

The Ontario Securities Commission

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The Ontario Securities Commission administers the *Securities Act* of Ontario (R.S.O. 1990, c. S.5) and the *Commodity Futures Act* of Ontario (R.S.O. 1990, c. C.20)

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## Chapter 1

# Notices

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### 1.4 Notices from the Office of the Secretary

#### 1.4.1 Majd Kitmitto et al.

**FOR IMMEDIATE RELEASE**  
October 29, 2020

**MAJD KITMITTO,  
STEVEN VANNATTA,  
CHRISTOPHER CANDUSSO,  
CLAUDIO CANDUSSO,  
DONALD ALEXANDER (SANDY) GOSS,  
JOHN FIELDING, and  
FRANK FAKHRY,  
File No. 2018-70**

**TORONTO** – Take notice that the hearing in the above named matter scheduled to be heard on October 30, 2020 will not proceed as scheduled.

The hearing on the merits will continue on November 2, 2020 at 9:30 a.m.

OFFICE OF THE SECRETARY  
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### 1.4.2 Solar Income Fund Inc. et al.

**FOR IMMEDIATE RELEASE**  
November 2, 2020

**SOLAR INCOME FUND INC.,  
ALLAN GROSSMAN,  
CHARLES MAZZACATO, and  
KENNETH KADONOFF,  
File No. 2019-35**

**TORONTO** – Take notice of the following merits hearing date changes in the above named matter:

- (1) the merits hearing scheduled to be heard on February 25 and 26, 2021 will not proceed as scheduled; and
- (2) the merits hearing shall commence on March 1, 2021 and continue on March 3-5, 24-26, 29, 31, and April 1, 6-9, 21-22, 2021, at 10:00 a.m. on each day.

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
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## Chapter 2

# Decisions, Orders and Rulings

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### 2.1 Decisions

#### 2.1.1 Irish Residential Properties REIT PLC and Canadian Apartment Properties Real Estate Investment Trust

##### Headnote

Subsection 74(1) – Application for exemption from prospectus requirement in connection with first trade of shares of issuer, acquired by the applicant and certain employees (defined in decision document) on a prospectus exempt basis during the period between April 11, 2014 and November 1, 2017, through exchange or market outside of Canada or to person or company outside of Canada – issuer not a reporting issuer in any jurisdiction in Canada – conditions of the exemption for non-reporting foreign issuer in section 2.15 of National Instrument 45-102 Resale of Securities (and Ontario Securities Commission Rule 72-503 Distributions Outside Canada) not satisfied as issuer did not meet the definition of foreign issuer as defined in the exemption for the relevant period – relief granted subject to conditions, including the issuer is not a reporting issuer in any jurisdiction of Canada on the date of the trade and the trade is made through an exchange or market outside of Canada or to a person or company outside of Canada – applicant can rely on exemption in section 2.15 of NI 45-102 (and s. 2.8 of OSC Rule 72-503) in connection with first trade of shares of issuer distribution on and after November 1, 2017 – existing relief granted to applicants in 2015 revoked upon granting new relief.

##### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74(1).  
Ontario Securities Commission Rule 72-503 Distributions Outside Canada, s. 2.8.  
National Instrument 45-102 Resale of Securities, s. 2.15.

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, C. S.5 AS AMENDED  
(THE ACT)**

**AND**

**IN THE MATTER OF  
IRISH RESIDENTIAL PROPERTIES REIT PLC  
(IRES REIT)  
AND  
CANADIAN APARTMENT PROPERTIES REAL ESTATE INVESTMENT TRUST  
(CAPREIT, AND TOGETHER WITH IRES REIT, THE FILERS)**

**DECISION**

##### Background

The Ontario Securities Commission (the **Commission**) has received an application from the Filers for a decision pursuant to section 74 of the Act for an exemption from the prospectus requirement in section 53 of the Act (the **prospectus requirement**) in connection with the first trades of (i) ordinary shares of IRES REIT (the **Ordinary Shares**) acquired in reliance upon exemptions from the prospectus requirement (**prospectus exemptions**); and (ii) ordinary shares of IRES REIT (the **Incentive Ordinary Shares**) issued by IRES REIT upon the exercise of stock options (or other similar awards) (**Stock Options**) acquired in reliance upon prospectus exemptions, directly or indirectly by:

- (a) CAPREIT (directly or indirectly through its affiliates from time to time); and
- (b) certain individuals who are or were employees, officers, and directors or trustees, as applicable, of IRES REIT, IRES Fund Management Limited (**IRES Fund Management**), CAPREIT, CAPREIT Limited Partnership or their respective affiliates from time to time (the **Employees**).

Specifically, the Filers request relief under the Act from the prospectus requirement for first trades of Ordinary Shares held directly or indirectly by CAPREIT or the Employees and first trades of Incentive Ordinary Shares issued upon the exercise of Stock Options held directly or indirectly by the Employees, where the relevant Ordinary Shares or Stock Options were

distributed during the period beginning on April 16, 2014 and ending immediately prior to November 1, 2017 (the **Transition Date**, and such period referred to as the **Pre-Foreign Issuer Period**), being a period during which time IRES REIT, but for the fact that the chief executive officer was resident in Canada and employed by IRES REIT until the Transition Date, would satisfy the conditions to the Foreign Issuer Exemption (as defined below) under subsections 2.8(2) and (3) of OSC Rule 72-503 *Distributions Outside Canada* (**OSC Rule 72-503**) (the **Requested Relief**).

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined.

### **Representations**

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

#### *CAPREIT and IRES*

1. CAPREIT was formed in 1997 and is an internally-managed, unincorporated, open-ended real estate investment trust governed under the laws of the Province of Ontario. CAPREIT is a reporting issuer in all provinces and territories of Canada and its units are listed for trading on the Toronto Stock Exchange under the symbol "CAR.UN".
2. IRES REIT was incorporated in Ireland on July 2, 2013 as a company under the Irish Companies Act and is domiciled in Ireland. During all relevant periods, its head office has been located in Ireland.
3. IRES REIT is a property investment company which acquires, holds, manages and develops investments primarily focused on residential accommodations and ancillary or strategically located commercial property on the island of Ireland.
4. IRES REIT is externally managed by IRES Fund Management, which is a limited liability corporation governed under the laws of Ireland and is an indirect wholly-owned subsidiary of CAPREIT.
5. IRES REIT is not a reporting issuer in the Province of Ontario or any other province or territory of Canada, nor are any of its securities listed or posted for trading on any exchange or market located in Canada.
6. The Ordinary Shares are listed on the Irish Stock Exchange Public Limited Company, trading as Euronext Dublin (the **Irish Stock Exchange**). IRES REIT is in compliance with all securities laws of Ireland. In addition, IRES REIT is in good standing with the rules of the Irish Stock Exchange.
7. In 2014, IRES REIT completed a €200 million initial offering of its Ordinary Shares (the **Initial Offering**) on the Irish Stock Exchange. In concurrent private placements in various jurisdictions, including in Canada solely in Ontario (the **Ontario Private Placement**), CAPREIT, indirectly through its subsidiary CAPREIT Limited Partnership, beneficially acquired approximately 20% and certain other Canadian investors (comprised primarily of institutional investors qualifying as "permitted clients" as such term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, and to a lesser extent as accredited investors pursuant to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**)), acquired less than 3%, of the outstanding Ordinary Shares in connection with the Initial Offering.
8. In a decision in the matter of Irish Residential Properties REIT Limited (the predecessor to IRES REIT) dated April 11, 2014, the Commission provided relief from the 10% De Minimis Condition (as defined below) for certain trades in the Ordinary Shares that were acquired by CAPREIT and such other Canadian investors who qualified as "permitted clients" in connection with the Ontario Private Placement. Following the Ontario Private Placement, Ordinary Shares were also acquired, and may continue to be acquired, by CAPREIT (directly or indirectly through its affiliates) on a prospectus-exempt basis pursuant to exemptions available under NI 45-106 or under open market purchases.
9. Ordinary Shares were also acquired, and may continue to be acquired, by the Employees. The Ordinary Shares were acquired by the Employees on a prospectus-exempt basis pursuant to exemptions available under NI 45-106 (including as "accredited investors" or pursuant to section 2.24 of NI 45-106) or under open market purchases. In addition, certain Employees have been issued and may continue to be issued Stock Options.
10. During the Pre-Foreign Issuer Period, the principal executive officer of IRES REIT was ordinarily resident in Canada. However, there were at all times significant senior level functions carried out or supported by individuals resident and in Ireland, including at all times the Chair of the board of directors of IRES REIT (the **IREs REIT Board**), and subject to the ultimate decision-making authority of the IRES REIT Board. On the dates of the distributions on April 16, 2014 and March 26, 2015, in addition to the principal executive officer, who also served as a director, there were three Irish-domiciled directors, one of whom also served at all relevant times as the Chair, and one other Canadian-domiciled director.



11. While the principal executive officer during the Pre-Foreign Issuer Period would have been considered to be ordinarily resident in Canada, he was not carrying out his duties exclusively from Canada. For example, he attended board meetings in Ireland and carried out other functions while in Ireland. During such time, key functions or positions were held at various times by individuals based in Ireland and carried out from Ireland.
12. On and as of the Transition Date, a majority of the executive officers of IRES REIT have been ordinarily resident outside of Canada and the IRES REIT Board has been constituted of a majority of directors who are ordinarily resident outside of Canada. The position of Chair has also at all times been fulfilled by an individual who is not a Canadian resident.
13. With respect to the IRES REIT Board in particular:
  - (a) from November 1, 2017 to June 1, 2018 there were five directors who would be considered to be ordinarily resident outside of Canada and one director who would be considered to be ordinarily resident in Canada (being the former principal executive officer after his resignation as chief executive officer of IRES REIT); and
  - (b) from June 1, 2018 to the present there have been six directors who would be considered to be ordinarily resident outside of Canada and one director who would be considered to be ordinarily resident in Canada, being initially the former principal executive officer after his resignation as chief executive officer of IRES REIT and thereafter the individual who replaced him on the IRES REIT Board.
14. As a real estate investment trust, key functions relating to operations and investment management of IRES REIT are carried out by the investment manager, being IRES Fund Management. IRES Fund Management is and at all relevant times has been an entity organized and existing under the laws of Ireland, with its head office and principal place of business in Ireland.
15. Material aspects of the business of IRES REIT are first reviewed by the board of IRES Fund Management, and then recommended for approval by the IRES REIT Board. As such, ultimate decision-making authority rests with the IRES REIT Board over matters such as acquisitions and dispositions, lending, capital raising, investment and material leasing matters.

*The 2015 Decision*

16. Pursuant to a decision of the Commission dated October 16, 2015 (the **2015 Decision**), the Commission granted relief pursuant to section 74 of the Act from the prospectus requirement under section 53 of the Act for first trades of Ordinary Shares acquired in reliance upon prospectus exemptions and first trades of Incentive Ordinary Shares acquired upon the exercise of Stock Options acquired in reliance upon prospectus exemptions.
17. Specifically, the 2015 Decision granted relief in respect of Ordinary Shares and Incentive Ordinary Shares acquired directly or indirectly by (a) CAPREIT (directly or indirectly through its affiliates) from time to time, (b) the Employees and (c) a specific Employee, being a Canadian-resident trustee (the **Trustee**) of CAPREIT (collectively, the **Existing Relief**).
18. The Existing Relief was granted with conditions based on subsections 2.14(1) and (2) of National Instrument 45-102 *Resale of Securities* (**NI 45-102**). Subsection 2.14(1) of NI 45-102 provides an exemption from the prospectus requirement for the first trade in securities of a non-reporting issuer distributed under a prospectus exemption, provided that certain conditions are met including that at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada:
  - (a) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and
  - (b) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series (collectively, the **10% De Minimus Condition**).
19. Subsection 2.14(2) of NI 45-102 provides similar relief for the first trade in underlying securities of a non-reporting issuer where the convertible, exchangeable or multiple convertible security that directly or indirectly entitled or required the holder to acquire the underlying securities is distributed under a prospectus exemption. Paragraph 2.14(2)(c) of NI 45-102 requires that the 10% De Minimus condition would have been satisfied for the underlying security at the time of the initial distribution of the relevant convertible security, exchangeable security or multiple convertible security.
20. The 2015 Decision permitted the exclusion of the Ordinary Shares and Incentive Ordinary Shares beneficially owned by CAPREIT and the Employees (including the Trustee) for the purposes of calculating the 10% De Minimus Condition, thereby exempting the first trades of the Ordinary Shares and Incentive Ordinary Shares acquired by CAPREIT (directly or indirectly through its affiliates) and the Employees (including the Trustee) on a prospectus-exempt basis

from time to time from the prospectus requirement, provided (among other things) that such trades were made through an exchange or market outside of Canada, or to a person or company outside of Canada, such that the 10% De Minimus Condition would be satisfied based on the holdings of Canadian investors other than the indirect holdings of CAPREIT and the Employees (including the Trustee).

21. As of June 30, 2020, CAPREIT (directly or indirectly through its affiliates) beneficially held 95,510,000 Ordinary Shares or 18.3% of the issued and outstanding Ordinary Shares as of such date.
22. CAPREIT (directly or indirectly through its affiliates) currently intends to maintain an ownership of between 10% and 25% of the issued and outstanding Ordinary Shares from time to time given its strategic position in, and relationship with, IRES REIT and will therefore subscribe, purchase or acquire additional Ordinary Shares of IRES REIT from time to time in order to do so.
23. At all relevant times, all Canadian resident Employees and the Canadian resident Trustee have been resident in Ontario.
24. The Existing Relief will expire October 16, 2020, except with respect to the first trades of any Incentive Ordinary Shares acquired, directly or indirectly, by the Employees (including the Trustee) provided the related Stock Option was granted or issued on or prior to the fifth anniversary date of the 2015 Decision. This exception was intended to allow for prospectus-exempt first trades of Incentive Ordinary Shares issuable upon the exercise of Stock Options acquired by Employees before October 16, 2020.

