minority approval in section 5.6 of MI 61-101, except that the Filer is entitled to rely on the exemption from the requirement to obtain minority approval set out in subsection 5.7(1)(b) of MI 61-101, despite subsection 5.7(1)(b)(i) of MI 61-101, provided that the other conditions of subsection 5.7(1)(b) of MI 61-101 are satisfied; and

(l) The Filer will not rely on the 2009 Relief.

"David Surat"
Manager, Corporate Finance Branch
Ontario Securities Commission

OSC File #: 2023/0419

B.3.2 Acreage Holdings, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions – application for relief from requirement to obtain separate minority approval for each of filer's subordinate voting shares and proportionate voting share – classes intended to be identical, but for proportionate rights – no difference of interest between holders of each class of shares in connection with the proposed business combination transaction, different class are not affected in a differing – safeguards include independent committee, fairness opinions – applicable corporate statue and filer's constating documents provide that shareholders will vote as a single class other than in certain circumstances which are not present in connection with proposed transaction.

August 7, 2020

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
ACREAGE HOLDINGS, INC.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the "**Application**") from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting the Filer, pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") from the requirements in subsection 8.1(1) of MI 61-101 to obtain minority approval for the Transaction (as defined below) from the holders of every class of affected securities of the Filer voting separately as a class, and requiring instead that minority approval be obtained from all Disinterested Shareholders (as defined below) voting together as a single class (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 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 British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia.

Representations

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

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on July 12, 1989 as "Applied Inventions Management Inc.". On August 29, 2014, the Filer's name was changed from Applied Inventions Management Inc. to "Applied Inventions Management Corp." ("**AIM**"). On November 14, 2018, High Street Capital Partners LLC ("**HSCP**") completed a reverse takeover of the Filer, concurrent with which the Filer continued into British Columbia as "Acreage Holdings, Inc." under the *Business Corporations Act* (British Columbia) (the "**BCBCA**") (the "**RTO**").

2. The Filer's head office is located at 11th floor, 366 Madison Avenue, New York, New York 10017, and its registered and records office is 2800 Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 27Z.

3. The Filer is a reporting issuer in all of the provinces of Canada, excluding Quebec, Prince Edward Island and Newfoundland and Labrador. The Filer is not in default of its obligations under the securities legislation in any of the jurisdictions of Canada in which it is a reporting issuer.

4. The Filer operates in the cannabis industry, with a focus on the cultivating, processing, distributing and retailing of cannabis, cannabis derivative products and branded products in the United States.

5. The authorized share capital of the Filer consists of: (i) an unlimited number of Class A subordinate voting shares, carrying one (1) vote per share (the "**Subordinate Voting Shares**"); (ii) an unlimited number of Class B proportionate voting shares, carrying forty (40) votes per share (the "**Proportionate Voting Shares**"); and (iii) an unlimited number of Class C multiple voting shares, carrying three thousand (3,000) votes per share (the "**Multiple Voting Shares**"). The Multiple Voting Shares are all held by Kevin Murphy, the Filer's Founder and director.

6. As at June 29, 2020, the outstanding share capital of the Filer (the "**Filer Shares**") consisted of: (i) 76,980,347 Subordinate Voting Shares; (ii) 556,490.3151 Proportionate Voting Shares; and (iii) 168,000 Multiple Voting Shares.

7. As at June 29, 2020, the issued and outstanding Subordinate Voting Shares, Proportionate Voting

Shares and Multiple Voting Shares represented approximately 12.8%, 3.7% and 83.5%, respectively, of the aggregate voting rights attached to the Filer Shares.

8. Following the RTO, the Filer was a "Foreign Private Issuer" as defined in Rule 405 under the United States Securities Act of 1933 and Rule 3b-4 under the United States Securities Exchange Act of 1934.

9. If more than 50% of the outstanding voting securities of an issuer (as determined under Rule 405 of the United States Securities Act of 1933) are directly or indirectly held of record by residents of the United States (the "**Threshold**"), such issuer will not meet the definition of a Foreign Private Issuer, which may have adverse consequences with respect to such issuer's ability to raise capital in private placements or Canadian prospectus offerings and result in additional U.S. securities law compliance requirements.

10. In December 2016, the United States Securities and Exchange Commission issued a Compliance and Disclosure Interpretation to clarify that issuers with multiple classes of voting stock carrying different voting rights may, for the purposes of calculating compliance with the Threshold, examine either (i) the combined voting power of its share classes, or (ii) the number of voting securities, in each case held of record by U.S. residents. Based on this interpretation, each issued and outstanding Proportionate Voting Share and each issued and outstanding Multiple Voting Share is counted as one voting security and each issued and outstanding Subordinate Voting Shares is counted as one voting security for the purposes of determining the Threshold.

11. As such, the Proportionate Voting Shares were created for the sole purpose of ensuring that the Filer maintained its Foreign Private Issuer status under United States securities laws. The Filer's share structure was approved by AIM shareholders and HSCP unit holders in conjunction with the RTO to preserve the Filer's Foreign Private Issuer status.

12. Notwithstanding the foregoing, the Filer ceased to be a Foreign Private Issuer under United States securities laws effective as of January 1, 2020.

13. The holders of the Subordinate Voting Shares, Proportionate Voting Shares and Multiple Voting Shares have the same rights and obligations, and no holder of Filer Shares is entitled to any privilege, priority or preference in relation to any other such holder, subject to the following:

    (a) The Subordinate Voting Shares are listed on the Canadian Securities Exchange (the "**CSE**") under the symbol "ACRG.U", are quoted on the OTCQX® Best Market by OTC Markets Group (the "**OTCQX**") under the symbol "ACRGF" and are traded on the Open Market of the Frankfurt Stock Exchange (the "**FRA**") under the symbol "0VZ". The Proportionate Voting Shares and the Multiple Voting Shares are not listed or posted for trading on any stock exchange.

    (b) Each Proportionate Voting Share is convertible into forty (40) Subordinate Voting Shares. Each Multiple Voting Share is convertible into one (1) Subordinate Voting Share.

    (c) In the event of the liquidation, dissolution or winding-up of the Filer, whether voluntary or involuntary, or in the event of any other distribution of assets of the Filer among its shareholders for the purpose of winding up its affairs, the holders of Proportionate Voting Shares are entitled to participate pari passu with the holders of Subordinate Voting Shares and Multiple Voting Shares in an amount equal to the amount of such distribution per Subordinate Voting Share and Multiple Voting Share, multiplied by forty (40).

    (d) No dividend may be declared on the Subordinate Voting Shares unless the Filer simultaneously declares dividends on the Proportionate Voting Shares in an amount equal to the dividend declared on the Subordinate Voting Shares, multiplied by forty (40), or on the Multiple Voting Shares in the amount of the dividend declared on the Subordinate Voting Shares.

    (e) No Multiple Voting Shares are permitted to be transferred by the holder thereof without the prior written consent of the Filer's board of directors (the "**Board**").

14. By their terms, the Proportionate Voting Shares and Subordinate Voting Shares were intended to be identical, but for the rights of conversion outlined in Paragraph 13. No holder of Proportionate Voting Shares has any expectation to the contrary.

15. Canopy Growth Corporation ("**Canopy Growth**") is a corporation governed by the *Canada Business Corporations Act*.

16. Canopy Growth is a reporting issuer or the equivalent thereof in each of the provinces and territories of Canada, excluding Québec, and its common shares are listed on the Toronto Stock Exchange under the symbol "WEED", and on the New York Stock Exchange under the symbol "CGC".

17. The head office of Canopy Growth is located at 1 Hershey Drive, Smiths Falls, Ontario, Canada, K7A 0A8.

18. On April 18, 2019, the Filer entered into an arrangement agreement (the "**Arrangement Agreement**") with Canopy Growth pursuant to which the Filer agreed to complete an arrangement (the "**Existing Arrangement**") under the BCBCA.

19. Following approval by Canopy Growth and Filer shareholders on June 19, 2019, the Existing Arrangement was implemented on June 27, 2019 by way of a court-approved plan of arrangement (the "**Existing Plan of Arrangement**") which resulted in, among other things, the articles of the Filer (the "**Filer Articles**") being amended to provide that, upon the occurrence or waiver of certain conditions, Canopy Growth would acquire all of the issued and outstanding Filer Shares in exchange for the payment of 0.5818 of a common share in the capital of Canopy Growth (each whole share, a "**Canopy Share**") (with the payment to holders of Proportionate Voting Shares being adjusted as though each Proportionate Voting Share was converted into forty (40) Subordinate Voting Shares in accordance with its terms) (the "**Existing Canopy Growth Call Option**").

20. On June 24, 2020, the Filer and Canopy Growth entered into a proposal agreement (the "**Proposal Agreement**"), which sets out, among other things, the terms and conditions upon which the Filer and Canopy Growth propose to amend the Arrangement Agreement (the "**Amending Agreement**"), amend and restate the Existing Plan of Arrangement (the "**Amended Plan of Arrangement**") and implement the Amended Plan of Arrangement (the "**Amended Arrangement**") pursuant to the BCBCA (the "**Transaction**").

