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The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Contact Centre – Inquiries, Complaints:

Office of the Secretary:

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Thomson Reuters
One Corporate Plaza
2075 Kennedy Road
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M1T 3V4

416-609-3800 or 1-800-387-5164

Fax: 416-593-8122
TTY: 1-866-827-1295

Fax: 416-593-2318

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Customer Support

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NOTICE OF MEMORANDUM OF UNDERSTANDING
RESPECTING THE OVERSIGHT OF
DESIGNATED BENCHMARKS AND DESIGNATED BENCHMARK ADMINISTRATORS

May 27, 2021

Background

The Ontario Securities Commission, together with the Alberta Securities Commission, Autorité des marchés financiers, British Columbia Securities Commission, Financial and Consumer Affairs Authority of Saskatchewan, Financial and Consumer Services Commission (New Brunswick) and Nova Scotia Securities Commission, recently entered into a Memorandum of Understanding (the **MOU**) respecting the oversight of designated benchmarks, designated benchmark administrators and, if applicable, benchmark contributors, including the processing of applications for designation.

The MOU outlines the manner in which the jurisdictions will cooperate and coordinate their efforts to oversee designated benchmarks, designated benchmark administrators and, if applicable, benchmark contributors, in order to achieve consistency, efficiency and effectiveness in the overall oversight approach, as well as the efficient and effective processing of applications for designation.

The MOU is subject to the approval of the Minister of Finance. The MOU was delivered to the Minister of Finance on May 26, 2021.

Questions

Questions may be referred to:

Michael Bennett
Senior Legal Counsel, Corporate Finance
Tel: 416-593-8079
Email: mbennett@osc.gov.on.ca

Melissa Taylor
Legal Counsel, Corporate Finance
Tel: 416-596-4295
Email: mtaylor@osc.gov.on.ca

Memorandum of Understanding
respecting the Oversight of Designated Benchmarks and Benchmark Administrators

among:

Alberta Securities Commission ("ASC")
Autorité des marchés financiers ("AMF")
British Columbia Securities Commission ("BCSC")
Financial and Consumer Affairs Authority of Saskatchewan ("FCAA")
Financial and Consumer Services Commission (New Brunswick) ("FCNB")
Nova Scotia Securities Commission ("NSSC")
Ontario Securities Commission ("OSC")

(each a "Party", collectively the "Parties")

The Parties agree as follows:

Article 1 – Underlying Principles

Scope

1.1 This memorandum of understanding (**"MOU"**) outlines the manner in which the Parties intend to cooperate and coordinate their efforts in respect of the oversight of designated benchmarks, designated benchmark administrators and, if applicable, benchmark contributors, including the processing of applications.

General Purpose and Objectives

1.2 The Parties intend to fully cooperate and coordinate among themselves in the oversight of designated benchmarks, designated benchmark administrators and, if applicable, benchmark contributors, including the processing of applications. The Parties' overall objectives are to promote the efficient and effective oversight of designated benchmarks, designated benchmark administrators and, if applicable, benchmark contributors.

1.3 The cooperation and coordination by the Parties under this MOU are intended to ensure that all of the following applicable objectives are met:

(a) the fulfillment of each Party's regulatory mandate;

(b) the achievement of consistency in the overall oversight approach among the Parties that act as a lead authority, co-lead authorities or reliant authorities for each particular designated benchmark and designated benchmark administrator so that conflicting or incompatible oversight requirements and actions are avoided and oversight gaps are eliminated;

(c) the efficient and effective processing of applications and oversight of designated benchmarks, designated benchmark administrators and, if applicable, benchmark contributors, to minimize as appropriate

  (i) the burden imposed on applicants, designated benchmarks, designated benchmark administrators and, if applicable, benchmark contributors, and

  (ii) the duplication of efforts by the Parties;

(d) the promotion of consistent and transparent reporting by a lead authority or co-lead authorities to a reliant authority for each designated benchmark, designated benchmark administrator and, if applicable, benchmark contributor.

1.4 While recognizing the benefits of cooperating through this MOU, the Parties also acknowledge that this MOU and their participation in this MOU do not result in any of the following:

(a) modifying or superseding the relevant legislation, regulations or rules in effect in their respective jurisdiction;

(b) modifying or superseding any designation or decision made by a Party in respect of a designated benchmark, designated benchmark administrator or, if applicable, benchmark contributor;

(c) constraining or limiting the powers or discretion of the Parties in discharging their respective oversight responsibilities or in their processing of applications;

(d) creating any legally binding rights, obligations or liabilities for the Parties apart from any rights, obligations and liabilities that might arise under applicable law. In particular, this MOU does not create any liabilities in respect of the provision of information, any failure or delay in providing information or the accuracy of the information that is provided.

Oversight Model

1.5 A lead authority or co-lead authorities will be selected for each designated benchmark and designated benchmark administrator in accordance with Article 3 of this MOU. If applicable, the lead authority or co-lead authorities also will be responsible for the oversight of benchmark contributors to a designated benchmark. If applicable, one or more Parties may rely on the lead authority or co-lead authorities as a reliant authority.

1.6 For each designated benchmark and designated benchmark administrator, the lead authority or co-lead authorities will be responsible for

(a) direct oversight through an oversight program established in accordance with Article 6 of this MOU,

(b) liaising and interacting directly with the designated benchmark administrator or a benchmark contributor with respect to such oversight, and

(c) where a designated benchmark administrator or a benchmark contributor to a designated benchmark is in a foreign jurisdiction, liaising and interacting directly with the home regulator in accordance with Article 7 of this MOU, where applicable.

1.7 Where a lead authority or co-lead authorities have been selected for a designated benchmark and designated benchmark administrator, a reliant authority may also designate the benchmark and the benchmark administrator.

Article 2 – Definitions

2.1 In this MOU, the following terms have the meanings set out below:

"applicant" means a benchmark administrator or a regulator that has applied to a securities regulatory authority to request the designation of a benchmark or a benchmark administrator under applicable Canadian securities legislation.

"application" means an application by an applicant to request the designation of a benchmark or a benchmark administrator under applicable Canadian securities legislation.

"benchmark" has the same meaning as in applicable Canadian securities legislation.

"benchmark administrator" has the same meaning as in applicable Canadian securities legislation.

"benchmark contact person" means the person designated by each Party under section 8.1 as the person or persons to receive communications from other Parties.

"benchmark contributor" has the same meaning as in applicable Canadian securities legislation.

"benchmark oversight committee" has the meaning assigned in section 9.1.

"Canadian securities legislation" has the same meaning as in National Instrument 14-101 *Definitions*.

"chair of the benchmark oversight committee" has the meaning assigned in section 9.3.

"chair of a Party" means the chair of a Party or an individual performing a similar function or occupying a similar position for a Party.

"co-lead authority" means a Party that has designated, or for purposes of this MOU will designate, a particular benchmark and benchmark administrator and that has been selected from time to time to be jointly responsible with one or more other Parties for the oversight of the designated benchmark, designated benchmark administrator and benchmark contributors in accordance with Article 3 of this MOU.

"coordinating lead authority" means one of the co-lead authorities for a particular designated benchmark and designated benchmark administrator that is responsible for carrying out certain administrative tasks in respect of that designated benchmark and designated benchmark administrator, as specified in this MOU.

"designated benchmark" has the same meaning as in applicable Canadian securities legislation.

"designated benchmark administrator" has the same meaning as in applicable Canadian securities legislation.

"energy benchmark" means, when commodity benchmark provisions are included in Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*, a commodity benchmark that is determined by reference to or an assessment of an underlying interest that is energy.

"home regulator" means a foreign-based regulatory authority that has direct authority over, and carries out oversight of, a particular foreign-based designated benchmark administrator or benchmark contributor to a designated benchmark in its home jurisdiction.

"lead authority" means a Party that has designated, or for purposes of this MOU will designate, a particular benchmark and benchmark administrator and that has been selected from time to time to be responsible for the oversight of the designated benchmark, designated benchmark administrator and benchmark contributors in accordance with Article 3 of this MOU.

"list of designated benchmarks and benchmark administrators" means the list attached as Schedule 1 to this MOU that includes the selected lead authority or co-lead authorities, and the reliant authorities of each designated benchmark and designated benchmark administrator.

"MOU contact person" means the person designated by each Party under section 8.1 as the person or persons to receive communications from other Parties.

"regulator" has the same meaning as in National Instrument 14-101 *Definitions*.

"reliant authority" means a Party that relies on the lead authority or co-lead authorities to provide direct oversight of a designated benchmark, designated benchmark administrator and benchmark contributors in the manner prescribed in this MOU.

"securities regulatory authority" has the same meaning as in National Instrument 14-101 *Definitions*.

"urgent matter" means a particular issue or concern that requires urgent action or consideration by the relevant Parties regarding any of the following:

(a) the accuracy or integrity of a designated benchmark;

(b) the conduct of a designated benchmark administrator or a benchmark contributor to a designated benchmark;

(c) the use of a designated benchmark by a benchmark user.

2.2 For the purposes of this MOU, any other term used in this MOU that has a meaning ascribed to it in National Instrument 14-101 *Definitions* has the meaning so ascribed in that Instrument.

Article 3 – Selection of a Lead Authority or Co-Lead Authorities

Guiding Factors for the Selection of a Lead Authority or Co-Lead Authorities

3.1 The selection of a lead authority or co-lead authorities for a particular designated benchmark and designated benchmark administrator will be reached by consensus of all Parties based on a number of guiding factors, including

(a) the head office or principal place of business of the benchmark administrator;

(b) the significance of the benchmark in each jurisdiction of Canada, which can be determined by

(i) the number of benchmark contributors to the benchmark that are resident in each jurisdiction of Canada relative to Canadian totals, and

(ii) the impact on the financial markets or economy of each jurisdiction of Canada if the benchmark does not accurately represent that part of the market or economy the benchmark is intended to record or ceases to be provided to benchmark users;

(c) the expertise or experience of a Party with the subject matter of the benchmark;

(d) it is generally expected that the ASC would be the lead authority for energy benchmarks and benchmark administrators that it designates when commodity benchmark provisions are included in Multilateral Instrument

25-102 *Designated Benchmarks and Benchmark Administrators*. Notwithstanding the above, any other Party may decide to

(i) designate energy benchmarks and benchmark administrators over which the Party has jurisdiction,

(ii) act as co-lead authority for any such benchmark or benchmark administrator in the manner prescribed in this MOU, and

(iii) if the benchmark or benchmark administrator has not also been designated by the ASC, act as lead authority for any such benchmark or benchmark administrator in the manner prescribed in this MOU;

(e) where co-lead authorities are selected, the number of co-lead authorities should be limited to two or three in order to ensure efficiency and effectiveness of the oversight of a particular designated benchmark and designated benchmark administrator.

3.2 The list of guiding factors is non-exhaustive, and no single factor is intended to be determinative.

3.3 The selection process for a lead authority or co-lead authorities for a particular designated benchmark and designated benchmark administrator will be initiated

(a) in the case of an application by a regulator, before the time of the application,

(b) in the case of a designation by a securities regulatory authority on its own initiative, before the time of the designation, and

(c) in the case of an application by benchmark administrator, before or promptly after the time of the application.

3.4 The selection process for a lead authority or co-lead authority for a particular designated benchmark and designated benchmark administrator will be finalized no later than the time of designation of the benchmark and benchmark administrator.

3.5 If a Party wants to designate a benchmark or benchmark administrator on its own initiative, it will notify the benchmark oversight committee. The benchmark oversight committee will

(a) ascertain whether any other Party also wants to designate the benchmark and benchmark administrator or act as lead authority or co-lead authority for the benchmark and benchmark administrator, and

(b) consult with the relevant Parties to seek a consensus and, whether or not a consensus has been reached, prepare a report to the chairs of the Parties with either a recommendation or options on which Party should act as lead authority or co-lead authority for the benchmark and benchmark administrator.

3.6 If a Party receives an application from a benchmark administrator, it will notify the benchmark oversight committee. The benchmark oversight committee will

(a) ascertain whether any other Party also wants to designate the benchmark and benchmark administrator or act as lead authority or co-lead authority for the benchmark and benchmark administrator, and

(b) consult with the relevant Parties to seek a consensus and, whether or not a consensus has been reached, prepare a report to the chairs of the Parties with either a recommendation or options on which Party should act as lead authority or which Parties should act as co-lead authorities for the benchmark and benchmark administrator.

3.7 Where consensus on a lead authority or co-lead authorities cannot be reached by the relevant Parties, the matter may be escalated pursuant to Article 12 of the MOU.

Re-Selection of a Lead Authority or Co-Lead Authorities

3.8 The Parties may re-select a lead authority or co-lead authorities for a particular designated benchmark and designated benchmark administrator in accordance with this Article 3 at either of the following times:

(a) no earlier than three years from the time of the selection of the incumbent lead authority or co-lead authorities in the absence of the escalation of any disputes or disagreements pursuant to Article 12 of this MOU;

(b) at an earlier time in connection with the resolution of any disputes or disagreements pursuant to Article 12 of the MOU.

3.9 Subject to section 3.8, if a Party wants to act as lead authority or co-lead authority for a designated benchmark and designated benchmark administrator that has already been assigned a lead authority or co-lead authorities under this MOU, it will notify the benchmark oversight committee. The benchmark oversight committee will

(a) ascertain whether any other Party also wants to act as lead authority or co-lead authority for the designated benchmark and designated benchmark administrator, and

(b) consult with the relevant Parties to seek a consensus and, whether or not a consensus has been reached, prepare a report to the chairs of the Parties with either a recommendation or options on which Party should act as lead authority or which Parties should act as co-lead authorities for the designated benchmark and designated benchmark administrator.

Article 4 – Cooperation between Co-Lead Authorities

4.1 Co-lead authorities for a particular designated benchmark and designated benchmark administrator will cooperate and coordinate with each other in respect of the oversight of the designated benchmark and designated benchmark administrator, including jointly establishing an oversight program in accordance with Article 6 of this MOU and coordinating the conduct of the oversight program.

4.2 Coordination between co-lead authorities may be achieved by

(a) clearly defining each Party's respective responsibilities,

(b) sharing information respecting the oversight of the designated benchmark and designated benchmark administrator in a timely manner, and

(c) harmonizing regulatory actions with respect to the designated benchmark and designated benchmark administrator to the extent possible.

4.3 Co-lead authorities for a particular designated benchmark and designated benchmark administrator may appoint by mutual agreement a coordinating lead authority that will accept responsibility for liaising and interacting with the designated benchmark administrator for each oversight matter, where possible, and for carrying out certain administrative tasks as determined between the co-lead authorities from time to time.

Article 5 – Coordination of Application Process

5.1 A Party that is in receipt of an application will notify all MOU contact persons of the application.

5.2 Parties that have concurrently or within an overlapping time period received an application will coordinate their review and approval of the application to the extent practicable, including sharing communications with the applicant, harmonizing relevant terms and conditions of designation and developing consistent protocols for review or approval of filings by the applicant following the designation.

5.3 The coordination of an application process in respect of a particular applicant may be led by its lead authority or coordinating lead authority, if already selected in accordance with Article 3 of this MOU, or by another Party or Parties selected by the mutual agreement of the Parties.

Article 6 – Oversight of a Designated Benchmark and Benchmark Administrator

Oversight Program Conducted by Lead Authority or Co-Lead Authorities

6.1 The lead authority or co-lead authorities for a particular designated benchmark and designated benchmark administrator will establish and conduct a risk-based oversight program ("**oversight program**") in respect of the designated benchmark, designated benchmark administrator and, if applicable, benchmark contributors.

6.2 The purpose of an oversight program is to ensure that the particular designated benchmark, designated benchmark administrator and, if applicable, benchmark contributors are in compliance with applicable Canadian securities legislation, the terms and conditions of the applicable designation decision issued by their lead authority or co-lead authorities and any code of conduct for benchmark contributors. An oversight program will include on-site review and periodic review of information filed or delivered by a designated benchmark administrator.

6.3 The lead authority or co-lead authorities retain discretion regarding the manner in which an oversight program is conducted.

Involvement of a Reliant Authority

6.4 A reliant authority may advise the lead authority or co-lead authorities of a particular designated benchmark and designated benchmark administrator that it has specific material concerns regarding the operations of the designated benchmark, designated benchmark administrator or benchmark contributor and request that the lead authority or co-lead authorities examine such concerns. The lead authority or co-lead authorities retain the discretion to determine how to examine the concerns and will notify the reliant authority of their intentions within a reasonable period of time. Where the lead authority or co-lead authorities undertake an examination based on the concerns of a reliant authority, the findings of the examination will be reported back to the reliant authority as soon as practicable and no later than the time any findings are presented to the designated benchmark administrator.

6.5 Where a lead authority or co-lead authorities are not able to, or in their discretion determine that they will not, examine such material concerns, the reliant authority may, if it has designated the particular benchmark and benchmark administrator, conduct direct oversight in respect of the concerns without the participation of the lead authority or co-lead authorities. The reliant authority will report the findings of that direct oversight to the lead authority, co-lead authorities and other reliant authorities as soon as practicable and no later than the time any findings are presented to the designated benchmark administrator.

6.6 To the extent that a reliant authority conducts direct oversight of a designated benchmark, designated benchmark administrator or benchmark contributor in a particular instance pursuant to section 6.5, the reliant authority may directly liaise and interact with

(a) the designated benchmark administrator or benchmark contributor, and

(b) the home regulator of the designated benchmark, designated benchmark administrator or benchmark contributor, if it is foreign-based.

Information Sharing

6.7 The lead authority or co-lead authorities for a particular designated benchmark and designated benchmark administrator will provide the reliant authorities with all of the following:

(a) at least annually, a summary description of the oversight program planned for the upcoming year, including material concerns or issues that will be subject to examination and key oversight activities, as well as any material changes to the oversight program since the last year;

(b) at least annually, a summary report of key findings from conducting the oversight program in the period, material issues encountered, the designated benchmark administrator's responses and action plans, the appropriateness of those responses and action plans and any follow up oversight activities;

(c) such other information respecting the designated benchmark, designated benchmark administrator, benchmark contributors or their oversight that the lead authority or co-lead authorities consider to be of interest to a reliant authority for the discharging of their respective regulatory mandates.

6.8 The lead authority or co-lead authorities for a particular designated benchmark and designated benchmark administrator will, upon written request from any reliant authority, provide to the reliant authority, or request that the designated benchmark administrator provide to the reliant authority, any of the following, within a reasonable period of time:

(a) information concerning the designated benchmark, designated benchmark administrator or benchmark contributors;

(b) information concerning the oversight activities of the lead authority or co-lead authorities in respect of the designated benchmark, designated benchmark administrator or benchmark contributors.

6.9 Information shared between the Parties may include

(a) information related to the operations, business, services, activities, affairs, financial resources, governance, systems, policies, procedures or controls of the designated benchmark administrator or a benchmark contributor in respect of a designated benchmark,

(b) results of any oversight activities,

(c) regulatory actions with respect to the designated benchmark, designated benchmark administrator or benchmark contributor,

(d) documents delivered or filed by the designated benchmark administrator or benchmark contributor, and

(e) any other information respecting the oversight of the designated benchmark, designated benchmark administrator or a benchmark contributor that a Party may reasonably request for use in discharging its respective regulatory mandate.

6.10 The sharing of any information between Parties is subject to applicable law. The Parties will keep such information confidential to the extent permitted by applicable law and the information may be used by the Parties only for oversight purposes or otherwise in connection with their respective statutory mandates and responsibilities.

6.11 Each Party will provide notice to all MOU contact persons of any proposed changes to its legislative, regulatory or legal frameworks with respect to benchmarks and benchmark administrators.

Emergency Protocol for Coordination on Urgent Matters

6.12 If it is not itself the lead authority or one of the co-lead authorities, a Party that identifies an urgent matter will promptly notify a benchmark contact person of the lead authority or co-lead authorities of the particular designated benchmark and designated benchmark administrator by telephone or email, briefly describing the nature and the urgency of the matter.

6.13 Upon identifying or being informed of an urgent matter, the lead authority or the co-lead authorities for the particular designated benchmark and designated benchmark administrator will promptly notify all benchmark contact persons of the co-lead authorities and reliant authorities of the designated benchmark and designated benchmark administrator, where applicable, and organize and convene a teleconference to discuss the urgent matter.

6.14 At the initial teleconference, the lead authority, co-lead authorities and reliant authorities of the designated benchmark and designated benchmark administrator will discuss the urgent matter and possible responses by the lead authority or co-lead authorities, including, where appropriate

(a) assigning the role of coordinating consultations among relevant Parties and responses to the urgent matter to the lead authority, the co-lead authorities or another Party ("**urgent matter coordinator**"), and

(b) assigning persons within each of the lead authority, co-lead authorities and reliant authorities to receive communications and participate in consultations relating to the urgent matter.

6.15 Although determination of which Party is the appropriate party to coordinate the urgent matter will depend on the circumstances, in determining the urgent matter coordinator, the Parties will have regard to

(a) the lead authority or co-lead authorities,

(b) whether the urgent matter is primarily a matter of risk to the Canadian financial system as a whole or rather is confined to risk, efficiency or access in a provincial or territorial market, and

(c) if the urgent matter is primarily a matter of operational risk resulting in a system problem or failure, the jurisdiction where the system problem or failure is likely to have the most impact.

6.16 Following the initial teleconference, as necessary, the urgent matter coordinator will regularly update, consult with or seek input from the lead authority, co-lead authorities and reliant authorities.

Article 7 – Consultation and Coordination with a Home Regulator

7.1 When a designated benchmark administrator or a benchmark contributor to a designated benchmark is also overseen by a home regulator, its lead authority or co-lead authorities will endeavour to cooperate and coordinate with the home regulator in order to

(a) promote a consistent approach to oversight between the lead authority or co-lead authorities and the home regulator, in order to avoid conflicting or incompatible oversight requirements and actions and to eliminate oversight gaps, and

(b) promote efficient and effective oversight of the benchmark administrator or benchmark contributor by minimizing the burden on the benchmark administrator or benchmark contributor and by avoiding duplication of efforts by the lead authority, co-lead authorities and the home regulator.

Article 8 – Benchmark Contact Persons and MOU Contact Persons

8.1 Each Party will designate one or more MOU contact persons for the purposes of this MOU and will communicate any updates in respect of the details of those MOU contact persons.

8.2 For each designated benchmark and designated benchmark administrator, each Party will designate at least one and up to three benchmark contact persons in respect of the designated benchmark and designated benchmark administrator for the purposes of this MOU and will communicate any updates in respect of the details of those benchmark contact persons.

8.3 The chair of the benchmark oversight committee will, promptly upon receiving the initial list of MOU contact persons and benchmark contact persons from each Party, compile a comprehensive list of MOU contact persons and benchmark contact persons and their contact information and distribute the list to all of the Parties. The chair of the benchmark oversight committee will then be responsible, as necessary, for

(a) maintaining and updating the comprehensive list of MOU contact persons and benchmark contact persons, and

(b) promptly distributing updated lists of MOU contact persons and benchmark contact persons.

Article 9 – Benchmark Oversight Committee

9.1 A benchmark oversight committee will be established and will have the mandate to act as a forum and venue for the Parties to share information pursuant to this MOU, including the discussion of issues, concerns and proposals related to the oversight of designated benchmarks and designated benchmark administrators.

9.2 The benchmark oversight committee will consist of staff representatives from the Parties who have responsibility for, or expertise in, the oversight of benchmarks and benchmark administrators. A Party may, but is not required to, have a staff representative on the benchmarks oversight committee. The benchmark oversight committee will be selected by consensus of the Parties. Initially, the benchmark oversight committee consists of staff representatives from AMF, ASC, BCSC and OSC**.**

9.3 A chair of the benchmark oversight committee will be selected by consensus of the Parties.

9.4 The benchmark oversight committee will conduct teleconferences at least quarterly.

9.5 At least annually, the benchmark oversight committee will provide to the Canadian Securities Administrators ("**CSA**") a written report of oversight activities regarding designated benchmarks and designated benchmark administrators during the previous period.

Article 10 – Waiver

10.1 The provisions of this MOU may be waived by written mutual agreement of the Parties, with the exception of section 6.10.

Article 11 – Amendments to the MOU and the List of Designated Benchmarks and Benchmark Administrators

11.1 This MOU may be amended from time to time as mutually agreed upon by the Parties. Any amendments must be in writing and approved by the duly authorized representatives of each Party. Any amendment of this MOU is subject to Ministerial approval in Alberta and Ontario and to Governmental approval in Québec in accordance with applicable legislation.

11.2 The list of designated benchmarks and benchmark administrators does not form part of this MOU, may be revised from time to time by mutual agreement of the Parties and will be published by each Party after any such revision.