*The June 2018 Amendments*

25. Effective June 12, 2018, NI 45-102 was amended to include a new exemption from the prospectus requirement in subsection 2.15(2) of NI 45-102, for first trades of securities distributed under an exemption from the prospectus requirement if:
  - (a) the issuer of the security was a foreign issuer on the distribution date, where “foreign issuer” means an issuer that is not incorporated or organized under the laws of Canada, or a jurisdiction of Canada, unless the issuer has its head office in Canada or the majority of the executive officers or directors of the issuer ordinarily reside in Canada (the **Foreign Issuer Requirement**);
  - (b) the issuer of the security:
    - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
    - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade; and
  - (c) the trade is made:
    - (i) through an exchange, or a market, outside of Canada, or
    - (ii) to a person or company outside of Canada.
26. Subsection 2.15(3) of NI 45-102 provides a similar exemption for the first trade of a security underlying an exchangeable or convertible security such as a warrant or stock option distributed under a prospectus exemption. While these exemptions are not available in Ontario under NI 45-102, the same exemptions are available in Ontario under subsections 2.8(2) and (3) of OSC Rule 72-503 which also came into force on June 12, 2018. The exemptions in subsections 2.15(2) and (3) of NI 45-102 and the exemptions in subsections 2.8(2) and (3) of OSC Rule 72-503 (collectively, the **Foreign Issuer Exemption**) are available for first trades in securities that occur on or after June 12, 2018, even if the securities were acquired before June 12, 2018.

*Reasons for the Requested Relief*

27. Ordinary Shares and Incentive Ordinary Shares acquired during the Pre-Foreign Issuer Period, either pursuant to prospectus exemptions under NI 45-106 or under open market purchases, continue to be held by CAPREIT (indirectly through its affiliates) and may continue to be held by the Employees (including the Trustee). Stock Options acquired pursuant to prospectus exemptions during the Pre-Foreign Issuer Period continue to be held by Employees.
28. Where Ordinary Shares, Incentive Ordinary Shares, or Stock Options were issued during the Pre-Foreign Issuer Period, the first trade in Canada of Ordinary Shares or Incentive Ordinary Shares acquired by CAPREIT (directly or indirectly through its affiliates) or the Employees in reliance upon a prospectus exemption would be deemed a distribution pursuant to NI 45-102 unless, among other things, IRES REIT has been a reporting issuer for the four months immediately preceding the trade. Since IRES REIT is not a reporting issuer in any jurisdiction of Canada, the prospectus exemptions contained in sections 2.5 and 2.6 of NI 45-102 will not be available for any such first trade by CAPREIT (directly or indirectly through its affiliates) or the Employees.

## Decisions, Orders and Rulings

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29. As noted above, the Existing Relief will expire on October 16, 2020, except with respect to certain first trades of Incentive Ordinary Shares issued upon exercise of Stock Options granted to Employees prior to the fifth anniversary date of the 2015 Decision. Rather than obtain a renewal of the Existing Relief (with conditions based on subsections 2.14(1) and (2) of NI 45-102), the Filers would like to obtain the Requested Relief (with conditions based on the Foreign Issuer Exemption).
30. During the Pre-Foreign Issuer Period, IRES REIT did not satisfy the Foreign Issuer Requirement as its principal executive officer was an individual who was ordinarily resident in Canada. As of the Transition Date, IRES REIT has satisfied the Foreign Issuer Requirement.
31. Insofar as section 2.15 of NI 45-102 and section 2.8 of OSC Rule 72-503 require that the issuer be a foreign issuer “on the distribution date”, IRES REIT meets this condition for any Ordinary Shares, Incentive Ordinary Shares or Stock Options distributed following the Transition Date. As such, CAPREIT (and its affiliates) and the Employees would be able to rely on section 2.15 of NI 45-102 and section 2.8 of OSC Rule 72-503 in respect of such distributions. In these circumstances, the first trades of Ordinary Shares acquired by CAPREIT (and its affiliates) since the Transition Date, and issued upon exercise of Stock Options acquired by the Employees since the Transition Date, are exempted from the prospectus requirement on the basis that the conditions to the Foreign Issuer Exemption are and continue to be satisfied.

### *Foreign Issuer Status*

32. But for the chief executive officer who was resident in Canada and employed by IRES REIT until the Transition Date, IRES REIT would satisfy the Foreign Issuer Requirement during the Pre-Foreign Issuer Period in respect of any distributions of Ordinary Shares distributed in reliance upon prospectus exemptions, or Incentive Ordinary Shares issued upon exercise of Stock Options acquired by the Employees in reliance upon prospectus exemptions during such period.
33. Although the chief executive officer of IRES REIT was resident in Canada during the Pre-Foreign Issuer Period, the sole mind and management would not have been considered to be in Canada as there was at all times significant senior level functions carried out or supported by Irish-domiciled individuals, including at all times the Chair of the IRES REIT Board, and subject to the ultimate decision-making authority of the IRES REIT Board.
34. During the Pre-Foreign Issuer Period, IRES REIT had a minimal connection to Canada for the reasons set out in paragraphs 2, 3, 5, 6, 11, 14, 15, 32 and 33 of this decision.
35. IRES REIT does not intend to become a reporting issuer in any jurisdiction in Canada, nor will its securities be listed or quoted on any exchange or market in Canada. As such, no market for the Ordinary Shares or Incentive Ordinary Shares is expected to develop in Canada. It is intended that any first trades of the Ordinary Shares or Incentive Ordinary Shares will be effected through the facilities of the Irish Stock Exchange, or to a person or company outside of Canada, in accordance with the rules and regulations of such foreign jurisdiction, and, in either case, will therefore not have any connection to the investing Canadian public.
36. As IRES REIT is currently a “foreign issuer” as such term is defined in section 2.15 of NI 45-102 and section 2.8 of OSC Rule 72-503 (including that its head office is not in Canada and a majority of its executive officers or directors are not ordinarily resident in Canada) and satisfies each of the conditions set out in subsections 2.15(2) and (3) of NI 45-102 and section 2.8 of OSC Rule 72-503, granting the Requested Relief would allow for consistency with respect to distributions undertaken during all relevant periods (since April 16, 2014).

### **Decision**

The Commission is satisfied that granting the Requested Relief would not be prejudicial to the public interest.

The decision of the Commission is that the Requested Relief is granted, provided that:

- (a) with respect to the first trade of Ordinary Shares issued to CAPREIT (and its affiliates) and the Employees in reliance on prospectus exemptions during the Pre-Foreign Issuer Period,
  - (i) IRES REIT is not a reporting issuer in any jurisdiction of Canada on the date of the trade; and
  - (ii) the trade is made:
    - (A) through an exchange, or a market, outside of Canada, or
    - (B) to a person or company outside of Canada; and
- (b) with respect to the first trade of Incentive Ordinary Shares issued upon the exercise of Stock Options issued to

the Employees during the Pre-Foreign Issuer Period,

- (i) IRES REIT is not a reporting issuer in any jurisdiction of Canada on the date of the trade; and
- (ii) the trade is made:
  - (A) through an exchange, or a market, outside of Canada, or
  - (B) to a person or company outside of Canada.

The further decision of the Commission is that the Existing Relief is revoked.

**DATED** this 13th day of October, 2020.

“Tim Moseley”  
Vice-Chair  
Ontario Securities Commission

“Heather Zordel”  
Commissioner  
Ontario Securities Commission

## 2.1.2 Timbercreek Investment Management Inc. and Timbercreek Global Real Estate Income Fund

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval for change of control of manager under s. 5.5(1)(a.1) of National Instrument 81-102 Investment Funds – transaction will not result in any material changes to operations and management of the manager or the funds it manages.

### Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(a.1) and 5.5(3).

August 25, 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  
TIMBERCREEK INVESTMENT MANAGEMENT INC.  
(the Manager)

AND

IN THE MATTER OF  
TIMBERCREEK GLOBAL REAL ESTATE INCOME FUND  
(the Fund)

**DECISION**

### Background

The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Manager for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for approval pursuant to subsection 5.5(1)(a.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of a change of control of the Manager (the **Approval 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 Manager 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (the **Other Jurisdictions** and together with Ontario, the **Jurisdictions**).

### Interpretation

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

### Representations

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

*The Manager and the Fund*

1. The Manager is a corporation incorporated under the laws of the Province of Ontario. The Manager's head office is located in Ontario.
2. The Manager is registered: (a) as an exempt market dealer in the provinces of Ontario, British Columbia, Alberta, Manitoba and Quebec, (b) as a portfolio manager in the province of Ontario, and (c) as an investment fund manager in the provinces of Ontario, Quebec and Newfoundland and Labrador.
3. The Manager is the investment fund manager and trustee of the Fund and provides investment advice and portfolio management services to the Fund.
4. The Fund is a reporting issuer in the Jurisdictions. Several series of mutual fund units of the Fund are qualified for distribution in the Jurisdictions by a simplified prospectus and annual information form.
5. The Fund is marketed and distributed through registered dealers.
6. Neither the Manager nor the Fund is in default of any of the securities law requirements of the Jurisdictions.

*The Proposed Transaction*

7. The Manager is part of the Timbercreek group of companies (the **Timbercreek Group**). On March 9, 2020, as part of a pending reorganization of the Timbercreek Group, Timbercreek Asset Management LLC (**TAML**), the sole shareholder of the Manager, entered into an agreement to transfer all of the voting shares in the Manager to Timbercreek Equities Corp. (**TEC**) (the **Transaction**).
8. Prior to completion of the Transaction, the co-founders of the Timbercreek Group Messrs. Blair Tamblyn and Ugo Bizzarri hold 87.5% and 3% respectively of 5030987 Ontario Limited (the **Numbered Company**), the sole shareholder of TAML. The remaining 9.5% interest in the Numbered Company is held by various shareholders (the **Minority Shareholders**).
9. Upon completion of the Transaction, Mr. Bizzarri will hold 100% of Tre Lupi Inc. (Ontario), which will be the sole shareholder of TEC, and TEC will be the sole shareholder of the Manager. The Transaction will result in a change of control of the Manager, since the percentage of the Manager's voting shares indirectly held by Mr. Bizzarri will increase from 3% to 100%. Mr. Tamblyn will no longer have rights of control in respect of the Manager, and the Minority Shareholders will no longer hold any interest in the Manager.
10. Completion of the Transaction will complete the reorganization of the Timbercreek Group into two distinct operating businesses, comprising (i) non-bank private commercial real estate debt financing (the **Debt Business**), and (ii) direct real estate asset management and securities advisory services (the **Equity Business**), such that TAML, through a wholly-owned subsidiary, would operate the Debt Business, and Mr. Bizzarri would take ownership of the Equity Business through TEC, his indirectly wholly-owned holding company.
11. The completion of the Transaction is subject to the satisfaction of closing conditions, including regulatory approvals and is expected to close following receipt of the regulatory approvals and the expiration of the notice period provided for in section 5.8(1)(a) of NI 81-102.

*Proposed Change of Control*

12. The Transaction will result in a change of control of the Manager.
13. The current directors of the Manager are Blair Tamblyn, Cameron Goodnough, Carrie Morris and Corrado Russo. The current officers of the Manager are Blair Tamblyn, Gigi Wong and Timothy Fitzpatrick. It is anticipated that Blair Tamblyn will resign as Ultimate Designated Person (**UDP**) and Chief Executive Officer (**CEO**) and Ugo Bizzarri will be appointed UDP and CEO of the Manager following the closing of the Transaction and will have overall responsibility for the investment management activities of the Manager. Timothy Fitzpatrick will continue in his capacity as Chief Compliance Officer.
14. Although the Manager does not consider the change of control material, a press release describing the Transaction will be issued by the Manager. An amendment to the Fund's Simplified Prospectus and Annual Information Form dated June 26, 2020 describing the Transaction was received on June 26, 2020.
15. TEC and the Manager confirm that TEC intends to undergo a rebranding project within 3 to 6 months of the date hereof, which will include a change of name of the Manager, and of TEC, under the new brand. TEC intends to effect the Transaction on or about the date of the launch of the rebranding so as to mitigate any potential confusion among investors.

16. In any event, at least 60 days prior written notice describing the Transaction and the resulting change of control will be sent to securityholders of the Fund after receipt of all regulatory approvals, pursuant to section 5.8(1)(a) of NI 81-102 (the **Notice Requirement**). The Transaction will not close and the change of control will not be effected prior to completion of the notice period set out in the Notice Requirement.
17. In respect of the impact of the proposed change of control of the Manager on the management and administration of the Fund:
  - a. TEC and the Manager confirm that for at least the foreseeable period of approximately twelve months following the change of control, the Manager will be operated as a distinct, stand-alone legal entity and there is no current intention to:
    - i. make any substantive changes to how the Manager operates or manages the Fund;
    - ii. merge the Fund or change the structure, investment objective, investment strategies or valuation procedures of the Fund;
    - iii. amalgamate or merge the Manager with another investment fund manager;
    - iv. change the investment fund manager or portfolio manager of the Fund;
    - v. change the individual portfolio manager of the Manager (currently Corrado Russo) who is responsible for managing the investment portfolio of the Fund;
    - vi. change the fees and expenses that are charged to the Fund and investors in the Fund;
    - vii. rationalize personnel or systems;
    - viii. except as referred to in representation 13, change any of the directors, officers or employees involved in any of the day-to-day business, operations or affairs of the Manager or the Fund, other than as a result of ordinary course personnel turnover;
    - ix. make changes to fund accounting and other administrative functions undertaken by the current providers, both internal and external, to the Manager or the Fund; or
    - x. make changes to the custodian of the Fund.
  - b. The change of control of the Manager will have no negative consequences on the ability of the Manager to comply with all applicable regulatory requirements or its ability to satisfy its obligations to the Fund.
  - c. The Manager currently intends to maintain the Fund as a separately managed fund, with the Manager as the Fund's investment fund manager and portfolio manager, after the Transaction closes.
  - d. The Transaction will not result in any material change in how the Manager operates or acts in relation to the Fund. The Transaction will not have any impact on the securityholders' interest in the Fund and securityholders are not required to take any action.
  - e. Following the closing of the Transaction, the Manager will continue to act as the investment fund manager and portfolio manager of the Fund in the same manner as it conducted such activities immediately prior to the closing of the Transaction.
  - f. All directors and officers of the Manager following closing of the Transaction have the requisite integrity and experience to fulfil their roles. Mr. Bizzarri has over 25 years of experience in the valuation, acquisition and disposition of investment-grade cash-flowing real estate relevant to the Fund's strategy of investing in securities issued by real estate investment trusts and other real estate investment issuers. Prior to co-founding the Timbercreek Group, Mr. Bizzarri was in portfolio management at the Ontario Teachers' Pension Plan Board where he played a leadership role in the strategic planning, corporate transactions/restructuring and property acquisitions for the real estate group. Mr. Bizzarri is an independent Director of Cymbria Corp., an investment manager. Mr. Bizzarri is a graduate of the Ivey School of Business and holds the Chartered Financial Analyst designation.
  - g. Although the current members of the Fund's independent review committee (**IRC**) will automatically cease to be members of the IRC by operation of section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds* upon the closing of the Transaction, the Manager intends to reappoint them immediately after the closing of the Transaction.