21. Pursuant to the Amended Plan of Arrangement, at 12:01 a.m. (Vancouver time) on the date that the Amended Plan of Arrangement becomes effective (the "**Amendment Time**"), the Filer will, among other things:

    (a) complete a capital reorganization (the "**Capital Reorganization**") whereby: (i) each Subordinate Voting Share will be exchanged for 0.7 of a Filer Class E subordinate voting share (each whole share, a "**Fixed Share**") and 0.3 of a Filer Class D subordinate voting share (each whole share, a "**Floating Share**"); (ii) each Proportionate Voting Share will be exchanged for 28 Fixed Shares and 12 Floating Shares; and (iii) each Multiple Voting Share will be exchanged for 0.7 of a new multiple voting share (each whole share, a "**Fixed Multiple Share**") and 0.3 of a Floating Share. Each Fixed Multiple Voting Share will be entitled to 4,300 votes at all meetings of the Filer's shareholders with each Fixed Share and each Floating Share being entitled to one (1) vote per share at such meetings; and

    (b) amend the Filer Articles to: (i) create the Fixed Shares, the Floating Shares and the Fixed Multiple Shares and effect the Capital Reorganization; (ii) provide that, upon the occurrence or waiver of certain conditions, Canopy Growth will acquire all of the issued and outstanding Fixed Shares in exchange for the payment of 0.3048 of a Canopy Share for each Fixed Share then outstanding (the "**Canopy Growth Fixed Call Option**"); and (iii) provide Canopy Growth with the right to concurrently acquire all of the issued and outstanding Floating Shares at a price to be determined based upon the then fair market value of the Floating Shares relative to the Canopy Shares (the "**Canopy Growth Floating Call Option**", and together with the Canopy Growth Fixed Call Option, the "**Canopy Growth Call Option**").

22. The effectiveness of the Transaction is subject to the conditions set out in the Proposal Agreement, including, among others, approval by: (i) the Supreme Court of British Columbia (the "**Court**") at a hearing upon the procedural and substantive fairness of the terms and conditions of the Amended Arrangement; and (ii) the Filer's shareholders as required by applicable corporate and securities laws.

23. Under the BCBCA, there is no entitlement to separate class votes with respect to the approval of an arrangement. The Filer Articles provide holders of each class of Filer Shares the right to vote by separate special resolution to alter or amend the Filer Articles if same would prejudice or interfere with any rights or special rights attached to the class of Filer Shares, or affect the rights of the holders of such class of Filer Shares on a per share basis as provided in the Filer Articles. The Filer has determined that the alteration of the Filer Articles in accordance with the Amended Arrangement would not prejudice or interfere with any rights or special rights attached to the Subordinate Voting Shares or the Proportionate Voting Shares, or affect the rights of the holders of such shares on a per share basis as provided in the Articles.

24. The Transaction is a "business combination" as such term is defined in MI 61-101 and is therefore subject to the applicable requirements of MI 61-101, on the basis that it is an arrangement of the Filer as a consequence of which the interest of a holder of an equity security of the Filer may be terminated without the holder's consent and in respect of which a related party of the Filer is entitled to receive, directly or indirectly, as a consequence of the Transaction, a collateral

benefit (as such term is defined in MI 61-101). Such requirements include, among other things, obtaining approval for the Transaction by a majority of votes cast by the holders of each class of Filer Shares, excluding the votes attached to Filer Shares beneficially owned, or over which control or direction is exercised, by any party specified in subsection 8.1(2) of MI 61-101 (the "**Disinterested Shareholders**"), at a shareholder meeting held by the Filer. The Disinterested Shareholders include a majority of the holders of Subordinate Voting Shares and Proportionate Voting Shares. Insiders of the Filer who may be considered interested parties, as such term is defined in MI 61-101, hold, as of June 29, 2020, 1,094,663 (1.4%) of the Subordinate Voting Shares and 118,075 (21.2%) of the Proportionate Voting Shares. The Multiple Voting Shares will be excluded from the vote of the Disinterested Shareholders, as the holder of all outstanding Multiple Voting Shares is an interested party in accordance with MI 61-101.

25. MI 61-101 was adopted to ensure the fair treatment of all security holders and the perception of such in the context of insider bids, issuer bids, business combinations and related party transactions.

26. The approval of the Transaction will be subject to a number of mechanisms to ensure that all holders of Filer Shares are treated fairly and that the collective interests of the holders of Filer Shares are protected, including the following:

(a) the creation of a special committee composed of independent directors (the "**Special Committee**") whose mandate is, among other things, to review the terms and conditions of the Transaction. In order to properly fulfill its mandate, the Special Committee retained the services of independent legal and financial advisors;

(b) the Filer will prepare and deliver to its shareholders an information circular (the "**Information Circular**") in accordance with applicable securities law requirements that will provide holders of Filer Shares with sufficient information to enable them to make an informed decision in respect of the Transaction;

(c) the Special Committee has obtained a fairness opinion from Eight Capital stating that, as of the date of the opinion and subject to the assumptions, limitations, and qualifications on which such opinion was based, the consideration to be received by holders of Filer Shares pursuant to the Transaction is fair, from a financial point of view, to the holders of Filer Shares (the "**Fairness Opinion**");

(d) the approval of the Transaction by the majority of votes cast by the Disinterested Shareholders voting together as a single class (each Subordinate Voting Share carrying one (1) vote and each Proportionate Voting Share carrying forty (40) votes);

(e) approval of the Supreme Court of British Columbia of the Amended Arrangement; and

(f) a right of dissent to the benefit of holders of Filer Shares, including Disinterested Shareholders

(the measures described in paragraphs 26(a) through 26(f), together, the "**Safeguard Measures**").

27. Pursuant to the Existing Plan of Arrangement, Canopy Growth made an aggregate cash payment of US$300,000,000 to all holders of Filer Shares and holders of certain securities exchangeable for Filer Shares as consideration for the option to acquire all of the issued and outstanding Filer Shares pursuant to the Existing Arrangement (the "**Original Option Premium**").

28. The Amended Plan of Arrangement provides for the additional aggregate cash payment of US$37,500,024 (the "**Amendment Option Payment**") to the holders of Filer Shares and holders of certain securities exchangeable for Filer Shares.

29. As a result of the Amended Arrangement, the receipt by holders of Filer Shares of their pro rata share of the Original Option Premium and Amendment Option Premium may result in differential tax treatment depending on the jurisdiction of residence of the holder. Certain Canadian and United States federal income tax considerations: (a) are more particularly disclosed in the Filer's preliminary proxy statement filed by the Filer on July 21, 2020 (the "**Preliminary Proxy Statement**"), and (b) will be disclosed in the final proxy statement to be filed by the Filer, with the U.S. Securities and Exchange Commission.

30. The holders of Subordinate Voting Shares comprise: (i) those Filer shareholders who held either Subordinate Voting Shares or Proportionate Voting Shares at the effective time of the Existing Arrangement; and (ii) holders of Subordinate Voting Shares acquired subsequent to the effective time of the Existing Arrangement. Certain holders of Subordinate Voting Shares may, therefore, not have received the Original Option Premium.

31. The holders of Proportionate Voting Shares comprise those holders of Proportionate Voting Shares who held such shares at the effective time of the Existing Arrangement and, accordingly, received their pro rata share of the Original Option Premium.

32. To the extent that there are adverse U.S. income tax consequences arising from receipt by U.S. Holders (as such term is defined in the Preliminary Proxy Statement) of the Original Option Premium or the Amendment Option Payment resulting from the Amended Arrangement, all holders of Proportionate Voting Shares will be affected whereas only certain holders of Subordinate Voting Shares will be affected. As such, the classes of shares may be differentially affected for U.S. tax purposes.

33. The differential tax treatment is not related to any terms of the Subordinate Voting Shares or Proportionate Voting Shares but, rather the residency of the holder of such Filer Shares and the income tax regime applicable to such holder.

34. Holders of the Subordinate Voting Shares and Proportionate Voting Shares will not be treated differentially pursuant to the Amended Arrangement, other than potential differential tax consequences.

35. Separate class votes by the holders of Subordinate Voting Shares and Proportionate Voting Shares would have the effect of granting disproportionate importance to one class of Filer Shares over another. Despite the fact that Disinterested Shareholders holding Proportionate Voting Shares would represent, as of June 29, 2020, 18.8% of the total vote of Disinterested Shareholders on an aggregate basis, holders of Proportionate Voting Shares representing 9.4% of the total vote of Disinterested Shareholders could be afforded a veto right in respect of the Transaction that could be exercised against all other Disinterested Shareholders. Such an outcome would not be in accordance with the reasonable expectations of the holders of Filer Shares.

36. The Board and the Special Committee are of the view that the Safeguard Measures are the optimal mechanisms to ensure that the interests of each holder of Filer Shares, along with the public interest, will be well protected.