11.3 The Parties acknowledge that a securities regulatory authority of any other jurisdiction of Canada may become a Party to this MOU by executing a counterpart of this MOU and providing an original copy of the counterpart to each of the other Parties.

Article 12 – Escalation Process

12.1 The Parties will act in good faith to resolve, amongst themselves or within the context of discussions of the benchmark oversight committee, any disputes or disagreements that arise between two or more Parties ("**disputing Parties**").

12.2 In the event that disputes or disagreements cannot be resolved through discussions among disputing Parties or within the context of discussions of the benchmark oversight committee, the disputes or disagreements will be escalated for resolution as follows:

(a) within 10 business days of an acknowledgement by the disputing Parties of a failure to resolve a dispute or disagreement, the disputing Parties will use their best efforts to arrange for senior staff representatives of the disputing Parties to discuss the issues and attempt to reach a consensus;

(b) if, after discussions, senior staff representatives of the disputing Parties are unable to reach a consensus, the disputing Parties will, as soon as practicable, escalate the disagreement to the CSA's Policy Coordination Committee for policy matters, the Executive Directors' Committee for operational matters or such other process as agreed to by the disputing Parties.

Article 13 – Withdrawal from the MOU

13.1 A Party may withdraw from this MOU at any time upon giving the other Parties at least 90 days prior written notice. During the notice period, a Party wishing to withdraw from this MOU will continue to cooperate in accordance with this MOU. A Party that withdraws from this MOU will continue to treat information that it obtained under this MOU in the manner prescribed by section 6.10 even after its withdrawal. If any Party withdraws from this MOU, the MOU remains in effect between the remaining Parties.

Article 14 – Effective Date and Execution

14.1 For a Party, this MOU becomes effective on the date ("**effective date**") that all of the following requirements are met:

(a) the MOU is signed by the Party and at least one other Party; and

(b) all applicable Ministerial or governmental approvals are obtained for the Party.

14.2 A Party will give notice of its effective date to the other Parties promptly after the requirements referred to in section 14.1 are met for the Party.

14.3 This MOU may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered is deemed to be the original, and those counterparts together constitute one and the same instrument.

IN WITNESS WHEREOF the duly authorized signatories of the Parties below have signed this MOU.

Alberta Securities Commission

Per: *"Stan Magidson"*

Title: Chair and Chief Executive Officer

Signed April 23, 2021

Autorité des marchés financiers

Per: *"Louis Morisset"*

Title: President and Chief Executive Officer

Signed April 29, 2021

British Columbia Securities Commission

Per: *"Brenda Leong"*

Title: Chair and Chief Executive Officer

Signed May 19, 2021

Financial and Consumer Affairs Authority of Saskatchewan

Per: *"Roger Sobotkiewicz"*

Title: Chair and Chief Executive Officer

Signed May 3, 2021

Financial and Consumer Services Commission (New Brunswick)

Per: *"Kevin Hoyt"*

Title: Chief Executive Officer

Signed April 22, 2021

Nova Scotia Securities Commission

Per: *"Paul E. Radford"*

Title: Chair and Chief Executive Officer

Signed April 23, 2021

Ontario Securities Commission

Per: *"Grant Vingoe"*

Title: Chair and Chief Executive Officer

Signed April 22, 2021

Schedule 1

List of Designated Benchmarks and Benchmark Administrators, in relation to the Memorandum of Understanding respecting the Oversight of Designated Benchmarks and Benchmark Administrators, as of [insert date]

Designated Benchmark	Designated Benchmark Administrator	Lead Authority	Co-Lead Authorities	Reliant Authorities
Canadian Dollar Offered Rate ("**CDOR**")	Refinitiv Benchmark Services (UK) Limited ("**RBSL**")	Not applicable	AMF, OSC[1]	ASC, BCSC, FCAA, FCNB, NSSC

[1] Currently, only the AMF and the OSC plan to designate CDOR as a designated benchmark and RBSL as a designated benchmark administrator.

1.1.2 CSA Notice of Publication – National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure and Related Consequential Amendments and Changes

CSA Notice of Publication

National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*
Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure*
and Related Consequential Amendments and Changes

May 27, 2021

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing in final form the following materials:

- National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Instrument**);
- Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Companion Policy**);
- Related consequential amendments or changes to:
  - Multilateral Instrument 45-108 *Crowdfunding*[1];
  - Companion Policy 45-108CP *Crowdfunding*;
  - Companion Policy 51-102CP *Continuous Disclosure Obligations*;
  - Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets*[2]; and
  - Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*.

(collectively, the **Materials**).

The original proposals for the Materials (the Original Materials) were published on September 6, 2018. In connection with the Original Materials we conducted 38 outreach sessions across seven cities in Canada and received 42 comment letters. In response to the original feedback received, we made substantive changes, and reissued the proposals for the Materials (Revised Materials) on February 13, 2020. In connection with the Revised Materials we conducted 14 outreach sessions across four cities in Canada allowing us to further actively engage with stakeholders. We received 26 comment letters from various stakeholders, including issuers, investors, accounting firms, standard setters, industry associations and law firms.

The list of commenters on the Revised Materials is attached as Annex A. We wish to thank all commenters for contributing to the second consultation. A summary of the comments we received and our responses to those comments are attached as Annex B. In response to the feedback we received, we have made targeted, non-material, changes that primarily clarify and streamline the application and disclosure requirements. As these changes are not material, we are not republishing the Materials for a further comment period.

The text of the consequential amendments and changes of the Materials is contained in Annexes E through I of this Notice.

Annex J to this Notice includes additional text, as required, to respond to local matters in a local jurisdiction. Each jurisdiction that is proposing local amendments will publish an Annex J.

This Notice will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com

[1] The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential amendments or the changes to the related Companion Policy because MI 45-108 does not apply in these jurisdictions.

[2] The Ontario Securities Commission is not proposing this consequential change as Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* and its Companion Policy do not apply in Ontario.

www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

The Instrument is expected to be adopted by each member of the CSA. In some jurisdictions, Ministerial approvals are required for the implementation of the Instrument. Provided all necessary ministerial approvals are obtained, the Instrument will come into force on August 25, 2021.

Substance and Purpose

The Instrument addresses the disclosure surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures (i.e., capital management measures, supplementary financial measures, and total of segments measures, as defined in the Instrument).

In some cases, non-GAAP financial measures, non-GAAP ratios, and other financial measures are disclosed by an issuer to provide additional insight, from management's perspective, about financial performance, financial position, or cashflow. The Instrument does not contain specific limitations or industry-specific requirements on how to calculate a measure; rather, it provides clarity and consistency with respect to an issuer's disclosure obligations aimed at improving the quality of information provided to investors about such measures.

We acknowledge that some stakeholders continue to prefer that we limit, in specific circumstances, the disclosure of certain financial measures, and develop industry-specific requirements for certain financial measures. However, due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we continue to believe that disclosure requirements are best suited to respond to investor needs for quality information without being overly prescriptive. These requirements would allow investors to better analyze different financial measures within an industry or among different industries.

Although the definition of a non-GAAP financial measure has been updated, the Instrument has substantially incorporated the disclosure guidance in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (SN 52-306) for non-GAAP financial measures. To ensure investors appreciate the context of other financial measures, the Instrument introduces disclosure requirements if such financial measures are disclosed outside of the financial statements.

Background

Non-GAAP Financial Measures

Various activities have contributed to the development of the Materials, which will replace the guidance provided in SN 52-306.

Many issuers, in all industries, disclose a range of financial measures that may lack standardized meanings under the financial reporting framework used in the preparation of the issuer's financial statements and lack transparency as to their calculation or vary significantly by issuer and industry.

Common terms used to label non-GAAP financial measures may include "adjusted earnings", "adjusted EBITDA", "free cash flow", "pro forma earnings", "cash earnings", "distributable cash", "cost per ounce", "adjusted funds from operations" and "earnings before non-recurring items".

In Canada, the guidance in SN 52-306 is intended to help ensure that non-GAAP financial measures do not mislead investors. Although we have updated SN 52-306 several times to respond to changing circumstances and published various staff notices and reports that comment on the topic, we continue to find that disclosure practices surrounding non-GAAP financial measures vary. Our findings are consistent with those of other stakeholders, particularly investors, who share our desire for quality disclosure.

The use of non-GAAP financial measures is a topic raised frequently by the financial reporting community, locally and abroad. In Canada, several organizations have undertaken research and issued guidance on how to disclose non-GAAP financial measures. Stakeholders generally have expressed the view that the CSA is best suited to regulate the use of non-GAAP financial measures.

Internationally, securities regulators have strengthened their efforts to regulate non-GAAP financial measure disclosure, including the International Organization of Securities Commissions (**IOSCO**) and the European Securities Markets Authority (**ESMA**). In addition, the U.S. Securities and Exchange Commission (**SEC**), which has formalized requirements for disclosure of non-GAAP financial measures in its rules, continues to provide further guidance on how to comply with applicable requirements.

We are aware the International Accounting Standards Board (**IASB**) continues to discuss feedback on the December 2019 Exposure Draft *General Presentation and Disclosures*, which sets out proposals to improve how information is communicated in the financial statements, with a focus on information in the statement of profit or loss. Changes to International Financial Reporting

Standards (**IFRS**) could, among other things, change the structure and content of the income statement and result in some traditional non-GAAP financial measures being included in a note to the financial statements with accompanying disclosure. As the IASB proposals are at an early stage, it is difficult to determine what changes, if any, will be made to IFRS. We will monitor the progress of the Exposure Draft, as well as other related initiatives, and if changes are made to IFRS we will consider at that time whether any changes to securities legislation are necessary.

Other Financial Measures

Over the years, we have found that other financial measures that do not meet the definition of a non-GAAP financial measure can present similar issues if not accompanied by appropriate disclosure. Such financial measures include certain measures disclosed in the notes to the financial statements that lack context when disclosed outside of the financial statements. For example, IFRS permit disclosure of a broad range of capital management or segment measures but do not specify how such measures must be calculated in most circumstances. As a result, such measures can differ materially from amounts presented in the primary financial statements and may not be prepared in accordance with the recognition and measurement accounting policies used to prepare the issuer's primary financial statements.

To ensure investors were not confused or misled, such measures were frequently identified as "non-GAAP" and issuers provided disclosures consistent with our expectations in SN 52-306. To ensure investors continue to appreciate the context of such measures, the Instrument includes disclosure requirements for such measures when disclosed outside of the financial statements. These disclosure requirements have been carefully tailored for each measure and result in substantially less disclosure than expected under SN 52-306.

Summary of Materials

The Materials:

- apply to all reporting issuers, except investment funds, SEC foreign issuers, and designated foreign issuers;
- apply to non-reporting issuers in certain documents in connection with certain offerings or transactions;
- pertain to the disclosure of financial measures that are non-GAAP financial measures, non-GAAP ratios, and other financial measures (i.e., capital management measures, supplementary financial measures, and total of segments measures, as defined in the Instrument);
- include an updated definition of a non-GAAP financial measure which builds upon and incorporates the disclosure guidance in SN 52-306;
- introduce the concept of capital management measures, supplementary financial measures, and total of segments measures, together with associated disclosure requirements,
- include extensive guidance and examples; and
- for a reporting issuer, apply to disclosures for a financial year ending on or after October 15, 2021 and for an issuer that is not a reporting issuer for filings after December 31, 2021.

The Instrument is included in Annex C. The Companion Policy is included in Annex D.

Summary of Changes to the Revised Materials

Many comment letters expressed support for the objectives of the Revised Materials. Commenters continued to agree with the analysis that non-GAAP financial measures (including non-GAAP ratios) and other financial measures lack standardized meaning under financial reporting frameworks, lack context when disclosed outside of financial statements, and lack transparency as to their calculation or vary significantly by issuer and industry. In addition, many comment letters supported the changes to the Original Materials that address identified concerns relating to application and definitions. Although some commenters expressed a desire for further substantive changes in these areas, on balance, we considered that such changes would be contrary to the objectives of the proposals.

Following our review and analysis of the comment letters, through the changes to the Revised Materials, we have:

- introduced new application exceptions (e.g., a document prepared by a registered firm that is provided or is intended to be provided to a client or prospective client of the registered firm, disclosure of a financial measure where its calculation is derived from a financial covenant in a written agreement, certain disclosures in the Statement of Executive Compensation);
- narrowed and clarified various definitions and disclosure requirements;

- permitted incorporation by reference, for certain disclosures, in an earnings release;
- expanded incorporation by reference, for certain disclosures, across all specified financial measures, and
- enhanced readability.

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission
Anita Cyr, Associate Chief Accountant, British Columbia Securities Commission
604-899-6579 | acyr@bcsc.bc.ca

Maggie Zhang, Senior Securities Analyst, British Columbia Securities Commission
604-899-6823 | mzhang@bcsc.bc.ca

Alberta Securities Commission
Cheryl McGillivray, Chief Accountant, Alberta Securities Commission
403-297-3307 | cheryl.mcgillivray@asc.ca

Anne Marie Landry, Associate Chief Accountant, Alberta Securities Commission
403-297-7907 | annemarie.landry@asc.ca

Ontario Securities Commission
Mark Pinch, Associate Chief Accountant, Ontario Securities Commission
416-593-8057 | mpinch@osc.gov.on.ca

Alex Fisher, Senior Accountant, Ontario Securities Commission
416-593-3682 | afisher@osc.gov.on.ca

Jonathan Blackwell, Senior Accountant, Ontario Securities Commission
416-593-8138 | jblackwell@osc.gov.on.ca

Katrina Janke, Senior Legal Counsel, Ontario Securities Commission
416-593-8297 | kjanke@osc.gov.on.ca

Autorité des marchés financiers
Suzanne Poulin, Chief Accountant and Director, Direction de l'information financière
Autorité des marchés financiers
514-395-0337 Ext: 4411| suzanne.poulin@lautorite.qc.ca

Nicole Parent, Associate Chief Accountant, Direction de l'information financière
Autorité des marchés financiers
514-395-0337 Ext: 4455 | nicole.parent@lautorite.qc.ca

Sophie Yelle, Associate Chief Accountant, Direction de l'information financière
Autorité des marchés financiers
514-395-0337 Ext: 4298 | sophie.yelle@lautorite.qc.ca

ANNEX A

List of Commenters

We received comment letters on the Revised Materials from the following:

- Canadian Accounting Standards Board
- Canadian Auditing and Assurance Standards Board
- Canadian Bankers Association
- BCE Inc. and Bell Canada
- Blake, Cassels & Graydon LLP
- Blake, Cassels & Graydon LLP – on behalf of a certain client
- Canadian Advocacy Council of CFA Societies Canada
- Canadian Coalition for Good Governance
- Canadian Investor Relations Institute
- Canadian Life and Health Insurance Association
- Canadian Natural Resources Limited
- Cenovus Energy Inc.
- Chartered Professional Accountants of Canada
- Davies Ward Phillips & Vineberg LLP
- Deloitte LLP
- Ernst & Young LLP
- Financial Executives International Canada
- Intact Financial Corporation
- Investor Advisory Panel
- KPMG LLP
- Norton Rose Fulbright Canada LLP
- Pembina Pipeline Corporation
- PricewaterhouseCoopers LLP
- Real Property Association of Canada
- Stikeman Elliott LLP
- TELUS Corporation

ANNEX B

Summary of Comments and CSA Responses

This annex summarizes the comment letters and our responses to these comments.

This annex contains the following sections:

1. Introduction
2. Responses to comments received on the Revised Materials

Introduction

Drafting Suggestions

We received a number of drafting suggestions and comments. While we incorporated many of these suggestions, this annex does not include a summary of all the drafting changes we made.

Categories of comments and single responses

In this annex, we consolidated and summarized the comments and our responses by the general themes of the comments. We have included section references to the Revised Materials for convenience.

Responses to Comments Received on the Revised Materials

Subject	Summarized Comment	Response
General comments	10 commenters supported the Revised Materials. 10 commenters indicated that there was substantial progress made in addressing comments from the first comment period.	We thank the commenters for their views.
General comments	Four commenters raised concerns about a lack of consistency with international regulators, specifically the U.S. Securities and Exchange Commission (**SEC**).	The disclosure required for non-GAAP financial measures is generally consistent to what is currently expected by other international regulators. The identification of a non-GAAP financial measure is substantially similar to other international regulators. To address the difference, and ensure sufficient disclosure is provided for certain measures disclosed outside of financial statements, the total of segments measure and capital management measure concepts have been introduced.
General comments	Three commenters expressed that the Revised Materials were not in-line with CSA's reducing regulatory burden strategic initiative.	The Materials were developed with a focus on identifying opportunity to reduce burden while continuing to address the regulatory objectives sought. For example, the scope of the application and incorporation by reference requirement in the Materials were revised to respond to suggestions from commenters on how to reduce the extent of burden of the Revised Materials.
General comments	Two commenters recommended emphasizing the importance of governance and controls that an issuer's board, audit committee and management must exercise with the review and disclosure of specified financial measures.	Adding governance and controls guidance to the Materials is out of scope for this project. We would however point out that our regulations, guidelines and guidance currently set out the board, audit committee and management responsibility for financial reporting.
General comments	11 commenters expressed the need for application guidance or asked for clarification	Change made. We have included some additional examples and a flowchart in the Companion Policy. We

Subject	Summarized Comment	Response
	as to the categorization of certain financial measures.	will also include additional examples in a Staff Notice to be published after the Materials.
General comments	Two commenters indicated that the scope of the Revised Materials is too narrow. Two commenters expressed that specific regulation or guidance on non-financial measures or operational measures should be considered. In addition, one commenter indicated that we should monitor international developments in this area.	We thank the commenters for their views, but disclosure in the noted areas was beyond the scope of this project. Regulation or guidance in these areas may be considered in the future.
General comments	Nine commenters indicated that the CSA should consider the burden to issuers in adopting these Revised Materials if these proposals are to be subsequently revised when the International Accounting Standards Board (**IASB**) finalizes its standard in regard to the IASB's Exposure Draft on *General Presentation and Disclosures*. Six commenters also suggested that the CSA consider a transitional period for the Revised Materials to allow the CSA to understand and monitor where the IASB project is headed and conduct additional outreach regarding the implications of the IASB's proposals and to ensure sufficient flexibility to deal with any fundamental incompatibility issues that may arise.	We note that IASB project is still underway and is not anticipated to be finalised in the current year. We also anticipate that an IASB standard is unlikely to be effective until approximately 18-24 months after being published in its finalised form. Thus, we see no reason to delay this project for multiple years and have decided to proceed with the Materials to address the disclosure and reporting concerns in regard to specified financial measures in the Canadian marketplace. If necessary in the future, we may update the Materials (or other regulations or guidance) to respond to these and other marketplace changes (if any). We will continue to closely monitor developments in this area.
General comments	Five commenters raised concerns that the categorization of the same or similar financial measures may differ between issuers depending on whether these measures are presented in the financial statements or where this categorization difference arises due to differing accounting policies.	We acknowledge that the categorization of same or similar financial measures may differ between issuers depending on where the measure is disclosed; however, we have tried to address this issue primarily through the introduction of the total of segments measure and capital management measure disclosure requirements.
General comments	One commenter agreed that other financial measures should be distinguished from and should not be subject to the same degree of disclosure mandated with respect to non-GAAP financial measures. Two commenters were concerned that the other financial measures category unnecessarily expanded the scope of the existing SN 52-306 and might be confusing to both issuers and investors.	We think that the disclosure requirements for other financial measures provides an appropriate solution to address the concerns raised by stakeholders.

Section 1 – Definitions

Subject	Summarized Comment	Response
General comments	One commenter suggested that the distinction as to whether a Specified Financial Measure appears in the primary financial statements or the notes to the financial statements may	The primary financial statement distinction is necessary for certain disclosure requirements, such as the prominence and reconciliation requirements which

Subject	Summarized Comment	Response
	create a perception that the notes to the financial statements are less important than the primary financial statements. Two commenters recommended clarifying that the term “financial statements” includes both the primary financial statement and the notes to the financial statements.	reference the most directly comparable financial measure disclosed in the primary financial statements of the entity. No change made. The content of financial statements is a generally understood term and is described in the issuer’s financial reporting framework, as well as in the prospectus and continuous disclosure requirements in securities legislation.
General comments	One commenter recommended that we replace “most comparable” with “most directly comparable” in the Revised Materials.	Change made. The term “most directly comparable” has been included to be consistent with the concepts and wording in SN 52-306 and the SEC requirements.
section 1 – capital management measure definition	One commenter requested clarification on whether the reference to the notes to the financial statements in the capital management measure definition was intended to refer to the complete set of financial statement notes or just the capital management note presented to meet the requirements under the financial reporting framework.	No change made. While the majority of capital management measures, as defined in section 1 of the Instrument, will typically be disclosed in a specific financial statement note in an issuer’s financial statements (i.e., identified as a capital management note or another similar term), the location of this disclosure is not specified under the issuer’s financial reporting framework. As such, any measure in the issuer’s financial statement notes that meets the definition of a capital management measure is captured as a capital management measure under the Instrument.
section 1 – non-GAAP financial measure definition	One commenter supported that the non-GAAP financial measure definition was changed to more align with the SN 52-306 definition. One commenter suggested that some of the clarifications included in the Revised Materials in respect of the definition of a non-GAAP financial measure be included in the non-GAAP financial measure definition in the Revised Materials.	We thank the commenter for their views. No change made. In order to keep the non-GAAP financial measure definition concise, we have not modified the definition in the Instrument to include the guidance provided in the Companion Policy.
section 1 – non-GAAP ratio definition	One commenter indicated that many ratios are calculated using more than one non-GAAP financial measure and that the non-GAAP ratio definition should be revised to reflect this.	Change made. The non-GAAP ratio definition has been revised to include a reference to “one or more” non-GAAP financial measures as components of the non-GAAP ratio.
section 1 – supplementary financial measure definition	One commenter suggested removing the “periodic basis” reference in paragraph (a) of the supplementary financial measure definition. One commenter suggested removing the “intended to be” reference in paragraph (a) of the supplementary financial measure definition.	No change made. We consider the periodic basis concept necessary to limit the scope of the specified financial measures. No change made. We consider the “intended to be” concept necessary to capture a supplementary financial measure that is disclosed by an issuer for the first time, when the measure is intended to be disclosed on a periodic basis.
section 1 – total of segments measure definition	One commenter indicated that a component of a line item for which the component has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements should not be captured as a total of segments measure.	Change made. The total of segments measure definition was amended to exclude a component of a line item for which the component has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements. No change made. We thank the commenter for its view. While the majority of total of segments measure, as defined in section 1 of the Instrument, will typically be

Subject	Summarized Comment	Response
	One commenter asked for clarification on whether the reference to the notes to the financial statements in the total of segments measure definition was intended to refer to the complete set of financial statement notes or just the segment note presented to meet the requirements under the issuer's financial reporting framework.	disclosed in a specific financial statement note in an issuer's financial statements (i.e., identified as an operating segment note, or another similar term), the location of this disclosure is not specified under the issuer's financial reporting framework. As such, any measure in the issuer's financial statement notes that meets the definition of a total of segments measure may be captured as a total of segments measure under the Instrument.

Sections 2 and 3 – Application – reporting issuers and issuers that are not reporting issuers

Subject	Summarized comment	Response
General comment	Two commenters indicated that we should consider limiting the Revised Materials to documents where its content would reasonably be expected to affect the market price or value of a security of the issuer.	No change made. We do not agree with introducing the scope exemption suggested.