- h. The Transaction is not expected to adversely impact the financial stability of the Manager or its ability to fulfill its regulatory obligations.

**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 Approval Sought is granted.

“Darren McKall”  
Manager  
Investment Funds and Structured Products Branch  
Ontario Securities Commission



**2.1.3 WhiteHaven Securities Inc. and WhiteHaven Asset Management Inc.**

**Headnote**

Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for the individual to be registered with both firms. The individual will have sufficient time to adequately serve both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition.

**Applicable Legislative Provisions**

Multilateral Instrument 11-102 Passport System, s. 4.7.  
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1 and 15.1.

October 28, 2020

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

**AND**

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

**AND**

**IN THE MATTER OF  
WHITEHAVEN SECURITIES INC.  
(WHS)**

**AND**

**IN THE MATTER OF  
WHITEHAVEN ASSET MANAGEMENT INC.  
(WHAM)**

**(collectively, the Filers)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirement in paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), pursuant to section 15.1 of NI 31-103, to authorize Mr. Athanasios Baltzis to register as an advising representative for WHAM, in addition to his current

registration as dealing representative with WHS (the **Exemption Sought**).

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

1. the *Autorité des marchés financiers* (the **AMF**) is the principal regulator for this application; and
2. the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta and British Columbia;
3. the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

**Representations**

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

**WHAM**

1. WHAM is a corporation incorporated under the *Canada Business Corporations Act*. Its head office is located at 1595 Boulevard Daniel-Johnson, Suite 300, Laval, Quebec, H7V 4C2.
2. WHAM is a subsidiary of WhiteHaven Holding Inc.
3. WHAM is registered in the categories of investment fund manager and portfolio manager in Quebec, Ontario, Alberta and British Columbia. It is also registered in the category of derivatives portfolio manager in Québec.
4. WHAM is not in default of any requirements of securities legislation in any jurisdiction of Canada.

**WHS**

5. WHS is a corporation incorporated under the *Business Corporations Act* (Québec). Its head office is located at 1595 Boulevard Daniel-Johnson, Suite 300, Laval, Quebec, H7V 4C2.
6. WHS is a subsidiary of WhiteHaven Holding Inc. and is therefore an affiliate of WHAM.
7. WHS is registered in the categories of exempt market dealer in Alberta, British Columbia, and Quebec. It is also registered in the category of mutual fund dealer in Quebec.
8. WHS is not in default of any requirements of securities legislation in any jurisdiction of Canada.

**Spin-Off**

9. WHS was required to surrender its registration as portfolio manager in order to become a member of the Mutual Fund Dealers Association of Canada (the **MFDA**) as the MFDA had requested that WHS no longer be registered as portfolio manager.
10. Consequently, on November 30, 2016, (the **Closing Date**), WHS completed the spin-off of its management business to a newly formed entity (WHAM) (the **Spin-off**) in order to be able to surrender its registration as portfolio manager in Alberta, in British Columbia and Quebec after the Spin-off.
11. As part of the Spin-off, portfolio managers registered with WHS and their clients were transferred to WHAM.
12. Mr. Baltzis is currently registered as dealing representative (exempt market dealer) in Ontario and Quebec, dealing representative (mutual fund dealer) in Quebec and ultimate designated person (**UDP**) in Quebec, Ontario, Alberta and British Columbia for WHS.
13. Additionally, Mr. Baltzis is currently registered as UDP in Quebec, Ontario, Alberta and British Columbia for WHAM.
14. Mr. Baltzis is currently director, president and chief executive officer of WHS and director and president of WHAM.
15. If the Exemption Sought is granted, Mr. Baltzis would also act as advising representative for WHAM.

**Mr. Baltzis' registration as advising representative for WHAM**

16. WHAM's clients would benefit from the Exemption Sought as they will have better access to a duly registered advising representative.
17. The interests of the Filers are aligned as a significant number of the clients of WHS will also be clients of WHAM; as the Filers will carry out distinct but complimentary business-lines to fully service the needs of their generally shared clients, and as both Filers are affiliates. As a result, the potential for conflicts of interest arising from the dual registration of Mr. Baltzis is very remote.
18. The dual registration of Mr. Baltzis is less likely to give rise to the conflicts of interest that may be present in a similar arrangement involving unrelated, arm's length firms.
19. Mr. Baltzis will have sufficient time to adequately serve both Filers. The management teams of the Filers, which are identical, will ensure that Mr. Baltzis continues to have sufficient time to adequately serve each Filer and will mitigate the risk of conflicts of interest.

20. Mr. Baltzis will act fairly, honestly and in good faith and in the best interests of the clients of each Filer.
21. The Filers will have the same CCO and appropriate compliance and supervisory policies and procedures in place to monitor the conduct of its registered individuals, including any material conflicts of interest that may arise as a result of the dual registration of Mr. Baltzis. In particular, Mr. Baltzis will be subject to the supervisory, and the applicable compliance, requirements of each of the Filers.
22. The Filers will be able to appropriately deal with any conflict arising out of the dual registration, as the case may be. The Filers currently share a CCO and they have been able to deal with any potential conflicts of interest.
23. In order to minimize any client confusion, WHAM, WHS and Mr. Baltzis will disclose the fact that Mr. Baltzis is registered with both firms, and the relationship between WHAM and WHS will be explained to clients. This disclosure will be made in writing prior to Mr. Baltzis providing services to clients of each of the Filers.

**Decision**

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

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

- (a) Mr. Baltzis is subject to supervision by, and the compliance requirements of, both Filers;
- (b) The Chief Compliance Officer of the Filers ensures that Mr. Baltzis has sufficient time and resources to adequately serve each Filer and its respective clients;
- (c) Each Filer has adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the Dual Registration of Mr. Baltzis, and deal appropriately with any such conflicts; and
- (d) The relationship between the Filers and the fact that Mr. Baltzis is dually registered with both of them is fully disclosed in writing to clients of each of them that deal with the advising representative.

"Frédéric Pérodeau"  
Superintendent, Client Services and Distribution Oversight

## 2.1.4 Ninepoint Partners LP

### Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Funds offering exchange-traded classes/series and conventional mutual fund classes/series within same fund structure – Relief granted from subparagraph 2.6(1)(a)(i) of NI 81-102 to allow mutual funds to borrow cash from their custodian to fund the portion of any distributions payable under the mutual funds' distribution policy that represents amounts that are owing to, but not yet been received by, the mutual funds – Technical relief granted from Parts 9, 10 and 14 of NI 81-102 to permit each fund to treat its exchange-traded classes/series and conventional mutual fund classes/series as if each such class/series was a separate fund for the purpose of compliance with Parts 9, 10 and 14 of NI 81-102 – National Instrument 81-102 Investment Funds.

### Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, paragraph 2.6(1)(a), Parts 9, 10 and 14, and s. 19.1.

October 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

NINEPOINT PARTNERS LP  
(the Filer)

DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each of the funds listed on Schedule A hereto being a mutual fund (collectively, the **Existing Mutual Funds**) or an alternative mutual fund (collectively, the **Existing Alternative Mutual Funds**, and together with the Existing Mutual Funds, the **Existing Funds**) and such other mutual funds (collectively with the Existing Mutual Funds, the **Mutual Funds**) or alternative mutual funds as are managed and may be managed by the Filer now or in the future that offer ETF Securities (as defined below) and Mutual Fund Securities (as defined below) (collectively with the Existing Funds, the **Funds**, and each a **Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that grants exemptive relief to the Filer and each Fund as set forth below (collectively, the **Exemptions Sought**):

- (a) an exemption from subparagraph 2.6(1)(a)(i) of National Instrument 81-102 *Investment Funds (NI 81-102)* (the **Borrowing Restriction**) to permit each Mutual Fund to borrow cash from the custodian of the Mutual Fund (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Mutual Fund; and
- (b) an exemption from the provisions of Parts 9, 10 and 14 of NI 81-102 (the **Sales and Redemptions Requirements**) to permit the Filer and each Fund to treat the ETF Securities and the Mutual Fund Securities (as defined below) as if such securities were separate funds for the purposes of compliance with the provisions of the Sales and Redemptions Requirements

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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in all of the provinces and territories of Canada other than Ontario (together with Ontario, the **Jurisdictions**).

### Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 81-102 and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

**Affiliate Dealer** means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

**Authorized Dealer** means a registered dealer that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

**Basket of Securities** means, in relation to the ETF Securities of a Fund, a group of securities or assets representing the constituents of the Fund.

**Designated Broker** means a registered dealer that has entered, or intends to enter, into an agreement with the Filer or an affiliate of the Filer on behalf of a Fund to

perform certain duties in relation to the ETF Securities of the Fund, including the posting of a liquid two-way market for the trading of the Fund's ETF Securities on the NEO Exchange or another Marketplace.

**ETF Securities** means securities of an exchange-traded class or series of a Fund that are listed or will be listed on the NEO Exchange or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

**Form 81-101F1** means Form 81-101F1 *Contents of Simplified Prospectus*.

**Marketplace** means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* that is located in Canada.

**Mutual Fund Securities** means securities of a non-exchange-traded class or series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

**NEO Exchange** means the Aequis NEO Stock Exchange.

**NI 81-101** means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

**Other Dealer** means a registered dealer that is not an Authorized Dealer, Designated Broker or Affiliate Dealer.

**Prescribed Number of ETF Securities** means, in relation to a Fund, the number of ETF Securities of the Fund determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

**Prospectus Delivery Requirement** means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

**Securityholders** means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

### Representations

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

#### **The Filer**

1. The Filer is a limited partnership under the laws of the Province of Ontario.
2. The head office of the Filer is located at Royal

Bank Plaza, South Tower, 200 Bay Street, Suite 2700, P. O. Box 27, Toronto, Ontario, M5J 2J1.

3. The Filer is the investment fund manager of the Funds. The Filer is registered under the securities legislation: (i) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as an adviser in the category of portfolio manager; (ii) in Ontario, Newfoundland and Labrador and Quebec as an investment fund manager; and (iii) in British Columbia, Alberta, Quebec, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as a dealer in the category of exempt market dealer. The Filer is also registered in Ontario as a commodity trading manager.
4. The Filer is, or will be, the investment fund manager of each Fund.
5. The Filer is not in default of securities legislation in any of the Jurisdictions.

#### **The Funds**

6. Each Fund is, or will be, a mutual fund structured as a trust or a corporation or a class thereof that is governed by the laws of a Jurisdiction. Each Fund is, or will be, a reporting issuer in the Jurisdictions in which its securities are distributed. Each Existing Fund offers Mutual Fund Securities and each Fund will offer ETF Securities.
7. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.
8. The Existing Mutual Funds, and one of the Existing Alternative Mutual Funds, Ninepoint Return Advantaged U.S. Equity Index Class, currently offer Series A, Series F, Series I and Series D Mutual Fund Securities. Certain Existing Mutual Funds also offer Series T, Series FT, Series P, Series PT, Series PF, Series PFT, Series Q, Series QT, Series QF and Series QFT Mutual Fund Securities, as applicable. These Mutual Fund Securities are currently distributed under a simplified prospectus and annual information form, each dated April 21, 2020, as amended on May 27, 2020 and as amended and restated on August 7, 2020.
9. The Existing Alternative Mutual Funds, other than Ninepoint Return Advantaged U.S. Equity Index Class, currently offer Series A, Series F, Series QF, Series I and Series D Mutual Fund Securities. One of the Existing Alternative Mutual Funds, Ninepoint FX Strategy Fund, also currently offers Series A1 and Series F1 Mutual Fund Securities.

These Mutual Fund Securities are currently distributed under a simplified prospectus and annual information form, each dated November 8, 2019, as amended on April 9, 2020 and May 1, 2020.

10. On or about October 28, 2020, an amended and restated prospectus in respect of the Mutual Fund Securities and the ETF Securities of certain Existing Mutual Funds, as well as fund facts documents for each series of Mutual Fund Securities and ETF facts documents for each series of ETF securities of certain Existing Mutual Funds, will be filed with the securities regulatory authorities in each of the Jurisdictions.
11. The Filer will apply to list any ETF Securities of a Fund on the NEO Exchange or another Marketplace and will not file a final prospectus or amendment to a prospectus for a Fund in respect of the ETF Securities until the NEO Exchange or other applicable Marketplace has conditionally approved the listing of such ETF Securities.
12. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through mutual fund dealers, investment dealers and their representatives that are registered under applicable securities legislation in the jurisdiction of Canada in which they are offered for sale.
13. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the NEO Exchange or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the NEO Exchange or another Marketplace.
14. In addition to subscribing for and re-selling their Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.
15. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash with a value equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.
16. Upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker may be contractually required to subscribe for Creation Units of a Fund for cash in an amount not to exceed a specified percentage of the net asset value of the Fund or such other amount established by the Filer.
17. The Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with a subscription for Creation Units. On the issuance of Creation Units, the Filer or a Fund may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.
18. Each Fund will appoint a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for its ETF Securities for the purpose of maintaining liquidity for the ETF Securities.
19. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities will not be available for purchase directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the NEO Exchange or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.
20. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the NEO Exchange or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash at the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the NEO Exchange or other Marketplace on the date of redemption, subject to a maximum

redemption price of the applicable net asset value per ETF Security.