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 the following mechanisms are implemented and remain in place:

1. a special meeting of the Filer's shareholders is held in order for the Disinterested Shareholders of the Filer to consider and, if deemed advisable, approve the Transaction, such approval to be obtained with the Disinterested Shareholders of the Filer voting together as a single class of the Filer;

2. the Information Circular is prepared and delivered by the Filer to its shareholders in accordance with applicable securities law requirements; and

3. the Fairness Opinion is included in its entirety in the Information Circular.

DATED at Toronto this 7th day of August, 2020.

"Jason Koskela"
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission

B.3.3 Genus Capital Management Inc. and Genus High Impact Equity Fund

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 81-102 Investment Funds.

National Instrument 81-102 Investment Funds (NI 81-102), s. 19.1 – Exemption from requirements of past performance data in sales communications in Part 15 of NI 81-102 – Before becoming a reporting issuer, the fund did not deviate from NI 81-102 investment restrictions and its past performance is reflective of how the fund would have performed as a reporting fund; although the fund is using a different series when reporting on past performance, the only difference in performance is due to the different management fees paid by each series; the fund's prior cost expenses are not materially different from a reporting fund; the fund discloses in the sales communications, fund facts document and MRFP that the past performance data is from a period when the fund was not a reporting issuer and that its expenses would have been higher had it been a reporting issuer; the manager posts on its website and makes available to investors the financial statements of the fund for all periods for which it is using the past performance.

National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101), s. 6.1 – Exemption from the fund facts form requirement in order to include past performance data – Before becoming a reporting issuer, the fund did not deviate from NI 81-102 investment restrictions and its past performance is reflective of how the fund would have performed as a reporting fund; although the fund is using a different series when reporting on past performance, the only difference in performance is due to the different management fees paid by each series; the fund's prior cost expenses are not materially different from a reporting fund; the fund discloses in the sales communications, fund facts document and MRFP that the past performance data is from a period when the fund was not a reporting issuer and that its expenses would have been higher had it been a reporting issuer; the manager posts on its website and makes available to investors the financial statements of the fund for all periods for which it is using the past performance.

National Instrument 81-106 Investment Fund Continuous Disclosure (NI 81-106), s. 17.1 – Exemption from the MRFP form requirement in order to include past performance data – Before becoming a reporting issuer, the fund did not materially deviate from NI 81-102 investment restrictions and its past performance is reflective of how the fund would have performed as a reporting fund; although the fund is using a different series when reporting on past performance, the only difference in performance is due to the different management fees paid by each series; the fund's prior cost expenses are not materially different from a reporting fund; the fund discloses in the sales communications, fund facts document and MRFP that the past performance data is from a period when the fund was not a reporting issuer and that its expenses would have been higher had it been a reporting issuer; the manager posts on its website and makes available to investors the financial statements of the fund for all periods for which it is using the past performance.

Exemption from requirements to calculate risk ratings – A mutual fund wants relief to be able to use its past performance data to calculate its investment risk rating in its simplified prospectus – Before becoming a reporting issuer, the fund did not deviate from NI 81-102 investment restrictions; the fund will be managed substantially similar in the period after becoming a reporting issuer as it was becoming a reporting issuer.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure ss. 2.1 and 6.1.
National Instrument 81-102 Investment Funds, ss. 15.3, 15.6, 15.8, 15.1.1, and 19.1.
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.

January 9, 2024

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA
AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
GENUS CAPITAL MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
GENUS HIGH IMPACT EQUITY FUND
(the Fund)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief, exempting the Fund from:

(a) subsection 15.3(2) and paragraphs 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of National Instrument 81-102 *Investment Funds* (NI 81-102) to permit the Fund to include performance data in sales communications relating to Series F units of the Fund notwithstanding that:

(i) the past performance data will relate to a period prior to the Fund offering its securities under a simplified prospectus;

(ii) the actual performance data will relate to Series O units of the Fund, and such actual past performance data would be used as the past performance data of the Series F units; and

(iii) the Fund has not distributed its securities under a prospectus for 12 consecutive months.

(b) subsection 15.1.1(a) of NI 81-102 and Items 2 and 4 of Appendix F - *Investment Risk Classification Methodology* to NI 81-102 (the Risk Classification Methodology) to permit the Fund to include its past performance data in determining its investment risk level in accordance with the Risk Classification Methodology;

(c) subsection 15.1.1(b) of NI 81-102 and Item 4(2)(a) and Instruction (1) of Item 4 of Form 81-101F3 *Contents of Fund Facts Document* (Form 81-101F3), to permit the Fund to disclose its investment risk level as determined by including its past performance data in accordance with the Risk Classification Methodology;

(d) item 10(b) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (Form 81-101F1) to permit the Fund to use its past performance data to calculate its investment risk rating in its simplified prospectus;

(e) section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) for the purposes of the relief requested herein from Form 81-101F1 and Form 81-101F3;

(f) items 5(2), 5(3) and 5(4), and Instruction (1) of Part I of Form 81-101F3 in respect of the requirement to comply with sections 15.3(2), 15.6(1)(a)(i), 15.3(4)(c), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102 to permit the Fund to include in its fund facts past performance data relating to Series F units of the Fund notwithstanding that:

(i) the past performance data relates to a period prior to the Fund offering its securities under a simplified prospectus;

(ii) the actual performance data will relate to its Series O units, and such actual past performance data would be used as the past performance data of the Series F units; and

(iii) the Fund has not distributed its securities under a simplified prospectus for 12 consecutive months.

(collectively, the relief under paragraphs (a), (b), (c), (d), (e) and (f), the NI 81-101 and 81-102 Relief);

(g) section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) for the purposes of the relief requested herein from Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (Form 81-106F1); and

(h) items 3.1(7) and 4.1(1) in respect of the requirement to comply with section 15.3(2) and 15.3(4)(c) of NI 81-102, Items 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1, to permit the Fund to include in its annual and interim management reports of fund performance

(individually an MRFP and collectively, the MRFPs) past performance data notwithstanding that such performance data relates to a period prior to the Fund offering its securities under a simplified prospectus

(together, the relief under paragraphs (g) and (h), the NI 81-106 Relief),

(collectively such exemptive relief, the Exemption Sought).

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

(a) the British Columbia Securities Commission is the principal regulator for the Application;

(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 each of the other provinces and territories of Canada other than the Jurisdictions; and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

¶ 2 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

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

The Filer

1. the Filer is a corporation organized under the laws of Canada with a head office in Vancouver, British Columbia;

2. the Filer is registered as an investment fund manager in British Columbia, Newfoundland and Labrador, Ontario and Quebec, as a portfolio manager in Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Newfoundland and Labrador, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon, and as an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon;

3. the Filer was previously a reporting issuer and ceased to be a reporting issuer on September 9, 2019; the Filer is not currently a reporting issuer in any Canadian jurisdiction and is not in default of securities legislation in any Canadian jurisdiction;

The Fund

4. the Fund is an open-end mutual fund established under the laws of the province of British Columbia as a trust on May 15, 2014 (the Inception Date) and governed by an amended and restated trust agreement made as of October 20, 2017, as amended;

5. the Filer is the manager and portfolio advisor of the Fund;

6. RBC Investor Services Trust acts as trustee of the Fund;

7. the Fund currently consists of five series of units:

   (a) Series O units, which have been offered to investors on a private placement basis in accordance with National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) since the Inception Date;

   (b) Series F units, which were previously offered publicly from October 23, 2017 to September 6, 2019; and

   (c) Series A units, Series C units and Series I units, which have not been offered to any investors and are not available for purchase.

8. the Fund does not intend to offer Series O units under a simplified prospectus and will continue to offer Series O units to investors on a private placement basis in accordance with NI 45-106;

9. Series F units have never been sold, whether on a private placement basis or publicly, to any investors;

10. the Fund is not in default of securities legislation of any Canadian jurisdiction;

11. the Fund intends to offer Series F units to the public in each of the provinces and territories of Canada pursuant to a simplified prospectus and fund facts documents (the IPO); the Fund filed a preliminary simplified prospectus and fund facts for Series F units with the securities regulator in each of the provinces and territories of Canada on November 30, 2023, and expects to file a final simplified prospectus and fund facts on January 25, 2024; upon issuance of a receipt for the final simplified prospectus, the Fund will become a reporting issuer in each of the provinces and territories of Canada and will become subject to the requirements of NI 81-102 and NI 81-106;

12. the investment objective of the Fund is to make positive social and environmental impacts in addition to generating better financial returns; this mandate focuses on investing in global companies who are leaders in areas of sustainability, such as: renewable energy, energy efficiency, green buildings, low negative impact products, as well as innovative companies in the healthcare, education and technology sectors;

13. since the Inception Date, the Fund has prepared audited annual and unaudited semi-annual financial statements in accordance with NI 81-106;

14. since the Inception Date, the Fund has complied with the investment restrictions and practices contained in NI 81-102;

15. since the Inception Date, the investment portfolios of Series F units and Series O units of the Fund have been the same;

16. the Fund will be managed substantially similarly after it becomes a reporting issuer as it was prior to becoming a reporting issuer; as a result of the Fund becoming a reporting issuer:

    (a) the Fund's investment objectives will not change;

    (b) the management fee charged to the Fund in respect of the Series F units and the Series O units will not change;

    (c) the day-to-day administration of the Fund will not change, other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which will impact the portfolio management of the Fund); and

    (d) the management expense ratio of the Series O units of the Fund is not expected to increase by more than 0.10%, which the Filer considers to be an immaterial amount.