Section 4 – Application – exceptions

Subject	Summarized Comment	Response
4(b)	Four commenters recommended that the SEC foreign issuer exemption should also apply to Canadian SEC issuers.	No change made. The application of the Materials to SEC issuers is consistent, and based on similar rationale, to the application of other requirements to these issuers under current Canadian securities legislation, such as the forward-looking information disclosure requirements and material change reporting. In addition, SEC issuers, as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, are principally regulated in Canada, and as such, we as regulators would be regulating and enforcing these Materials under Canadian securities legislation rather than through the interpretation of a U.S. rule.
4(c)(i) and (ii)	One commenter indicated that disclosures provided under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**) that are exempt from the Revised Materials should be specifically labelled as such in order to differentiate from other measures that would otherwise be within the scope of the Revised Materials.	No change made. We have not prescribed specific labelling requirements for NI 43-101 measures to be consistent with the other application exemptions.
4(c)(iii)	One commenter indicated that section 5.14 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* should be included as an exception in the Revised Materials.	No change made. We are of the view that clear and transparent disclosure should be provided to investors for any specified financial measures that are disclosed using oil and gas metrics.
4(d)(i)	Two commenters recommended that the exemptions in the Revised Materials be expanded to include any valuation report or fairness opinion that is filed or incorporated by reference in a document.	Change made. Refer to subparagraph 4(1)(d)(i) of the Instrument for this expanded exemption. In addition, an exemption was added in paragraph 4(1)(g) of the Instrument to exempt the disclosure of a specified financial measure made by a registered firm, if (i) the document in which the disclosure is made is intended to be, or is reasonably likely to be, made available to a client

Subject	Summarized Comment	Response
	Three commenters also recommended that all third-party reports be exempt from the Revised Materials.	or a prospective client of the registered firm, and (ii) the measure does not relate to the registered firm's financial performance, financial position or cash flow.
4(d)(ii)	One commenter recommended that the exemption in subparagraph 4(d)(ii) of the Revised Materials be expanded to include voluntary pro forma financial statement filings.	No change made to expand the exemption in subparagraph 4(d)(iii) of the Instrument. Pro forma financial measures that are not required by securities legislation are an area of concern for regulators. We are of the view that additional disclosure is needed for these measures when required pro forma financial statements are not available.
4(e)	Two commenters recommended that the exemption in paragraph 4(e) of the Revised Materials be expanded to include all regulatory bodies as well as both required and recommended measures.	No change made. The exemption in paragraph 4(1)(e) of the Instrument was not expanded to include recommended disclosures in order to ensure that any financial measures exempt from the Instrument be limited to those required under law or by an SRO of which the issuer is a member, where the law or the SRO's requirement specifies the composition of the financial measure and where the financial measure has been determined in compliance with that law or requirement.
Application to comparables	One commenter suggested that we expand exceptions for comparables, i.e., information that compares an issuer to other issuers.	No change made. As specified financial measures are not standardized financial measures under the financial reporting framework used to prepare the financial statements of the entity to which the measure relates, these specified financial measures may not be comparable to similar financial measures disclosed by other issuers, and as such, should generally not be used as comparables.
Application to exchangeable security issuers and credit support issuers	One commenter indicated that the Revised Materials should not apply to an exchangeable security issuer that files required disclosure of a parent issuer, or a credit support issuer that files required disclosures of a parent credit supporter, in each case under Part 13 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**).	No change made. We are of the view that the Instrument should apply to a parent issuer or a parent credit supporter in respect of their disclosure of a Specified Financial Measure in a document, unless one of the exemptions in section 4 of the Instrument are met.
Application to executive compensation	Two commenters expressed support that the Revised Materials would apply to executive compensation disclosures. One commenter expressed that the application of the Revised Materials to executive compensation disclosures would add to the burden of disclosure applying to proxy circulars and would be too cumbersome. This commenter indicated that if the requirements under the Revised Materials be maintained, the correlation between the requirements in subsection 2.1(4) of Form 51-102F6 *Statement of Executive Compensation* (**Form 51-102F6**) and the requirements under the Revised Materials should be better explained with potential consequential guidance or amendments made to the subsection 2.1(4) of Form 51-102F6 requirements. One commenter indicated that the requirements in paragraphs 6(b), (c) and (d)	Change made. Considering the nature and purpose of executive compensation disclosures, further exemptions were added in subsection 4(2) of the Instrument to limit disclosure relating to specified financial measures to the information required under paragraph 6(1)(b), the identification as a non-GAAP financial measure, and the quantitative reconciliation disclosure requirements under paragraph 9(c) and clauses 6(1)(e)(ii)(C) and 10(1)(b)(ii)(C), as we are of the view that the information provided under these requirements is important in the context of executive compensation disclosures.

Subject	Summarized Comment	Response
	and in subparagraphs 6(e)(ii) and (iii) of the Revised Materials did not make sense in the context of discussing executive compensation policies.	
Application to financial covenants	One commenter suggested that the disclosure of a financial covenant derived from a material contract should be excluded from the application of the Revised Materials.	Change made. An exemption was added to paragraph 4(1)(f) of the Instrument.
Application to social media	One commenter suggested that the Revised Materials should not apply to disclosure on websites or social media.	No change made. The use of specified financial measures in disclosures made on websites and social media continues to be an area of concern for regulators.

Section 5 – Incorporating information by reference

Subject	Summarized Comment	Response
General comment	One commenter suggested that a simple cross-reference to the location of the required information in the MD&A would be sufficient, rather than requiring incorporation by reference.	No change made. It is our view that cross-referencing would not be sufficient to ensure that any information incorporated by reference into a document will form part of that document.
General comment	While this one commenter was supportive of our efforts to streamline disclosures through incorporation by reference, the commenter indicated that an issuer should be required to disclose any differences in the definition or the usefulness of a Specified Financial Measure between different documents (i.e., the same measure is defined or used differently in the MD&A than it is for executive compensation disclosures).	No change made. It is not expected that the calculation or the usefulness of the same Specified Financial Measure would differ with its use in the MD&A to discuss the issuer's operations or its use in another document, such as an information circular, for executive compensation disclosures.
5(1)	Two commenters recommended that incorporation by reference be permitted for the following disclosure requirements for all specified financial measures: composition explanation and the explanation that the measure is not a standardized measure. One commenter indicated that the incorporation by reference for the quantitative reconciliation requirement will not be sufficiently accessible in the context for an investor to utilize.	Change made to allow incorporation by reference for the composition information. See subsection 5(1) of the Instrument. No change made to allow incorporation by reference for the explanation that the measure is not a standardized measure, as we feel that this information is important to highlight in each document where a Specified Financial Measure is disclosed. No change made. We thank the commenter for its view. We have retained the option for a quantitative reconciliation to be provided in a document, except within the MD&A and earnings releases since these are the most critical documents looked-at by investors and where the use of specified financial measures is generally most prevalent.
5(3)(a)	Two commenters recommend that we allow incorporation by reference from interim MD&A to annual MD&A. Two commenters recommended that section 5 of the Revised Materials should also allow incorporation by reference to the financial statements and not just the MD&A.	No change made. The MD&A is meant to be the main repository where recent disclosures relating to specified financial measures, as required under the Instrument, can be found for each Specified Financial Measure disclosed by the issuer. Adding incorporation by reference of information included in other documents, including previous MD&A filings, may obscure the relevant information and increase the burden placed on readers in locating the information themselves.

Subject	Summarized Comment	Response
5(3)(b)	17 commenters recommended that issuers be permitted to incorporate by reference the information required under the Revised Materials in a news release issued or filed by the issuer if the reference is to the MD&A of the issuer.	Change made to allow incorporation by reference for the information required under the Instrument, as specified in subsection 5(1), in a news release issued or filed by the issuer if the reference is to the most recent MD&A of the issuer. However, as outlined in subsection 5(4) of the Instrument, for earnings release filings made under section 11.4 of NI 51-102, the issuer would be required to provide a quantitative reconciliation, as applicable, if a Specified Financial Measure was disclosed in this earnings release.

Part 2 – Disclosure Requirements
Sections 6 to 11

Subject	Summarized Comment	Response
6(a)(i), 8(a), 11(a)(i) – labelling	One commenter requested that we remove the requirement that a Specified Financial Measure be labelled using a term, that given the measure's composition, describes the measure.	No change made. We are of the view that the label which identifies a Specified Financial Measure must be appropriate given the nature of information.
6(c), 7(2)(c), 8(b), 9(b), 10(b) – prominence	One commenter supported the prominence requirement as a key feature of the Revised Materials. Two commenters indicated that the prominence requirement is too burdensome and that a materiality threshold should apply to this requirement or greater prominence should be given to the most directly comparable financial measure presented in the primary financial statements only when it would be misleading not to do so.	No change made. We thank the commenters for their views. Prominence is an area of concern for regulators as it has been a long-standing issue with respect to the misuse of specified financial measures.
6(d), 8(c), 9(d), 10(c) – comparatives	Four commenters recommended that the requirement to disclose comparatives should allow that the issuer exercise judgment as to whether disclosure of comparatives is necessary to not mislead investors. One commenter recommended that we allow for an exception from the requirement to provide comparative period disclosure where this information can be obtained from the issuer's most recent annual period or its most recent interim period filings. One commenter indicated that the requirement to disclose a measure for a comparative period using the same composition is too rigid and that we should revert back to "consistent basis" used in the SN 52-306.	Change made. We have changed the requirement in paragraphs 6(1)(f), 8(d), 9(d) and 10(1)(c) of the Instrument to require comparatives only in an MD&A or an earnings release of the issuer (unless impracticable to do so for certain specified financial measures). No change made, considering the change made above to limit the instances where the disclosure of comparatives is required. No change made. We are of the view that the application of the "same composition" term in the Instrument does not substantially differ from the SN 52-306 "consistent basis" guidance.
6(e), 7(2)(d), 8(d), 9(c), 10(a), 11(b) – in proximity to the first instance	Three commenters asked for clarification in regard to the application of proximity to the first instance.	Change made. We have included additional guidance in the Companion Policy.

Subject	Summarized Comment	Response
6(e)(iii), 8(d)(i), 10(a)(i), 11(b) – composition	One commenter suggested that clarification be made as to whether a separate explanation of a Specified Financial Measure's composition is still required when the composition of the measure is explicit in its label.	Change made. We have added guidance in the Companion Policy to clarify the composition requirement and to include an example of what that composition disclosure would entail.

Section 6 – Non-GAAP financial measures that are historical information

Subject	Summarized Comment	Response
6(b), 6(c) – most comparable financial measure and prominence	One commenter indicated that they believed the requirements in paragraphs 6(b) and 6(c) overlapped.	No change made. The requirement in paragraph 6(1)(c) of the Instrument is to disclose the most directly comparable financial measure that is presented in the primary financial statements of the entity to which the non-GAAP financial measure relates; however, the requirement in paragraph 6(1)(d) of the Instrument relates to prominence and that the non-GAAP financial measure should be disclosed with no more prominence than that of the most directly comparable financial measure. We do not view the requirements of paragraphs 6(1)(c) and (d) to be overlapping.
6(c), 6(e)(iv)	One commenter expressed concern that the following Revised Materials guidance would preclude disclosure of similar measures that the commenter would consider to be important and useful to investors: prominence considerations in regard to the use of multiple non-GAAP financial measures and the use of the term "incremental" in the context of requiring information to be incremental in order to be considered useful.	No change made. The prominence and usefulness of non-GAAP financial measures guidance has been retained since these continue to be areas of concern for regulators.
6(e)(vi) – explanation of change	One commenter indicated that the requirement to explain the reason for a change in a non-GAAP financial measure under subparagraph 6(e)(vi) of the Revised Materials should be sufficient and that there should be no specific requirement to restate a non-GAAP financial measure for a comparative period.	No change made. Comparative period information is important for investors to understand and assess the non-GAAP financial measure being disclosed.
6(e)(i) and (ii) – identification and not a standardized financial measure disclosure	Four commenters indicated that the wording in the Revised Materials that a non-GAAP financial measure be cross-referenced to a section each time it is disclosed, is not aligned with the wording in paragraph 6(e) of the Revised Materials itself, which only requires the disclosure provided for in that paragraph to be made "in proximity to the first instance" of the non-GAAP financial measure in the document, not each time in the document where the measure appears.	Change made. The identification of the measure as a non-GAAP financial measure has been moved out of subparagraph 6(1)(e)(i) of the Revised Materials to paragraph 6(1)(b) of the Instrument and as such the "in proximity to the first instance" would not apply to this disclosure item. In addition, additional guidance was added in section "Paragraph 6(1)(b) – Identification of a non-GAAP financial measure" of the Companion Policy in regard to footnote use.

Section 7 – Non-GAAP financial measures that are forward-looking information

Subject	Summarized Comment	Response
7(2)(b) – historical non-GAAP	Two commenters suggested that we remove the requirement to disclose the related historical financial measure.	No change made for these views; however, we did clarify in section 7 of the Companion Policy that the equivalent historical non-GAAP financial measure is required to be

Subject	Summarized Comment	Response
financial measure		disclosed in the same document as the non-GAAP financial measure that is forward-looking information.
7(2)(d) – significant difference	Three commenters asked for more clarity in respect of the requirement to describe significant differences between the non-GAAP financial measure that is forward-looking information and the equivalent historical non-GAAP financial measure.	Change made. We have included additional clarifying language in the Companion Policy.
7(3)	One commenter asked for clarification as to whether the exemption in subsection 7(3) of the Revised Materials is meant to apply only when the SEC issuer is required to comply with Regulation G under the 1934 Act or if the SEC issuer may voluntarily comply with Regulation G under the 1934 Act. One commenter indicated that the 7(3) exemption for SEC issuers should be limited to those entities that are SEC issuers filing outside of the Multi-Jurisdictional Disclosure System.	No change made. We are of view that subsection 7(3) of the Instrument is clear that the exemption is available to any disclosure of a non-GAAP financial measure that is forward-looking information made by an SEC issuer in compliance with Regulation G under the 1934 Act. No change made. The subsection 7(3) exemption is meant to apply to all SEC issuers complying with Regulation G under the 1934 Act.

Section 8 – Non-GAAP ratios

Subject	Summarized Comment	Response
8(b) – prominence	One commenter recommended that we remove the requirement that a non-GAAP ratio be disclosed with no more prominence in the document than that of a similar financial measure presented in the primary financial statements to which the non-GAAP ratio relates.	No change made. Prominence is an area of concern for regulators.
8(d)(i) – component of the non-GAAP ratio that is a non-GAAP financial measure	Five commenters asked for clarification of the requirement to identify each non-GAAP financial measure that is used as a component of the non-GAAP ratio. One commenter recommended that the components of a non-GAAP ratio need not be reconciled if the component is not otherwise disclosed in the document.	Change made. The requirement in subparagraph 8(c)(ii) of the Instrument was clarified to require that each non-GAAP financial measure that is used as a component of the non-GAAP ratio be “disclosed” rather than “identified”. No change made. We consider information about these non-GAAP financial measure components used in the calculation of the non-GAAP ratio to be key in understanding the non-GAAP ratio.

Section 9 – total of segments measures

Subject	Summarized Comment	Response
9(c) – quantitative reconciliation	Six commenters recommended that we remove the quantitative reconciliation requirement for the total of segments measure or allow a cross-reference to the reconciliation included in the financial statement notes.	No change made. We are of the view that a quantitative reconciliation requirement for a total of segments measure under paragraph 9(c) of the Instrument is needed to ensure that a consistent form of reconciliation is provided to readers in the same manner as the non-GAAP financial measure reconciliation. This will also ensure that the quantitative reconciliation gives the total of segments measure the necessary context when it is disclosed outside of the issuer’s financial statements.

Subject	Summarized Comment	Response
		In addition, the quantitative reconciliation for the total of segments measure was retained to ensure consistency of presentation with SEC issuers complying with Regulation G and Item 10(e) of Regulation S-K since such measures would meet the definition of a non-GAAP financial measure under SEC requirements.
	One commenter recommended that the requirements of paragraph 9(c) of the Revised Materials be revised so that the level of detail required to be provided when presenting a quantitative reconciliation for a total of segments measure be clear, in order to adequately comply with the requirements set out in paragraph 9(c).	Change made. We have amended paragraph 9(c) of the Instrument to clarify that the quantitative reconciliation be in the permitted format outlined in subsection 6(2) of the Instrument.

Section 10 – capital management measures

Subject	Summarized Comment	Response
General comment	Three commenters suggested that the Revised Materials should be clarified in respect of an issuer's requirement to comply with section 6 of the Revised Materials for each non-GAAP financial measure used in the calculation of a capital management measure.	Change made. We have amended subparagraph 10(1)(b)(i) of the Instrument to clarify that an issuer is required to disclose any non-GAAP financial measures used in the calculation of a capital management measure.
	One commenter recommended that the components of a capital management measure that are non-GAAP financial measures should not need to be reconciled if the non-GAAP financial measure component is not otherwise disclosed in the document.	No change made. We consider information about these non-GAAP financial measure components used in the calculation of the capital management measure to be key in understanding the capital management measure.
10(b) – prominence	One commenter recommended that the requirement that the capital management measure be disclosed with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the issuer, be removed, citing that the disclosure of a similar financial measure is highly subjective.	No change made. Prominence is an area of concern for regulators.

Section 11 – supplementary financial measures

Subject	Summarized Comment	Response
11(b) – composition	One commenter recommended that the requirement in paragraph 11(b) be removed as it was their view this requirement overlapped with the requirement in paragraph 11(a).	No change made. Transparency around the composition of a supplementary financial measure and the clear labelling of this measure in paragraphs 11(b) and 11(a), respectively, are the primary concerns we identified in respect of these supplementary financial measures. We do not view the requirements in paragraphs 11(a) and (b) to be overlapping.

Section 13 – Effective date

Subject	Summarized Comment	Response
13	Five commenters indicated that they would support a long transition period leading up to the effective date to ease the transition burden on issuers. Some of these commenters also indicated that we should consider making the Revised Materials effective for the beginning of an annual financial reporting period to ensure consistent and comparable reporting over periods.	We agree with the comment and have included a transition provisions in Part 13 of the Instrument.

ANNEX C

NATIONAL INSTRUMENT 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

Table of Contents

NATIONAL INSTRUMENT 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

PART 1
DEFINITIONS AND APPLICATION

Definitions

1. In this Instrument,

"capital management measure" means a financial measure disclosed by an issuer that

(a) is intended to enable an individual to evaluate an entity's objectives, policies and processes for managing the entity's capital,

(b) is not a component of a line item disclosed in the primary financial statements of the entity,

(c) is disclosed in the notes to the financial statements of the entity, and

(d) is not disclosed in the primary financial statements of the entity;

"earnings release" means a news release that is required to be filed under section 11.4 of National Instrument 51-102 *Continuous Disclosure Obligations*;

"entity" includes any of the following:

(a) a person or company other than an individual,

(b) an asset or a group of assets for which financial statements are prepared;

"forward-looking information" has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

"MD&A" has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

"non-GAAP financial measure" means a financial measure disclosed by an issuer that

(a) depicts the historical or expected future financial performance, financial position or cash flow of an entity,

(b) with respect to its composition, excludes an amount that is included in, or includes an amount that is excluded from, the composition of the most directly comparable financial measure disclosed in the primary financial statements of the entity,

(c) is not disclosed in the financial statements of the entity, and

(d) is not a ratio, fraction, percentage or similar representation;

"non-GAAP ratio" means a financial measure disclosed by an issuer that

(a) is in the form of a ratio, fraction, percentage or similar representation,

(b) has a non-GAAP financial measure as one or more of its components, and

(c) is not disclosed in the financial statements of the entity;

"primary financial statements" means, with respect to an entity, any of the following:

(a) the statement of financial position;

(b) the statement of profit or loss and other comprehensive income;

(c) the statement of changes in equity;

(d) the statement of cash flows;

"registered firm" has the meaning ascribed to it in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"reportable segment" means a reportable segment as described in the accounting principles applied to the preparation of an entity's financial statements;

"specified financial measure" means any of the following:

(a) a non-GAAP financial measure;

(b) a non-GAAP ratio;

(c) a total of segments measure;

(d) a capital management measure;

(e) a supplementary financial measure;

"supplementary financial measure" means a financial measure disclosed by an issuer that

(a) is, or is intended to be, disclosed on a periodic basis to depict the historical or expected future financial performance, financial position or cash flow of an entity,

(b) is not disclosed in the financial statements of the entity,

(c) is not a non-GAAP financial measure, and

(d) is not a non-GAAP ratio;

"total of segments measure" means a financial measure disclosed by an issuer that

(a) is a subtotal or total of 2 or more reportable segments of an entity,

(b) is not a component of a line item disclosed in the primary financial statements of the entity,

(c) is disclosed in the notes to the financial statements of the entity, and

(d) is not disclosed in the primary financial statements of the entity.

Application – reporting issuers

2. This Instrument applies to a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is intended to be, or reasonably likely to be, made available to the public.

Application – issuers that are not reporting issuers

3. This Instrument applies to an issuer that is not a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is made available to the public and is

(a) subject to National Instrument 41-101 *General Prospectus Requirements*,

(b) filed with a regulator or a securities regulatory authority in connection with a distribution made under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*, or

(c) submitted to a recognized exchange in connection with a qualifying transaction, reverse takeover, change of business, listing application, significant acquisition or similar transaction.

Application – exceptions

4. (1) Despite sections 2 and 3, this Instrument does not apply to the following:

(a) an investment fund as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

(b) a designated foreign issuer, or an SEC foreign issuer, as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(c) an issuer in respect of disclosure required under any of the following:

(i) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(ii) section 5.4 of Form 51-102F2 *Annual Information Form*;

(iii) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, other than section 5.14 of that Instrument;

(d) an issuer in respect of disclosure in any of the following:

(i) a report prepared by a person or company other than the issuer or entity that is the subject of the specified financial measure;

(ii) a transcript of an oral statement;

(iii) pro forma financial statements required to be filed under securities legislation;

(iv) a filing required under section 12.1 or 12.2 of National Instrument 51-102 *Continuous Disclosure Obligations* or subparagraphs 9.1(1)(a)(ii) and 9.2(a)(ii) and section 9.3 of National Instrument 41-101 *General Prospectus Requirements*;

(e) an issuer in respect of disclosure of a specified financial measure that is required under law, or by an SRO of which the issuer is a member, if

(i) the law or the SRO's requirement specifies the composition of the measure and the measure was determined in compliance with that law or requirement, and

(ii) in proximity to the measure, the issuer discloses the law or the SRO's requirement under which the measure is disclosed;

(f) an issuer in respect of disclosure of a specified financial measure if the calculation of the specified financial measure is derived from a financial covenant in a written agreement;

(g) an issuer that is a registered firm in respect of disclosure of a specified financial measure if

(i) the document in which the disclosure is made is intended to be, or is reasonably likely to be, made available to a client or a prospective client of the registered firm, and

(ii) the measure does not relate to the registered firm's financial performance, financial position or cash flow.

(2) Despite sections 2 and 3, this Instrument does not apply to disclosure required under Form 51-102F6 *Statement of Executive Compensation* and Form 51-102F6V *Statement of Executive Compensation — Venture Issuers*, except for the information required under paragraph 6(1)(b), clause 6(1)(e)(ii)(C), paragraph 9(c) and clause 10(1)(b)(ii)(C) of this Instrument.

PART 2
INCORPORATING INFORMATION BY REFERENCE

Incorporating information by reference

5. (1) Subject to subsections (3) and (4), an issuer may incorporate by reference the information required under any of the following provisions, if the reference is to the issuer's MD&A:

(a) subparagraph 6(1)(e)(ii);

(b) paragraph 7(2)(d);

(c) subparagraph 8(c)(iii);

(d) paragraph 9(c);

(e) subparagraph 10(1)(b)(ii);

(f) paragraph 11(b).

(2) If, as permitted under subsection (1), an issuer incorporates required information by reference into a document, the issuer must include all of the following in the document:

(a) a statement indicating that the information is incorporated by reference;

(b) a statement that specifies the location of the information in the MD&A;

(c) a statement that the MD&A is available on SEDAR at www.sedar.com.

(3) Despite subsection (1), an issuer must not incorporate by reference the information referred to in subsection (1) in its MD&A if the document that contains the specified financial measure is another MD&A filed by the issuer.

(4) Despite subsection (1), an issuer must not incorporate by reference the information referred to in clause 6(1)(e)(ii)(C), paragraph 7(2)(d) or 9(c) or clause 10(1)(b)(ii)(C) if the document that contains the specified financial measure is in an earnings release filed by the issuer.

PART 3
SPECIFIED FINANCIAL MEASURE DISCLOSURE

Non-GAAP financial measures that are historical information

6. (1) An issuer must not disclose a non-GAAP financial measure that is historical information in a document unless all of the following apply:

(a) the non-GAAP financial measure is labelled using a term that,

(i) given the measure's composition, describes the measure, and

(ii) distinguishes the measure from totals, subtotals and line items disclosed in the primary financial statements of the entity to which the measure relates;

(b) the non-GAAP financial measure is identified as a non-GAAP financial measure;

(c) the document discloses the most directly comparable financial measure that is disclosed in the primary financial statements of the entity to which the measure relates;

(d) the non-GAAP financial measure is presented with no more prominence in the document than that of the most directly comparable financial measure referred to in paragraph (c);

(e) in proximity to the first instance of the non-GAAP financial measure in the document, the document

(i) explains that the non-GAAP financial measure is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the measure relates and might not be comparable to similar financial measures disclosed by other issuers,

(ii) discloses, directly or by incorporating it by reference as permitted under section 5,

(A) an explanation of the composition of the non-GAAP financial measure,

(B) an explanation of how the non-GAAP financial measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP financial measure,

(C) a quantitative reconciliation of the non-GAAP financial measure for its current and comparative period, if disclosed under paragraph (f), to the most directly comparable financial measure referred to in paragraph (c), and that reconciliation is disclosed in the permitted format, and

(D) if the label or composition of the non-GAAP financial measure has changed from what was previously disclosed, an explanation of the reason for the change;

(f) if the non-GAAP financial measure is disclosed in MD&A or in an earnings release of the issuer, the non-GAAP financial measure for a comparative period, determined using the same composition, is disclosed in the document, unless it is impracticable to do so.