*Borrowing Restriction*

21. Subparagraph 2.6(1)(a)(i) of NI 81-102 prevents a mutual fund from borrowing cash or providing a security interest over its portfolio assets unless the transaction is a temporary measure to accommodate redemption requests or to settle portfolio transactions and does not exceed five percent of the net assets of the mutual fund. As a result, a Mutual Fund is not permitted under subparagraph 2.6(1)(a)(i) to borrow from the Custodian to fund distributions under its Distribution Policy (as defined below).
22. Each Mutual Fund will make distributions on a monthly or annual basis or at such frequency as the Filer may, in its discretion, determine appropriate, may make additional distributions and, in each taxation year, will distribute sufficient net income and net realized capital gains so that it will not be liable to pay income tax under Part I of the *Income Tax Act* (Canada) (the **Tax Act**), and for each Mutual Fund structured as a corporation or a class thereof, under Part IV of the Tax Act on taxable dividends from taxable Canadian corporations (collectively, the **Distribution Policy**).
23. Amounts included in the calculation of net income and net realized capital gains of a Mutual Fund for a taxation year that must be distributed in accordance with its Distribution Policy sometimes include amounts that are owing to but have not actually been received by the Mutual Fund from the issuers of securities held in the Mutual Fund's portfolio (**Issuers**).
24. While it is possible for a Mutual Fund to maintain a portion of its assets in cash or to dispose of securities in order to obtain any cash necessary to make a distribution in accordance with its Distribution Policy, maintaining such a cash position or making such a disposition (which would generally be followed, when the cash is actually received from the Issuers, by an acquisition of the same securities) will impact the Mutual Fund's performance. The needs to maintain assets in cash or dispose of and reacquire the same securities would preclude a portion of the net asset value of the Mutual Fund from being invested in accordance with its investment objective.
25. The Filer is of the view that it is in the interests of a Mutual Fund to have the ability to borrow cash from its Custodian and, if required by the Custodian, to provide a security interest over its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders that represents, in the aggregate, amounts that are owing to, but have not yet been

received by, the Mutual Fund from Issuers. While such borrowing will have a cost, the Filer expects that such costs will be less than the reduction to the Mutual Fund's performance if the Mutual Fund had to hold cash or to dispose of and reacquire securities in order to fund the distribution.

*Sales and Redemptions Requirements*

26. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Exemption Sought in respect of the Sales and Redemptions Requirements, the Filer and the Funds would not be able to technically comply with those parts of NI 81-102.
27. The Exemption Sought will permit the Filer and the Funds to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds for the purposes of their compliance with the Sales and Redemptions Requirements. The Exemption Sought will enable each of the ETF Securities and Mutual Fund Securities to comply with the Sales and Redemptions Requirements as appropriate for the type of security being offered.

**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.

1. The decision of the principal regulator under the Legislation is that the Exemption Sought from the Borrowing Restriction is granted, provided that each Mutual Fund will be in compliance with the following conditions:
  - a. the borrowing by the Mutual Fund in respect of a distribution does not exceed the portion of the distribution that represents, in the aggregate, amounts that are payable to the Mutual Fund but have not been received by the Mutual Fund from the Issuers and, in any event, does not exceed five percent of the net assets of the Mutual Fund;
  - b. the borrowing is not for a period longer than 45 days;
  - c. any security interest in respect of the borrowing is consistent with industry practice for the type of borrowing and is only in respect of amounts owing as a result of the borrowing;
  - d. the Mutual Fund does not make any distribution to Securityholders where the distribution would impair the Mutual Fund's ability to repay any borrowing to fund distributions; and

- e. the final prospectus or amendment thereto of the Mutual Fund discloses the potential borrowing, the purpose of the borrowing and the risks associated with the borrowing.
2. The decision of the principal regulator under the Legislation is that the Exemption Sought in respect of the Sales and Redemptions Requirements is granted, provided that each Fund will be in compliance with the following conditions:
- a. with respect to its Mutual Fund Securities, the Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and
  - b. with respect to its ETF Securities, the Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

“Darren McKall”  
Manager, Investment Funds & Structured Products  
Ontario Securities Commission

**SCHEDULE A**

**Existing Mutual Funds**

Ninepoint Diversified Bond Fund  
Ninepoint Energy Fund  
Ninepoint Global Infrastructure Fund  
Ninepoint Global Real Estate Fund  
Ninepoint Gold and Precious Minerals Fund  
Ninepoint High Interest Savings Fund  
Ninepoint Alternative Health Fund  
Ninepoint International Small Cap Fund  
Ninepoint Concentrated Canadian Equity Fund  
Ninepoint Diversified Bond Class\*  
Ninepoint Resource Class\*  
Ninepoint Silver Equities Class\*  
Ninepoint Risk Advantaged U.S. Equity Index Class\*  
Ninepoint Focused Global Dividend Class\*  
Ninepoint Gold Bullion Fund  
Ninepoint Silver Bullion Fund

**Existing Alternative Mutual Funds**

Ninepoint FX Strategy Fund  
Ninepoint Alternative Credit Opportunities Fund  
Ninepoint Return Advantaged U.S. Equity Index Class\*

\*A class of shares of Ninepoint Corporate Class Inc.

2.1.5 Ninepoint Partners LP

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to facilitate the offering of exchange-traded classes/series and conventional mutual fund classes/series within same fund structure – Relief to permit funds’ prospectus to not include an underwriter’s certificate – Relief from take-over bid requirements for normal course purchases of securities of exchange-traded series on the NEO Exchange or other marketplace – Relief granted for exchange-traded classes/series to be offered under a simplified prospectus – Relief permitting exchange-traded classes/series and conventional mutual fund classes/series to be disclosed in the same simplified prospectus – National Instrument 41-101 General Prospectus Requirements, National Instrument 62-104 Take-Over Bids and Issuer Bids, Securities Act (Ontario).

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 3.1(2), 5.9 and 19.1.  
National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.  
Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 59(1) and 147.

October 13, 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

NINEPOINT PARTNERS LP  
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each of the funds listed on Schedule A hereto being a mutual fund (collectively, the **Existing Mutual Funds**) or an alternative mutual fund (collectively, the **Existing Alternative Mutual Funds**, and together with the Existing Mutual Funds, the **Existing Funds**) and such other mutual funds or alternative mutual funds as are managed and may be managed by the Filer now or in the future that offer ETF Securities (as defined below) and Mutual Fund Securities (as defined below) (the **Future Funds** and together with the Existing Funds, the **Funds**, and each a **Fund**) for a

decision under the securities legislation of the Jurisdiction (the **Legislation**) that grants exemptive relief to the Filer and each Fund as set forth below (collectively, the **Exemptions Sought**):

- (a) an exemption from the requirement to prepare and file a long form prospectus for the ETF Securities (as defined below) in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**, and such requirement, the **ETF Prospectus Form Requirement**), provided that the Fund files a simplified prospectus for the ETF Securities in the form prescribed by Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and an annual information form in the form prescribed by Form 81-101F2 *Contents of Annual Information Form* (**Form 81-101F2**) in accordance with the provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for the ETF Securities;
- (b) an exemption from the requirement to include a certificate of an underwriter in a Fund’s prospectus in respect of each class or series of ETF Securities (the **Underwriter’s Certificate Requirement**);
- (c) an exemption from the Take-over Bid Requirements (as defined below) for a person or company purchasing ETF Securities in the normal course through the facilities of the NEO Exchange (as defined below) or another Marketplace (as defined below)

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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada other than Ontario (together with Ontario, the **Jurisdictions**).

Interpretation

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

**Affiliate Dealer** means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.



**Authorized Dealer** means a registered dealer that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

**Basket of Securities** means, in relation to the ETF Securities of a Fund, a group of securities or assets representing the constituents of the Fund.

**Designated Broker** means a registered dealer that has entered, or intends to enter, into an agreement with the Filer or an affiliate of the Filer on behalf of a Fund to perform certain duties in relation to the ETF Securities of the Fund, including the posting of a liquid two-way market for the trading of the Fund's ETF Securities on the NEO Exchange or another Marketplace.

**ETF Facts** means a prescribed summary disclosure document required pursuant to NI 41-101, in the form prescribed by Form 41-101F4, in respect of one or more classes or series of ETF Securities being distributed under a prospectus.

**ETF Securities** means securities of an exchange-traded class or series of a Fund that are listed or will be listed on the NEO Exchange or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

**Form 41-101F4** means Form 41-101F4 *Information Required in an ETF Facts Document*.

**Fund Facts** means a prescribed summary disclosure document required pursuant to NI 81-101, in respect of one or more classes or series of Mutual Fund Securities being distributed under a prospectus.

**Form 81-101F1** means Form 81-101F1 *Contents of Simplified Prospectus*.

**Marketplace** means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* that is located in Canada.

**Mutual Fund Securities** means securities of a non-exchange-traded class or series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

**NEO Exchange** means the Aequitas NEO Stock Exchange.

**NI 81-101** means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

**NI 81-102** means National Instrument 81-102 *Investment Funds*.

**Other Dealer** means a registered dealer that is not an Authorized Dealer, Designated Broker or Affiliate Dealer.

**Prescribed Number of ETF Securities** means, in relation to a Fund, the number of ETF Securities of the Fund determined by the Filer from time to time for the purpose of

subscription orders, exchanges, redemptions or for other purposes.

**Prospectus Delivery Requirement** means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

**Securityholders** means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

**Take-over Bid Requirements** means the requirements of National Instrument 62-104 *Take-over Bids and Issuer Bids* relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in each jurisdiction of Canada in which the take-over bid is made.

### Representations

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

#### **The Filer**

1. The Filer is a limited partnership under the laws of the Province of Ontario.
2. The head office of the Filer is located at Royal Bank Plaza, South Tower, 200 Bay Street, Suite 2700, P. O. Box 27, Toronto, Ontario, M5J 2J1.
3. The Filer is the investment fund manager of the Funds. The Filer is registered under the securities legislation: (i) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as an adviser in the category of portfolio manager; (ii) in Ontario, Newfoundland and Labrador and Quebec as an investment fund manager; and (iii) in British Columbia, Alberta, Quebec, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as a dealer in the category of exempt market dealer. The Filer is also registered in Ontario as a commodity trading manager.
4. The Filer is, or will be, the investment fund manager of each Fund.
5. The Filer is not in default of securities legislation in any of the Jurisdictions.

#### **The Funds**

6. Each Fund is, or will be, a mutual fund structured as a trust or a corporation or a class thereof that is

- governed by the laws of a Jurisdiction. Each Fund is, or will be, a reporting issuer in the Jurisdictions in which its securities are distributed. Each Existing Fund offers Mutual Fund Securities and each Fund will offer ETF Securities.
7. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.
  8. The Existing Mutual Funds, and one of the Existing Alternative Mutual Funds, Ninepoint Return Advantaged U.S. Equity Index Class, currently offer Series A, Series F, Series I and Series D Mutual Fund Securities. Certain Existing Mutual Funds also offer Series T, Series FT, Series P, Series PT, Series PF, Series PFT, Series Q, Series QT, Series QF and Series QFT Mutual Fund Securities, as applicable. These Mutual Fund Securities are currently distributed under a simplified prospectus and annual information form, each dated April 21, 2020, as amended on May 27, 2020 and as amended and restated on August 7, 2020.
  9. The Existing Alternative Mutual Funds, other than Ninepoint Return Advantaged U.S. Equity Index Class, currently offer Series A, Series F, Series QF, Series I and Series D Mutual Fund Securities. One of the Existing Alternative Mutual Funds, Ninepoint FX Strategy Fund, also currently offers Series A1 and Series F1 Mutual Fund Securities. These Mutual Fund Securities are currently distributed under a simplified prospectus and annual information form, each dated November 8, 2019, as amended on April 9, 2020 and May 1, 2020.
  10. On or about October 28, 2020, an amended and restated prospectus in respect of the Mutual Fund Securities and the ETF Securities of certain Existing Mutual Funds, as well as fund facts documents for each series of Mutual Fund Securities and ETF facts documents for each series of ETF securities of certain Existing Mutual Funds, will be filed with the securities regulatory authorities in each of the Jurisdictions.
  11. The Filer will apply to list any ETF Securities of a Fund on the NEO Exchange or another Marketplace and will not file a final prospectus or amendment to a prospectus for a Fund in respect of the ETF Securities until the NEO Exchange or other applicable Marketplace has conditionally approved the listing of such ETF Securities.
  12. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through mutual fund dealers, investment dealers and their representatives that are registered under applicable securities legislation in the jurisdictions of Canada in which they are offered for sale.
  13. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the NEO Exchange or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the NEO Exchange or another Marketplace.
  14. In addition to subscribing for and re-selling their Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.
  15. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash with a value equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.
  16. Upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker may be contractually required to subscribe for Creation Units of a Fund for cash in an amount not to exceed a specified percentage of the net asset value of the Fund or such other amount established by the Filer.
  17. The Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with a subscription for Creation Units. On the issuance of Creation Units, the Filer or a Fund may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.

18. Each Fund will appoint a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for its ETF Securities for the purpose of maintaining liquidity for the ETF Securities.
19. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities will not be available for purchase directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the NEO Exchange or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.
20. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the NEO Exchange or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash at the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the NEO Exchange or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

*ETF Prospectus Form Requirement*

21. The Filer believes it is more efficient and expedient to include all of the series of each Fund, including the Mutual Fund Securities and ETF Securities, in one prospectus document instead of two different prospectus documents and that this presentation will assist in providing full, true and plain disclosure of all material facts relating to all classes and series of securities of a Fund. The Filer will file ETF Facts in the form prescribed by Form 41-101F4 in respect of each class or series of ETF Securities, and will continue to file Fund Facts in the form prescribed by Form 81-101F3 Contents of Fund Facts Document in respect of each class or series of Mutual Fund Securities.
22. The Filer will ensure that any additional disclosure included in the simplified prospectus and annual information form relating to the ETF Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes.