17. the Filer proposes that the actual past performance data of Series O units of the Fund for the time period since the Inception Date be used as the past performance data of the Series F units of the Fund during such period, adjusted for the difference in management fee between the Series O units and the Series F units of the Fund; the only difference in performance between the Series O and the Series F units of the Fund since the Inception Date would have been due to the different management fees paid by each such series of units of the Fund;

18. without the Exemption Sought, sales communications pertaining to Series F units of the Fund cannot include performance data of the Fund that relate to a period prior to it becoming a reporting issuer;

19. without the Exemption Sought, sales communications pertaining to Series F units of the Fund would not be permitted to include performance data until the Fund has distributed securities under a simplified prospectus for 12 consecutive months;

20. as a reporting issuer, the Fund will be required under NI 81-101 to prepare and file a fund facts;

21. the Filer proposes to use the Fund's past performance data for the time period since the Inception Date to determine the investment risk level of the Series F units of the Fund, and to disclose that investment risk level in its simplified prospectus and fund facts document; without the Exemption Sought, the Filer, in determining and disclosing the Fund's investment risk level in its simplified prospectus and fund facts document for Series F units of the Fund, cannot use the past performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer;

22. the Filer proposes to include in the fund facts for the Series F units of the Fund the past performance data of Series O units in the disclosure required by Items 5(2), 5(3) and 5(4) under the sub-headings Year-by-year returns, Best and worst 3-month returns and Average return, respectively, related to periods prior to the Fund

becoming a reporting issuer. Without the Exemption Sought, the fund facts for the Series F units of the Fund cannot include performance data of the Fund that relate to a period prior to it becoming a reporting issuer;

23. as a reporting issuer, the Fund will be required under NI 81-106 to prepare and send MRFPs to all holders of its securities on an annual and interim basis;

24. without the Exemption Sought, the MRFPs of the Fund cannot include financial highlights and performance data of Series F units of the Fund that relate to a period prior to it becoming a reporting issuer;

25. the performance data and other financial data of the Fund for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors in the Fund;

26. as the Fund has prepared annual and interim financial statements in accordance with the requirements of NI 81-106 since its Inception Date, the past performance data of the Fund is based on the same standard of financial statement disclosure that is used by mutual funds to which NI 81-102 applies; and

27. in the absence of the Exemption Sought, investors in the Fund following the IPO will have no information about the Fund's past performance or financial highlights on which to base their investment decision.

Decision

¶ 4 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) any sales communication, fund facts documents and MRFP that contains past performance data of the units of the Fund relating to a period of time prior to when the Fund was a reporting issuer discloses that:

(i) the Fund was not a reporting issuer during such period;

(ii) the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

(iii) the Filer obtained exemptive relief on behalf of the Fund to permit the disclosure of past performance data of the units of the Fund relating to a period prior to when the Fund was a reporting issuer; and

(iv) with respect to any MRFP, the financial statements of the Fund for such period are posted on the Fund's website and are available to investors upon request; and

(b) the Filer posts the financial statements of the Fund since the Inception Date on the Fund's designated website and delivers those financial statements to investors upon request.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

Application File #: 2023/0599
SEDAR+ File #: 6059266

B.3.4 Northwest & Ethical Investments L.P. and The Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from short selling limit, cash borrowing limit and combined aggregate value in subparagraph 2.6.1(1)(c)(v), subparagraph 2.6(2)(c) and section 2.6.2 and relief from short selling issuer concentration limit in subparagraph 2.6.1(1)(c)(iv) of NI 81-102 with respect to short sales of "index participation units", subject to the usual conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.6.1(1)(c)(v), 2.6(2)(c), 2.6.2, 2.6.1(1)(c)(iv) and 19.1.

December 11, 2023

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
NORTHWEST & ETHICAL INVESTMENTS L.P.
(the Filer)

AND

IN THE MATTER OF
THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of NEI Long Short Equity Fund and any alternative mutual fund, including exchange traded funds, established in the future for which the Filer or an affiliate of the Filer acts as the manager, portfolio advisor and/or trustee (collectively, the **Funds** and individually, a **Fund**), for a decision under the securities legislation of the principal regulator (the **Legislation**) exempting the Funds from:

(i) the following restrictions of National Instrument 81-102 - *Investment Funds* (**NI 81-102**) to permit each Fund to sell securities short and/or borrow cash up to a combined aggregate total of 100% of the NAV of the Fund:

(a) subparagraph 2.6.1(1)(c)(v), which restricts a Fund from selling a security short if, at the time, the aggregate market value of all securities sold short by the Fund exceeds 50% of the Fund's NAV (together with (c) below, the **Short Selling Limit**);

(b) subparagraph 2.6(2)(c), which restricts a Fund from borrowing cash if the value of cash borrowed, when aggregated with the value of all outstanding borrowing by the Fund, exceeds 50% of the Fund's NAV (together with (c) below, the **Cash Borrowing Limit**); and

(c) section 2.6.2, which restricts a Fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Fund (the **Combined Aggregate Value**) would exceed 50% of the Fund's NAV and which requires a Fund, if the Combined Aggregate Value exceeds 50% of the Fund's NAV, as quickly as commercially reasonable, to take all necessary steps to reduce the Combined Aggregate Value to 50% or less of the Fund's NAV; and

(ii) the restriction in subparagraph 2.6.1(1)(c)(iv) of NI 81-102, which restricts a Fund from selling a security of an issuer, other than a "government security" (as defined in NI 81-102) short if, at the time, the aggregate market value of the securities of that issuer sold short by the Fund exceeds 10% of the Fund's NAV (the **Single Issuer Short Restriction**) in order to permit each Fund to exceed the Single Issuer Short Restriction to short sell IPUs of one or more IPU Issuers up to a maximum of 100% of a Fund's NAV at the time of the sale

((i)(a) and (i)(c) together, the **Short Selling Relief**, (i)(b) and (i)(c) together, the **Cash Borrowing Relief**, (ii) the **Single Issuer Short Relief** and, collectively with the Short Selling Relief and the Cash Borrowing Relief, the **Requested Relief**).

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

(i) the Ontario Securities Commission is the principal regulator for the Application;

(ii) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-202 Passport System (**MI 11-102**) is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the **Other Jurisdictions** and, together with the Jurisdiction, 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:

Aggregate Limit means the aggregate gross exposure restriction in subsection 2.9.1 of NI 81-102, which places an overall limit on an alternative mutual fund's exposure to cash borrowing, short selling and specified derivatives equal to 300% of such fund's NAV.

IPU means "index participation unit", as defined in NI 81-102.

IPU Issuer means an investment fund the securities of which are IPUs.

NAV means net asset value.

Prime Broker means any entity that acts as a lender or borrowing agent, as the case may be, to one or more investment funds.

Prospectus means a simplified prospectus of a Fund prepared in accordance with Form 81-101F1 – *Contents of Simplified Prospectus* or a prospectus of a Fund prepared in accordance with Form 41-101F2 - *Information Required in an Investment Fund Prospectus*, as the same may be amended from time to time.

Representations

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

The Filer

1 The Filer is a limited partnership formed under the laws of Ontario which acts through its general partner Northwest & Ethical Investments Inc., a corporation formed under the laws of Canada, with its head office in Ontario.

2 The Filer, or an affiliate of the Filer, is, or will be, the manager, portfolio advisor and/or trustee of the Funds.

3 The Filer is registered as (i) a commodity trading manager in Ontario; (ii) a portfolio manager in British Columbia and Ontario; (iii) an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan; and (iv) an investment fund manager in British Columbia, Newfoundland and Labrador, Ontario and Québec.

4 The Filer is not in default of securities legislation in any of the Jurisdictions.

The Funds

5 Each of the Funds is, or will be, an open-ended public "alternative mutual fund" as defined in and governed by NI 81-102.

6 Each of the Funds is, or will be, established under the laws of Ontario or another Jurisdiction.

7 None of the Funds are in default of securities legislation in any of the Jurisdictions.

8 Units of the Funds are, or will be, offered by Prospectus, fund facts and, in certain instances, ETF facts filed in one or more of the Jurisdictions and, accordingly, each Fund is, or will be, a reporting issuer in the Jurisdictions were the Requested Relief is relied upon.

IPU Issuers

9 The portfolio holdings of IPU Issuers are generally diversified.

10 IPU Issuers seek to provide investment results that correspond generally to the performance of a specified widely quoted market index comprised of multiple issuers by holding a portfolio of securities that are included in the index or otherwise investing in a manner that causes the IPU Issuer to replicate the performance of that index.