(2) For the purpose of clause (1)(e)(ii)(C), a quantitative reconciliation of the non-GAAP financial measure is in the "permitted format" if it

(a) is disaggregated quantitatively in a way that would enable a reasonable person applying a reasonable effort to understand the reconciling items,

(b) explains each reconciling item, and

(c) does not describe a reconciling item as "non-recurring", "infrequent", "unusual", or using a similar term, if a loss or gain of a similar nature is reasonably likely to occur within the entity's 2 financial years that immediately follow the disclosure, or has occurred during the entity's 2 financial years that immediately precede the disclosure.

Non-GAAP financial measures that are forward-looking information

7. (1) In this section,

"equivalent historical non-GAAP financial measure" means a non-GAAP financial measure that is historical information and has the same composition as a non-GAAP financial measure that is forward-looking information;

"SEC issuer" has the meaning ascribed to it in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

(2) An issuer must not disclose a non-GAAP financial measure that is forward-looking information in a document unless all of the following apply:

(a) the document discloses an equivalent historical non-GAAP financial measure;

(b) the non-GAAP financial measure that is forward-looking information is labelled using the same label used for the equivalent historical non-GAAP financial measure;

(c) the non-GAAP financial measure that is forward-looking information is presented with no more prominence in the document than that of the equivalent historical non-GAAP financial measure;

(d) in proximity to the first instance of the non-GAAP financial measure that is forward-looking information in the document, the document discloses, directly or by incorporating it by reference as permitted under section 5, a description of any significant difference between the non-GAAP financial measure that is forward-looking information and the equivalent historical non-GAAP financial measure.

(3) Subsection (2) does not apply if the disclosure is made

(a) by an SEC issuer, and

(b) in compliance with Regulation G under the 1934 Act.

Non-GAAP ratios

8. An issuer must not disclose a non-GAAP ratio in a document unless all of the following apply:

(a) the non-GAAP ratio is labelled using a term that, given the non-GAAP ratio's composition, describes the non-GAAP ratio;

(b) the non-GAAP ratio is presented with no more prominence in the document than that of similar financial measures disclosed in the primary financial statements of the entity to which the non-GAAP ratio relates;

(c) in proximity to the first instance of the non-GAAP ratio in the document, the document

(i) explains that the non-GAAP ratio is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the non-GAAP ratio relates and might not be comparable to similar financial measures disclosed by other issuers,

(ii) discloses each non-GAAP financial measure that is used as a component of the non-GAAP ratio,

(iii) discloses, directly or by incorporating it by reference as permitted under section 5, an explanation of

(A) the composition of the non-GAAP ratio,

(B) how the non-GAAP ratio provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP ratio, and

(C) if the label or the composition of the non-GAAP ratio has changed from what was previously disclosed, an explanation of the reason for the change;

(d) if the non-GAAP ratio is disclosed in MD&A or in an earnings release of the issuer, the non-GAAP ratio for a comparative period, determined using the same means of calculation, is disclosed in the document, unless

(i) the non-GAAP ratio is forward-looking information, or

(ii) it is impracticable to disclose the measure for the comparative period.

Total of segments measures

9. An issuer must not disclose a total of segments measure in a document, other than in financial statements about the entity to which the measure relates, unless all of the following apply:

(a) the document discloses the most directly comparable financial measure disclosed in the primary financial statements of the entity;

(b) the total of segments measure is presented with no more prominence in the document than that of the most directly comparable financial measure referred to in paragraph (a);

(c) in proximity to the first instance of the total of segments measure in the document, the document discloses, directly or by incorporating it by reference as permitted under section 5, a quantitative reconciliation of the total of segments measure for its current and comparative period, if disclosed under paragraph (d), to the most directly comparable financial measure referred to in paragraph (a), in the permitted format referred to in subsection 6(2);

(d) if the total of segments measure is disclosed in MD&A or in an earnings release of the issuer, the total of segments measure for a comparative period, determined using the same composition, is disclosed in the document, unless it has not been previously disclosed.

Capital management measures

10. (1) An issuer must not disclose a capital management measure in a document, other than financial statements about the entity to which the measure relates, unless all of the following apply:

(a) the capital management measure is presented with no more prominence in the document than that of similar financial measures disclosed in the primary financial statements of the entity;

(b) in proximity to the first instance of the capital management measure in the document, the document,

(i) if the capital management measure was calculated using one or more non-GAAP financial measures, discloses each such non-GAAP financial measure;

(ii) discloses, directly or by incorporating it by reference as permitted under section 5,

(A) for any capital management measure that is disclosed in the form of a ratio, fraction, percentage or similar representation, an explanation of its composition,

(B) an explanation of how the capital management measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the capital management measure, and

(C) for any capital management measure that is not disclosed as a ratio, fraction, percentage or similar representation, a quantitative reconciliation of the capital management measure for its current and comparative period, if disclosed under paragraph (c), to the most directly comparable financial measure disclosed in the primary financial statements of the issuer;

(c) if the capital management measure is disclosed in MD&A or in an earnings release of the issuer, the capital management measure for a comparative period, determined using the same composition, is disclosed in the document, unless it has not been previously disclosed.

(2) Subparagraph (1)(b)(ii) does not apply if the disclosure required under that subparagraph is made in the notes to the financial statements of the entity to which the measure relates.

Supplementary financial measures

11. An issuer must not disclose a supplementary financial measure in a document unless both of the following apply:

(a) the supplementary financial measure is labelled using a term that,

(i) given the measure's composition, describes the measure, and

(ii) distinguishes the measure from totals, subtotals and line items disclosed in the primary financial statements of the issuer;

(b) in proximity to the first instance of the supplementary financial measure in the document, the document discloses, directly or by incorporating it by reference as permitted under section 5, an explanation of the composition of the supplementary financial measure.

PART 4
EXEMPTION

Exemption

12. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions*, opposite the name of the local jurisdiction.

PART 5
EFFECTIVE DATE AND TRANSITION

Effective date and transition

13. (1) This Instrument comes into force on August 25, 2021.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after August 25, 2021, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

(3) Despite subsections (1) and (2), this Instrument does not apply to a reporting issuer in respect of documents filed for a financial year ending before October 15, 2021.

(4) Despite subsections (1) and (2), this Instrument does not apply until after December 31, 2021 to an issuer that is not a reporting issuer.

ANNEX D

COMPANION POLICY 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

Introduction

National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the "Instrument") sets out specific disclosure requirements for non-GAAP financial measures, non-GAAP ratios, and other financial measures, which are capital management measures, supplementary financial measures, and total of segments measures, as defined in the Instrument (together the "specified financial measures"). The purpose of this Companion Policy (the "Policy") is to explain how the provincial and territorial regulatory authorities interpret or apply certain provisions of the Instrument. This Policy includes explanations, discussions, and examples of various parts of the Instrument. This Policy contains, as Appendix A, a flow chart outlining the process for assessing specified financial measures. The flow chart is for illustrative purposes only and, in all cases, reference should be made to the precise language of the Instrument.

Interpretation of "made available to the public" and "filed", "delivered" or "submitted"

Documents made available to the public include not only information filed on SEDAR but also information on a website and disclosure provided through social media platforms.

The Instrument uses the terms "filed" and "submitted". This Policy also uses the term "delivered". Material that is filed in a jurisdiction will be made available to the public in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction. Material that is delivered to a regulator or securities regulatory authority, or submitted to a recognized exchange, but not filed, is not generally required under securities legislation to be made available to the public.

Document

A document is any written communication, including a communication prepared and transmitted in electronic form, e.g., a website, but for the purposes of the Instrument, does not include a transcript of an oral statement.

Entity

An "entity" may include, but is not limited to:

- An issuer, meaning a person or company that has outstanding securities, is issuing securities, or proposes to issue securities;
- An affiliate or a subsidiary of an issuer;
- A company, such as a corporation, incorporated association, incorporated syndicate or other incorporated organization;
- A person, such as a partnership, unincorporated association, unincorporated syndicate, unincorporated organization or a trust;
- A group of assets of an issuer for which financial statements are prepared, whether or not the asset or group of assets are held in a legal entity; or
- Two or more issuers or portions of an issuer that are not all linked by a parent-subsidiary relationship, typically referred to as a "combined entity".

An entity is not necessarily a legal person or company.

Specified Financial Measures Disclosed by an Issuer and Financial Statements of an Entity

An issuer may disclose a specified financial measure that is derived from its financial statements or the financial statements of another entity. The following are examples of financial statements of an entity, other than the issuer's financial statements, that a specified financial measure may be derived from:

- Financial statements of a reverse takeover acquirer or financial statements of an acquired business included in a document filed by an issuer;
- Financial statements that are required to be filed with or delivered to a regulator or a securities regulatory authority, or made reasonably available to each holder of a security acquired, as required by a provision of National Instrument 45-106 *Prospectus Exemptions* ("NI 45-106");

- Financial statements of a subsidiary, joint venture or associate for which summarized financial information is disclosed in the notes to the financial statements of the issuer;

- Financial statements of an investment entity's investments, when supplemental financial information is included in the financial statements or the management's discussion & analysis (the "MD&A") of the investment entity; and

- Financial statements of an entity with which the issuer completed a transaction that are included in a filing statement or a listing document.

Financial Measures

The Instrument applies when a specified financial measure is disclosed in a document. If the financial measure is identified only by label without a corresponding numerical amount or measure, a specified financial measure has not been disclosed and, thus, the disclosure requirements within the Instrument do not apply.

For clarity, the Instrument does not apply to qualitative disclosure of targets, benchmarks or covenants that are not accompanied by the disclosure of a financial numerical amount for the measure.

Financial Reporting Framework, Accounting Principles, and Accounting Policies

In Canada, there are different financial reporting frameworks for different types of entities. Generally Accepted Accounting Principles ("GAAP") is a common term used to refer to a financial reporting framework that comprises the accounting principles that are generally accepted in a jurisdiction. National Instrument 52-107 *Accounting and Auditing Principles* prescribes, among other things, acceptable accounting principles, such as International Financial Reporting Standards ("IFRS").

The application of accounting principles often requires specific accounting policies. Accounting policies encompass all accounting policies applied in preparing and presenting financial statements, not just those which are disclosed in the notes to the financial statements.

Misleading disclosure still prohibited

Compliance with the Instrument does not relieve an issuer from other obligations under securities legislation. Specifically, an issuer may not present or disclose a specified financial measure in a way that would be misleading.

Section 1 - Definition of a non-GAAP financial measure

Common terms used to identify non-GAAP financial measures include "adjusted earnings", "adjusted EBITDA", "free cash flow", "pro forma earnings", "cash earnings", "distributable cash", "adjusted funds from operations", "earnings before non-recurring items" and measures presented on a constant-currency basis. Many of these terms lack standard meanings. Issuers across a spectrum of industries, and within the same industry, may use the same term to refer to different compositions.

The following are examples of measures that are not captured by the definition:

- Amounts that do not depict historical or future "financial performance", "financial position" or "cash flow", which relate to elements of the primary financial statements as defined in the Instrument, such as share price, market capitalization, or credit rating;

- Financial information that does not have the effect of providing a financial measure that is different from a financial measure presented in the primary financial statements, such as the addition or subtraction of an identical line item, or a subtotal or total originating from multiple periods of primary financial statements. For example, rolling 12-month results or fourth quarter revenue calculated by subtracting year-to-date third quarter revenue from the annual revenue presented in primary financial statements; or

- A financial measure which does not exclude an amount that is included in, or include an amount that is excluded from, the composition of the most directly comparable financial measure presented in the primary financial statements of the entity. For example, assets under management representing the total market value of invested assets managed by the issuer which are beneficially owned by clients and not reported in the primary financial statements of the issuer.

Component Information

When an issuer presents a financial statement line item in a more granular way outside the financial statements, otherwise known as a disaggregation, that number is a component of a line item that has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements. Such a financial measure would not be a non-GAAP financial measure because it is not a financial measure which excludes an amount that is included in, or includes an amount that is excluded

from, the composition of the most directly comparable financial measure presented in the primary financial statements of the entity. However, even though such a measure would not be a non-GAAP financial measure, it may still meet the definition of a supplementary financial measure.

For example, an issuer may disclose sales per square foot on a periodic basis to depict its financial performance. When the sales figure, included in sales per square foot, is extracted directly from the primary financial statements or is a component of such line item (when the component is calculated in accordance with the issuer's accounting policies used to prepare the line item presented in the financial statements), the "sales per square foot" measure would not meet the definition of a non-GAAP ratio but would meet the definition of a supplementary financial measure. However, if the sales figure is not calculated in accordance with the issuer's accounting policies, the "sales per square foot" measure in this example would meet the definition of a non-GAAP ratio.

Combinations of Line Items

A financial measure calculated by combining financial information that originates from different line items from the primary financial statements would meet the definition of a non-GAAP financial measure if the measure depicts financial performance, financial position or cash flow, unless that resulting measure is separately disclosed in the notes to the financial statements.

Non-GAAP Financial Measures that are Forward-looking Information

Forward-looking information for which there is an equivalent historical financial measure disclosed in the financial statements does not meet the definition of a non-GAAP financial measure. Therefore, section 7 of the Instrument does not apply to measures such as future capital management measures and future total of segments measures.

In addition, if, for example, revenue is disclosed on a forward-looking basis using the accounting policies applied by the issuer in its latest set of financial statements (i.e., revenue as presented in the primary financial statements adjusted only for assumptions about future economic conditions and courses of action), this forward-looking revenue is not a non-GAAP financial measure. Conversely, if an issuer discloses EBITDA on a forward-looking basis and does not disclose this financial measure in the financial statements, this forward-looking EBITDA does meet the definition of a non-GAAP financial measure that is forward-looking information.

Issuers are reminded that forward-looking information is subject to the disclosure requirements in Parts 4A and 4B and section 5.8 of National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102").

Non-Financial Information

For clarity, the definition of a non-GAAP financial measure does not include non-financial information such as the following:

- Number of units;
- Number of subscribers;
- Volumetric information;
- Number of employees or workforce by type of contract or geographical location;
- Environmental measures such as greenhouse gas emissions;
- Information on major shareholdings;
- Acquisition or disposal of the issuer's own shares; and
- Total number of voting rights.

The above list is not exhaustive.

We remind issuers that while non-financial information is not subject to the requirements of the Instrument, non-financial information is subject to various disclosure requirements under applicable securities legislation, including the requirement not to disclose misleading information.

Section 1 – Definition of primary financial statements

The Instrument uses the terms "statement of financial position", "statement of profit or loss and other comprehensive income", "statement of changes in equity", and "statement of cash flows", to describe the primary financial statements. Issuers may use titles for the statements other than those terms if the titles comply with the financial reporting framework used in the preparation of the financial statements. For example, an issuer may use the title of "balance sheet" instead of "statement of financial position".

Section 1 - Definition of a supplementary financial measure

Component Information

An issuer that operates in the retail industry may disclose financial results for "same-store sales" each reporting period. When same-store sales, a component of overall sales, is calculated in accordance with the accounting policies used to prepare the sales line item presented in the primary financial statements, it would not meet the definition of a non-GAAP financial measure. However, since in this example "same-store sales" is used by the issuer to depict financial performance by reporting sales performance from period to period, it would meet the definition of a supplementary financial measure.

Conversely, when the measure is not calculated in accordance with the issuer's accounting policies, such measure would meet the definition of a non-GAAP financial measure. For example, if the sales figure in "same-store sales" is sales presented on a constant-dollar basis, this constant-dollar sales figure meets the definition of a non-GAAP financial measure since it excludes amounts (i.e., the effect of foreign exchange differences) that are included in the most directly comparable financial measure presented in the primary financial statements (i.e., sales). As a result, the "constant dollar same-store sales" measure in this example would meet the definition of a non-GAAP financial measure or the "constant dollar same-store sales per square foot" measure would meet the definition of a non-GAAP ratio.

If an issuer discloses a financial measure that is a component of a financial statement line item to explain how the financial statement line item changed from period to period (in dollars or as a percentage, for instance), such a measure would not meet the definition of a supplementary financial measure if the measure is not intended to be disclosed on a periodic basis. For example, if an issuer experienced an unexpected increase in administrative expenses, it may analyze the reasons for changes in administrative expenses by, among other things, disclosing information about its insurance expense, a component of overall administrative expenses. In this example, insurance expense would not meet the definition of a supplementary financial measure because, among other things, the insurance expense was calculated in accordance with the accounting policies used to prepare the administrative expenses line item presented in the primary financial statements.

Periodic Basis

An element of the definition of a supplementary financial measure is that it is disclosed or is intended to be disclosed on a periodic basis. A measure will not be precluded from being considered a supplementary financial measure the first time it is disclosed if the measure is intended to be disclosed on an ongoing basis (e.g., in future quarterly and/or annual disclosures).

Financial Ratios

A financial ratio that is not a non-GAAP ratio would typically meet the definition of supplementary financial measure because such ratio is often disclosed on a periodic basis to depict historical or future financial performance, financial position or cash flow.

Financial ratios contain at least one financial component (either the numerator or the denominator).

Examples include, but are not limited to the following ratios:

- Liquidity ratios such as the current ratio;
- Solvency ratios such as the debt-to-equity ratio;
- Profitability ratios such as the return on equity ratio or revenue per user; and
- Activity ratios such as the inventory turnover ratio.

Section 2 – Application to reporting issuers

Websites and Social Media

The Instrument applies to a reporting issuer in respect of its disclosure, on a website and social media, of a specified financial measure.

A reporting issuer should not disclose a specified financial measure using social media, if it is unable to include or incorporate by reference all the required disclosure.

Section 3 – Application to issuers that are not reporting issuers

The Instrument applies to an issuer that is not a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is filed with a regulator or a securities regulatory authority in connection with a distribution made in reliance on the offering memorandum exemption under NI 45-106, including the following documents:

- Offering memorandum; and
- Offering memorandum marketing materials.

Subparagraphs 4(1)(c)(i) and (ii) – Mineral projects

The Instrument does not apply to disclosure required under *National Instrument 43-101 Standards of Disclosure for Mineral Projects* ("NI 43-101") related to an issuer's material mineral project. For example, Item 22 of Form 43-101F1 *Technical Report* requires an issuer to disclose an economic analysis that includes certain financial measures. Section 5.4 of Form 51-102F2 *Annual Information Form* requires an issuer to disclose certain measures such as capital and operating costs, and annual cash flow, net present value, internal rate of return, and payback period disclosed in an economic analysis.

The Instrument does not apply to these measures because they are specifically required to be disclosed under NI 43-101. However, if an issuer discloses a financial measure that is not specifically required to be disclosed under NI 43-101, for example, EBITDA, it may be considered a specified financial measure and, thus, is within the scope of the Instrument.

Subparagraph 4(1)(c)(iii) – Oil and gas metrics

The Instrument does not apply to disclosure required under National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* ("NI 51-101"). However, disclosures of oil and gas metrics that are made under section 5.14 of NI 51-101 are subject to the requirements of the Instrument because such disclosure is made on a voluntary basis.

Subparagraph 4(1)(d)(i) – Reports prepared by a person or company other than the issuer or entity that is the subject of the specified financial measure

The Instrument does not apply to reports that are prepared by a person or company other than the issuer or entity that is the subject of the specified financial measure. An example is an analyst report disclosed by an issuer (i.e., either through posting a copy of this analyst report or by providing a link to such a report on its website), where this report has been prepared by a person or company other than the issuer (i.e., a "third-party") and contains financial measures that provide information about the issuer itself (i.e., "the subject of the specified financial measure").

Examples of these "third-party" reports include analyst reports, fairness opinions and valuation reports. These reports may also include those filed under subparagraphs 9.1(1)(a)(vi) or 9.2(a)(v) of National Instrument 41-101 *General Prospectus Requirements*, subparagraphs 4.1(1)(a)(vi) or 4.2(a)(iv) of National Instrument 44-101 *Short Form Prospectus Distributions*, section 2.5 of Form 51-102F4 *Business Acquisition Report* or Part 6 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

However, when an issuer discloses a specified financial measure that has been taken from such a report prepared by a person or company other than the issuer, this specified financial measure is within the scope of the Instrument.

Subparagraph 4(1)(d)(iii) – Pro forma financial statements

The Instrument does not apply to pro-forma financial statements included in a filing required under securities legislation, such as pro-forma financial statements required to be included in a business acquisition report under NI 51-102.

The Instrument does apply to pro-forma financial statements included in a filing made on a voluntary basis (i.e., it is not explicitly required under securities legislation).

Paragraph 4(1)(e) – Financial measures required under law or by an SRO

Paragraph 4(1)(e) includes financial measures disclosed in accordance with prescribed (i.e., mandatory) requirements under applicable securities legislation, for example, disclosure of earnings coverage ratios prescribed by Item 9 of Form 41-101F1 *Information Required in a Prospectus*. Voluntary disclosure that is permitted but not required by other securities legislation is subject to the requirements of the Instrument.

The Instrument also does not apply to a financial measure that is disclosed in accordance with the laws of a jurisdiction of Canada, or jurisdiction outside Canada, including governments, governmental authorities and SROs. This exclusion is, however, only applicable in situations when a financial measure is required to be disclosed and the law specifically specifies its composition.

If an issuer discloses a financial measure that is prepared in accordance with voluntary guidance published by a government, governmental authority or SRO that is applicable to the issuer, then the financial measure is subject to the requirements of this Instrument.

Paragraph 4(1)(f) – Specified financial measure where its calculation is derived from a financial covenant in a written agreement

The Instrument does not apply to an issuer in respect of disclosure of a specified financial measure where its calculation is derived from a financial covenant in a written agreement, for example, a specified financial measure whose calculation and composition are derived from a financial covenant within a credit agreement.

Paragraph 4(1)(g) – Specified financial measure disclosed in a document by a registered firm that is intended to be, or is reasonably likely to be, made available to a client or a prospective client of the registered firm

The Instrument does not apply to an issuer that is a registered firm in respect of disclosure of a specified financial measure if (i) the document in which the disclosure is made is intended to be, or is reasonably likely to be, made available to a client or a prospective client of the registered firm, and (ii) the measure does not relate to the registered firm's financial performance, financial position or cash flow. Examples would include a report prepared and disclosed by a registered firm, such as an analyst report which contains data and analysis of an unrelated issuer or entity.

Subsection 4(2) – Statement of Executive Compensation

In the context of Form 51-102F6 *Statement of Executive Compensation* ("Form 51-102F6") or Form 51-102F6V *Statement of Executive Compensation – Venture Issuers* ("Form 51-102F6V"), if a financial measure is identified (e.g., adjusted net income) and the calculation is described (e.g., net income adjusted for foreign exchange gains or losses) but no financial amount is disclosed (i.e., no dollar amount), it would not be within the scope of the Instrument because a financial measure has not been disclosed, only identified and described.

If a specified financial measure that is in scope of the Instrument is disclosed in Form 51-102F6 or Form 51-102F6V (e.g., adjusted net income of $X), as outlined in subsection 4(2) of the Instrument, only the following information is required, as applicable: the identification of the non-GAAP financial measure under paragraph 6(1)(b) and the quantitative reconciliation of the specified financial measure under clause 6(1)(e)(ii)(C), paragraph 9(c) or clause 10(1)(b)(ii)(C).

Section 5 – Incorporation by reference

The Instrument allows an issuer to incorporate by reference certain disclosure, if the reference is to the issuer's MD&A. To meet the requirement that the MD&A be available on SEDAR under paragraph 5(2)(c) of the Instrument, the MD&A must be filed on SEDAR before, or simultaneously with the document, in order for this MD&A to be used to incorporate any information by reference into the document. For example, if an issuer is filing an annual information form that includes a specified financial measure and the issuer is incorporating certain information in the MD&A by reference to satisfy the disclosure requirements of the Instrument, that MD&A would have to be filed on SEDAR before or simultaneously with the filing of the annual information form.

Paragraph 5(2)(b) requires the identification of the specific location of the required information in the MD&A. To comply with this requirement, identify where the required information is specifically located within the MD&A (e.g., identify the specific MD&A including a reference to the date of the MD&A, its reporting period, and the specific section or page reference within the MD&A) or provide a hyperlink to the specific section or page within the MD&A where the information is located. Issuers would not satisfy this requirement with a general hyperlink to the relevant MD&A.

The Instrument allows an issuer to incorporate by reference certain required disclosure in a news release; however, subsection 5(1) does not apply to the quantitative reconciliation requirements under clauses 6(1)(e)(ii)(C), paragraph 7(2)(d) or 9(c), or clause 10(1)(b)(ii)(C) if the document that contains the specified financial measure is an earnings release filed by the issuer under section 11.4 of NI 51-102.