23. The Funds will comply with the provisions of NI 81-101 when filing any prospectus or amendment thereto.

*Underwriter's Certificate Requirement*

24. Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting.
25. The Filer will generally conduct its own marketing, advertising and promotion of the Funds to the extent permitted by its registrations.
26. Authorized Dealers and Designated Brokers will not be involved in the preparation of a Fund's prospectus, will not perform any review or any independent due diligence to the content of a Fund's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the Funds or the Filer in connection with the distribution of ETF Securities. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities.
27. Furthermore, the Authorized Dealers will change from time to time. Accordingly, it is not practical to provide an underwriter's certificate in the prospectus of the Funds.

*Take-over Bid Requirements*

28. As equity securities that will trade on the NEO Exchange or another Marketplace, it is possible for a person or company to acquire a number of ETF Securities that will trigger the Take-over Bid Requirements. However the application of the Take-over Bid Requirements is unnecessary or impractical due to the following:
- a. in respect of a Fund structured as a corporation or class thereof, it will not be possible for one or more Securityholders to exercise control or direction over the Fund as the Fund is a class of non-voting shares of Ninepoint Corporate Class Inc. (which only has those voting rights available under corporate law and those prescribed by NI 81-102, which for greater certainty does not include the right to vote in connection with the election of directors of Ninepoint Corporate Class Inc.);
  - b. it will be difficult for purchasers of ETF Securities of a Fund to monitor compliance with the Take-over Bid

Requirements because the number of outstanding ETF Securities of the Fund will frequently change due to the ongoing issuance and redemption of ETF Securities by a Fund; and

- c. the way in which the ETF Securities will be priced deters anyone from either seeking to acquire control or offering to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect the class or series net asset value of the ETF Securities.

- 29. The application of the Take-over Bid Requirements to the Funds would have an adverse impact upon the liquidity of the ETF Securities, because they could cause Designated Brokers and other large Securityholders to cease trading ETF Securities once the Designated Brokers or other large Securityholders reach the prescribed threshold at which the Take-over Bid Requirements would apply. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over the Funds.

As to the Exemptions Sought from the ETF Prospectus Form Requirement and Take-over Bid Requirements:

“Darren McCall”  
Manager, Investment Funds & Structured Products  
Ontario Securities Commission

As to the Exemption Sought from the Underwriter’s Certificate Requirement:

“Heather Zordel”  
Commissioner  
Ontario Securities Commission

“Garnet Fenn”  
Commissioner  
Ontario Securities Commission

**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.

- 1. The decision of the principal regulator is that the Exemption Sought from the ETF Prospectus Form Requirement is granted, provided that the Filer will be in compliance with the following conditions:
  - a. the Filer files a simplified prospectus and annual information form in respect of the ETF Securities in accordance with the requirements of NI 81-101, Form 81-101F1 and Form 81-101F2, other than the requirements pertaining to the filing of a Fund Facts;
  - b. the Filer includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1 or Form 81-101F2) in respect of the ETF Securities, in each Fund’s simplified prospectus and/or annual information form, as applicable; and
  - c. the Filer includes disclosure regarding this decision under the heading “Additional Information” and “Exemptions and Approvals” in each Fund’s simplified prospectus and annual information form, respectively.
- 2. The decision of the principal regulator is that the Exemptions Sought from the Underwriter’s Certificate Requirement and the Take-over Bid Requirements are granted.

**SCHEDULE A**

**Existing Mutual Funds**

Ninepoint Diversified Bond Fund  
Ninepoint Energy Fund  
Ninepoint Global Infrastructure Fund  
Ninepoint Global Real Estate Fund  
Ninepoint Gold and Precious Minerals Fund  
Ninepoint High Interest Savings Fund  
Ninepoint Alternative Health Fund  
Ninepoint International Small Cap Fund  
Ninepoint Concentrated Canadian Equity Fund  
Ninepoint Diversified Bond Class\*  
Ninepoint Resource Class\*  
Ninepoint Silver Equities Class\*  
Ninepoint Risk Advantaged U.S. Equity Index Class\*  
Ninepoint Focused Global Dividend Class\*  
Ninepoint Gold Bullion Fund  
Ninepoint Silver Bullion Fund

**Existing Alternative Mutual Funds**

Ninepoint FX Strategy Fund  
Ninepoint Alternative Credit Opportunities Fund  
Ninepoint Return Advantaged U.S. Equity Index Class\*

\*A class of shares of Ninepoint Corporate Class Inc.

**2.1.6 Fidelity Investments Canada ULC et al.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from fund multi-layering restriction in paragraph 2.5(2)(b) of NI 81-102 to permit certain three-tier and four-tier investment fund structures – A fund that is a three-tier structure will purchase and hold directly or indirectly securities of one or more other investment funds, which each may hold directly or indirectly more than 10% of their net asset value in securities of one or more other investment funds – All underlying funds in the three-tier structure will be subject to NI 81-102, and will include current and future mutual funds, including exchange-traded funds, but exclude alternative mutual funds, under common management – A fund that is a four-tier structure will be either a currency neutral fund or a wrap fund that purchases and holds directly or indirectly the securities of a single corresponding three-tier structure – Relief subject to conditions ensuring transparency of investment portfolio, accountability for portfolio management, minimization of portfolio complexity, non-duplication of fund fees, and liquidity risk management – National Instrument 81-102 Investment Funds.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 2.5(2)(b), 19.1.

**October 20, 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  
FIDELITY INVESTMENTS CANADA ULC  
(the Filer)**

**AND**

**FIDELITY CANADIAN MONTHLY HIGH INCOME ETF,  
FIDELITY GLOBAL MONTHLY HIGH INCOME ETF,  
FIDELITY CANADIAN MONTHLY  
HIGH INCOME ETF FUND and  
FIDELITY GLOBAL MONTHLY  
HIGH INCOME ETF FUND  
(the Existing Funds)**

**DECISION**

## Background

The principal regulator in the Jurisdiction has received an application from the Filer, which is the trustee and the investment fund manager of the Existing Funds, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption, pursuant to section 19.1 of National Instrument 81-102 *Investment Funds (NI 81-102)*, exempting each Existing Fund and all other current and future mutual funds, including exchange-traded funds, but excluding alternative mutual funds, managed by the Filer or an affiliate of the Filer (the **Future Funds** and, together with the Existing Funds, the **Funds**) from the requirement set out in paragraph 2.5(2)(b) of NI 81-102:

- (i) to permit each Fund to purchase and hold directly or indirectly securities of one or more other investment funds, excluding alternative mutual funds, each of which is, or will be, subject to NI 81-102 and is, or will be, managed by the Filer or an affiliate of the Filer (each, a **Reference Fund**), which Reference Fund holds, or will hold, directly or indirectly more than 10% of its net asset value in securities of one or more other mutual funds, including exchange-traded funds, but excluding alternative mutual funds, each of which is, or will be, subject to NI 81-102 and is, or will be, managed by the Filer or an affiliate of the Filer (each, a **Third Tier Fund**) (the **Three-Tier Relief**); and
- (ii) to permit each Fund that is a:
  - (a) Currency Neutral Fund (as defined below) to purchase and hold directly or indirectly securities of a Corresponding Reference Fund (as defined below), which Corresponding Reference Fund holds, or will hold directly or indirectly securities of one or more Third Tier Funds, each of which Third Tier Funds may hold, in turn, directly or indirectly more than 10% of its net asset value in securities of one or more other mutual funds, including exchange-traded funds, but excluding alternative mutual funds, each of which is, or will be, subject to NI 81-102, and is, or will be, managed by the Filer or an affiliate of the Filer (each, a **Fourth Tier Fund**); and
  - (b) Wrap Fund (as defined below) to purchase and hold directly or indirectly securities of a Corresponding Reference Fund, which Corresponding Reference Fund holds, or will hold, directly or indirectly securities of one or more Third Tier Funds, each of which Third Tier Funds may hold, in turn, directly or indirectly more than 10% of its net asset value in securities of one or more Fourth Tier Funds (collectively, the **Four-Tier Relief**),

(the Three-Tier Relief and the Four-Tier Relief are, collectively, the **Requested Relief**).

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

- (a) the Ontario Securities Commission is the principal regulator for the application; and
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon (together with Ontario, 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 to the defined terms used in this decision, capitalized terms used in this decision have the following meanings:

**Corresponding Reference Fund** means, in each Four-Tier Structure, the sole Reference Fund whose securities the Currency Neutral Fund or the Wrap Fund, as the case may be, holds or will hold;

**Currency Neutral Fund** means, in each Four-Tier Structure, each Fund that holds, or will hold, only currency hedging instruments and the securities of its Corresponding Reference Fund;

**Four-Tier Structure** refers to the structure where either a Currency Neutral Fund or a Wrap Fund purchases and holds, or will purchase and hold, securities of its Corresponding Reference Fund, which Corresponding Reference Fund holds, or will hold, more than 10% of its net asset value in securities of one or more Third Tier Funds, and one or more of such Third Tier Funds, in turn, holds, or will hold, more than 10% of its net asset value in securities of one or more Fourth Tier Funds. For greater certainty, a Corresponding Reference Fund that is part of a Four-Tier Structure will only invest directly in one or more Third Tier Funds, cash, cash equivalents and specified derivatives used to equitize cash or to hedge risks associated with the portfolio holdings of the Third Tier Funds and/or the Fourth Tier Funds, but will not hold directly any other portfolio securities;

**Multi-Tier Structure** refers, collectively, to the Three-Tier Structure and the Four-Tier Structure;

**NI 81-106** means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

**Policy** means the Filer's retail Fund of Fund Significant Trade Policy dated as of May 18, 2018, as the same may be amended, restated or replaced from time to time;

**Three-Tier Structure** refers to the structure where a Fund purchases and holds, or will purchase and hold, securities of one or more Reference Funds, and one or more of such Reference Funds, in turn, holds, or will hold, more than 10% of its net asset value in securities of one or more Third Tier Funds. For greater certainty, a Fund that is part of a Three-Tier Structure will only invest directly in one or more Reference Funds, cash, cash equivalents and specified derivatives used to equitize cash or to hedge risks associated with the portfolio holdings of the Reference Funds and/or the Third Tier Funds, but will not hold directly any other portfolio securities;

**Wrap Fund** means, in each Four-Tier Structure, each Fund that holds, or will hold, all or substantially all of its assets in securities of its Corresponding Reference Fund.

Further, each of the terms “invests”, “holds”, “investment” and “holding” refers to any investing or investment made in, or holding of, securities either directly or indirectly through specified derivatives, as the context requires.

### Representations

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

1. The Filer is a corporation continued under the laws of the Province of Alberta with its head office located in Toronto, Ontario.
2. The Filer is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a portfolio manager in each of the Jurisdictions, as a commodity trading manager in Ontario and as a mutual fund dealer in each of the Jurisdictions.
3. The Filer is, or will be, the investment fund manager of the Funds and the Filer or an affiliate of the Filer is, or will be, the portfolio manager of the Funds.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.
5. Each Fund is, or will be, an open-ended mutual fund or a class of a mutual fund corporation, including an exchange-traded fund, but excluding an alternative mutual fund, organized and governed by the laws of a Jurisdiction or the laws of Canada. Each Reference Fund, Third Tier Fund and Fourth Tier Fund is, or will be, an open-ended mutual fund or a class of a mutual fund corporation, including an exchange-traded fund, but excluding an alternative mutual fund, organized and governed by the laws of a Jurisdiction or the laws of Canada. The securities of each Reference Fund, Third Tier Fund and Fourth Tier Fund may be sold to investors other than the Funds.
6. Each Fund, Reference Fund, Third Tier Fund and Fourth Tier Fund is, or will be, governed by the provisions of NI 81-102, subject to any exemption

therefrom that has been, or may be, granted by the securities regulatory authorities.

7. Each Reference Fund may invest, among other things, in one or more Third Tier Funds.
8. Each Third Tier Fund in the Three-Tier Structure primarily invests, or will primarily invest, directly in a portfolio of securities and/or other assets. It may also invest up to 10% of its net asset value in securities of other investment funds.
9. Each Third Tier Fund in the Four-Tier Structure, may invest, among other things, in one or more Fourth Tier Funds.
10. Each Fourth Tier Fund in the Four-Tier Structure primarily invests, or will primarily invest, directly in a portfolio of securities and/or other assets. It may also invest up to 10% of its net asset value in securities of other investment funds.
11. Each fund-of-fund investment in a Multi-Tier Structure is subject to the Policy, last approved by the independent review committee (**IRC**) of the Funds on September 22, 2020. Any changes to the Policy are subject to IRC approval. The purpose of the Policy is to seek the fair treatment for investors in all investment funds managed by the Filer that are involved in a fund of fund structure by allocating transaction costs fairly between funds. The Policy is designed to isolate the transaction costs associated with significant trades and to prevent the dilution of a fund's assets when these material transactions occur by taking steps to ensure that the applicable fund or funds bear(s) the appropriate economic impact of such transaction costs.
12. To manage liquidity risk due to cross-ownership of funds within a Multi-Tier Structure, the Filer will use a combination of risk management tools to address the significant investor risk, including (i) IRC approved governance policies that have been adopted to protect all investors in the Funds, (ii) internal portfolio manager notification requirements of significant cash flows into the Funds, (iii) ongoing liquidity monitoring of each Fund's portfolio, and (iv) real time cash projection reporting for the Funds. Each fund in a Multi-Tier structure will be managed as a stand-alone investment for purposes of the application of these risk management tools.
13. No existing Fund, Reference Fund, Third Tier Fund or Fourth Tier Fund is in default of securities legislation in any of the Jurisdictions.

### **Three-Tier Structure**

14. A Fund that is part of a Three-Tier Structure will only invest directly in one or more Reference Funds, cash, cash equivalents and specified derivatives used to equitize cash or to hedge risks associated with the portfolio holdings of the

Reference Funds and/or the Third Tier Funds, but will not hold directly any other portfolio securities.