11 The portfolio holdings of IPU Issuers are generally liquid.

12 The creation process for IPUs of IPU Issuers can quickly increase the available supply of IPUs of IPU Issuers in the marketplace, making the potential for a liquidity issue inherently lower.

13 The weight of each underlying security held in the portfolio of an IPU Issuer substantially corresponds to the weight of such security in the underlying index.

Reasons for the Short Selling Relief and Cash Borrowing Relief

14 The investment objective of each Fund will differ but, in each case, key investment strategies which may be utilized by a Fund will include (a) the use of market-neutral, offsetting, inverse or shorting strategies requiring the use of short selling in excess of the Short Selling Limit and/or (b) the use of cash borrowing to provide additional investment exposure in connection with the investment strategies of the Fund in excess of the Cash Borrowing Limit.

15 Market-neutral strategies are well-recognized for limiting market risk, balancing long and short positions within an investment portfolio with the objective of providing positive returns regardless of whether the broader market rises, falls or is flat. Market-neutral strategies are designed to have less volatility than the broader market when measured over medium to long-term periods. Market-neutral strategies also provide diversification to investors as returns are intended to be uncorrelated to the performance of the broader market -- such strategies are designed to effectively remove any "beta" component from their returns and investment exposures.

16 As part of an investment strategy, short positions can serve as both a hedge against exposure to a long position or a group of long positions and also as a source of returns with an offsetting long position or positions. The Funds will generally seek to generate an attractive risk/return profile independent of the direction of the broad equity markets. As such, at the portfolio level, these strategies will seek to hedge out a Fund's exposure to the direction of broad equity markets, and to generate positive performance from the difference, specifically, the spread between the performance of the portfolio's long and short positions.

17 The ability to engage in additional short selling and cash borrowing in connection with the investment strategies of a Fund may provide material cost savings to the Fund compared to obtaining the same level of investment exposure through the use of specified derivatives while, at the same time, not increasing the overall level of risk to the Fund.

18 The costs to the Funds of engaging in physical short sales and cash borrowing are typically less when compared to the equivalent derivative transactions due to a number of factors which may include:

(a) Prime Brokers typically have greater flexibility to offer more favourable financing terms to a Fund in relation to the aggregate amount of the Fund's assets held in the prime brokerage margin account. Derivative instruments, such as futures contracts and over the counter (OTC) derivatives, are not held in a prime brokerage account and therefore reduce the ability of a Fund to obtain the most beneficial pricing terms available.

(b) Margin requirements for derivative instruments are primarily based on the underlying investment exposure and, as a result, can be high.

(c) Certain derivative instruments (such as futures contracts) require cash or near cash securities (such as government treasuries) to be deposited with the counterparty as collateral. This would require a Fund to use these portfolio assets to satisfy collateral requirements rather than utilizing them in connection with the Fund's investment strategy.

19 The Funds may use cash borrowing as a more flexible and cost-efficient means of providing additional leverage for investment strategies such as merger arbitrage strategies where the use of derivative instruments to provide the same level of exposure may not be not practical. In connection with such strategies, the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) is typically required to respond in a timely manner to public disclosure relating to a

transaction and market movements in the share price of the target and/or acquiror company. The use of cash borrowing in such circumstances provides an easily accessible tool which enables the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) to implement the investment decision more quickly compared to the use of derivative instruments which provide the same level of exposure on a synthetic basis.

20 Cash borrowing is more efficient to utilize on a day to day basis compared to derivative instruments which generally require a higher degree of negotiation and ongoing administration on the part of the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor). The Cash Borrowing Relief would provide the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) with access to a more functional source of additional leverage to utilize on behalf of the Funds at a lower cost which, in turn, would benefit investors.

21 The investment strategies of each Fund permit, or will permit, it to:

(a) sell securities short provided that, at the time the Fund sells a security short (i) the aggregate market value of securities of any one issuer (other than "government securities" as defined in NI 81-102 and IPU Issuers) sold short by the Fund does not exceed 10% of the NAV of the Fund and (ii) the aggregate market value of all securities sold short by the Fund does not exceed 100% of its NAV;

(b) borrow cash provided that, at the time, the value of cash borrowed when aggregated with the value of all outstanding borrowing by the Fund does not exceed 100% of the Fund's NAV;

(c) borrow cash or sell securities short, provided that the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Fund does not exceed 100% of the Fund's NAV (the Total Borrowing and Short Selling Limit). If the Total Borrowing and Short Selling Limit is exceeded, the Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to be within the Total Borrowing and Short Selling Limit; and

(d) borrow cash, sell securities short or enter into specified derivatives transactions, provided that immediately after entering into a cash borrowing, short selling or specified derivative transaction, the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and aggregate notional amount of the Fund's specified derivatives positions (other than positions held for hedging purposes, as defined in NI 81-102) would not exceed the Aggregate Limit. If the Aggregate Limit is exceeded, the Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and the aggregate notional amount of the Fund's specified derivatives positions (other than positions held for hedging purposes) to be within the Aggregate Limit.

22 An alternative mutual fund that is subject to NI 81-102 is permitted to take leveraged long and short positions using specified derivatives up to the Aggregate Limit. As such, the Short Selling Relief and Cash Borrowing Relief would not be required if the Funds utilized solely specified derivatives (such as over-the-counter total return swaps) to obtain short exposure to the underlying securities or to provide additional investment exposure in connection with the Fund's investment strategies. NI 81-102 contemplates that alternative mutual funds may utilize shorting strategies using a combination of short sale transactions (subject to the Short Selling Limit) and specified derivative positions and obtain additional investment exposure using a combination of cash borrowing (subject to the Cash Borrowing Limit) and specified derivative positions subject, in all cases, to the Aggregate Limit. Alternative mutual funds that were previously known as commodity pools provide 100% or 200% inverse exposure through the use of specified derivatives, which is consistent with the Aggregate Limit and does not trigger the application of the Short Selling Limit or Cash Borrowing Limit for which the Filer is requesting exemptive relief. Accordingly, the Short Selling Relief and Cash Borrowing Relief would simply allow the Funds to do directly what they could otherwise do indirectly through the use of specified derivatives.

23 The Funds require the flexibility to enter into physical short positions and borrow cash when doing so is, in the opinion of the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor), in the best interests of the applicable Fund and to not be obligated to utilize an equivalent short position or amount of leverage synthetically through the use of specified derivatives as a result of regulatory restrictions in NI 81-102 that the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) believes do not provide any material additional benefit or protection to investors.

24 The Filer believes that the Short Selling Relief and the Cash Borrowing Relief would allow the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) to more effectively manage each Fund's investment exposure by providing it with the ability to respond to market developments in a timely manner and enabling the Filer to reduce the related expenses incurred by the Funds. In addition, specified derivative options may not be readily available for certain securities, may be relatively illiquid or may require large capital commitments on the part of the Fund.

25 While there may be certain situations where using a synthetic short position may be preferable, physical short positions are typically less costly, because of the ability to execute trades with a larger number of counterparties, compared to a single counterparty for synthetic shorts. This can result in lower borrowing costs for the Fund and reduce its exposure to

counterparty risk (e.g. counterparty default, counterparty insolvency and premature termination of derivatives) compared to a synthetic short position.

26 The Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor), as a fiduciary, is in the best position to determine, depending on the surrounding circumstances, whether the Funds should enter into a physical short position and/or obtain additional investment exposure via cash borrowing versus achieving the same result through the use of specified derivatives. The Short Selling Relief and Cash Borrowing Relief would provide the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) with the required flexibility to make timely trading decisions between physical and synthetic short sale positions and/or achieving additional investment exposure through cash borrowing or synthetic transactions. Accordingly, the Short Selling Relief and the Cash Borrowing Relief would permit the Filer to implement more effective portfolio management activities on behalf of a Fund and its investors. Investors would benefit by obtaining access to a more diversified set of investment opportunities than are currently available, while remaining within the overall investment limits set out in NI 81-102.

27 Any physical short position or cash borrowing transaction entered into by a Fund will be consistent with the investment objectives and strategies of the applicable Fund.

28 The Prospectus, fund facts and ETF facts, as applicable, will comply with the applicable requirements of National Instrument 81-101 - Mutual Fund Prospectus Disclosure, Form 41-101F2 - Information Required in an Investment Fund Prospectus, Form 81-101F3 - Contents of Fund Facts Document and Form 41-101F4 - Information Required in an ETF Facts Document, as applicable, for alternative mutual funds.

29 The investment strategies of each Fund will clearly disclose that the short selling and cash borrowing strategies and abilities of the Fund are outside the scope of NI 81-102, including that the aggregate market value of all securities sold short by the Fund and/or the aggregate amount of cash borrowed may exceed 50% of the NAV of the Fund. The Prospectus will also contain appropriate risk disclosure, alerting investors of any material risks associated with such investment strategies.

30 The Filer believes that it is in the best interests of each of the Funds to be permitted to engage in physical short selling and to obtain additional investment exposure through the use of cash borrowing in excess of the current limits set out in NI 81-102.