Section 6 – Non-GAAP financial measures that are historical information

Paragraph 6(1)(a) – Labelling a non-GAAP financial measure that is historical information

Any label or term used to describe a non-GAAP financial measure, or adjustments in a reconciliation, must be appropriate given the nature of information.

For example, the following are not in compliance with the labelling requirement in paragraph 6(1)(a) of the Instrument:

- Labels that are the same as, or confusingly similar to, those normally used under the financial reporting framework used to prepare the financial statements. For example, a measure labelled "cash flows from operations" and calculated as cash flows from operating activities before changes in non-cash working capital items is confusingly similar to the term "cash flows from operating activities" specified in IAS 7 *Statement of Cash Flows*;

- Labels that purport to represent "results from operating activities" or a similar title but exclude items of an operating nature, such as inventory write-downs, restructuring costs, impairment of assets used for operations and stock-based compensation;

- Labels that are overly optimistic (e.g., guaranteed profit or protected returns); and
- Labels that may cause confusion based on the financial measure's composition. For example, in presenting EBITDA as a non-GAAP financial measure, it would be inappropriate to exclude amounts for items other than interest, taxes, depreciation and amortization.

The above list is not exhaustive.

Paragraph 6(1)(b) – Identification of a non-GAAP financial measure that is historical information

An issuer may satisfy the paragraph 6(1)(b) identification requirement by inserting a footnote to the non-GAAP financial measure that is disclosed in the document, with a statement similar to the following: "This is a non-GAAP financial measure. Refer to the Non-GAAP Financial Measures section of this document for more information on each non-GAAP financial measure". The issuer should exercise judgement in assessing whether the non-GAAP financial measure should be identified with a footnote each time the measure is disclosed in the document, considering the nature and extent of the use of this measure.

Paragraph 6(1)(d) – Prominence of a non-GAAP financial measure that is historical information

Determining the relative prominence of a non-GAAP financial measure is a matter of judgment, involving consideration of the overall disclosure and the facts and circumstances in which the disclosure is made.

The presentation of a non-GAAP financial measure should not in any way confuse or obscure the presentation of the most directly comparable financial measure that is presented in the primary financial statements of the entity to which the measure relates.

The following are examples that would cause a non-GAAP financial measure to be more prominent than the most directly comparable financial measure presented in the primary financial statements:

- Presenting a non-GAAP financial measure in the form of a statement of profit or loss and other comprehensive income without presenting it in the form of a reconciliation to the most directly comparable financial measure, sometimes referred to as a "single column approach";
- Omitting the most directly comparable financial measure from a news release headline or caption that includes a non-GAAP financial measure;
- Presenting a non-GAAP financial measure using a style of presentation (e.g., bold, underlined, italicized, or larger font) that emphasizes the non-GAAP financial measure over the most directly comparable financial measure;
- Multiple non-GAAP financial measures being used for the same or similar purpose thereby obscuring disclosure of the most directly comparable financial measure;
- Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most directly comparable financial measures; and
- Providing a discussion and analysis of a non-GAAP financial measure in a more prominent location than a similar discussion and analysis of the most directly comparable financial measure. For greater certainty, a location is not more prominent if it allows an investor who reads the document, or other material containing the non-GAAP financial measure, to be able to view the discussion and analysis of both the non-GAAP financial measure and the most directly comparable financial measure contemporaneously (e.g., within the previous, same or next page of the document).

The above list is not exhaustive.

The Instrument requires that the non-GAAP financial measure be presented with "no more prominence in the document than that of the most directly comparable financial measure" presented in the primary financial statements. If the most directly comparable financial measure is presented with "equal or greater prominence" than the non-GAAP financial measure, the requirement under paragraph 6(1)(d) of the Instrument has been met.

Paragraphs 6(1)(e), 7(2)(d), 8(c), 9(c), 10(1)(b), 11(b) – Proximity to the first instance

To prevent duplicative disclosure, an issuer may include the information required by paragraphs 6(1)(e), 7(2)(d), 8(c), 9(c), 10(1)(b), 11(b) of the Instrument in one section of the document, unless incorporation by reference is permitted under section 5 of the Instrument. To satisfy these requirements, when the specified financial measure first appears in the document an issuer may reference, either through a footnote or in another manner, a separate section within the same document that contains the disclosure required by these paragraphs.

There may be types of documents where it is not clear when the specified financial measure first occurs or appears, for example, websites and social media. In these instances, the "first instance" disclosure requirements may be satisfied by providing a website hyperlink to where the disclosures required by paragraphs 6(1)(e), 7(2)(d), 8(c), 9(c), 10(1)(b), 11(b) of the Instrument are found (e.g., on another section of the website) with minimal to no scrolling or navigation. Hyperlinking may only be provided within a website or within a document.

Clauses 6(1)(e)(ii)(A), 8(c)(iii)(A), 10(1)(b)(ii)(A) and paragraph 11(b) – Explain the composition

The composition explanation should include a clear description of how the specified financial measure is calculated. For example, we would expect an issuer to describe the type of adjustments made, such as those for "non-cash" items or the basis being used to determine the type of adjustments.

In most instances, this requirement would not be satisfied just by listing all adjustments made in calculating the measure.

It is important to consider whether any new adjustment made in the calculation of a specified financial measure might constitute a change in composition or whether the adjustment is consistent with the stated usefulness of the measure.

Clauses 6(1)(e)(ii)(B), 8(c)(iii)(B) and 10(1)(b)(ii)(B) – Usefulness of a specified financial measure

The Instrument does not define the term "useful". The term "useful" is intended to reflect how management believes that presentation of the non-GAAP financial measure provides incremental information to investors regarding the issuer's financial position, financial performance or cash flows. The term "useful" should be considered in the context of what a person making an investment decision would consider useful.

A statement made to satisfy the requirement of clauses 6(1)(e)(ii)(B), 8(c)(iii)(B) and 10(1)(b)(ii)(B) of the Instrument should

- Be clear and understandable;
- Be specific to the specified financial measure used, the issuer, the nature of the business and the industry (i.e., not boilerplate); and
- Specifically explain how the specified financial measure is assessed and applied to decisions made by management, if applicable, and explain the reasons why the specified financial measure is useful to an investor.

Issuers should avoid making inappropriate or potentially misleading statements about the usefulness of a measure. The Instrument does not explicitly prohibit certain adjustments. However, if adjustments are not consistent with the usefulness explanation provided to address clauses 6(1)(e)(ii)(B), 8(c)(iii)(B) and 10(1)(b)(ii)(B) of the Instrument, this may result in a specified financial measure that is inappropriate or misleading.

A specified financial measure may be misleading if it

- Includes positive components of the most directly comparable financial measure but omits negative components (e.g., presenting a specified financial measure that excludes unrealized losses on financial instruments but includes unrealized gains); or
- Excludes from an operating performance measure those operating expenses necessary to operate an issuer's business.

Clause 6(1)(e)(ii)(C) and subsection 6(2) – Reconciliation of a non-GAAP financial measure

Clause 6(1)(e)(ii)(C) of the Instrument requires a quantitative reconciliation between the non-GAAP financial measure and the most directly comparable financial measure presented in the primary financial statements. For the purpose of clause 6(1)(e)(ii)(C), a quantitative reconciliation of the non-GAAP financial measure is required to be the "permitted format" outlined in subsection 6(2) of the Instrument. An issuer may satisfy this requirement by providing a reconciliation in a clearly understandable way, such as a table. For purposes of presenting the reconciliation, an issuer may begin with the non-GAAP financial measure or the most directly comparable financial measure presented in the primary financial statements, provided the reconciliation is presented in an understandable and consistent manner.

Most Directly Comparable Financial Measure

The Instrument does not define the "most directly comparable financial measure" and therefore the issuer needs to apply judgment in determining the most directly comparable financial measure. In applying judgment, it is important for an issuer to consider the context of how the non-GAAP financial measure is used. For example, when the non-GAAP financial measure is discussed primarily as a performance measure used in determining cash generated by the issuer, or the issuer's distribution-paying capacity, its most directly comparable financial measure will be from the statement of cash flows. In practice, earnings-based measures and cash flow-based measures are used to disclose operational performance. If it is not clear from the way the non-GAAP financial

measure is used what the most directly comparable financial measure is, consideration can be given to the nature, number and materiality of the reconciling items.

Reconciling Items

The reconciliation must be quantitative, separately itemizing and explaining each significant reconciling item.

Source of Reconciling Items

When a reconciling item is taken directly from the entity's financial statements, it should be named such that an investor is able to identify the item in those financial statements, and no further explanation of that reconciling item is required.

When a reconciling item is not extracted directly from the entity's financial statements, but is, for example, a component of a line item in the entity's primary financial statements or originates from outside the primary financial statements, disclosure must be provided to satisfy clause 6(1)(e)(ii)(C) and subsection 6(2) of the Instrument. Such disclosure should identify the source of the reconciling item (e.g., the financial statement line item, the financial statement note, or the externally sourced document), if not obvious, and should explain how the amount is calculated, including a discussion of any significant judgments or estimates management has made in developing the reconciling items used in the reconciliation.

Entity-Specific Inputs

Reconciling items should be calculated using entity-specific inputs. An entity may make adjustments that are accepted within an industry; however, the quantum of these adjustments should be calculated using entity-specific information. For example, an entity may make an adjustment for operating capital expenditures, which is a standard adjustment in certain industries, but the amount of the adjustment should be calculated based on the entity's operating capital expenditures, and not by using only an 'industry average' amount as the sole factor. However, adjustments should be supportable and consistent with the usefulness explanation provided to address clause 6(1)(e)(ii)(B) of the Instrument.

Level of Detail

The level of detail expected in the reconciliation depends on the nature and complexity of the reconciling items. The adjustments made from the most directly comparable financial measure should be consistent with the explanation required by clause 6(1)(e)(ii)(B) of the Instrument regarding why the information is useful to investors and if applicable, how it is used by management. Explanations should be more detailed than merely stating what the reconciling item represents and should also cover the circumstances that give rise to the particular adjustment if it is not obvious.

An "other" or "adjusting items" category to describe numerous insignificant reconciling items should not be used without further explanation as to the nature of items that comprise the category.

Gross Basis

Issuers should consider significant reconciling items on a gross basis. For example, an issuer is expected to separately itemize positive and negative adjustments unless netting is permitted under the financial reporting framework used in the preparation of the financial statements.

Tax

Reconciling items are commonly presented on a pre-tax basis to ensure that investors understand the gross amount of each reconciling item. If an issuer chooses to present reconciling items on a post-tax basis then the tax effect for each reconciling item should also be disclosed.

Comparatives

For comparative non-GAAP financial measures disclosed for a previous period under paragraph 6(1)(f) of the Instrument, a reconciliation to the corresponding most directly comparable financial measure is required for that previous period.

Presentation in the Form of a Primary Financial Statement

An issuer may present adjusted financial information outside the entity's financial statements using a format that is similar to one or more of the primary financial statements, but that is not in accordance with the financial reporting framework used to prepare the entity's financial statements. In this case, the adjusted financial information would contain non-GAAP financial measures. Specifically, this would arise if an issuer presents such financial measures in a form that is similar to the following financial statements:

- A statement of financial position;

- A statement of profit or loss and other comprehensive income;
- A statement of changes in equity; or
- A statement of cash flows.

Presentation of this information as a single column that excludes the most directly comparable financial measures in a separate column would not satisfy clause 6(1)(e)(ii)(C) and subsection 6(2) of the Instrument. However, this information may be presented in the form of a reconciliation of the non-GAAP financial measure to the most directly comparable financial measure if such presentation shows in separate columns each of the most directly comparable financial measures, the reconciling items, and the non-GAAP financial measures. An example of the separate column approach may be used when issuers with joint ventures present a full set of non-GAAP financial statements in the form of a columnar reconciliation that shows the issuer's statement of income as presented in the primary financial statements, an additional column with amounts related to equity accounted investees for each financial statement line item, and then a total column for each financial statement line item, which would be appropriately labelled as non-GAAP financial measures for each financial statement line item. This effectively creates the presentation of a full set of non-GAAP financial statements.

When the adjusted presentation is used as a basis for the qualitative discussions and analysis of an entity's financial performance, financial position or cash flows with greater prominence than financial measures presented in the primary financial statements, this would not be considered to be in compliance with the prominence requirement in paragraph 6(1)(d) of the Instrument.

Clauses 6(1)(e)(ii)(D) and 8(c)(iii)(C) – Explanation of the reason for the change in a non-GAAP financial measure or a non-GAAP ratio

If the label or composition of the non-GAAP financial measure or non-GAAP ratio has changed from what was previously disclosed, the requirement of clauses 6(1)(e)(ii)(D) and 8(c)(iii)(C) of the Instrument would apply.

Including additional reconciling items or excluding previously included reconciling items between the non-GAAP financial measure and the most directly comparable financial measure constitutes a change in composition. A clear explanation of the reason for this change is required under clauses 6(1)(e)(ii)(D) and 8(c)(iii)(C) of the Instrument, which would include a restatement of comparatives, when disclosed as required under paragraph 6(1)(f) or 8(d).

A change in magnitude of an individual item would not constitute a change in composition. For example, an issuer may define adjusted earnings as earnings before impairment losses and transaction costs. Transaction costs may only be incurred every three years, such that there may be no adjustment in year two to reflect transaction costs, but there should be an explanation noting that the issuer expects that it will incur transaction costs in the future. In this example, the issuer should continue to include transaction costs in the explanation of the composition under clause 6(1)(e)(ii)(A) or 8(c)(iii)(A) to maintain consistency of the non-GAAP financial measure or non-GAAP ratio.

Given that disclosure of non-GAAP financial measures and non-GAAP ratios is optional, disclosing a particular non-GAAP financial measure or non-GAAP ratio does not create an obligation to continue disclosing that measure in future periods. If, however, an issuer replaces a non-GAAP financial measure or a non-GAAP ratio with another measure or ratio, fraction or similar representation that achieves the same objectives (that is, the usefulness information provided to comply with clauses 6(1)(e)(ii)(B) and 8(c)(iii)(B) of the Instrument was consistent for both measures), the requirement of clauses 6(1)(e)(ii)(D) and 8(c)(iii)(C) of the Instrument would apply.

If the label of a non-GAAP financial measure or non-GAAP ratio has changed, while the explanation for the change may be incorporated by reference, we expect the issuer to make it clear in the document that the label has changed in the current period from that disclosed in the prior period.

Paragraphs 6(1)(f) and 8(d) – Presenting comparative information for a non-GAAP financial measure or a non-GAAP ratio

Impracticable

Understandably, it is impracticable for an issuer to provide the comparative disclosure required by paragraph 6(1)(f) or 8(d) of the Instrument when the current period is the first period of operations and no comparative period exists. However, when a comparative period exists, we do not consider the cost or the time involved in preparing the comparative information to be sufficient rationale for an issuer to assert that it is impracticable to disclose such information.

Changes in Accounting Standards

We would not consider adoption of a new accounting standard, which would include adoption of amendments to current accounting standards, or a change in accounting policy, to be a basis for not presenting comparative period disclosure, as the composition of the non-GAAP financial measure should continue to be the same.

Adoption of new accounting standards, or changes in accounting policy, may modify measurement and recognition of transactions which will have an impact on line items, subtotals and totals over different financial periods. However, the composition of the non-GAAP financial measure itself should not change. Consider, for example, an issuer that discloses EBITDA as its non-GAAP financial measure, and in the current year adopts a new accounting standard which modifies the classification of certain expenditures from administrative expense to interest expense. While the resulting EBITDA measure will no longer include those transactions, EBITDA will continue to have the same composition, as it will comprise earnings before interest, taxes, depreciation and amortization. Therefore, the issuer would not be subject to the explanation of the reason for the change disclosure under clause 6(1)(e)(ii)(D).

The financial reporting framework used to prepare an entity's financial statements would determine whether comparative information is restated with adoption of a new accounting standard or change in accounting policy. For example, we expect comparative non-GAAP financial measures to be restated when a new accounting standard or policy is applied retrospectively to each prior reporting period presented. Conversely, if a new accounting standard is applied prospectively or retrospectively without restatement of a prior reporting period presented, the specified financial measures would also not be restated. In such circumstances, the issuer communicates that the comparative non-GAAP financial measures are disclosed under the previous financial reporting framework used to prepare the entity's financial statements.

In both cases, the composition of the specified financial measure has not changed, and the explanation of the reason for the change disclosure under clause 6(1)(e)(ii)(D) would not be required.

Section 7 – Non-GAAP financial measures that are forward-looking Information

Paragraph 7(2)(a) – Equivalent historical non-GAAP financial measure

Under paragraph 7(2)(a) of the Instrument, an issuer must disclose, in the same document where the non-GAAP financial measure that is forward-looking information is disclosed, the equivalent historical non-GAAP financial measure. The issuer must also comply with section 6 of the Instrument in respect of the equivalent historical non-GAAP financial measure disclosed.

The equivalent historical non-GAAP financial measure must have the same composition as a non-GAAP financial measure that is forward-looking information. For example, adjusted EBITDA would be the equivalent historical non-GAAP financial measure of forward-looking adjusted EBITDA.

Determining the relevant historical period to satisfy the requirement in paragraph 7(2)(a) of the Instrument is a matter of judgment, considering the time period covered by the forward-looking information and the extent to which the business of the issuer is cyclical or seasonal. For example, when an issuer discloses forward-looking information for the three months ending June 30, 20X2, the relevant period for the equivalent historical non-GAAP financial measure may be:

- Where the business of the issuer is not seasonal, the issuer's most recent interim period for which annual financial statements or an interim financial report has been filed (e.g., the three months ended March 31, 20X2); or

- Where the business of the issuer is seasonal, the comparable historical interim period to that of the financial outlook disclosed (e.g., the three months ended June 30, 20X1).

Paragraph 7(2)(c) – Prominence of a non-GAAP financial measure that is forward-looking information

The Instrument requires a non-GAAP financial measure that is forward-looking information to be presented with no more prominence in the document than that of the equivalent historical non-GAAP financial measure disclosed. This means that the non-GAAP financial measure that is forward-looking information must be presented with no more prominence than that of the most directly comparable financial measure that is presented in the primary financial statements, as required by paragraph 6(1)(d) of the Instrument.

Paragraph 7(2)(d) – Description of any significant difference between the non-GAAP financial measure that is forward-looking information and the equivalent historical non-GAAP financial measure

The requirement in paragraph 7(2)(d) of the Instrument can be addressed in a schedule or other presentation which details significant differences between the non-GAAP financial measure that is forward-looking information and the equivalent historical non-GAAP financial measure. The material factors and assumptions that were used to develop the forward-looking information, as specified in paragraph 4A.3(c) of NI 51-102, will complement this disclosure.

Section 8 – Non-GAAP ratios

Financial ratios may be useful in communicating aspects of an issuer's financial performance, financial position or cash flow. A ratio where a non-GAAP financial measure is used as one or more of its components is a non-GAAP ratio and subject to the disclosure requirements of section 8.

For clarity, ratios may also meet the definition of forward-looking information.

Examples of non-GAAP ratios include “adjusted EBITDA per share”, “free cash flow per ounce”, “funds flow per barrel of oil equivalent”, and the equivalent future measures “forecasted adjusted EBITDA per share”, “forecasted free cash flow per ounce” and “forecasted funds flow per barrel of oil equivalent”.

Ratios that are calculated using exclusively:

- Financial measures that are presented in the primary financial statements; or
- Operating measures or other measures that are not non-GAAP financial measures

would not meet the definition of a non-GAAP ratio. For example, a working capital ratio would not meet the definition if the ratio is calculated as total current assets divided by total current liabilities, as both total current assets and total current liabilities are presented in the primary financial statements. A percentage increase or decrease year over year with respect to a line item presented in the primary financial statements (or a component of such line item) for the purpose of variance analysis would also not meet the definition of a non-GAAP ratio.

Paragraphs 8(b) and 10(1)(a) – Prominence of similar financial measures

The prominence requirements in paragraphs 8(b) and 10(1)(a) of the Instrument for non-GAAP ratios and capital management measures differ from the requirements for non-GAAP financial measures in paragraph 6(1)(d) and the requirements for total of segments measures in paragraph 9(b). However, the principle that the non-GAAP ratios and capital management measures should be presented with no more prominence than that of measures from the primary financial statements remains the same.

Many non-GAAP ratios and capital management measures do not have a most directly comparable financial measure. As such, issuers should consider the disclosure of the non-GAAP ratio and capital management measure in relation to the overall disclosure of similar financial measures presented in the primary financial statements to which the non-GAAP ratio or the capital management measure relates. For example, the prominence requirement in paragraph 8(b) of the Instrument is not met if the issuer focused its disclosure on an increased gross margin percentage without giving at least equally prominent disclosure to the fact that sales have significantly decreased over the same time period, resulting in a reduction in total profit period over period. In this example, it is assumed that the financial measure of “gross margin” is not presented in the primary financial statements and therefore meets the definition of a non-GAAP financial measure. As a further example, the discussion of a “total cash cost per ounce” financial measure should not be more prominent than the discussion of cost of sales, the similar financial measure presented in the primary financial statements to which the non-GAAP ratio relates.

An issuer that discloses a capital management measure such as “adjusted debt” will meet the requirement in paragraph 10(1)(a) by giving at least equally prominent disclosure to similar financial measures presented in the primary financial statements such as short-term and long-term debt.

For a non-GAAP ratio or a capital management measure which has a most directly comparable financial measure presented in the primary financial statements, the guidance on prominence contained in this Policy for paragraph 6(1)(d) should be referred to. For example, the most directly comparable financial measure of “adjusted earnings per share” is “earnings per share” and we expect that the discussion of “adjusted earnings per share” should not be more prominent than the discussion of “earnings per share”.

Subparagraph 8(c)(ii) – Disclosure of each non-GAAP financial measure that is used as a component of the non-GAAP ratio

For a non-GAAP ratio that is calculated using one or more non-GAAP financial measures, the issuer must disclose each non-GAAP financial measure and comply with section 6 of the Instrument in respect of each non-GAAP financial measure used in the calculation of the non-GAAP ratio.

Section 9 – Disclosure of total of segments measures

An entity’s financial reporting framework used in the preparation of the financial statements may permit disclosure of a broad range of segment measures, but may not necessarily specify how such financial measures should be calculated or require that these financial measures comply with the recognition and measurement requirements of the financial reporting framework used to prepare the financial statements of the entity.

When disclosed outside the financial statements, the disclosures made under section 9 of the Instrument should allow a reader to understand how these total of segments measures are calculated and how they relate to measures presented in the entity’s primary financial statements.

An example of a total of segments measure is when an issuer discloses adjusted EBITDA for each of its reportable segments in the notes to the financial statements: segment A, segment B, and segment C. The issuer then sums the adjusted EBITDA for each segment and discloses total "entity-adjusted EBITDA". "Entity-adjusted EBITDA" is a total of segments measure and is not presented in the primary financial statements. When this financial measure is disclosed in a document other than the financial statements, the issuer must comply with section 9 of the Instrument. For clarity, the individual segment adjusted EBITDA measure for segment A, for instance, would not be captured as a total of segments measure and would not be subject to section 9 of the Instrument.

If an issuer discloses a financial measure of a reportable segment and such financial measure is not presented or disclosed in the financial statements to which the financial measure relates, the issuer should consider whether this financial measure meets the definition of a non-GAAP financial measure.

A total of segments measure does not include a component of a financial statement line item for which the component has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements (see Component Information in section 1 of the Policy).

An SEC issuer may characterize a total of segments measure as a non-GAAP financial measure in compliance with SEC rules on non-GAAP financial measures and in doing so, the issuer would be complying with the requirements in section 9 of the Instrument in respect of this measure.

Section 10 – Disclosure of capital management measures

Disclosure of information that enables an individual to evaluate an entity's objectives, policies and processes for managing capital may be required by the financial reporting framework used in the preparation of the financial statements; for example, requirements in IFRS under IAS 1 *Presentation of Financial Statements*.

How an entity manages its capital is entity-specific and the financial reporting framework used to prepare the financial statements might not prescribe a specific calculation. The accompanying disclosure required by section 10 of the Instrument allows a reader to understand how an entity calculates these capital management measures and how they relate to measures presented in the entity's primary financial statements when these measures are disclosed in documents other than the financial statements.