15. One or more of the Reference Funds held by the Fund will invest in, among other things, the securities of one or more Third Tier Funds. In some circumstances, these investments in Third Tier Funds will exceed 10% of the Reference Fund's net asset value.
16. For purposes of section 2.5 of NI 81-102, each Fund will be considered to be holding securities of each Reference Fund, whether the Fund holds the securities of each Reference Fund directly or indirectly through one or more specified derivatives. Accordingly, each Fund's investment in one or more of the Reference Funds will result in a Three-Tier Structure. This Three-Tier Structure is contrary to the multi-layering restriction in paragraph 2.5(2)(b) of NI 81-102 and does not fit within the exceptions to paragraph 2.5(2)(b) found in subsection 2.5(4) of NI 81-102. Except for paragraph 2.5(2)(b), a Fund's use of the Three-Tier Structure will be made in accordance with the provisions of section 2.5 of NI 81-102.
17. An investment by a Reference Fund in securities of its Third Tier Funds is, and will be, made in accordance with the provisions of section 2.5 of NI 81-102.
18. The prospectus of each Fund in a Three-Tier Structure will disclose that the Fund invests in securities of one or more Reference Funds, and that each such Reference Fund may invest more than 10% of its net asset value in the securities of Third Tier Funds.
19. The prospectus of each Fund in a Three-Tier Structure will also disclose that the accountability for portfolio management is (a) at the level of each Reference Fund with respect to the selection of Third Tier Funds to be purchased by that Reference Fund and with respect to the purchase and sale of any other portfolio securities or other assets held by that Reference Fund and (b) at the level of each Third Tier Fund with respect to the purchase and sale of portfolio securities and other assets held by that Third Tier Fund.
20. There will be no duplication of fees between each tier of the Three-Tier Structure. The prospectus of each Fund and Reference Fund will disclose that fees and expenses will not be duplicated as a result of investments in underlying funds.
21. Each Fund in a Three-Tier Structure will comply with the requirements under NI 81-106 relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if

the Fund was investing directly in the Third Tier Funds.

22. The investment objectives of the Reference Funds held by a Fund in a Three-Tier Structure will generally be independent of each other in order to minimize potential overlap between the securities held by the respective portfolios of the Reference Funds. To address any potential duplication of securities between Reference Funds, the Filer will, through its compliance testing, aggregate the portfolio holdings across all Reference Funds in a Three-Tier Structure for purposes of determining compliance with the concentration, control and other threshold limits under NI 81-102.

#### **Four-Tier Structure**

23. In the Four-Tier Structure, each Fund is, or will be, either a Currency Neutral Fund or a Wrap Fund.
24. Each Currency Neutral Fund is, or will be, intended to provide a currency neutral version of a Corresponding Reference Fund by attempting to hedge its currency risk. Each Currency Neutral Fund seeks, or will seek, a similar return to that of its Corresponding Reference Fund, except for the impact of different movements in currency, by investing all or substantially all of its assets in its Corresponding Reference Fund that has the same investment objective as the Currency Neutral Fund, except that the Currency Neutral Fund uses, or will use, one or more specified derivatives to hedge its currency risk.
25. Each Wrap Fund seeks, or will seek, a similar return to that of its Corresponding Reference Fund by investing all or substantially all of its assets in its Corresponding Reference Fund that has the same investment objective as the Wrap Fund.
26. Certain current mutual funds managed by the Filer have exemptive relief that permit them to invest in a Reference Fund and for that Reference Fund to invest more than 10% of its net asset value in securities of one or more Third Tier Funds. This relief, however, does not permit any of the Third Tier Funds to invest in the securities of one or more Fourth Tier Funds.
27. The main difference between the Four-Tier Structure and the Three-Tier Structure is that in the Four-Tier Structure either a Currency Neutral Fund or a Wrap Fund is, or will be, a top Fund that invests, or will invest, in a Three-Tier Structure where its Corresponding Reference Fund is the top Fund in that Three-Tier Structure. The Currency Neutral Fund's or the Wrap Fund's Corresponding Reference Fund, as the case may be, seeks, or will seek, to achieve its investment objective by investing primarily in securities and/or other assets and/or by investing in one or more Third Tier Funds. One or more of those Third Tier Funds will invest in, among other things, the



securities of one or more Fourth Tier Funds. In some circumstances, these investments in Fourth Tier Funds will exceed 10% of the applicable Third Tier Fund's net asset value.

28. For purposes of section 2.5 of NI 81-102, each Currency Neutral Fund and each Wrap Fund will be considered to be holding securities of its Corresponding Reference Fund, whether the Currency Neutral Fund or the Wrap Fund, as the case may be, holds the securities of its Corresponding Reference Fund directly or indirectly through one or more specified derivatives. In addition, for purposes of section 2.5 of NI 81-102, each Corresponding Reference Fund will be considered to be holding securities of its Third Tier Funds, whether the Corresponding Reference Fund holds the securities of its Third Tier Fund directly or indirectly through one or more specified derivatives. Accordingly, each Currency Neutral Fund's or Wrap Fund's, as the case may be, investment in its Corresponding Reference Fund will result in a Four-Tier Structure. This Four-Tier Structure is contrary to the multi-layering restriction in paragraph 2.5(2)(b) of NI 81-102 and does not fit within the exceptions to paragraph 2.5(2)(b) found in subsection 2.5(4) of NI 81-102. Except for paragraph 2.5(2)(b), a Currency Neutral Fund's or Wrap Fund's, as the case may be, use of the Four-Tier Structure will be made in accordance with the provisions of section 2.5 of NI 81-102.
29. An investment by a Corresponding Reference Fund in securities of its Third Tier Funds is, and will be, made in accordance with the provisions of section 2.5 of NI 81-102 and the Three-Tier Relief.
30. An investment by a Third Tier Fund in securities of its Fourth Tier Funds is, and will be, made in accordance with the provisions of section 2.5 of NI 81-102.
31. The prospectus of each Currency Neutral Fund or Wrap Fund, as the case may be, in a Four-Tier Structure will disclose that the Currency Neutral Fund or the Wrap Fund, as applicable, seeks to provide a return that is similar to its Corresponding Reference Fund by investing in the securities of its Corresponding Reference Fund. It will also disclose that the Corresponding Reference Fund invests more than 10% of its net asset value in securities of Third Tier Funds and that each Third Tier Fund may invest more than 10% of its net asset value in securities of Fourth Tier Funds. In accordance with the Three-Tier Relief, the prospectus of each Corresponding Reference Fund will include the disclosure set out in paragraph 18 above.
32. The prospectus of each Currency Neutral Fund or Wrap Fund, as the case may be, in a Four-Tier Structure will also disclose that the accountability for portfolio management is (a) at the level of the

Corresponding Reference Fund with respect to the selection of Third Tier Funds to be purchased by the Corresponding Reference Fund and with respect to the purchase and sale of any other portfolio securities or other assets held by the Corresponding Reference Fund, (b) at the level of each Third Tier Fund with respect to the selection of Fourth Tier Funds to be purchased by that Third Tier Fund and with respect to the purchase and sale of any other portfolio securities or other assets held by that Third Tier Fund, and (c) at the level of each Fourth Tier Fund with respect to the purchase and sale of portfolio securities and other assets held by that Fourth Tier Fund.

33. There will be no duplication of management fees or administrative fees in the Three-Tier Structure or the Four-Tier Structure. The prospectus of a Fund that is part of a Three-Tier Structure or Four-Tier Structure will disclose the total annual management fees and administrative fees that will be applicable. In the case of an investment made into any Corresponding Reference Fund, Reference Fund, Third Tier Fund or Fourth Tier Fund offered by the Filer, such investment will be made either into series O units of that fund, in respect of which no management or administrative fees are charged, or, if the Corresponding Reference Fund, the Reference Fund, the Third Tier Fund or the Fourth Tier Fund is an exchange-traded fund offered by the Filer, into publicly offered units of that exchange-traded fund in respect of which no administrative fees are charged and the management fees that are charged will be waived by the Filer. In addition, where a Fund invests in another exchange-traded fund or other investment fund managed by the Filer or its affiliates, and such other fund pays a management fee to the Filer or its affiliates in respect of such investment that is higher than the management fee payable by the Fund, the Filer will adjust the management fee payable by the Fund to ensure that the total annual fees paid directly or indirectly to the Filer by the Fund does not exceed the single annual management fee to be paid by the Fund. The prospectus of each Currency Neutral Fund, Wrap Fund, Corresponding Reference Fund and Third Tier Fund will disclose that fees and expenses will not be duplicated as a result of investments in underlying funds.
34. Each Currency Neutral Fund and Wrap Fund in a Four-Tier Structure will comply with the requirements under NI 81-106 relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Currency Neutral Fund or the Wrap Fund, as the case may be, was investing directly in the Fourth Tier Funds.

35. The investment objectives of the Third-Tier Funds held by a Fund in a Four-Tier Structure will generally be independent of each other in order to minimize potential overlap between the securities held by the respective portfolios of the Third-Tier Funds. To address any potential duplication of securities between Third-Tier Funds, the Filer will, through its compliance testing, aggregate the portfolio holdings across all Third-Tier Funds in a Four-Tier Structure for purposes of determining compliance with the concentration, control and other threshold limits under NI 81-102.
36. It would not be prejudicial to the public interest to grant the Requested Relief to the Funds.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

- (i) the Filer is the investment fund manager and portfolio manager of each Reference Fund, Third Tier Fund and Fourth Tier Fund in a Multi-Tier Structure;
  - (ii) the investment objective of each Currency Neutral Fund or Wrap Fund in a Four-Tier Structure, as stated in its prospectus, states the name of its Corresponding Reference Fund;
  - (iii) the investment strategies of each:
    - (a) Corresponding Reference Fund in a Four-Tier Structure, as stated in its prospectus (which, in the case of an existing Corresponding Reference Fund, means the prospectus next receipted after that Corresponding Reference Fund becomes part of a Four-Tier Structure), states that the Corresponding Reference Fund will invest in one or more Third Tier Funds and that each of these Third Tier Funds may invest more than 10% of its net assets in one or more other investment funds; and
    - (b) Fund in a Three-Tier Structure, as stated in its prospectus (which, in the case of an existing Fund, means the prospectus next receipted after that Fund becomes part of a Three-Tier Structure), states that the Fund will invest in one or more Reference Funds and that each of these Reference Funds may invest more than 10% of its net assets in one or more other investment funds;
  - (iv) the proposed investment of each Fund in its Reference Fund in a Multi-Tier Structure is otherwise made in compliance with all other requirements of section 2.5 of NI 81-102, except
- (v) to the extent that discretionary relief has been granted from any such requirement;
  - (vi) there is no duplication of management fees or administrative fees between each tier of the Three-Tier Structure and Four-Tier Structure;
  - (vii) the Multi-Tier Structure is implemented in a manner that seeks the fair treatment for investors in all of the investment funds managed by the Filer that are involved in a Multi-Tier Structure by allocating portfolio transaction costs fairly among all of such investment funds;
  - (viii) the Filer maintains investor protection policies and procedures that address liquidity and redemption risk due to cross-ownership of funds within a Multi-Tier Structure, and each fund in a Multi-Tier Structure is managed as a stand-alone investment for purposes of these policies and procedures;
  - (ix) a Corresponding Reference Fund that is part of a Four-Tier Structure only invests directly in one or more Third Tier Funds, cash, cash equivalents and specified derivatives used to equitize cash or to hedge risks associated with the portfolio holdings of the Third Tier Funds and/or the Fourth Tier Funds, but does not hold directly any other portfolio securities;
  - (x) a Fund that is part of a Three-Tier Structure only invests directly in one or more Reference Funds, cash, cash equivalents and specified derivatives used to equitize cash or to hedge risks associated with the portfolio holdings of the Reference Funds and/or Third Tier Funds, but does not hold directly any other portfolio securities;
  - (xi) each Fund in a Three-Tier Structure complies with the requirements under NI 81-106 relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Fund was investing directly in the Third Tier Funds;
  - (xii) each Currency Neutral Fund and Wrap Fund in a Four-Tier Structure complies with the requirements under NI 81-106 relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 *Contents of Fund Facts Document* relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Currency Neutral Fund or the Wrap Fund, as the case may be, was investing directly in the Fourth Tier Funds; and
  - (xiii) each Reference Fund, Third Tier Fund and Fourth Tier Fund in a Multi-Tier Structure is not an alternative mutual fund and does not rely on any discretionary relief permitting the fund to exceed

the leverage exposure otherwise permitted under NI 81-102 through the use of borrowing, short selling and specified derivatives.

**2.2 Orders**

**2.2.1 ONECHICAGO, LLC – s. 144**

**October 30, 2020**

“Stephen Paglia”  
Manager  
Investment Funds and Structured Products Branch  
**ONTARIO SECURITIES COMMISSION**

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S.5, AS AMENDED  
(the OSA)**

**AND**

**IN THE MATTER OF  
THE COMMODITY FUTURES ACT,  
R.S.O. 1990, CHAPTER C.20, AS AMENDED  
(the CFA)**

**AND**

**IN THE MATTER OF  
ONECHICAGO, LLC  
(ONECHICAGO)**

**REVOCATION ORDER  
(Section 144 of the OSA)**

**WHEREAS** the Ontario Securities Commission (**Commission**) issued an order dated October 14, 2016

- a. pursuant to section 147 of the OSA, exempting ONECHICAGO from the requirement to be recognized as an exchange under subsection 21(1) of the OSA;
- b. pursuant to section 80 of the CFA exempting OneChicago from the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA;
- c. pursuant to section 38 of the CFA exempting trades in contracts on OneChicago by a “hedger,” as defined in subsection 1(1) of the CFA, from the registration requirement under section 22 of the CFA; and
- d. pursuant to section 38 of the CFA exempting trades in contracts on OneChicago by a bank listed in Schedule I to the *Bank Act* (Canada) entering orders as principal and for its own account only from the registration requirement under Section 22 of the CFA (together, the **2016 Order**);

**AND WHEREAS** ONECHICAGO notified the Commission that ONECHICAGO has determined to close the exchange and vacate its Designated Contract Market designation with the U.S. Commodity Futures Trading Commission;

**AND WHEREAS** there is currently no trading activity on the ONECHICAGO platform and ONECHICAGO has currently ceased its activities as an Exchange in Ontario;

**AND WHEREAS** ONECHICAGO has no physical presence in Ontario and does not otherwise carry on business in Ontario;

**AND WHEREAS** the Commission has determined that revocation of the 2016 Order would not be prejudicial to the public interest;

**THE COMMISSION** hereby revokes the 2016 Order pursuant to section 144 of the OSA.

Dated October 30, 2020.