Reasons for the Single Issuer Short Relief

31 Subsection 2.1(1.1) of NI 81-102 restricts an alternative mutual fund from purchasing a security of an issuer, entering into a specified derivatives transaction or purchasing an IPU if, immediately after the transaction, more than 20% of its NAV would be invested in securities of any one issuer (the **Concentration Restriction**).

32 Subsection 2.1(2) of NI 81-102 provides an exception to the Concentration Restriction for an IPU that is a security of an investment fund. The Filer has submited that the rationale for this exception is in part that an IPU Issuer should be considered a look-through vehicle in that it is comprised of and represents a diversified group of issuers whose securities it holds in proportion to the underlying index, thereby mitigating the concentration risk otherwise associated with a Fund holding the securities of a single issuer. The Filer believes a similar rationale can be applied in respect to shorting IPU Issuers.

33 A significant risk associated with short positions generally is the potential to be unable to obtain the securities required to cover the short position, or to be unable to obtain them without additional costs, at the required time due to a lack of liquidity in the market. The Filer has submited that the liquidity of the IPU Issuers as described above significantly reduces the risk that a Fund may not be able to cover or exit a short position in an IPU Issuer. On this basis, short sales of IPU Issuers will not have the same risk profile as a short sale of a single issuer or of a security that lacks liquidity of this magnitude.

34 The Funds are, or will be, as the case may be, permitted to short sell IPUs of multiple IPU Issuers up to the limits of the Short Selling Relief. However, the Filer has submitted that shorting a single IPU Issuer is preferable in certain cases to shorting multiple IPU Issuers where the liquidity of the single IPU Issuer being sold short is higher than other IPU Issuers tracking the same index, or where the underlying index tracked by a particular IPU Issuer otherwise presents more favourable investment characteristics than other IPU Issuers.

35 The Filer is of the view that, in the case of IPU Issuers, given their high diversity and liquidity, the concentration risk otherwise associated with shorting securities of a single issuer is mitigated and, as a result, the Single Issuer Short Relief would permit the Funds to benefit from efficiencies without prejudicing investors.

36 The Single Issuer Short Relief is requested to permit each Fund to short sell IPUs of IPU Issuers without otherwise impacting such Fund's ability to borrow cash or engage in short sales under NI 81-102, in circumstances where the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) believes that it is more beneficial to gain the desired

short exposure to IPU Issuers: (a) through shorting fewer IPU Issuers than would otherwise be necessary under the Single Issuer Short Restriction; and (b) by way of short sales rather than by way of specified derivative transactions.

37 While a Fund could acquire exposure, including short exposure, to IPU Issuers in pursuit of its respective investment strategy through derivative transactions, the Filer believes that short sales of IPU Issuers may provide a faster, more efficient and flexible means of achieving diversification and hedging against market risk.

38 As such, the Filer is of the view that it would be in each Fund's best interest to permit the Fund to physically short sell IPUs of IPU Issuers, up to 100% of the Fund's NAV at the time of sale, instead of being limited to achieving that degree of leverage through either specified derivatives alone, or a combination of physical short selling and specified derivatives, including for the following reasons:

(a) In some circumstances, the availability of derivatives with similar risk characteristics to corresponding indices may be limited. Alternatively, pricing of a short position at a particular point in time may be preferable to the pricing of a corresponding derivatives contract.

(b) Granting the Single Issuer Short Relief would expand the scope of available tools at the disposal of the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) to achieve market hedging, and thereby provide the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) with the best execution and best liquidity.

(c) The Single Issuer Short Relief is less risky than certain derivatives transactions by allowing the Fund to, in part, mitigate against settlement risk (which is the risk that one of the parties to the derivatives contract defaults under the derivatives contract). Use of derivatives may also be incrementally riskier by exposing the Fund to operational risk (such as the case of a party to a derivatives contract failing to maintain adequate internal procedures or controls including intra-day settlements or managing closing-out the transaction) and liquidity risk.

39 The Single Issuer Short Relief would allow the Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) greater flexibility and liquidity in pursuing a hedging strategy that reduces potential market volatility by expanding options for hedging to include selling highly liquid IPU Issuers short.

General

40 Notwithstanding the Requested Relief the Funds would otherwise still be required to comply with all of the requirements applicable to alternative mutual funds in subsections 2.6.1 and 2.6.2 of NI 81-102, subject to any relief granted therefrom by the securities regulatory authorities.

41 The Requested Relief would not change a Fund's obligation to comply with the Aggregate Limit. The Aggregate Limit would continue to apply to a Fund's combined exposure to borrowing, short selling and derivatives. A decision to grant the Requested Relief would not permit a Fund to exceed the Aggregate Limit through a combination of investment strategies.

42 If a Fund's aggregate gross exposure were to exceed the Aggregate Limit, subsection 2.9.1(5) of NI 81-102 would require the Fund to, as quickly as commercially reasonable, take all necessary steps to reduce the aggregate gross exposure to 300% of the Fund's NAV or less.

43 The Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) has comprehensive risk management policies and/or procedures that address the risks associated with short selling and cash borrowing in connection with the implementation of the investment strategy of each Fund.

44 Each Fund will implement the following controls when conducting a short sale:

(a) The Fund will assume the obligation to return to the borrowing agent the securities borrowed to effect the short sale;

(b) The Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

(c) The Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) will monitor the short positions within the constraints of the Requested Relief as least as frequently as daily;

(d) The security interest provided by the Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions; and

(e) The Filer (or, where applicable, the portfolio advisor or portfolio sub-advisor) will maintain appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records.

45 Each short sale by a Fund will be made consistent with the Fund's investment objective(s), strategies and restrictions.

46 Each Fund's Prospectus will contain adequate disclosure of the Fund's short selling activities, including the material terms of the Requested Relief.

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 is that the Requested Relief is granted provided that:

In respect of the Short Selling and Cash Borrowing Relief:

(A) A Fund may sell a security short or borrow cash only if, immediately after the cash borrowing or short selling transaction:

(a) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV;

(b) the aggregate value of all cash borrowing by the Fund does not exceed 100% of the Fund's NAV;

(c) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV; and

(d) the Fund's aggregate exposure to short selling, cash borrowing and specified derivatives does not exceed the Aggregate Limit.

(B) In the case of a short sale, the short sale:

(a) otherwise complies with all of the short sale requirements applicable to alternative mutual funds under section 2.6.1 and 2.6.2 of NI 81-102, subject to any relief granted therefrom by the securities regulatory authorities; and

(b) is consistent with the Fund's investment objectives and strategies.

(C) In the case of a cash borrowing transaction, the transaction:

(a) otherwise complies with all of the cash borrowing requirements applicable to alternative mutual funds under section 2.6 and 2.6.2 of NI 81-102; and

(b) is consistent with the Fund's investment objectives and strategies.

(D) The Prospectus under which securities of a Fund are offered discloses, or will disclose at the time of its next renewal, as applicable:

(a) that the Fund can sell securities short or borrow cash up to, and subject to, the limits described in condition A above; and

(b) a description of the material terms of this decision.

In respect of the Single Issuer Short Relief:

(A) the only securities that a Fund will sell short in an amount that exceeds 50% of the Fund's NAV at the time of sale will be IPUs of IPU Issuers;

(B) the only securities that a Fund will sell short (other than "government securities", as defined in NI 81-102), resulting in the aggregate market value of the securities of that issuer sold short by the Fund exceeding 10% of the Fund's NAV at the time of sale, will be IPUs of IPU Issuers;

(C) the relief granted by this decision only applies in respect of a Fund's short sales of IPUs of an IPU Issuer and each Fund will comply with the Single Issuer Short Restriction in respect of its exposure to the securities held by each IPU Issuer the IPUs of which the Fund sells short. For each IPU of an IPU Issuer the Fund sells short, the Fund will be considered to be directly selling short its proportionate share of the securities held by the IPU Issuer, except that it will not be considered to be directly selling short a security or instrument that is a component of, but represents less than 10% of, the securities held by the IPU Issuer;

(D) a Fund may sell an IPU of an IPU Issuer short or borrow cash only if, immediately after the transaction: (i) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV; and (ii) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV;

(E) each Fund will otherwise comply with all of the requirements applicable to alternative mutual funds in subsections 2.6.1 and 2.6.2 of NI 81-102, subject to any relief granted therefrom by the securities regulatory authorities;

(F) a Fund's aggregate exposure to short selling, cash borrowing and specified derivatives will not exceed the Aggregate Limit;

(G) each short sale will be made consistent with the Fund's investment objectives and investment strategies; and

(H) each Fund's Prospectus discloses, or will disclose at the time of its next renewal, as applicable, that the Fund is able to sell short IPUs of one or more IPU Issuers in an amount up to 100% of the Fund's NAV at the time of sale, including the material terms of this decision.