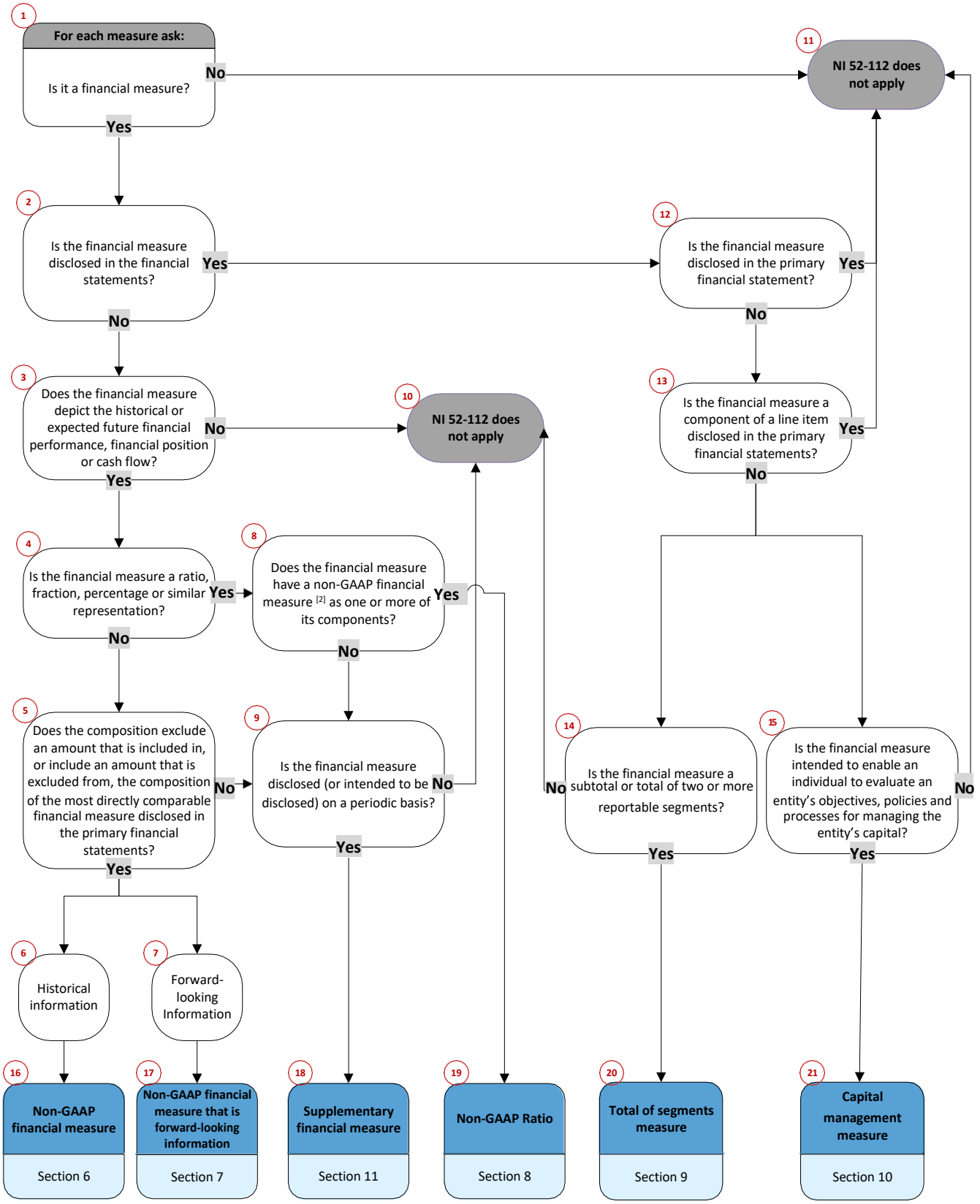
A capital management measure does not include a component of a financial statement line item for which the component has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements (see Component Information in section 1 of the Policy). An example of a capital management measure may include annualized adjusted EBITDA.

If the capital management measure was calculated using one or more non-GAAP financial measures, under subparagraph 10(1)(b)(i) of the Instrument the issuer must disclose each non-GAAP financial measure and comply with section 6 of the Instrument, in respect of each non-GAAP financial measure used in the calculation of the capital management measure.

Clause 10(1)(b)(ii)(A) of the Instrument requires a clear explanation of the composition, for any capital management measure that is disclosed in the form of a ratio, fraction, percentage or similar representation.

The level of detail expected in the reconciliation required under clause 10(1)(b)(ii)(C) is a matter of judgment and depends on the nature and complexity of the reconciling items required to provide the necessary context.

Appendix A – General Overview of Non-GAAP and Other Financial Measures Disclosure[1]



[1] This is a simplified overview. To ensure compliance, users should refer to the Instrument itself and its Policy.
[2] An issuer should assess each component of a financial measure presented in the form of a ratio, fraction, percentage or similar representation, to determine whether it is a non-GAAP financial measure.

ANNEX E

AMENDMENTS TO
MULTILATERAL INSTRUMENT 45-108 *CROWDFUNDING*

The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential amendments because Multilateral Instrument 45-108 Crowdfunding does not apply in these jurisdictions.

1. Multilateral Instrument 45-108 Crowdfunding is amended by this Instrument.

2. Form 45-108F1 Crowdfunding Offering Document is amended by replacing the heading "Non-GAAP financial measures" and the paragraph that follows this heading, in the "Instructions related to financial statement requirements and the disclosure of other financial information" of Schedule A with the following:

> ***Non-GAAP financial measures and other financial measures*** *- An issuer that intends to disclose financial measures that are subject to National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure in its crowdfunding offering document should refer to the requirements set out in that Instrument.***.**

3. This Instrument comes into force on August 25, 2021.

ANNEX F

CHANGE TO
COMPANION POLICY 45-108CP *CROWDFUNDING*

The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential changes to Companion Policy 45-108CP Crowdfunding because Multilateral Instrument 45-108 Crowdfunding does not apply in these jurisdictions.

1. Companion Policy 45-108CP Crowdfunding is changed by this Document.

2. Section 16 is changed by replacing the last paragraph with the following:

> Non-GAAP financial measures and other financial measures – An issuer that intends to disclose financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, including in its crowdfunding offering document, should refer to the requirements set out in that Instrument.**.**

3. This change becomes effective on August 25, 2021.

ANNEX G

CHANGES TO
COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. Companion Policy 51-102CP Continuous Disclosure Obligations is changed by this Document.

2. Section 4.2 is changed by replacing the heading "*Non-GAAP Financial Measures*" with* "Non-GAAP Financial Measures and Other Financial Measures" *and by replacing the paragraph with the following:

Reporting issuers that intend to publish financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* should refer to the requirements set out in that Instrument*.*.

3. These changes become effective on August 25, 2021.

ANNEX H

CHANGE TO
COMPANION POLICY 51-105CP MULTILATERAL INSTRUMENT 51-105 *ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS*

The Ontario Securities Commission is not proposing this consequential change as Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets and its Companion Policy do not apply in Ontario.

1. Companion Policy 51-105CP Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is changed by this Document.

2. Section 5 is changed by adding the following paragraph under the heading "National Instruments":

(e) National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* which sets out disclosure requirements for non-GAAP financial measures and certain other financial measures.

3. This change becomes effective on August 25, 2021.

ANNEX I

CHANGE TO
COMPANION POLICY 52-107CP *ACCEPTABLE ACCOUNTING PRINCIPLES AND AUDITING STANDARDS*

1. Companion Policy 52-107CP Acceptable Accounting Principles and Auditing Standards is changed by this Document.

2. Section 2.10 is replaced with the following:

> **2.10 Acceptable Accounting Principles** — Readers are likely to assume that financial information disclosed in a news release is prepared on a basis consistent with the accounting principles used to prepare the issuer's most recently filed financial statements. To avoid misleading readers, an issuer should alert readers if financial information in a news release is prepared using accounting principles that differ from those used to prepare an issuer's most recently filed financial statements or includes financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*.**.**

3. This change becomes effective on August 25, 2021.

1.2 Notices of Hearing

1.2.1 Jonathan Cartu et al. – ss. 127, 127.1

FILE NO.: 2020-14

IN THE MATTER OF
JONATHAN CARTU,
DAVID CARTU
and
JOSHUA CARTU

NOTICE OF HEARING
Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: May 26, 2021 at 10:00 a.m.

LOCATION: By videoconference

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated May 18, 2021, between Staff of the Commission and David Cartu in respect of the Statement of Allegations filed by Staff of the Commission dated May 4, 2020.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 19th day of May, 2021

"Grace Knakowski"
Secretary to the Commission

For more information

Please visit www.osc.ca or contact the Registrar at registrar@osc.gov.on.ca.

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Polo Digital Assets, Ltd. – ss. 127(1), 127.1

FILE NO.: 2021-17

IN THE MATTER OF
POLO DIGITAL ASSETS, LTD.

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

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: June 18, 2021 at 10:00 a.m.

LOCATION: By Teleconference

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order requested in the Statement of Allegations filed by Staff of the Commission on May 25, 2021.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 5(1) of the Commission's *Practice Guideline*.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 25th day of May 2021.

"Grace Knakowski"
Secretary to the Commission

For more information

Please visit www.osc.ca or contact the Registrar at registrar@osc.gov.on.ca.

IN THE MATTER OF
POLO DIGITAL ASSETS, LTD.

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

A. OVERVIEW

1. Staff of the Enforcement Branch of the Commission (**Enforcement Staff**) brings this proceeding to hold Polo Digital Assets, Ltd. (**Poloniex**) accountable for disregarding Ontario securities law and to signal that crypto asset trading platforms flouting Ontario securities law will face regulatory action.

2. Poloniex operates an online crypto asset trading platform (the **Poloniex Platform**). The Poloniex Platform is available to Ontario residents. Ontario residents have opened accounts on the Poloniex Platform and have used the platform to deposit and trade in crypto asset products.

3. Poloniex is subject to Ontario securities law because crypto asset products offered on the Poloniex Platform are securities and derivatives. Poloniex has nonetheless failed to comply with the registration and prospectus requirements under Ontario securities law.

4. Registration and disclosure are cornerstones of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading. Prospectus requirements are fundamental to ensuring investors are provided with full, true and plain disclosure of all material facts relating to the securities being offered.

5. On March 29, 2021, the Ontario Securities Commission (the **Commission**) issued a press release notifying crypto asset trading platforms that currently offer trading in derivatives or securities to persons or companies located in Ontario that they must bring their operations into compliance with Ontario securities law or face potential regulatory action. The press release included a deadline of April 19, 2021 for such platforms to contact Commission staff to start compliance discussions. The press release followed regulatory guidance issued by the Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada on the application of securities legislation to crypto asset trading platforms.[1]

6. Despite this warning, Poloniex did not contact the Commission by April 19, 2021 or at any time to start compliance discussions.

7. A process is in place for crypto asset trading platforms to bring their operations into compliance with Ontario securities law. Entities such as Poloniex, which flout this compliance process, expose Ontario investors to unacceptable risks and create an uneven playing field within the crypto asset trading platform sector.

B. FACTS

Enforcement Staff makes the following allegations of fact:

(a) Poloniex

8. Poloniex is a corporation incorporated under the laws of the Republic of Seychelles. Poloniex has never been registered with the Commission to engage in the business of trading or obtained an exemption from the registration requirement. Poloniex has never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.

(b) The Poloniex Platform

9. Investors access the Poloniex Platform by first creating an account on the platform using an online application process. After opening an account, an investor may deposit crypto assets into the account. An investor makes a crypto asset deposit by transferring crypto assets to a wallet controlled by Poloniex. An investor may also use fiat currency to purchase crypto assets which are then credited to their account.

[1] This guidance included Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (March 29, 2021), CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (January 16, 2020) and Joint CSA/IIROC Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms* (March 14, 2019).

10. Investors may trade crypto assets credited to their account for a variety of other assets. The crypto assets available on the platform include, among others, Bitcoin and Ether.

11. Poloniex maintains custody of crypto assets deposited and traded on the Poloniex Platform in wallets Poloniex controls. Investors do not have possession or control of crypto assets deposited or traded on the Poloniex Platform. Rather, they see a crypto asset balance displayed in their account on the Poloniex Platform. In order to take possession of crypto assets reflected in their Poloniex account balance, an investor must request a withdrawal and is dependent on Poloniex to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.

12. While Poloniex purports to facilitate trading of the crypto assets in its investors' accounts, in practice, Poloniex only provides its investors with instruments or contracts involving crypto assets. These instruments or contracts constitute securities and derivatives.

13. Investors may also trade crypto asset futures contracts on the Poloniex Platform that constitute securities and derivatives. The Poloniex Platform allows investors to engage in leveraged trading of up to 100:1 on various futures contracts.

14. Poloniex charges fees for trades made on the Poloniex Platform and for crypto asset withdrawals.

(c) Poloniex's Ontario presence

15. Poloniex has opened and operated trading accounts for Ontario residents. Ontario investors have deposited crypto assets into their accounts. They are able to trade, and have traded, the products offered on the Poloniex Platform, as described above.

16. Poloniex encourages Canadians to use the Poloniex Platform. Poloniex's website indicates that investors may use Canadian fiat currency to purchase crypto assets on the Poloniex Platform and that investors in Canada can purchase crypto assets by setting up a bank account with a payment processing company partnered with Poloniex. Canada is also not identified in the list of "Restricted Territories" on Poloniex's website.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

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

17. Poloniex has engaged in, or held itself out as engaging in, the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Ontario *Securities Act*, RSO 1990, c. S.5, as amended (the **Act**);

18. Poloniex has engaged in trading in securities which constitute distributions without complying with the prospectus requirements and without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act; and

19. Poloniex has engaged in activity that is contrary to the public interest.

D. ORDER SOUGHT

Enforcement Staff requests that the Commission make the following orders:

20. that Poloniex cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;

21. that Poloniex be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

22. that any exemptions contained in Ontario securities law not apply to Poloniex permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

23. that Poloniex be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

24. that Poloniex be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

25. that Poloniex pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

26. that Poloniex disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

27. that Poloniex pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

28. such other orders as the Commission considers appropriate in the public interest.

DATED this 25th day of May, 2021.

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Charlie Pettypiece
Litigation Counsel
cpettypiece@osc.gov.on.ca
Tel: (416) 596-4297

Staff of the Ontario Securities Commission

1.4 Notices from the Office of the Secretary

1.4.1 Wilks Brothers, LLC and Calfrac Well Services Ltd.

FOR IMMEDIATE RELEASE
May 19, 2021

AN APPLICATION BY
WILKS BROTHERS, LLC
FOR THE REVIEW OF
A DECISION BY TSX INC.
RELATING TO
CALFRAC WELL SERVICES LTD.,
File No. 2021-12

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

A copy of the Order dated May 18, 2021 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.2 Canada Cannabis Corporation et al.

FOR IMMEDIATE RELEASE
May 19, 2021

CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO, and
PETER STRANG,
File Nos. 2019-34 and 2020-13

TORONTO – The Commission issued its Reasons for Decision in the above named matter.

A copy of the Reasons for Decision dated May 18, 2021 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.3 Wilks Brothers, LLC and Calfrac Well Services Ltd.

FOR IMMEDIATE RELEASE
May 19, 2021

AN APPLICATION BY
WILKS BROTHERS, LLC
FOR THE REVIEW OF
A DECISION BY TSX INC.
RELATING TO
CALFRAC WELL SERVICES LTD.,
File No. 2021-12

TORONTO – Take notice that the hearing on the merits in the above named matter is scheduled to commence on July 12, 2021 and shall continue on July 13, 2021 commencing at 10:00 a.m. on each scheduled day.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.4 Jonathan Cartu et al.

FOR IMMEDIATE RELEASE
May 19, 2021

JONATHAN CARTU,
DAVID CARTU,
AND
JOSHUA CARTU,
File No. 2020-14

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into by Staff of the Commission and David Cartu in the above named matter.

A copy of the Notice of Hearing dated May 19, 2021 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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inquiries@osc.gov.on.ca

1.4.5 Becksley Capital Inc. and Fabrizio Lucchese

FOR IMMEDIATE RELEASE
May 21, 2021

BECKSLEY CAPITAL INC. and
FABRIZIO LUCCHESE,
File No. 2020-41

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

A copy of the Order dated May 21, 2021 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.6 Polo Digital Assets, Ltd.

FOR IMMEDIATE RELEASE
May 25, 2021

POLO DIGITAL ASSETS, LTD.,
File No. 2021-17

TORONTO – The Office of the Secretary issued a Notice of Hearing on May 25, 2021 setting the matter down to be heard on June 18, 2021 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated May 25, 2021 and Statement of Allegations dated May 25, 2021 are available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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media_inquiries@osc.gov.on.ca

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inquiries@osc.gov.on.ca

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Dealflow Solutions Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer operates an online introductory platform whereby potential investors may be made aware of potential investment projects meeting certain criteria selected by the investor – Filer registered as an exempt market dealer but seeking relief from trade confirmation requirement and account statement requirements applicable to registered dealers – Filer does not act on behalf of any investor in connection with that investor's purchase or sale of any securities and has no involvement in negotiation, execution or funding of a project posted on the platform – Filer does not hold or have access to any investor or issuer funds or securities relief granted subject to 5-year sunset clause and other terms and conditions.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 14.12, 14.14, and 15.1.

May 18, 2021

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

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE
RELIEF APPLICATIONS

IN THE MATTER OF
DEALFLOW SOLUTIONS LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the following under section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**):

a. the requirement in Section 14.12 [*Content and delivery of trade confirmation*] of NI 31-103 that a registered dealer that has acted on behalf of a client in connection with a purchase or sale of a security promptly deliver to the client a written confirmation of the transaction setting out certain prescribed information (the **trade confirmation requirement**); and

b. the requirement in Section 14.14 [*Account statements*] of NI 31-103 that a registered dealer deliver to a client a statement containing certain prescribed information at least once every three months or, if the client has requested to receive statements on a monthly basis, for each one-month period (the **account statement requirement**);

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

a. the Nova Scotia Securities Commission (the **Commission**) is the principal regulator for this application;

b. the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision unless otherwise defined in this decision (the **Decision**).

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*. The Filer's head office is in Truro, Nova Scotia.

2. The Filer owns and operates websites with the stated purpose of "connecting entrepreneurs and investors". The Filer is specifically seeking registration and requested relief for activities associated with the CanadianInvestmentNetwork.com website (the **Canadian Investment Network**).

3. The majority of the revenue generated by the Canadian Investment Network originates from prospective issuers who pay a fee to obtain either a referral service (the **Referral Service**) or premium service (the **Premium Service**). The remaining site revenue (< 5%) is generated from prospective investors who pay a fee to obtain the contact information of entrepreneurs whose proposal they expressed interest in (the **Entrepreneur Referral Service**).

4. As the Filer is based in Nova Scotia and the Canadian Investment Network involves the facilitation of trades in securities of issuers to investors in Nova Scotia and Ontario, the Filer is seeking registration as a restricted dealer in these provinces.

5. The Filer has been operating the Canadian Investment Network since 2014. After discussions with the securities regulatory authorities, the Filer has applied for registration and this exemptive relief in order to continue its operations.

6. Subject to the matter to which this Decision relates, the Filer is not in default of securities legislation in any province or territory in Canada.

The Investment Process

7. Issuers register for free on the Canadian Investment Network platform and submit an investment proposal for funding. They have the option to submit a proposal for free to find out if there is investor interest in their proposal. If there is, and they wish to follow up on that interest based on the amount and type of interest (they are emailed anonymous profile info about the potential investor), then they may upgrade to the Referral Service or Premium Service to obtain their contact info. Issuers may also elect to pay these fees upfront which entitles them to include more detailed information about their company and venture to be sent to prospective investors.

8. The Referral Service provides the Issuer with access to contact information of interested investors and allows the Issuer to include contact information in their pitch (e.g., name of company, website link, phone number, email address).

9. The Premium Service provides the Referral Service features and also allows the Issuer to incorporate more details into their pitch (i.e., documents, videos, images, logo) and displays their proposal summary information more prominently on the site (front page, sidebar scroller, top scroller). Site users are notified in public and private areas of the site that entrepreneurs pay a fee to have their proposals featured and that featured placement should not be considered a recommendation.

10. Investors register for free and acknowledge a) that they are accredited investors, b) that they are aware that private investment deals are potentially high-risk and illiquid, and c) that investing in exempt distributions is suitable for them.. Investors who register are not automatically admitted to the platform. The data provided by the Investor is compared to other online information sources to verify that they are using their real name and are credible accredited investors. Credibility is assessed on our intake form by asking investors to provide details concerning their professional experience, education, investment experience, value-adds, anticipated involvement, and status (e.g., individual investor, investment group, broker, etc..). Connecting on Linkedin is the preferred method to verify investor details and to access relevant details that may not have been provided in the intake form. Our bias is to only admit investors who have Linkedin profiles or established websites that corroborate intake details. This also makes it easier for issuers to conduct similar due diligence on prospective investors.

10. When investors register, they specify their investment criteria in terms of which industries and locations they prefer as well as their investment range.

11. Investment proposals are automatically sent to investors based on a match with the industries, location and funding amounts that are specified in the issuer's investment proposal.

12. If an investor wishes to follow up with an issuer regarding a proposal, they can click a "Contact Entrepreneur" button on their version of the issuer's investment proposal.

13. When an investor clicks the "Contact Entrepreneur" button, the issuer is notified by e-mail of the investor's interest. That e-mail contains anonymous information about the interested investor. If the issuer has not paid a fee to the Filer for the Referral Service or Premium Service, they may choose upgrade to obtain the investor's contact information or they may wait until there is more investor interest or the right type of interest is expressed.

14. If the issuer has paid for the Referral Service or Premium Service, they may obtain the investor's contact information to follow up directly with the prospective investor. The Filer is not involved in any of the negotiations with the prospective investor.

15. The pool of potential investors for any investment proposal includes all the investors registered on the network.

16. The Filer has established, maintains and applies policies and procedures reasonably designed to

ensure that access to the Canadian Investment Network is limited to accredited investors.

17. The Filer's primary administrative role is to approve investors for access to the Canadian Investment Network, to approve investment proposals by issuers before they are posted to the platform, and answer any questions that either issuers or investors might have.

18. Except as described above, the Filer does not offer advice or recommendations to investors as to the suitability of any specific investment or any listed investment proposal.

19. The Filer does not accept any compensation from investors or issuers that is contingent upon an investment proposal being funded or an investment being consummated.

20. The Filer does not have knowledge of whether an issuer has been successful in fund raising.

21. The Filer does not have knowledge of whether an investor has invested in a particular investment proposal.

22. Investors are advised that they must perform their own due diligence on the entrepreneurs they wish to connect with and their investment proposal.

23. Entrepreneurs are advised that they must perform their own due diligence on the investors who have expressed interest.

24. Investors and entrepreneurs are advised to seek professional assistance before any deal is consummated.

25. The Filer does not provide or promote any firm offering professional services. The only exception is a pitch consultation which is provided by a third party from whom the Filer does not receive compensation (the **Pitch Consultant**). If an issuer needs help preparing an investment proposal, they may be referred to the Pitch Consultant.

26. The Filer does not engage in any direct trading or settlement of securities in respect of any particular securities offerings.

27. The Filer does not hold any investor or issuer funds or other client assets of any kind at any time, either in connection with an offering of securities or otherwise.

28. The Filer only advertises proposals to potential investors. The filer offers an "introduction only" service.

Request for relief from trade confirmation and account statement requirements

29. The Filer submits that compliance with the trade confirmation requirement and the account statement requirement are unnecessary in the circumstances and would impose an undue regulatory burden on the Filer and that the cost of such compliance would outweigh the benefits to its investors.

30. The trade confirmation requirement in section 14.12 of NI 31-103 applies to "a registered dealer that has acted on behalf of a client in connection with a purchase or sale of a security".

31. Unlike a conventional dealer, the Filer does not act on behalf of investors as clients in connection with a purchase or sale of securities, since:

    a) the Filer's role is generally limited to providing an online introductory platform whereby potential investors may be made aware of potential investment projects meeting the investors self-selected criteria;

    b) the Filer does not act on behalf of any investor as a client in connection with that investor's purchase or sale of any securities and has no involvement in negotiation, execution or funding of a project posted on the Canadian Investment Network; and

    c) the Filer does not hold or have access to any investor or issuer funds or securities.