“Raymond Kindiak”

“Mary Anne De Monte-Whelan”

**2.2.2 ONECHICAGO, LLC – s. 8.1 of OSC Rule 13-502 Fees**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
THE PROVINCE OF ONTARIO**

**AND**

**IN THE MATTER OF  
ONECHICAGO, LLC  
(the Applicant)**

**ORDER  
(Section 8.1 of**

**Ontario Securities Commission Rule 13-502 Fees)**

**UPON** the application by the Applicant (the Fee Exemption Application) to the Director for an order pursuant to section 8.1 of Ontario Securities Commission Rule 13-502 Fees (OSC Rule 13-502) exempting the Applicant from the requirement to pay an activity fee of \$4,800 in connection with an application for an order pursuant to section 144 of the *Securities Act*, RSO 1990, Chapter S.5 as Amended (the OSA) for the Commission to revoke its order, dated October 14, 2016, pursuant to section 147 of the OSA and pursuant to section 80 of the *Commodity Futures Act*, RSO 1990, Chapter C.20 (the CFA), exempting ONECHICAGO from the requirement to be recognized as an exchange under subsection 21(1) of the OSA and from the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA (the 2016 Order Revocation Application);

**AND UPON** considering the Fee Exemption Application and the recommendation of staff of the Commission;

**AND UPON** the Applicant having represented to the Director as follows:

1. In June 2020, the Applicant paid the Ontario Securities Commission (the Commission) the annual Exempt Exchange Participation Fee of \$10,000;
2. In August 2020, the Applicant announced it was closing the exchange with September 18, 2020 as the last day of trading;
3. On September 21, 2020, the Applicant requested that the U.S. Commodity Futures Trading Commission vacate the Applicant's Designated Contract Market registration, effective December 21, 2020;
4. On October 8, 2020, the Applicant brought the 2016 Order Revocation Application.

**AND UPON** the Director being satisfied that to do so would not be prejudicial to the public interest;

**IT IS ORDERED** by the Director, pursuant to section 8.1 of OSC Rule 13-502, that the Applicant is exempted from paying an activity fee of \$4,800 in

connection with the 2016 Order Revocation Application.

**DATED** this 28th day of October, 2020

“Tracey Stern”  
Manager, Market Regulation  
Ontario Securities Commission

### 2.2.3 Covington Venture Fund Inc.

#### Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications (NP 11-206).

October 8, 2020

**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  
COVINGTON VENTURE FUND INC.  
(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 Quebec, 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 head office of the Filer’s manager, Covington Capital Corporation, is in Ontario. The Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

## Decisions, Orders and Rulings

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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 jurisdictions of Canada in which the Filer is a reporting issuer are Ontario, Quebec, British Columbia, Alberta, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador. 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.

“Darren McCall”  
Manager  
Investment Funds and Structured Products Branch  
Ontario Securities Commission

## Chapter 4

# Cease Trading Orders

### 4.1.1 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
Champignon Brands Inc.	October 27, 2020	

### 4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

### 4.2.2 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	

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## Chapter 7

# Insider Reporting

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://www.carswell.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](http://www.sedi.ca)).



## Chapter 11

# IPOs, New Issues and Secondary Financings

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### INVESTMENT FUNDS

**Issuer Name:**

Big Pharma Split Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus (NI 44-102) dated October 27, 2020

NP 11-202 Preliminary Receipt dated October 27, 2020

**Offering Price and Description:**

Maximum Offering: \$200,000,000 - Preferred Shares and Class A Shares

Price: \$10.49 - Preferred Shares and \$12.50 - Class A Shares

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Harvest Portfolios Group Inc.

Project #3126547

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**Issuer Name:**

The Ether Fund  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated dated October 28, 2020 to Preliminary Long Form Prospectus dated July 24, 2020

NP 11-202 Preliminary Receipt dated October 30, 2020

**Offering Price and Description:**

Maximum: US\$107,500,000 - 10,000,000 Class A Units and/or Class F Units

Minimum: US\$10,750,000 - 1,000,000 Class A Units and/or Class F Units

Price: US\$10.75 per Class A Unit and US\$10.53 per Class F Unit

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

3iQ CORP.

Project #3086427

**Issuer Name:**

TD Active Global Income ETF  
TD Active Global Real Estate Equity ETF  
TD Active U.S. High Yield Bond ETF  
TD Canada ESG Index ETF  
TD Canadian Long Term Federal Bond ETF  
TD Income Builder ETF  
TD International ESG Index ETF  
TD Q Canadian Dividend ETF  
TD Q Global Dividend ETF  
TD Q Global Multifactor ETF  
TD Q U.S. Small-Mid-Cap Equity ETF  
TD U.S. ESG Index ETF  
TD U.S. Long Term Treasury Bond ETF  
Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Long Form Prospectus dated Oct 29, 2020

NP 11-202 Final Receipt dated Oct 29, 2020

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #3114007

**Issuer Name:**

1832 AM Investment Grade Canadian Corporate Bond Pool  
 1832 AM U.S. \$ Investment Grade U.S. Corporate Bond Pool (formerly 1832 AM Investment Grade U.S. Corporate Bond Pool)  
 Pinnacle Balanced Portfolio (formerly Pinnacle Conservative Balanced Growth Portfolio)  
 Scotia Aria Conservative Build Portfolio  
 Scotia Aria Conservative Defend Portfolio (formerly Scotia Aria Conservative Core Portfolio)  
 Scotia Aria Conservative Pay Portfolio  
 Scotia Aria Equity Build Portfolio  
 Scotia Aria Equity Defend Portfolio  
 Scotia Aria Equity Pay Portfolio  
 Scotia Aria Moderate Build Portfolio  
 Scotia Aria Moderate Defend Portfolio (formerly Scotia Aria Moderate Core Portfolio)  
 Scotia Aria Moderate Pay Portfolio  
 Scotia Aria Progressive Build Portfolio  
 Scotia Aria Progressive Defend Portfolio (formerly Scotia Aria Progressive Core Portfolio)  
 Scotia Aria Progressive Pay Portfolio  
 Scotia Balanced Opportunities Fund (formerly Scotia Canadian Tactical Asset Allocation Fund)  
 Scotia Bond Fund  
 Scotia Canadian Balanced Fund  
 Scotia Canadian Bond Index Fund  
 Scotia Canadian Dividend Fund  
 Scotia Canadian Equity Fund (formerly Scotia Canadian Blue Chip Fund)  
 Scotia Canadian Growth Fund  
 Scotia Canadian Income Fund  
 Scotia Canadian Index Fund  
 Scotia Canadian Small Cap Fund  
 Scotia Conservative Fixed Income Portfolio (formerly Scotia Conservative Income Fund)  
 Scotia Diversified Monthly Income Fund  
 Scotia Dividend Balanced Fund (formerly Scotia Canadian Dividend Income Fund)  
 Scotia Emerging Markets Equity Fund  
 Scotia European Fund  
 Scotia Global Balanced Fund  
 Scotia Global Bond Fund  
 Scotia Global Dividend Fund  
 Scotia Global Equity Fund (formerly Scotia Global Opportunities Fund)  
 Scotia Global Growth Fund  
 Scotia Global Small Cap Fund  
 Scotia Income Advantage Fund  
 Scotia INNOVA Balanced Growth Portfolio  
 Scotia INNOVA Balanced Income Portfolio  
 Scotia INNOVA Growth Portfolio  
 Scotia INNOVA Income Portfolio  
 Scotia INNOVA Maximum Growth Portfolio  
 Scotia International Equity Fund (formerly Scotia International Value Fund)  
 Scotia International Index Fund  
 Scotia Low Carbon Canadian Fixed Income Fund  
 Scotia Low Carbon Global Balanced Fund  
 Scotia Low Carbon Global Equity Fund  
 Scotia Money Market Fund  
 Scotia Mortgage Income Fund

Scotia Nasdaq Index Fund  
 Scotia Partners Balanced Growth Portfolio (formerly Scotia Partners Balanced Income & Growth Portfolio)  
 Scotia Partners Balanced Income Portfolio (formerly Scotia Partners Income & Modest Growth Portfolio)  
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 Scotia Partners Income Portfolio (formerly Scotia Partners Diversified Income Portfolio)  
 Scotia Partners Maximum Growth Portfolio (formerly Scotia Partners Aggressive Growth Portfolio)  
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 Scotia Private Canadian Equity Pool  
 Scotia Private Canadian Growth Pool  
 Scotia Private Canadian Mid Cap Pool  
 Scotia Private Canadian Preferred Share Pool  
 Scotia Private Canadian Small Cap Pool  
 Scotia Private Canadian Value Pool  
 Scotia Private Diversified International Equity Pool  
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 Scotia Private Floating Rate Income Pool (formerly Scotia Floating Rate Income Fund)  
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 Scotia Private International Small to Mid Cap Value Pool  
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 Scotia Private Real Estate Income Pool  
 Scotia Private Short Term Bond Pool (formerly Scotia Short Term Bond Fund)  
 Scotia Private Short-Mid Government Bond Pool  
 Scotia Private Strategic Balanced Pool  
 Scotia Private Total Return Bond Pool  
 Scotia Private U.S. Dividend Pool  
 Scotia Private U.S. Large Cap Growth Pool  
 Scotia Private U.S. Mid Cap Value Pool  
 Scotia Private U.S. Value Pool  
 Scotia Private World Infrastructure Pool  
 Scotia Resource Fund  
 Scotia Selected Balanced Growth Portfolio (formerly Scotia Selected Balanced Income & Growth Portfolio)  
 Scotia Selected Balanced Income Portfolio (formerly Scotia Selected Income & Modest Growth Portfolio)  
 Scotia Selected Growth Portfolio (formerly Scotia Selected Moderate Growth Portfolio)  
 Scotia Selected Income Portfolio

Scotia Selected Maximum Growth Portfolio (formerly Scotia Selected Aggressive Growth Portfolio)  
Scotia T-Bill Fund  
Scotia U.S. \$ Balanced Fund  
Scotia U.S. \$ Bond Fund  
Scotia U.S. \$ Money Market Fund  
Scotia U.S. Dividend Fund  
Scotia U.S. Equity Fund (formerly Scotia U.S. Blue Chip Fund)  
Scotia U.S. Index Fund  
Scotia U.S. Opportunities Fund (formerly Scotia U.S. Value Fund)  
Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated Oct 29, 2020

NP 11-202 Final Receipt dated Oct 30, 2020

**Offering Price and Description:**

Series T units, Series I units, Series K units, Series M units, Pinnacle Series units, Series A units, Series D units, Premium TL Series units, Premium T Series units, Premium TH Series units, Premium Series units and Series F units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3115204**

---

**Issuer Name:**

First Trust JFL Fixed Income Core Plus ETF

First Trust JFL Global Equity ETF

Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Oct 27, 2020

NP 11-202 Preliminary Receipt dated Oct 27, 2020

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3126552**

---

**Issuer Name:**

Wealthsimple Shariah World Equity Index ETF

Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Oct 29, 2020

NP 11-202 Preliminary Receipt dated Oct 30, 2020

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3128268**

---

**Issuer Name:**

Invesco NASDAQ 100 Index ETF Fund

Invesco NASDAQ Next Gen 100 Index ETF Fund

Invesco S&P 500 ESG Index ETF Fund

Invesco S&P/TSX Composite ESG Index ETF Class

Principal Regulator – Ontario

**Type and Date:**

Preliminary Simplified Prospectus, Annual Information Form dated Nov 2, 2020

NP 11-202 Preliminary Receipt dated Nov 2, 2020

**Offering Price and Description:**

Series PTF Units, Series F Units, Series A Units, Series F Shares, Series A Shares and Series PTF Shares

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3129444**

---

**Issuer Name:**

Ninepoint Diversified Bond Fund  
Ninepoint Energy Fund  
Ninepoint Global Infrastructure Fund  
Ninepoint Global Real Estate Fund  
Ninepoint Gold and Precious Minerals Fund  
Ninepoint High Interest Savings Fund  
Ninepoint Alternative Health Fund  
Ninepoint International Small Cap Fund  
Ninepoint Concentrated Canadian Equity Fund  
Ninepoint Diversified Bond Class  
Ninepoint Resource Class  
Ninepoint Silver Equities Class  
Ninepoint Risk Advantaged U.S. Equity Index Class  
(formerly, Ninepoint Enhanced Equity Class)  
Ninepoint Return Advantaged U.S. Equity Index Class  
(formerly, Ninepoint Enhanced U.S. Equity Class)  
Ninepoint Focused Global Dividend Class  
Ninepoint Gold Bullion Fund  
Ninepoint Silver Bullion Fund  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated to Final Simplified Prospectus dated October 28, 2020  
NP 11-202 Final Receipt dated Oct 29, 2020

**Offering Price and Description:**

Series PFT Units, Series P Shares, Series F Units, Series PF Shares, Series PF Units, Series QFT Shares, Series I Shares, Series FT Shares, Series FT Units, ETF Series Shares, Series PT Shares, Series PT Units, Series T Units, Series F Shares, Series D Securities, Series A Securities, Series D Shares, Series PFT Shares, Series Q Units, Series P Units, Series QFT Units, Series A Shares, Series QF Shares, Series QF Units, Series T Shares, ETF Series Units, Series I Securities, Series F Securities, Series QT Shares, Series Q Shares and Series QT Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3033523**

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**Issuer Name:**

CI Lawrence Park Alternative Investment Grade Credit Fund  
CI Marret Alternative Absolute Return Bond Fund  
CI Marret Alternative Enhanced Yield Fund  
CI Munro Alternative Global Growth Fund  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated to Final Simplified Prospectus dated October 22, 2020  
NP 11-202 Final Receipt dated Oct 28, 2020

**Offering Price and Description:**

ETF C\$ Series, ETF US\$ Series Hedged Series, Series A units, Series AH units, Series F units, Series FH units, Series I units, Series IH units, Series P units and Series PH units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3042591**

---

NON-INVESTMENT FUNDS

**Issuer Name:**

Big Pharma Split Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated October 27, 2020  
NP 11-202 Preliminary Receipt dated October 27, 2020

**Offering Price and Description:**

Maximum Offering: \$200,000,000 - Preferred Shares and Class A Shares

Price: \$10.49 - Preferred Shares and \$12.50 - Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Harvest Portfolios Group Inc.