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

Application File #: 2023/0591
SEDAR+ File #: 6055069

B.4
Cease Trading Orders

B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Therma Bright Inc.	December 4, 2023	January 10, 2024
Boosh Plant-Based Brands Inc.	October 6, 2023	January 12, 2024

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
Falcon Gold Corp.	November 1, 2023	
Tokens.com Corp.	January 2, 2024	
KWESST Micro Systems Inc.	January 2, 2024	

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B.5
Rules and Policies

B.5.1 OSC Rule 33-509 Exemption from Underwriting Conflicts Disclosure Requirements

ONTARIO SECURITIES COMMISSION RULE 33-509
EXEMPTION FROM UNDERWRITING CONFLICTS DISCLOSURE REQUIREMENTS

PART 1 DEFINITIONS

1. **Definitions**

(1) In this Rule,

"**Act**" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

"**eligible foreign security**" has the meaning ascribed to that term in section 3A.1 of NI 33-105;

"**NI 31-103**" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**NI 33-105**" means National Instrument 33-105 *Underwriting Conflicts*;

"**permitted client**" has the meaning ascribed to that term in section 1.1[*definitions*] of NI 31-103; and

"**underwriting conflicts of interest disclosure requirement**" means the requirement in subsection 2.1(1) of NI 33-105 that investors be provided with certain conflicts of interest disclosure in circumstances in which there is a direct or indirect relationship between the issuer or selling securityholder and the underwriter that might give rise to a perception that they are not independent of each other in connection with a distribution.

(2) Terms used in this Rule that are defined in the Act have the meaning ascribed to them in the Act, unless otherwise defined in this Rule or the context otherwise requires.

PART 2 EXEMPTION FROM UNDERWRITING CONFLICTS DISCLOSURE REQUIREMENT

2. A person or company is exempt from the underwriting conflicts of interest disclosure requirement in subsection 2.1(1) of NI 33-105 in connection with a distribution provided that:

(a) the distribution is made under an exemption from the prospectus requirement;

(b) the distribution is of a security that is an eligible foreign security; and

(c) each purchaser in Ontario that purchases a security pursuant to the distribution through such person or company is a permitted client.

PART 3 EFFECTIVE DATE

3. This Rule comes into force on February 17, 2024.

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B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
NEI Long Short Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 11, 2024
NP 11-202 Final Receipt dated Jan 11, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06060432

Issuer Name:
CIBC Active Investment Grade Corporate Bond ETF
CIBC Active Investment Grade Floating Rate Bond ETF
CIBC Canadian Bond Index ETF
CIBC Canadian Equity Index ETF
CIBC Canadian Short-Term Bond Index ETF
CIBC Clean Energy Index ETF
CIBC Emerging Markets Equity Index ETF
CIBC Flexible Yield ETF (CAD-Hedged)
CIBC Global Bond ex-Canada Index ETF (CAD-Hedged)
CIBC Global Growth ETF
CIBC International Equity ETF
CIBC International Equity Index ETF
CIBC International Equity Index ETF (CAD-Hedged)
CIBC Qx Canadian Low Volatility Dividend ETF
CIBC Qx International Low Volatility Dividend ETF
CIBC Qx U.S. Low Volatility Dividend ETF
CIBC U.S. Equity Index ETF
CIBC U.S. Equity Index ETF (CAD-Hedged)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 15, 2024
NP 11-202 Final Receipt dated Jan 15, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06045455

Issuer Name:
Harvest Canadian T-Bill ETF
Harvest Diversified Monthly Income ETF
Harvest Premium Yield 7-10 Year Treasury ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 8, 2024
NP 11-202 Final Receipt dated Jan 9, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06060713

Issuer Name:
Mackenzie Emerging Markets ex-China Equity Fund
Mackenzie Shariah Global Equity Fund
Mackenzie World Low Volatility Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 11, 2024
NP 11-202 Final Receipt dated Jan 12, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06049159

Issuer Name:
Tangerine Money Market Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 10, 2024
NP 11-202 Final Receipt dated Jan 15, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06044569

Issuer Name:
Life & Banc Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Jan 11, 2024
NP 11-202 Preliminary Receipt dated Jan 12, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06071468

Issuer Name:
Invesco Morningstar Global Next Gen AI Index ETF
Invesco US Treasury Floating Rate Note Index ETF (CAD Hedged)
Invesco US Treasury Floating Rate Note Index ETF (USD)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 8, 2024
NP 11-202 Final Receipt dated Jan 9, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06028026

Issuer Name:
Mackenzie World Low Volatility ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 11, 2024
NP 11-202 Final Receipt dated Jan 12, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06049223

Issuer Name:
CIBC Private Wealth Canadian Core Equity Pool
CIBC Private Wealth Canadian Core Pool
CIBC Private Wealth U.S. Core Equity Pool
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jan 15, 2024
NP 11-202 Preliminary Receipt dated Jan 15, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06071957

Issuer Name:
Horizons USD High Interest Savings ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 12, 2024
NP 11-202 Final Receipt dated Jan 12, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06059563

Issuer Name:
Life & Banc Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Jan 12, 2024
NP 11-202 Preliminary Receipt dated Jan 12, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06071468

Issuer Name:
Fidelity True North Fund
Fidelity U.S. Focused Stock Fund
Fidelity U.S. Dividend Fund
Fidelity Conservative Income Fund
Fidelity Multi-Sector Bond Currency Neutral Fund
Fidelity Global Value Long/Short Fund
Fidelity Long/Short Alternative Fund
Fidelity Market Neutral Alternative Fund
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated January 8, 2024
NP 11-202 Final Receipt dated Jan 10, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06030529, 06030324, 06030445 & 06030493

Issuer Name:
Evolve Metaverse ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 8, 2024
NP 11-202 Final Receipt dated Jan 10, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03560449

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NON-INVESTMENT FUNDS

Issuer Name:
Eupraxia Pharmaceuticals Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated Jan 5, 2024
NP 11-202 Preliminary Receipt dated Jan 8, 2024
Offering Price and Description:
US$200,000,000.00
Common Shares, Preferred Shares, Debt Securities, Warrants Subscription Receipts, Units
Filing# 06070024

Issuer Name:
WELL Health Technologies Corp.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Base Shelf Prospectus dated Jan 5, 2024
NP 11-202 Final Receipt dated Jan 8, 2024
Offering Price and Description:
Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Filing# 06070272

Issuer Name:
West Red Lake Gold Mines Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated Jan 8, 2024
NP 11-202 Preliminary Receipt dated Jan 9, 2024
Offering Price and Description:
$150,000,000.00
Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Filing# 06070339

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Suspended (Regulatory Action)	RF Securities Clearing LP / Compensation de Titres RF S.E.C	Investment Dealer	September 27, 2023
Change of Registration Category	Cadogan Park Advisors Inc.	From: Portfolio Manager To: Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	January 10, 2024
New Registration	Bouthillier Capital Inc.	Portfolio Manager	January 12, 2024

[**Editor's Note:** previously published at (2024), 47 OSCB 311; effective date amended]

Type	Company	Category of Registration	Effective Date
Amalgamation	MANULIFE SECURITIES INCORPORATED/PLACEMENTS MANUVIE INCORPORÉE and MANULIFE SECURITIES INVESTMENT SERVICES INC./Placements Manuvie Services d'Investissement Inc. To form: MANULIFE SECURITIES INCORPORATED/PLACEMENTS MANUVIE INCORPORÉE	From: Investment Dealer To: Investment Dealer and Mutual Fund Dealer	January 1, 2024

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.1 CIRO

B.11.1.1 Canadian Investment Regulatory Organization (CIRO) – Derivatives Rule Modernization, Stage 1 – Notice of Commission Approval

NOTICE OF COMMISSION APPROVAL

CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

DERIVATIVES RULE MODERNIZATION, STAGE 1

The Ontario Securities Commission has approved CIRO's proposed Derivatives Rule Modernization, Stage 1 amendments to its Investment Dealer and Partially Consolidated Rules (**IDPC Rules**) to expand, where appropriate, the scope of the rules that apply only to securities-related activities to also apply to derivatives-related activities (and in particular, over-the-counter derivatives activities); and to ensure consistency with the CSA Multilateral Instrument 93-101 *Derivatives: Business Conduct* (**MI 93-101**) (the **Amendments**).

CIRO initially published the Amendments for comment in IIROC Rules Notice 19-0200, followed by the republication for comment in IIROC Rules Notice 22-0055 and CIRO Rules Bulletin 23-0092. One comment letter was received in response to the third publication for comment on July 13, 2023. Non-material changes were made following the third publication and comments by the CSA.

A copy of the CIRO Implementation Bulletin, including text of the Amendments, can be found at www.osc.ca.

The Amendments will be effective on September 28, 2024, to align with the effective date of MI 93-101.

In addition, the Alberta Securities Commission; the Autorité des marchés financiers; the British Columbia Securities Commission; the Manitoba Securities Commission; the Financial and Consumer Services Commission of New Brunswick; the Office of the Superintendent of Securities, Digital Government and Service Newfoundland and Labrador; the Office of the Superintendent of Securities, Northwest Territories; the Nova Scotia Securities Commission; the Office of the Superintendent of Securities, Nunavut; the Prince Edward Island Office of the Superintendent of Securities; the Financial and Consumer Affairs Authority of Saskatchewan; and the Office of the Yukon Superintendent of Securities have either not objected to or have approved the Amendments.