The Decision

The Decision Maker 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 Maker under the Legislation is that relief from the trade confirmation requirement and the account statement requirement are granted, provided that and for so long as:

    a) unless otherwise exempted by this Decision or by a further decision of the Decision Makers, the Filer complies with all of the registration requirements of a registered dealer and to a registered individual under Nova Scotia securities laws, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer;

    b) the Filer deals fairly, honestly and in good faith with users of the Canadian Investment Network;

c) the Filer has its head office in Nova Scotia;

d) the Filer's primary source of funding remains as set out in paragraph 3 above;

e) the Filer will facilitate trades in securities to investors only in Nova Scotia and Ontario;

f) the Filer's mandate and activities remain substantially as set out above in paragraphs 7 to 28 above;

g) the Filer does not receive any commissions or transaction-based fees or incentive fees for its services;

h) the Filer has established, maintains and applies policies and procedures reasonably designed to ensure that investor membership is limited to accredited investors;

i) neither the Filer nor any representative of the Filer provides a recommendation or advice to any investor or prospective investor in connection with an offering or potential offering;

j) the Filer is not involved in the negotiation, documentation, financing and transaction closing of any investment;

k) the Filer does not hold, handle or have access to any funds or securities of any investor or issuer;

l) the Filer maintains

(i) a copy of all information posted by the Filer, its investors or issuers on its website;

(ii) information it is required to keep under applicable securities law

for at least seven years in a safe location and in a durable form and agrees to deliver to the Commission at such time or times as the Commission may require, any of the books, records and documents (including the information posted on the website) of the Filer;

m) the Filer notifies the Director in writing at least 30 days prior to any material change in the Filer's business operations, business model or capital structure, including any material addition to or modification of the services it provides to issuers or investors;

n) this Decision may be amended by the Director from time to time upon prior written notice to the Filer;

o) this Decision shall expire on the earlier of:

(i) five years after the date hereof; and

(ii) 90 days after any material changes in the Filer's business, operations or capital.

"A. Douglas Harris"
General Counsel, Director of Market Regulation and Policy and Secretary
Nova Scotia Securities Commission

Application File #: 2018/0607

2.1.2 Brookfield Asset Management Reinsurance Partners Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirements of subsection 2.2(e) of National Instrument 44-101 Short Form Prospectus Distributions requiring an issuer's equity securities to be listed and posted for trading on short form eligible exchange – exemption from the requirements of paragraph 9.3(1)(b) of National Instrument 44-102 Shelf Distributions requiring the securities distributed under an ATM prospectus be equity securities.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.2(e) and 8.1.
National Instrument 44-102 Shelf Distributions, ss. 9.3(1)(b) and 11.1.

May 25, 2021

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
BROOKFIELD ASSET MANAGEMENT
REINSURANCE PARTNERS LTD.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Asset Management Reinsurance Partners Ltd. (the **company** or the **Filer**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) the Filer be exempt from the requirements contained in section 2.2(e) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) with respect to equity securities (the **Short Form Prospectus Eligibility Requirements**); and

(b) the Filer be exempt from requirements contained in section 9.3(1)(b) of National Instrument 44-102 – Shelf Distributions ("**NI 44-102**"), that distributions by way of an at-the-market distribution using the shelf procedures be limited to distributions of equity securities (the **At-the-Market Distribution Eligibility Requirements**),

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

in each case, to accommodate the issuance by the company of class A exchangeable limited voting shares of the company (**class A exchangeable shares**) that are the economic equivalent of, and exchangeable for, class A limited voting shares of (**Brookfield Class A Shares**) Brookfield Asset Management Inc. (**Brookfield Asset Management**), as more particularly described 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 British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut, as applicable.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* (**NI 14-101**), MI 11-102 and NI 44-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Relevant Entities

Brookfield Asset Management

1. Brookfield Asset Management was formed by articles of amalgamation dated August 1, 1997 and is organized pursuant to articles of amalgamation under the Business Corporations Act (Ontario) dated January 1, 2005.

2. Brookfield Asset Management's registered and head office is located at Suite 300, Brookfield Place, 181 Bay Street, Toronto, Ontario M5J 2T3.

3. Brookfield Asset Management is a reporting issuer (or the equivalent thereof) in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the

jurisdictions in which it is a reporting issuer or the equivalent thereof.

4. Brookfield Asset Management is a leading global alternative asset manager with a 120-year history and over US$600 billion of assets under management across a broad portfolio of real estate, infrastructure, renewable power, private equity and credit assets.

5. The Brookfield Class A Shares are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (**TSX**) under the symbols "BAM" and "BAM.A", respectively.

6. The authorized share capital of Brookfield Asset Management consists of (a) an unlimited number of preference shares designated as Class A Preference Shares, issuable in series, (b) an unlimited number of preference shares designated as Class AA Preference Shares, issuable in series, (c) an unlimited number of Brookfield Class A Shares and (d) 85,120 class B limited voting shares (**Brookfield Class B Shares**).

The company

7. The company was incorporated under the Bermuda Companies Act 1981 on December 10, 2020.

8. The registered and head office of the company is located at 73 Front Street, 5th Floor Hamilton HM 12 Bermuda.

9. The company's principal business is expected to consist of the provision, through its operating subsidiaries, of annuity-based reinsurance products to insurance and reinsurance companies and the direct issuance of pension risk transfer products for pension plan sponsors.

10. The authorized share capital of the company currently consists of an unlimited number of common shares.

11. Brookfield Asset Management currently owns all the company's common shares and therefore controls 100% of the voting securities of the company.

12. The company is not a reporting issuer or the equivalent thereof in any jurisdiction of Canada and is not in default of any applicable requirement under securities legislation.

The Special Dividend

13. Brookfield Asset Management has planned a special dividend of class A exchangeable shares to holders of Brookfield Class A Shares and Brookfield Class B Shares of Brookfield Asset Management (the **special dividend**).

14. In connection with the special dividend in Canada, the company and Brookfield Asset Management filed a preliminary prospectus on March 31, 2021 (the **prospectus**), to qualify (i) the exchange rights and call rights described in the prospectus; (ii) the class A exchangeable shares that will be distributed in the special dividend; and (iii) the Brookfield Class A Shares issuable or deliverable upon exchange, redemption or acquisition of such class A exchangeable shares.

15. Upon obtaining a receipt for the final prospectus, the company will become a reporting issuer (or the equivalent thereof) in each of the provinces and territories of Canada.

16. The company and Brookfield Asset Management filed a registration statement on Form F-1 with the U.S. Securities and Exchange Commission on March 31, 2021, which registration statement was thereafter amended on May 18, 2021, to register (i) the class A exchangeable shares that will be distributed in the special dividend; and (ii) the Brookfield Class A Shares issuable or deliverable upon exchange, redemption or acquisition of such class A exchangeable shares.

17. Prior to the closing of the special dividend:

    (a) the company will amend its share capital such that, following the amendment, the authorized share capital of the company will consist of (i) 1,000,000,000 class A exchangeable shares; (ii) 500,000 class B limited voting shares (**class B shares**); (iii) 1,000,000,000 class C non-voting shares (**class C shares**); (iv) 1,000,000,000 Class A Junior Preferred Shares (issuable in series); (v) 1,000,000,000 Class B Junior Preferred Shares (issuable in series); (vi) 100,000,000 Class A Senior Preferred Shares (issuable in series); and (vii) 100,000,000 Class B Senior Preferred Shares (issuable in series); and

    (b) Brookfield Asset Management will transfer (i) to BAM Re Holdings Inc., a wholly-owned subsidiary of the company, its existing insurance company assets held through Brookfield Annuity Holdings Inc. and (ii) to North End Re (Cayman) SPC, a wholly-owned subsidiary of the company, 9,106,042 common shares of American Equity Investment Life Holding Company (AEL Holdings) along with the right to acquire the remaining equity interest in AEL Holdings, for a total equity investment of up to 19.9% (but not less than 15.0%) in AEL Holdings.

    (c) all holders of Brookfield Class A Shares and Brookfield Class B Shares will be

entitled to receive the special dividend. Based on the number of Brookfield Class A Shares and Brookfield Class B Shares expected to be outstanding on the record date for the special dividend, Brookfield Asset Management expects to distribute a number of class A exchangeable shares representing an aggregate of US$500 million. The exact number of class A exchangeable shares distributed to holders of Brookfield Class A Shares and Brookfield Class B Shares will be based on the market price of a Brookfield Class A Share prior to the declaration of the special dividend. No holder will be entitled to receive any fractional interests in the class A exchangeable shares. Holders who would otherwise be entitled to a fractional class A exchangeable share will receive a cash payment.

18. Immediately following closing of the special dividend, the only voting securities of the company will be the class A exchangeable shares and the class B shares. Holders of the class A exchangeable shares will be entitled, among other things, to elect one-half of the board of directors of the company. The holders of the class B shares will be entitled to elect the other one-half of the board of directors of the company and will be entitled to the same distributions as the class A exchangeable shares.

19. Neither the class A exchangeable shares nor the class B shares carry a residual right to participate in the assets of the company upon liquidation or winding-up of the company, and accordingly, are not equity securities under the Legislation.

20. All of the class C shares will be held by Brookfield Asset Management, which will entitle Brookfield Asset Management to the residual economics of the company following payment of amounts due to holders of class A exchangeable shares and class B shares (consisting of any declared and unpaid distributions, and the delivery of Brookfield Class A Shares or the cash equivalent on a redemption or liquidation), and subject to the prior rights of holders of the company's Junior Preferred Shares and Senior Preferred Shares (if any such shares are issued). Following the special dividend, the class C shares will be the only outstanding equity securities of the company.

21. Prior to completion of the special dividend, Brookfield Asset Management and the company will enter into a support agreement (the **Support Agreement**), pursuant to which Brookfield Asset Management will agree to support the economic equivalence of the class A exchangeable shares by agreeing to take all actions reasonably necessary to enable the company to pay quarterly distributions, the liquidation amount or the amount payable on a redemption of class A exchangeable shares.

22. In addition to the Support Agreement, the exchangeable share provisions will contain terms that provide holders of class A exchangeable shares directly with protections designed to make the class A exchangeable shares the economic equivalent of the Brookfield Class A Shares.

23. An investment in the class A exchangeable shares is intended to be, as nearly as practicable, functionally and economically, equivalent to an investment in Brookfield Class A Shares. As such, the company expects that investors of class A exchangeable shares will hold or purchase class A exchangeable shares as an alternative way of owning Brookfield Class A Shares rather than a separate and distinct investment.

24. The company has received conditional approval to have the class A exchangeable shares listed on the NYSE and TSX.

Qualification to File Short Form Prospectus

25. The company wishes to be eligible to file short form prospectuses under NI 44-101 upon completion of the special dividend. While the company does not currently intend to complete a distribution immediately following the completion of the special dividend, the company's eligibility to file short form and shelf prospectuses is critical to its viability as an issuer of a security that provides investors with an alternative way of owning an interest in Brookfield Asset Management. In addition, there are short time frames associated with financings undertaken in current market conditions. As a result, the relief from the Short Form Prospectus Eligibility Requirements is being sought in advance of the completion of the special dividend and any possible follow on distribution of the company's securities.

26. The qualification criteria for short form prospectus eligibility are outlined in section 2.2 of NI 44-101. Once the company becomes a reporting issuer or the equivalent thereof, the company will satisfy all of the qualification criteria for short form prospectus eligibility in section 2.2 of NI 44-101 with the exception of subsection 2.2(e) which requires that an issuer's equity securities are listed and posted for trading on a short form eligible exchange and that an issuer is not an issuer whose (i) operations have ceased, or (ii) whose principal asset is cash, cash equivalents, or its exchange listing. The term "equity security" is defined under the Legislation as a security that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets. The class A exchangeable shares do not carry a residual right to participate in the assets of the company upon liquidation or winding-up of the company, and

accordingly, are not equity securities under the Legislation.

27. In the event that the company undertakes an offering or other distribution of its securities prior to the filing of its audited financial statements for the year ended December 31, 2021, the company intends to rely on the exemption in subsection 2.7(1) of NI 44-101 from the requirements to have (i) current annual financial statements and (ii) a current AIF.

28. The class A exchangeable shares will provide holders thereof with a security of a Canadian issuer having an economic return equivalent an investment in Brookfield Class A Shares.

29. It is appropriate for the class A exchangeable shares to be treated as equity securities for the purposes of NI 44-101 since the class A exchangeable shares are, in effect, the economic and voting equivalent of the Brookfield Class A Shares and the Brookfield Class A Shares do qualify as equity securities under NI 44-101.

30. Except for not meeting the Short Form Prospectus Eligibility Requirements, the company would otherwise be qualified to file a prospectus in the form of a short form prospectus pursuant to, and in accordance with, NI 44-101.

Qualification of At-the-Market Distribution

31. Pursuant to section 9.3(1)(b) of NI 44-102, only equity securities may be distributed by way of an at-the-market distribution using the shelf procedures.

32. Based upon the rationale provided in paragraphs 26, 28, 29 and 30 above, it is not prejudicial to the public interest to exempt the company from the At-the-Market Distribution Requirements.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

1. the company does not have to comply with the Short Form Prospectus Eligibility Requirements so long as:

   (a) the company is otherwise qualified to file a preliminary short form prospectus under section 2.2 of NI 44-101;

   (b) the class A exchangeable shares are listed and posted for trading on a short form eligible exchange (as defined in NI 44-101);

   (c) the company is not an issuer whose operations have ceased;

   (d) the company is not an issuer whose principal asset is cash, cash equivalents, or its exchange listing;

   (e) the Brookfield Class A Shares qualify as equity securities under NI 44-101, and

2. the company does not have to comply with the At-the-Market Distribution Requirements so long as:

   (a) the company otherwise satisfies the conditions set out in section 9.3 of NI 44-102 to distribute securities under an ATM prospectus (as defined in NI 44-102) as part of an at-the-market distribution;

   (b) the security being distributed is a class A exchangeable share; and

   (c) the Brookfield Class A Shares qualify as equity securities under NI 44-102.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

Application File #: 2021/0219

2.2 Orders

2.2.1 Wilks Brothers, LLC and Calfrac Well Services Ltd.

IN THE MATTER OF
AN APPLICATION BY
WILKS BROTHERS, LLC

FOR THE REVIEW OF
A DECISION BY TSX INC.
RELATING TO
CALFRAC WELL SERVICES LTD.

File No. 2021-12

Timothy Moseley, Vice-Chair and Chair of the Panel

May 18, 2021

ORDER

WHEREAS on May 18, 2021, the Ontario Securities Commission held a hearing by videoconference to consider:

i. an application (the **Application**) by Wilks Brothers, LLC (**Wilks**) for a review of a decision by TSX Inc. (**TSX**) dated March 24, 2021, relating to Calfrac Well Services Ltd. (**Calfrac**); and

ii. a motion by Glendon Capital Management LP, Signature Global Asset Management, a division of CI Investments Inc., and EdgePoint Investment Group, Inc. (collectively, the **Proposed Intervenors**) for intervenor status in this proceeding;

ON READING Wilks's Application and the Proposed Intervenors' Motion Record, and on hearing the submissions of the representatives for Wilks, Calfrac, TSX, Staff of the Commission, and the Proposed Intervenors;

IT IS ORDERED THAT:

1. TSX shall serve and file the record of the original proceeding by 4:30 p.m. on May 20, 2021;

2. by 4:30 p.m. on May 31, 2021, Wilks shall either serve and file an amended Application, or advise all parties that it does not intend to do so;

3. by 4:30 p.m. on June 3, 2021, Calfrac shall serve and file:

   a. its motion with respect to Wilks's standing to bring the Application (the **Standing Motion**); and

   b. its written submissions with respect to whether the Commission should bifurcate the hearing of the Standing Motion and the hearing on the merits of the Application;

4. by 4:30 p.m. on June 8, 2021, each of Wilks and Staff shall serve and file its responding written submissions with respect to whether the Commission should bifurcate the hearing of the Standing Motion and the hearing on the merits of the Application; and

5. pursuant to Rule 21(4) of the Commission's *Rules of Procedure and Forms*, (2019) 42 OSCB 9714, the Proposed Intervenors are granted intervenor status to make submissions at the hearing on the merits of the Application, should that hearing proceed.

"Timothy Moseley"

2.2.2 GVIC Communications Corp.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – The issuer is not an OTC reporting issuer; the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country; the issuer is not in default of securities legislation except it has not filed certain continuous disclosure documents – Requested relief granted.

Applicable Legislative Provisions

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

May 14, 2021

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

AND

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

AND

IN THE MATTER OF
GVIC COMMUNICATIONS CORP.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

1. the Filer was incorporated under the *Canada Business Corporations Act* (CBCA) and its head office is in Vancouver, British Columbia;

2. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;

3. effective as of 11:59 PM (Vancouver time) on March 31, 2021 (Effective Time), the Filer had 4,208,345.44 Class B voting common shares (GVIC B Shares) and 303,593,899.68 Class C non-voting shares (GVIC C Shares) outstanding;

4. at the Effective Time, Glacier Media Inc. (on its own and through a wholly-owned subsidiary and a wholly-owned limited partnership) (collectively, Glacier) acquired all of the issued and outstanding common GVIC B Shares and GVIC C Shares by way of a plan of arrangement under the CBCA;

5. no securities of the Filer are outstanding other than the GVIC B Shares and the GVIC C Shares owned by Glacier;

6. the GVIC B Shares and the GVIC C Shares were delisted from the Toronto Stock Exchange at the close of business on April 6, 2021;

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

8. 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;

9. 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;

10. 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;

11. the Filer is not in default of securities legislation in any jurisdiction, other than the obligation to file, on or before March 31, 2021, its annual information form, annual financial statements and management discussion and analysis for the year ended December 31, 2020 as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filing*s (collectively, the Filings);

12. the requirements to file the Filings did not arise until after the Filer became a wholly-owned subsidiary of Glacier; and

13. the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it is in default for failure to file the Filings.

Order

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

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

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

OSC File #: 2021/0197

2.2.3 Becksley Capital Inc. and Fabrizio Lucchese

IN THE MATTER OF
BECKSLEY CAPITAL INC.
AND
FABRIZIO LUCCHESE

File No. 2020-41

M. Cecilia Williams, Commissioner and Chair of the Panel

May 21, 2021

ORDER

WHEREAS on May 21, 2021, the Ontario Securities Commission held a hearing by teleconference to consider a request by Fabrizio Lucchese and Becksley Capital Inc. (together, the **Applicants**) for an adjournment of the hearing of the Application;

ON READING the correspondence from Staff of the Commission (**Staff**) and the Applicants and on hearing the submissions of all parties, and on considering Staff's consent to the order requested;

IT IS ORDERED, with reasons to follow, that:

1. the Applicants' request for an adjournment of the hearing of the Application is granted;

2. the following dates are vacated:

   a. the date for the hearing of the Application scheduled for June 29, 2021; and

   b. the dates for Staff and the Applicants to file and serve their hearing brief and written submissions; and

3. a further attendance in this proceeding is scheduled for August 19, 2021 at 11:00 a.m., by teleconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"M. Cecilia Williams"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Canada Cannabis Corporation et al.

Citation: *Canada Cannabis Corporation (Re)*, 2021 ONSEC 13
Date: 2021-05-18
File Nos.: 2019-34 and 2020-13

IN THE MATTER OF
CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO,
and
PETER STRANG

REASONS FOR DECISION

Hearing:	June 10 and July 24, 2020	
Decision:	May 18, 2021	
Panel:	Raymond Kindiak	Commissioner and Chair of the Panel
Appearances:	Simon Bieber Robert Stellick	For Silvio Serrano
	William Jones	For Canada Cannabis Corporation and Canadian Cannabis Corporation
	Melissa MacKewn Michael Byers	For Benjamin Ward
	James Camp	For Peter Strang
	Frank Addario Lynda Morgan Robert Gain	For Staff of the Commission
	Nader Hasan	For Amicus Curiae

REASONS FOR DECISION

I. OVERVIEW

[1] Enforcement Staff of the Ontario Securities Commission (**Staff**) provided disclosure in this enforcement proceeding against Canada Cannabis Corporation, Canadian Cannabis Corporation, Benjamin Ward, Silvio Serrano and Peter Strang (the **Respondents**), that included transcripts of the compelled interview of Ward. The transcripts Staff disclosed are redacted, and the redactions are labelled "By Confidential Order of the Commission". One of the Respondents, Serrano, seeks, among other things, that the Office of the Secretary of the Commission, or alternatively Staff, be required to provide the order by which Ward's transcripts were redacted (the **Confidential Order**), and any written decision or reasons (the **Confidential Reasons**) (together, the **Confidential Decisions**) in support of the Confidential Order (the **Motion**). To the extent that the terms of the Confidential Order preclude the relief sought by Serrano, he seeks that the Confidential Order be varied or revoked (the **Application**).

[2] At the outset of the hearing of the Motion and the Application, Staff submitted that it is legally prohibited from identifying information relating to the Confidential Order, including the existence of any decision or reasons of the Commission and any related materials filed. Staff argued that it was also legally prohibited from explaining why it was so prohibited.

[3] Given these limitations, Staff proposed a procedural process to address the issues raised on the Motion and Application. The proposed process provided for a portion of the hearing to be conducted *in camera* and *ex parte*, meaning it would be confidential and heard in the absence of both the public and the Respondents. Staff argued that this would allow them to make meaningful submissions to the Panel, which they would be otherwise unable to do. Staff's proposed process was supplemented by Serrano's proposal for the appointment of an *amicus curiae* (**Amicus**), to which Staff agreed.

[4] For the following reasons, I issued an Order on August 5, 2020[1] (the **Procedural Order**), providing for a portion of the hearing of the Motion and Application to be held *in camera* and *ex parte* (the **Confidential Phase**), as well as appointing Nader Hasan of Stockwoods LLP as Amicus.

II. PRELIMINARY ISSUE - SEALED MATERIALS FILED, BUT NOT SERVED

[5] In response to the Motion and Application, Staff proposed to file under seal the Confidential Decisions, early in the hearing process, without providing them to the Respondents. Before the hearing of the Motion and Application could commence, I asked the parties: Should the Panel review Staff's sealed materials without them being provided to the Respondents? If so, when?

[6] Staff submitted that my early review of the Confidential Decisions was necessary and would assist with determining the appropriate next procedural steps in the proceeding. The individual Respondents[2] agreed that I ought to review the Confidential Order, but disagreed about the appropriate timing of my review of the Confidential Reasons:

a. Serrano opposed my early review of the reasons, submitting that it should be apparent from the Confidential Order alone whether any of the issues raised in the Motion could be resolved at the outset of the hearing. This might allow for the Respondents to have the benefit of additional information about the Confidential Decisions when making submissions about the next appropriate procedural steps.

b. Strang also opposed my early review of the reasons, arguing that every party should receive the maximum amount of information possible at every stage. He submitted that I should make an immediate determination, based on the face of the Confidential Order alone, about whether any issues raised in the Motion could be resolved, including whether any of the requested information could be disclosed to the Respondents.

c. Ward favored my early review of the reasons, arguing that I couldn't determine whether to vary the Confidential Order without understanding the reasons for it.

[7] At the end of the first hearing day, the Respondents opposing the Panel's early review of the Confidential Reasons indicated that they would no longer oppose the Panel's review.

[8] It was appropriate and necessary that I receive and review both the Confidential Decisions, under seal, and that I should do so early in the hearing process. It was apparent that the ultimate determination of the substantive issues raised in the Motion and Application would require the Panel to review the Confidential Decisions, sooner or later. It was also apparent that no prejudice would arise from my early review, whereas procedural inefficiencies appeared likely if I were to delay my review of the Confidential Decisions.

[9] Staff subsequently filed the Confidential Decisions without disclosing them to the Respondents. The Confidential Decisions do not form part of the adjudicative record, were not marked as exhibits, and were ordered to be confidential from the public pursuant to the *Tribunal Adjudicative Records Act*,[3] and the *Ontario Securities Commission Rules of Procedure and Forms*[4] as part of the Procedural Order.

III. ISSUES WITH RESPECT TO STAFF'S PROPOSED PROCESS

[10] Given the sensitivity surrounding the Confidential Decisions, it is necessary to determine the appropriate process for the hearing of the Motion and Application. The issues before me with respect to Staff's proposed process are:

a. Should Staff be permitted to make confidential submissions on an *ex parte* basis during a 'Confidential Phase' of the proceeding?

b. If Staff is permitted to make confidential submissions on an *ex parte* basis, should an Amicus be appointed to represent the interests of the absent parties?

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1 (2020) 43 OSCB 6387

2 The corporate respondents, Canada Cannabis Corporation and Canadian Cannabis Corporation, did not have counsel present for this day of the hearing and did not make submissions on this preliminary issue.

3 2019, SO 2019, c 7 Sch 60 (**TARA**).

4 (2019) 42 OSCB 9714 (the **Commission's Rules**).

[11] I address each of these issues in turn.

IV. ANALYSIS

A. Confidential Phase

1. Authority to Hold a Confidential Phase

[12] I asked the parties to address the following preliminary questions regarding the Confidential Phase proposed by Staff: What is the Panel's authority to allow this procedure and is there precedent for it? Does any authority expressly prohibit it?