Project #3126547

**Issuer Name:**

Frontenac Mortgage Investment Corporation  
Principal Regulator - Ontario

**Type and Date:**

Amendment #5 dated October 29, 2020 to Final Long Form Prospectus dated May 26, 2020

Received on October 29, 2020

**Offering Price and Description:**

Unlimited Number of Common Shares

Price: \$30.00 per Common Share

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

W.A. ROBINSON ASSET MANAGEMENT LTD.

Project #3055756

---

**Issuer Name:**

Bragg Gaming Group Inc. (formerly Breaking Data Corp.)  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated October 30, 2020  
NP 11-202 Preliminary Receipt dated October 30, 2020

**Offering Price and Description:**

\$18,000,500.00 - 25,715,000 Units

Price: \$0.70 per Unit

**Underwriter(s) or Distributor(s):**

CORMARK SECURITIES INC.  
CANACCORD GENUITY CORP.  
HAYWOOD SECURITIES INC.  
PARADIGM CAPITAL INC.  
EIGHT CAPITAL

**Promoter(s):**

-

Project #3126410

---

**Issuer Name:**

GetSwift Technologies Limited  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated October 27, 2020  
NP 11-202 Preliminary Receipt dated October 28, 2020

**Offering Price and Description:**

Up to 30,804,256 Common Shares and 2,163,166 Option Shares,

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Project #3126900

---

**Issuer Name:**

Hollister Biosciences Inc. (formerly, 1205600 BC Ltd.)  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Shelf Prospectus dated October 27, 2020  
NP 11-202 Preliminary Receipt dated October 29, 2020

**Offering Price and Description:**

\$10,000,000.00 - Common Shares Warrants Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Carl Saling

Project #3126879

---

**Issuer Name:**

Fission Uranium Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated October 30, 2020  
NP 11-202 Preliminary Receipt dated October 30, 2020

**Offering Price and Description:**

C\$15,000,012.50 - 54,545,500 Units

**Underwriter(s) or Distributor(s):**

EIGHT CAPITAL  
SPROTT CAPITAL PARTNERS LP by its General Partner  
SPROTT CAPITAL PARTNERS GP INC.  
CANACCORD GENUITY CORP

**Promoter(s):**

-

Project #3128986

**Issuer Name:**

Skeena Resources Limited  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Shelf Prospectus dated October 30, 2020  
NP 11-202 Preliminary Receipt dated October 30, 2020

**Offering Price and Description:**

\$150,000,000.00 - Common Shares, Preferred Shares,  
Debt Securities, Warrants, Subscription Receipts, Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3128906**

---

**Issuer Name:**

Vitalhub Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated October 30, 2020  
NP 11-202 Preliminary Receipt dated October 30, 2020

**Offering Price and Description:**

\$15,000,250.00- 5,172,500 Common Shares  
Price: \$2.90 per Common Share

**Underwriter(s) or Distributor(s):**

CORMARK SECURITIES INC.  
CANACCORD GENUITY CORP.  
BEACON SECURITIES LIMITED  
EIGHT CAPITAL  
PARADIGM CAPITAL INC.

**Promoter(s):**

-

**Project #3128072**

---

**Issuer Name:**

Argonaut Gold Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated October 27, 2020  
NP 11-202 Receipt dated October 27, 2020

**Offering Price and Description:**

US\$50,000,000.00 - 4.625% Convertible Senior Unsecured  
Debentures

Price: US\$1,000.00 per Debenture

**Underwriter(s) or Distributor(s):**

BMO NESBITT BURNS INC.  
SCOTIA CAPITAL INC.

**Promoter(s):**

-

**Project #3122919**

**Issuer Name:**

Aurora Cannabis Inc.  
Principal Regulator - Alberta

**Type and Date:**

Final Shelf Prospectus dated October 28, 2020  
NP 11-202 Receipt dated October 29, 2020

**Offering Price and Description:**

U.S.\$500,000,000.00  
Common Shares

Warrants

Options

Subscription Receipts

Debt Securities

Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3125860**

---

**Issuer Name:**

Euro Asia Pay Holdings Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Long Form Prospectus dated October 27, 2020  
NP 11-202 Receipt dated October 27, 2020

**Offering Price and Description:**

Minimum Offering: \$2,000,000.00 or 8,000,000 Units  
Maximum Offering: \$3,000,000.00 or 12,000,000 Units  
Price: \$0.25 per Unit

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.

**Promoter(s):**

Morris Chen

**Project #3090191**

---

**Issuer Name:**

Frontenac Mortgage Investment Corporation  
Principal Regulator - Ontario

**Type and Date:**

Amendment #5 dated October 29, 2020 to Final Long Form  
Prospectus dated May 26, 2020  
NP 11-202 Receipt dated November 2, 2020

**Offering Price and Description:**

Unlimited Number of Common Shares

Price: \$30.00 per Common Share

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

W.A. ROBINSON ASSET MANAGEMENT LTD.

**Project #3055756**



**Issuer Name:**

Gold Lion Resources Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated October 28, 2020  
NP 11-202 Receipt dated October 29, 2020

**Offering Price and Description:**

Minimum Offering: \$3,000,000.00 (6,666,667 Units)  
Maximum Offering: \$5,000,000.00 (11,111,111 Units)

**Underwriter(s) or Distributor(s):**

EIGHT CAPITAL

**Promoter(s):**

-

**Project #3117071**

---

**Issuer Name:**

MANSA EXPLORATION INC.  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated October 30, 2020  
NP 11-202 Receipt dated November 2, 2020

**Offering Price and Description:**

Minimum Public Offering of 6,500,000 Shares at \$0.10 per Share for Gross Proceeds of \$650,000.00  
Maximum Public Offering of 10,000,000 Shares at \$0.10 per Share for Gross Proceeds of \$1,000,000.00

**Underwriter(s) or Distributor(s):**

MACKIE RESEARCH CAPITAL CORPORATION

**Promoter(s):**

-

**Project #3052499**

---

**Issuer Name:**

Mind Medicine (MindMed) Inc. (formerly Broadway Gold Mining Ltd.)  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated October 26, 2020  
NP 11-202 Receipt dated October 27, 2020

**Offering Price and Description:**

\$25,000,500.00 - 23,810,000 Units  
\$1.05 per Unit

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.

**Promoter(s):**

Jamon Alexander Rahn  
Stephen Hurst  
Scott Freeman

**Project #3121703**

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**Issuer Name:**

Planet 13 Holdings Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated October 30, 2020  
NP 11-202 Receipt dated October 30, 2020

**Offering Price and Description:**

\$25,047,500.00 - 5,825,000 Units  
Price: \$4.30 per Unit

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.  
BEACON SECURITIES LIMITED

**Promoter(s):**

ROBERT GROESBECK  
LARRY SCHEFFLER

**Project #3124362**

---

**Issuer Name:**

Sunshine Silver Mining & Refining Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated October 27, 2020  
NP 11-202 Receipt dated October 27, 2020

**Offering Price and Description:**

US\$ □ 18,750,000 Shares of Common Stock  
Price: US\$ per Share

**Underwriter(s) or Distributor(s):**

BMO NESBITT BURNS INC.  
GOLDMAN SACHS CANADA INC.  
RBC DOMINION SECURITIES INC.  
CANACCORD GENUITY CORP.  
CIBC WORLD MARKETS INC.

**Promoter(s):**

THE ELECTRUM GROUP LLC  
ELECTRUM SILVER US LLC

**Project #3119650**

---

**Issuer Name:**

VEXT Science, Inc. (formerly, Vapen MJ Ventures Corporation)  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated October 27, 2020  
NP 11-202 Receipt dated October 27, 2020

**Offering Price and Description:**

\$6,000,000.00  
16,666,666 Units  
Price: \$0.36 per Unit

**Underwriter(s) or Distributor(s):**

BEACON SECURITIES LIMITED  
CANACCORD GENUITY CORP.

**Promoter(s):**

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**Project #3121034**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Return on Innovation Advisors Inc.	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer	October 29, 2020
Voluntary Surrender	Outcome Wealth Management Inc.	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer, Commodity Trading Manager	October 30, 2020
Voluntary Surrender	Takota Asset Management Inc.	Portfolio Manager and Exempt Market Dealer	November 2, 2020

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## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.2 Marketplaces

#### 13.2.1 TSX Inc. – Notice of Proposed Amendments and Requests for Comments

##### TSX INC.

##### NOTICE OF PROPOSED AMENDMENTS AND REQUEST FOR COMMENTS

TSX Inc. (“**TSX**”) is publishing this Notice of Proposed Amendments and Request for Comments in accordance with the “Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto”.

Market participants are invited to provide comments on the proposed changes. Comments should be in writing and delivered by December 7, 2020 to:

Denno Chen  
Director, Regulatory Affairs  
TMX Group  
100 Adelaide Street West, Suite 300  
Toronto, Ontario M5H 1S3  
Email: [tsxrequestforcomments@tsx.com](mailto:tsxrequestforcomments@tsx.com)

A copy should also be provided to:

Market Regulation Branch  
Ontario Securities Commission  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
Email: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

Comments will be made publicly available unless confidentiality is requested. Upon completion of the review by Ontario Securities Commission (“**Commission**”) staff, and in the absence of any regulatory concerns, a notice will be published to confirm Commission approval.

#### Proposed Amendments

TSX is proposing amendments to the Toronto Stock Exchange Rule Book (“**TSX Rulebook**”) to allow anonymous Broker Preferencing (as defined below) against passive dark orders, and other amendments necessary to ancillary features (collectively, the “**Amendments**”).

Currently, under the TSX Rulebook, an incoming attributed order from a broker will automatically be matched with another attributed order from the same broker on TSX at the top price level regardless of its position in the order book (“**Broker Preferencing**”). Broker Preferencing is currently not available on anonymous orders, whether visible or dark.

The Amendments would expand the order types that would be eligible for Broker Preferencing where all passive dark orders would become eligible for Broker Preferencing.

Please see Appendix A for a blackline of the Amendments.

#### Rationale

Broker Preferencing on unattributed dark orders is becoming the industry standard in Canada. TSX is proposing the Amendments as a result of client demand, for consistency with other Canadian marketplaces that offer similar functionality, and enhance our competitiveness.

### **Expected Date of Implementation**

The Amendments will be implemented following receipt of regulatory approval, and TSX anticipates implementing the Amendments as early as Q1 2021.

### **Expected Impact**

TSX does not expect any material impact on market structure, members, investors, issuers or the capital markets as other Canadian marketplaces already offer Broker Preferencing for unattributed dark orders. TSX anticipates a minor positive impact for some members and investors in that they could further benefit from reduced intermediation on their unattributed dark orders. TSX anticipates that the Amendments will increase execution quality and lower trade costs.

### **Expected Impact of the Amendments on TSX's Compliance with Ontario Securities Law**

The Amendments will not impact TSX's compliance with Ontario securities law and in particular the requirements for fair access and maintenance of fair and orderly markets. Broker Preferencing is a common feature for equity marketplaces in Canada, and other Canadian marketplaces already offer Broker Preferencing for anonymous dark orders.

### **Estimated Time Required by Members and Service Vendors to Modify Their Own Systems after Implementation of the Amendments**

There are no expected mandatory technical changes required by members and service vendors since there are no changes to the specification to reflect the Amendments. Notwithstanding, TSX anticipates that at least 60 days will be provided between regulatory approval of the Amendments and implementation, which should be sufficient to allow adoption by those that wish to take full advantage of the Amendments.

### **Do the Amendments Currently Exist in Other Markets or Jurisdictions**

Broker Preferencing for Unattributed dark orders is currently available on NEO Exchange, Canadian Securities Exchange, and MatchNow.

On March 5, 2020, Omega Securities Inc. published a request for comment on, among other things, permitting Broker Preferencing on their lit and hidden orders, for both attributed and anonymous orders.

In addition, on March 10, 2020, the Commission approved changes to the trading rules and policies of Nasdaq Canada to reflect the introduction of Broker Preferencing for unattributed (anonymous) orders.

APPENDIX A  
BLACKLINE OF AMENDMENTS TO TSX RULEBOOK

PART 1 - INTERPRETATION

Rule 1-101 Definitions (Amended)

[...]

(2) In all Exchange Requirements, unless the subject matter or context otherwise requires:

[...]

“unattributed order” means an order ~~which is displayed~~ in the Book without the Participating Organization's trading number.

Amended ([●], 2021)

[...]

Rule 4-802 Allocation of Trades

[...]

(3) Subject to Rule 4-801(1), Rule 4-801(2), and any conditions imposed on either the tradeable order or the offsetting order that would otherwise prevent the two orders from executing against each other, a tradeable order that is entered in the Book ~~and is not a Bypass Order~~ shall be executed on allocation in the following sequence:

- (a) to offsetting orders entered in the Book by the Participating Organization that entered the tradeable order according to the time of entry of the offsetting order in the Book, provided that the offsetting order is undisclosed, or in the case where the offsetting order is disclosed, neither the tradeable order nor the offsetting order is an unattributed order; then
- (b) to offsetting orders in the Book according to the time of entry of the offsetting order in the Book; then
- (c) to a Market Maker if the tradeable order is disclosed and is eligible for a Minimum Guaranteed Fill.

Amended (October 23, 2017, ~~and~~ November 27, 2017, and [●], 2021)

**13.2.2 ONECHICAGO, LLC – Notice of Revocation Order**

**ONECHICAGO, LLC**

**NOTICE OF REVOCATION ORDER**

On October 30, 2020, at the request of ONECHICAGO, LLC (**ONECHICAGO**), the Commission revoked an exemption order issued to ONECHICAGO on October 14, 2016 (**Exemption Order**). The Exemption Order granted an exemption to ONECHICAGO from the requirement to be recognized as an exchange under subsection 21(1) of the Securities Act (Ontario) and from the requirement to be registered as a commodity futures exchange under subsection 15(1) of the Commodity Futures Act (Ontario).

A copy of the revocation order is published in Chapter 2 of this Bulletin.



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