B.11.2 Marketplaces

B.11.2.1 Cboe Canada Inc. – Notice of Housekeeping Rule Amendments to the Listing Forms

CBOE CANADA INC.

NOTICE OF HOUSEKEEPING RULE AMENDMENTS TO THE LISTING FORMS

In accordance with the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto*, Cboe Canada Inc. ("**Cboe Canada**") has adopted housekeeping rule changes to its Listing Forms (the "**Housekeeping Rule Amendments**"). The Ontario Securities Commission has not disagreed with the housekeeping categorization. The Housekeeping Rule Amendments comprise the following changes:

Housekeeping Rule Amendments and Rationale for Classification

The Housekeeping Rule Amendments are and, for the most part, address the following:

- The replacement of Neo Exchange Inc. ("**NEO**") branding with Cboe Canada branding;
- Formatting updates (e.g., layout of forms, numbering, fonts, etc.);
- The replacement of references to "Neo Exchange Inc." with references to "Cboe Canada Inc." and the deletion of references to "NEO," as applicable;
- The replacement of references to "IIROC" and "Investment Industry Regulatory Organization of Canada" with references to "CIRO" and "Canadian Investment Regulatory Organization," as applicable, to reflect the name change of that organization; and
- The correction of certain typographical errors and other minor editorial changes (e.g., updates to reflect the renumbering of certain provisions of the Listing Manual, the adjustment of articles and punctuation, minor rewording and changes to capitalization to improve clarity and/or internal consistency). The most notable changes in this category are further described in the table below. Please note that the numbering (e.g., questions or sections' numbers) used in the table below is that of the revised Listing Forms.

The Housekeeping Rule Amendments do not have a significant impact on the exchange, its market structure, members, issuers, investors or the Canadian capital markets, and are consistent with the changes as described in subsection 6.1(5)(b) of Companion Policy 21-101CP to National Instrument 21-101 *Marketplace Operation*.

	Listing Form	Amendments	Rationale
1.	***Form 1 – Listing Application***	The signature line of the Listing Agreement for all Listed Issuers was updated as follows: "Signature of Authorized Person". Under Section 2(G) (Applicant Information), reference to Question "2F" updated to "2G". Under Section 6B (Corporate Governance Information), the reference to Section 10.01 of the Listing Manual was deleted.	Correction of typographical errors. No substantive content to meet and not mentioned in the descriptor above (Part B).
2.	***Form 3 – Personal Information Form***	Under Appendix B (Statutory Declaration), Section (ii) was updated to reflect the amended title of Appendix C "Personal Information Collection, Use and Disclosure Policy". Under Appendix C (Personal Information Collection, Use and Disclosure Policy): • Section (iii) was updated to add "on the Exchange" at the end of the sentence to account for background checks that are completed outside of Canada (i.e., Cboe U.S.).	Editorial changes for clarification purposes and correction of typographical errors.

	Listing Form	Amendments	Rationale
		• The "Failure to Consent" section was updated to reflect the amended title of Appendix C (Personal Information Collection, Use and Disclosure Policy). • Legal@neostockexchange.com was replaced with CboeCanadaLegal@cboe.com to reflect the updated distribution list of the Cboe Canada legal team. • The title of the second part of Appendix C was updated to replace the word "regulator" with the word "regulatory".	
3.	***Form 7 – Notice of Dividend***	Deletion of "of the Form" after "Date".	For consistency purposes.
4.	***Form 8 – Notice of Prospectus Offering***	Under Question K(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9).	Correction of typographical error.
5.	***Form 9 – Notice of Private Placement***	Under Question K(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). The second part of Question K, which needs to be answered if there is an affirmative response to the first part of the question, was updated as follows: • "If the response to any of the foregoing questions is "**YES**", provide full particulars:".	Correction of typographical error. For clarification purposes.
6.	***Form 9A – Price Reservation Form***	N/A.	The English-language PDF version of Form 9A was decommissioned, and this form is now only fillable online on the Cboe Canada website at: https://www.cboe.ca/en/resources (in the drop-down menu under the sub-heading "Select a Listing Form:" in the "Listing Forms" section).
7.	***Form 9B – Notice of Amendment of Convertible Security***	Under Question (i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9).	Correction of typographical error.
8.	***Form 10 – Notice of Acquisition***	Under Question M(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). Under Question M(ii), the reference to Section 10.10 of the Listing Manual was updated to Section 10.11. The second part of Question M, which needs to be answered when there is an affirmative response to the first part of the question, was updated as follows: • "If the response to any of the foregoing questions is "**YES**", provide full particulars:".	Correction of typographical errors. For clarification purposes.
9.	***Form 11 – Notice of Security Based***	Under Section 3 (Additional Information):	Correction of typographical errors.

	Listing Form	Amendments	Rationale
	Compensation Arrangement Award or Amendment	• Under Question B(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). • Under Question B(ii), the reference to Section 10.13 of the Listing Manual was updated to Section 10.12.	
10.	***Form 12 – Notice of Rights Offering***	Under Question E(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). Under Question E(ii), the reference to Section 10.14 of the Listing Manual was updated to Section 10.13.	Correction of typographical errors.
11.	***Form 13 – Notice of Take-Over Bid***	Under Question E(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). Section 2 of the certificate was amended to delete the following: "and will conduct the take-over bid in compliance with applicable securities legislation,".	Correction of typographical error. For consistency with other forms' certificates.
12.	***Form 14A – Notice of Additional Listing***	Under Question G(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9).	Correction of typographical error.
13.	***Form 14B – Notice of Cancellation of Securities***	N/A.	N/A.
14.	***Form 14C – Notice of Exercise of Over-Allotment Option***	Under Question E(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). Questions E(ii) and (iii) were updated to replace the word "acquisition" with "additional listing".	Correction of typographical errors.
15.	***Form 15 – Notice of Creation or Redemption***	N/A.	N/A.
16.	***Form 16 – Notice of Name Change***	N/A.	N/A.
17.	***Form 17 – Notice of Stock Subdivision (Forward Stock Split)***	N/A.	N/A.
18.	***Form 18 – Notice of Security Consolidation (Reverse Stock Split)***	N/A.	N/A.
19.	***Form 18A – Confirmation of Distribution Requirements in Connection with Security Consolidation***	Section 2 of the certificate was amended to delete the following: "and will conduct the issuer bid in compliance with applicable securities legislation,".	For consistency with other forms' certificates.

	Listing Form	Amendments	Rationale
20.	***Form 19 – Notice of Security Restructuring***	On the first page of the form: • The reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). • The word "offering" was replaced with the word "restructuring".	Correction of typographical errors.
21.	***Form 20 – Notice of Formal Issuer Bid***	On the first page of the form, the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). Section 2 of the certificate was amended to delete the following: "and will conduct the issuer bid in compliance with applicable securities legislation,".	Correction of typographical error. For consistency with other forms' certificates.
22.	***Form 20A – Notice of Normal Course Issuer Bid***	N/A.	N/A.
23.	***Form 20B – Notice of Normal Course Issuer Bid Purchases***	The first sentence of the certificate was updated to delete the following: "If this Form is filed by the Listed Issuer,".	For consistency with other forms' certificates.
24.	***Form 21 – Notice of Shareholder Rights Plan***	N/A.	N/A.
25.	***Form 22 – Notice of Significant Transaction***	Under Question H(i), the reference to Section 10.09(8) of the Listing Manual was updated to Section 10.09(9). Questions H(ii) and (iii) were updated to replace the word "acquisition" with the word "transaction".	Correction of typographical errors.
26.	***Form 23 – Notice of Change of Underlying or Composition***	N/A.	N/A.
27.	***Form 24 – Notice of Delisting***	N/A.	N/A.

The Listing Forms can be viewed on the Cboe Canada website at: https://www.cboe.ca/en/resources.

The Housekeeping Rule Amendments are effective as of the date hereof.

B.11.3 Clearing Agencies

B.11.3.1 CDS Clearing and Depository Services (CDS) – Proposed Material Amendments to CDS Procedures and Fee Schedule Related to the Cessation of the Euroclear France Link and SEB Link Services – Notice of Material Rule Submission

NOTICE OF MATERIAL RULE SUBMISSION

CDS CLEARING AND DEPOSITORY SERVICES (CDS)

PROPOSED MATERIAL AMENDMENTS TO
CDS PROCEDURES AND FEE SCHEDULE RELATED TO
THE CESSATION OF THE EUROCLEAR FRANCE LINK AND SEB LINK SERVICES

CDS has submitted to the Commission, proposed amendments to the CDS procedures and fee schedule related to the cessation of the Euroclear France Link and the SEB Link services.

CDS is proposing to discontinue the CDS Euroclear France Link Service and the CDS SEB Link Service and is proposing consequential amendments to CDS Procedures and to the CDS Fee Schedule, to redact all references to the Euroclear France Link Service and the SEB Link Service.

The proposed amendments have been posted for public comment on the CDS website. The 30 day public comment period ends on February 20, 2024.

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