[13] The Respondents argued that the Commission either does not have the authority to order a Confidential Phase or that the Commission's authority is unclear:

a. Serrano argued the Commission's authority is unclear as the *Commission's Rules and the Statutory Powers Procedures Act*[5] does not appear to provide the Commission with the jurisdiction to order a confidential hearing in the absence of parties to that proceeding. He argued that Staff should have to articulate a clear basis on which the Commission can proceed with the Confidential Phase before it is ordered.

b. Strang and Ward argued that the Commission lacks the jurisdiction to order a Confidential Phase. Both argued that the Commission has no jurisdiction to exclude the Respondents from any portion of this proceeding absent a compelling justification from Staff.

[14] Staff argued that the Commission is the master of its own procedure. In the absence of specific rules laid down by statute, the Commission is empowered to control its own procedure, subject to requirements of natural justice and common law.[6] Staff argued that the *SPPA* expressly recognizes the Commission's authority to determine its own procedure, by empowering it to make orders and rules governing its procedure.[7]

[15] No legislation and none of the *Commission's Rules* appear to specify a required procedure for a hearing relating to a party's request for a Confidential Order in Staff's possession, or for a request to revoke or vary a Confidential Order. In the absence of legislation governing the procedure for the requests made in the Motion and the Application, the Commission's inherent authority over its own procedure governs.

2. Conduct of the Confidential Phase

[16] Deciding that the Commission had the authority to conduct the Confidential Phase, I then considered how I ought to do so.

[17] Staff argued that an *ex parte*, *in camera* hearing was necessary in the unique circumstances of this matter, and would still maximize the Respondents' participatory rights. Without recourse to the Confidential Phase, Staff also argued that it cannot address Serrano's allegations of Staff misconduct, which Serrano alleges with respect to the Confidential Order and in Staff's seeking and obtaining the adjournment of the Second Attendance. Staff submitted that such allegations of misconduct have a bearing on the integrity of Commission proceedings.

[18] The Respondents argued that Staff must articulate a clear basis on which the Commission can proceed with a portion of the hearing in the absence of the Respondents. They argued that, if the Commission has jurisdiction to exclude parties from a portion of the hearing, then that jurisdiction must be used sparingly and for good reason. I agree and find that the unique circumstances of this matter satisfy these requirements.

[19] In determining the proper conduct of the Confidential Phase, I considered the balancing of the parties' interests. In addition to the appointment of Amicus, discussed in detail below, the Procedural Order provides safeguards to mitigate against procedural unfairness and to maximize the Respondents' participatory rights as much as possible in the current circumstances:

a. the Respondents are entitled to participate in public portions of the hearings (the First Non-Confidential Phase and the Second Non-Confidential Phase), which will be held both before and after the hearing of the Confidential Phase; and

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5 RSO 1990, c S.22 (**SPPA**).

6 *Prassad v Canada (Minister of Employment & Immigration)*, [1989] 1 SCR 560 at para 46; *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at para 33; *Hollinger Inc (Re),* 2006 ONSEC 2, (2006) 29 OSCB 847 at para 20; *Re ATI Technologies Inc (Re),* 2005 ONSEC 7, (2005) 28 OSCB 9667 at para 19; *Re Costello*, [2004] OJ No 2972 at paras 30, 67 and 86 (Ont Div Ct).

7 *SPPA*, s 25.0.1 and s 25.1.

b. the Respondents are entitled to file confidential written submissions for use at the Confidential Phase, to be considered alongside those filed by Staff and Amicus.

3. No Respondent Attendance at the Confidential Phase

[20] The final consideration for the Confidential Phase was whether Ward, unlike the other Respondents, should be allowed to attend and/or be represented. In their proposed procedure, Staff submitted that Ward should be entitled to participate at the hearing of the Confidential Phase.

[21] Staff and Ward argued that Ward should be entitled to participate in all or part of the Confidential Phase because he has access to and knowledge of the redacted portions of his own transcripts. Ward added that he is clearly an affected party.

[22] Serrano and Strang, along with the corporate respondents, opposed Ward's participation in the Confidential Phase. They argued that procedural fairness requires all Respondents to be treated alike. While Ward may know about the redacted parts of the transcript, he should not be privy to the submissions that Staff and the Amicus will make during the Confidential Phase. If Ward were permitted to attend the Confidential Phase, he may receive information about the proceeding not available to the other Respondents, which may risk providing Ward with an unfair advantage in his ultimate defence of the enforcement proceeding. I agree with these submissions, and ordered that the Confidential Phase would be heard in the absence of both the public and all Respondents, including Ward, unless expressly authorized by the Panel.

B. Appointment of Amicus Curiae

[23] The purpose of Amicus is to ensure that each party's interests and perspectives are represented during a portion of a proceeding where they are not in attendance or are not adequately represented. Amicus has no solicitor-client relationship with the parties, and instead serves as counsel to the decision-maker, appointed to assist the decision-maker in determining the best outcome in the interests of justice.

[24] I asked the parties for submissions on several preliminary issues related to the appointment of Amicus, including:

a. what is the Panel's authority to appoint Amicus and is there precedent for it? Does any authority expressly prohibit it?

b. if an Amicus is appointed, what will be the scope of the Amicus' retainer?

i. will Amicus' submissions only be permitted during the Confidential Phase, or also during the First and Second Non-Confidential Phase?

ii. what will be the permissible role of Amicus during the Confidential Phase? Should Amicus be given an opportunity to file confidential written submissions?

iii. what materials should be provided for Amicus' preparations? How long does the Amicus require to prepare for the hearing and what is the availability of the proposed Amicus?

[25] All parties except Ward supported the appointment of Amicus should the Confidential Phase be ordered, as the appointment would assist in addressing the fairness concerns inherent in excluding the Respondents from a portion of the proceeding. Ward submitted that, until the positions of all parties are made clear, the appointment of Amicus was premature.

1. Authority to Appoint Amicus

[26] Prior to this proceeding, Amicus has never been appointed at the Commission. Despite the novelty of Amicus participating in Commission proceedings, all parties agree that I have the authority to appoint Amicus and that no authority expressly prohibits the use of Amicus at the Commission. The Commission has the ability to govern its own procedure and practices under the *SPPA*.[8]

[27] In the criminal context, Amicus are appointed regularly. Appointments have also been made before other administrative tribunals.[9] The precise role of Amicus may be set by the court or tribunal that makes the appointment and may be shaped by the needs of the particular case.[10]

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8 *SPPA*, s 25.0.1.

9 *Ontario v Criminal Lawyers' Association of* Ontario, 2013 SCC 43; *Bon Hillier v Milojevic*, 2010 ONSC 4514 (***Bon Hillier***).

10 *Bon Hillier* at para 46.

[28] The Commission has the authority to appoint Amicus and the appointment of Amicus in this proceeding is necessary in order to address the inherent fairness concerns created by the Confidential Phase. The parties and the public must be assured that where important rights are at stake, counsel will be present to represent the interests of justice.

[29] Through the appointment of Amicus, the Commission can better balance the need to protect the confidentiality of the Confidential Decisions with the Respondents' right to participate in the proceeding. The appointment of Amicus is accordingly necessary to assist the Commission in arriving at a full and fair determination of the complex issues raised in the Motion and the Application.

[30] Nader Hasan is an appropriate choice for this appointment. He is an experienced criminal, regulatory and constitutional lawyer. He is independent of this proceeding, has cleared conflicts of interest, and is willing to act as Amicus. Hasan attended part of the hearing of the preliminary procedural issues and shared details of his background and experience as an Amicus before various courts and tribunals.

[31] The Commission will pay all reasonable fees and disbursements incurred by Hasan in discharging his role as Amicus and the terms of such payment will be reflected in a retainer agreement between Amicus and the Commission.

2. Scope of Amicus' Retainer

[32] Staff and counsel for Serrano prepared a draft order outlining the potential scope of Amicus' retainer. The draft order provided Amicus with broad powers. The draft order also named Hasan as Amicus. Hasan indicated that he contributed to the creation of the draft order. The draft order, among other things, allowed the Amicus to:

a. participate in the First Non-Confidential Phase;

b. have access to the Confidential Decisions;

c. communicate with the Respondents to understand their positions, with limits on those communications once Amicus obtains the Confidential Decisions;

d. represent the interests of justice during the Confidential Phase; and

e. with leave of the Panel, make submissions at the Second Non-Confidential Phase.

[33] Ward and Strang submitted that the draft order was too broad and permissive in scope and did not provide enough detail with respect to the proper payment of Amicus' fees, permissible communications with the Respondents and what materials would be made available to Amicus.

[34] The terms of the Procedural Order outline the scope of Amicus' duties during the Confidential Phase and Second Non-Confidential Phase. The terms imposed in the Procedural Order are necessarily broad as to allow Amicus to fully and effectively participate in the proceeding. Amicus will be able to present issues, argument and evidence and may read, hear, challenge and respond to evidence and submissions made by Staff or the Respondents in their confidential filings. Amicus must not reveal the Confidential Decisions or any information at issue in the Confidential Phase to the Respondents.

V. CONCLUSION

[35] For the reasons set out above, I issued the August 5 order providing, among other things, that the hearing of the Motion and Application will consist of four phases: (i) First Non-Confidential Phase, (ii) Appointment of Amicus, (iii) Confidential Phase in the absence of the public and the Respondents and (iv) Second Non-Confidential Phase.

Dated at Toronto this 18th day of May, 2021.

"Raymond Kindiak"

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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
BitRush Corp.	December 2, 2016	May 21, 2021
Pure Hydrogen Corporation Limited	May 21, 2021	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Almonty Industries Inc.	April 1, 2021	May 19, 2021
TraceSafe Inc.	May 3, 2021	May 19, 2021

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	
Almonty Industries Inc.	April 1, 2021	May 19, 2021
Avicanna Inc.	April 9, 2021	
Bhang Inc.	May 3, 2021	
Bluesky Digital Assets Corp.	May 3, 2021	
Flower One Holdings Inc.	May 3, 2021	
Jushi Holdings Inc.	May 3, 2021	
Indiva Limited	May 3, 2021	May 17, 2021
Matica Enterprises Inc.	May 3, 2021	
Ionic Brands Corp.	May 3, 2021	
King Global Ventures Inc.	May 3, 2021	

Company Name	Date of Order	Date of Lapse
Tree of Knowledge International Corp.	May 3, 2021	
TraceSafe Inc.	May 3, 2021	May 19, 2021
WeedMD Inc.	May 3, 2021	
Empower Clinics Inc.	May 4, 2021	
Red White & Bloom Brands Inc.	May 4, 2021	
Reservoir Capital Corp.	May 5, 2021	
Nass Valley Gateway Ltd.	May 5, 2021	

Chapter 7

Insider Reporting

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

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

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

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Educators Balanced Fund
Educators Bond Fund
Educators Dividend Fund
Educators Growth Fund
Educators Money Market Fund
Educators Monitored Aggressive Portfolio
Educators Monitored Balanced Portfolio
Educators Monitored Conservative Portfolio
Educators Monitored Growth Portfolio
Educators Monthly Income Fund
Educators Mortgage & Income Fund
Educators U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 14, 2021
NP 11-202 Final Receipt dated May 20, 2021
Offering Price and Description:
Class A units, Class E units, Class I units and Class F units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3205379

Issuer Name:
CI Alternative North American Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated May 18, 2021
NP 11-202 Preliminary Receipt dated May 18, 2021
Offering Price and Description:
Series AH Units, Series I Units, Series IH Units, Series F Units, Series A Units, ETF C$ Series, ETF US$ Hedged Series, Series FH Units, Series PH Units and Series P Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3224269

Issuer Name:
Mackenzie - IG Equity Hedge Pool
Principal Regulator – Manitoba
Type and Date:
Preliminary Simplified Prospectus dated May 21, 2021
NP 11-202 Preliminary Receipt dated May 21, 2021
Offering Price and Description:
Series P Mutual Fund Units

Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3225985

Issuer Name:
Horizons Global Hydrogen Index ETF
Horizons Global Lithium Producers Index ETF
Horizons Global Semiconductor Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 18, 2021
NP 11-202 Preliminary Receipt dated May 19, 2021
Offering Price and Description:
Class A units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3224510

Issuer Name:
BMO Global High Dividend Covered Call ETF
BMO Short Corporate Bond Index ETF
BMO Short Federal Bond Index ETF
BMO Short Provincial Bond Index ETF
BMO Ultra Short-Term Bond ETF
BMO Ultra Short-Term US Bond ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated May 18, 2021
NP 11-202 Final Receipt dated May 21, 2021
Offering Price and Description:
USD Units, CAD Units and Hedged Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3149448

Issuer Name:
Desjardins Canada Multifactor-Controlled Volatility ETF,
Desjardins USA Multifactor-Controlled Volatility ETF,
Desjardins Developed ex-USA ex-Canada Multifactor-Controlled Volatility ETF,
Desjardins Emerging Markets Multifactor-Controlled Volatility ETF
Desjardins RI Developed ex-USA ex-Canada - Low CO2 Index ETF
Principal Regulator - Quebec
Type and Date:
Amendment #1 to Final Long Form Prospectus dated May 12, 2021
NP 11-202 Final Receipt dated May 18, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3171181

Issuer Name:
Fidelity Europe Class
Fidelity International Disciplined Equity Class
Fidelity Corporate Bond Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated May 11, 2021
NP 11-202 Final Receipt dated May 20, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3187283

Issuer Name:
Mackenzie Global Credit Opportunities Fund
Mackenzie North American Corporate Bond Fund
Mackenzie USD Global Tactical Bond Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated May 14, 2021
NP 11-202 Final Receipt dated May 21, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3093522

Issuer Name:
Sustainable Agriculture & Wellness Dividend Fund
Principal Regulator - Alberta (ASC)
Type and Date:
Final Long Form Prospectus dated May 18, 2021
NP 11-202 Receipt dated May 18, 2021
Offering Price and Description:
$100,000,000 (maximum)
(maximum – 10,000,000 Units)
$25,000,000 (minimum)
(minimum 2,500,000 Units)
$10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Canccord Genuity Corp.
TD Securities Inc.
IA Private Wealth Inc.
National Bank Financial Inc.
Raymond James Ltd.
Manulife Securities Incorporated
Richardson Wealth Limited
Hampton Securities Limited
Middlefield Capital Corporation
Wellington-Altus Private Wealth Inc.
Echelon Wealth Partners Inc.
Research Capital Corporation
Promoter(s):
Middlefield Limited
Project #3208759

NON-INVESTMENT FUNDS

Issuer Name:
Allied Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated May 20, 2021
NP 11-202 Preliminary Receipt dated May 20, 2021
Offering Price and Description:
$3,000,000,000.00
Debt Securities
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3225340

Issuer Name:
Aritzia Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 19, 2021
NP 11-202 Preliminary Receipt dated May 19, 2021
Offering Price and Description:
$91,221,000.00
3,040,700 Subordinate Voting Shares
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #3221935

Issuer Name:
BuzBuz Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 20, 2021
NP 11-202 Preliminary Receipt dated May 21, 2021
Offering Price and Description:
No securities are being offered pursuant to this prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3225512

Issuer Name:
GREENFIELD ACQUISITION CORP.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated May 19, 2021
NP 11-202 Preliminary Receipt dated May 20, 2021
Offering Price and Description:
$400,000.00
4,000,000 COMMON SHARES
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
James J. Hickman
Luis H. Goyzuetta
Project #3225077

Issuer Name:
Greyhame Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated May 20, 2021
NP 11-202 Preliminary Receipt dated May 21, 2021
Offering Price and Description:
Minimum of $1,500,000.00 - 15,000,000 Common Shares
Maximum of $2,500,000.00 - 25,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
IA Private Wealth Inc.
Promoter(s):
-
Project #3225833

Issuer Name:
Largo Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated May 19, 2021
NP 11-202 Preliminary Receipt dated May 19, 2021
Offering Price and Description:
C$750,000,000.00
Common Shares
Warrants
Units
Debt Securities
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3224824

Issuer Name:
Lightspeed POS Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Shelf Prospectus dated May 20, 2021
NP 11-202 Preliminary Receipt dated May 20, 2021
Offering Price and Description:
C$4,000,000,000.00
Subordinate Voting Shares
Preferred Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3225188

Issuer Name:
Rupert Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 21, 2021
NP 11-202 Preliminary Receipt dated May 21, 2021
Offering Price and Description:
C$26,076,000.00
4,920,000 Common Shares
Price: C$5.30 per Offered Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Cormark Securities Inc.
Canaccord Genuity Corp.
Eight Capital
Scotia Capital Inc.
Promoter(s):
-
Project #3224198

Issuer Name:
Softchoice Corporation
Principal Regulator - Ontario
Type and Date:
Amendment dated May 18, 2021 to Preliminary Long Form Prospectus dated May 12, 2021
NP 11-202 Preliminary Receipt dated May 18, 2021
Offering Price and Description:
C$350,000,000.00
* Common Shares
Price: C$* per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
GOLDMAN SACHS CANADA INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
CORMARK SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
ATB CAPITAL MARKETS INC.
RAYMOND JAMES LTD.
INFOR FINANCIAL INC.
Promoter(s):
-
Project #3220669

Issuer Name:
Aardvark Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated May 14, 2021
NP 11-202 Receipt dated May 18, 2021
Offering Price and Description:
$330,000.00
3,300,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #3202223

Issuer Name:
Aleafia Health Inc. (formerly Canabo Medical Inc.)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 19, 2021
NP 11-202 Receipt dated May 20, 2021
Offering Price and Description:
$150,000,000.00 –
Common Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3216442

Issuer Name:
Apolo III Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 21, 2021
NP 11-202 Receipt dated May 21, 2021
Offering Price and Description:
No securities are being offered pursuant to this prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3207536

Issuer Name:
Burrell Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated May 14, 2021
NP 11-202 Receipt dated May 18, 2021
Offering Price and Description:
Offering: $800,000.00 or 5,333,333 Common Shares (the "Offering")
Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Patrick McGrath
Project #3179479

Issuer Name:
CLS Holdings USA, Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 20, 2021
NP 11-202 Receipt dated May 21, 2021
Offering Price and Description:
US$25,000,000.00
Common Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3187491

Issuer Name:
dentalcorp Holdings Ltd.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 20, 2021
NP 11-202 Receipt dated May 20, 2021
Offering Price and Description:
$700,000,000.00
* Subordinate Voting Shares
Price: $ * per Offered Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
JEFFERIES SECURITIES, INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
RBC DOMINION SECURITIES INC.
MERRILL LYNCH CANADA INC.
CANACCORD GENUITY CORP.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #3213770

Issuer Name:
First Majestic Silver Corp.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated May 18, 2021
NP 11-202 Receipt dated May 18, 2021
Offering Price and Description:
US$300,000,000.00
Common Shares
Subscription Receipts
Units
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3216934

Issuer Name:
Gotham Resource Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated May 14, 2021
NP 11-202 Receipt dated May 19, 2021
Offering Price and Description:
$400,000.00
4,000,000 COMMON SHARES
PRICE: $0.10 PER COMMON SHARE
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #3194613

Issuer Name:
Khiron Life Sciences Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 21, 2021
NP 11-202 Receipt dated May 21, 2021
Offering Price and Description:
$50,000,000.00
Common Shares
Warrants
Units
Debt Securities
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3161504

Issuer Name:
Magen Ventures I Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated May 17, 2021
NP 11-202 Receipt dated May 19, 2021
Offering Price and Description:
Minimum Offering: $3,000,000.00 or 30,000,000 Common Shares
Maximum Offering: $4,000,000.00 or 40,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3205065

Issuer Name:
Neighbourly Pharmacy Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 17, 2021
NP 11-202 Receipt dated May 18, 2021
Offering Price and Description:
C$ 175,015,000.00
10,295,000 Common Shares
Price: C$17.00 per Offered Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
DESJARDINS SECURITIES INC.
IA PRIVATE WEALTH INC.
HSBC SECURITIES (CANADA) INC.
Promoter(s):
-
Project #3215430

Issuer Name:
Nouveau Monde Graphite Inc. (auparavant Nouveau Monde Mining Enterprises Inc.)
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated May 19, 2021
NP 11-202 Receipt dated May 19, 2021
Offering Price and Description:
CAD$500,000,000.00
Common Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3193995

Issuer Name:
Nurosene Health Inc. (formerly Nurosene Inc.)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 20, 2021
NP 11-202 Receipt dated May 21, 2021
Offering Price and Description:
Minimum Offering of $5,000,000.00/5,555,555 Common Shares
Maximum Offering of $8,000,000.00/8,888,888 Common Shares
Price: $0.90 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
BEACON SECURITIES LIMITED
Promoter(s):
Daniel Gallucci
Project #3176259

Issuer Name:
Silver Spike III Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 21, 2021
NP 11-202 Receipt dated May 21, 2021
Offering Price and Description:
U.S.$125,000,000.00
12,500,000 CLASS A RESTRICTED VOTING UNITS
Price: U.S.$10.00 per Class A Restricted Voting Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
CANTOR FITZGERALD CANADA CORPORATION
Promoter(s):
SILVER SPIKE SPONSOR III, LLC
Project #3217643

Issuer Name:
Triple Flag Precious Metals Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 19, 2021
NP 11-202 Receipt dated May 19, 2021
Offering Price and Description:
US$* - 19,230,770 Common Shares
Price: US$* per common share
Underwriter(s) or Distributor(s):
MERRILL LYNCH CANADA INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
Promoter(s):
Triple Flag Mining Elliott and Management Co-Invest GP Ltd., in its capacity as general partner of Triple Flag Mining Elliott and Management Co-Invest LP
Triple Flag Mining Aggregator S.a r.l.
Project #3219040

Issuer Name:
Uranium Participation Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 18, 2021
NP 11-202 Receipt dated May 18, 2021
Offering Price and Description:
$70,002,400.00
13,462,000 Common Shares
$5.20 per Common Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
CANTOR FITZGERALD CANADA CORPORATION
CANACCORD GENUITY CORP.
SPROTT CAPITAL PARTNERS LP
HAYWOOD SECURITIES INC.
SCOTIA CAPITAL INC.
SPROTT CAPITAL PARTNERS LP
RAYMOND JAMES LTD.
TD SECURITIES INC.
Promoter(s):
-
Project #3215782

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
THERE IS NOTHING TO REPORT THIS WEEK.			

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Neo Exchange Inc. – Request for Comments – Proposed Amendment to the Listing Manual

NEO EXCHANGE INC.

REQUEST FOR COMMENTS

PROPOSED AMENDMENT TO THE LISTING MANUAL

May 27, 2021

Introduction

Neo Exchange Inc. ("**NEO Exchange**" or "**Exchange**") is publishing a proposed public interest rule amendment (the "**Public Interest Rule Amendment**") to the NEO Exchange Listing Manual in accordance with Schedule 4 to its recognition order, as amended. The Public Interest Rule Amendment was filed with the Ontario Securities Commission ("**OSC**") and is being published for comment. A description of the Public Interest Rule Amendment is set out below and the text of the Public Interest Rule Amendment are attached hereto as Appendix A. Subject to any changes resulting from comments received, the Public Interest Rule Amendment will be effective upon publication of the notice of approval on the OSC's website.

Description of the Public Interest Rule Amendment

We propose to repeal subsections 2.05 (1) and 2.06 (1) of the Listing Manual, which sets out the Minimum Distribution requirements for Structured Products and Debt-Based Structured Products.

Expected Date of Implementation of the Public Interest Rule Amendment

NEO Exchange seeks to implement the Public Interest Rule Amendment in Q2 or early Q3 2021.

Rationale for the Public Interest Rule Amendment and Supporting Analysis

We are proposing to repeal the minimum distribution requirement for Structured Products to encourage issuers to consider this type of listing, and to align with TSX rules, which do not have the same requirement. All other minimum listing standards remain unchanged and consistent with TSX rules. Furthermore, debt-based Structured Products are generally denominated at $1,000 face value per security. The current language introduces the ambiguity because the requirement can be read as requiring a minimum of 1,000,000 securities at $1,000 per security face value for a total market value of $1,000,000,000 as the minimum standard. This is a prohibitive standard for any issuer seeking to list such products on NEO. Finally, in the context of Structured Products, including debt-based ones, the Minimum Public Float Value requirement of $1,000,000 is a sufficient proxy for the distribution requirement. Although NEO has not yet listed a structured product, we do not believe the imposition of a distinct minimum distribution requirement provides any additional protection to the investing public.

Expected Impact on Market Structure, Members, Investors, Issuers and Capital Markets

There is no anticipated impact on the market structure and a positive one on issuers and the capital markets generally, due to the positive impact on issuers' ability to raise capital and meet exchange requirements.

Impact on Exchange's Compliance with Ontario Securities Law and on Requirements for Fair Access and Maintenance of Fair and Orderly Markets

The proposed amendments will not adversely impact the Exchange's compliance with Ontario securities laws, including requirements for fair access and maintenance of fair and orderly markets.

Impact on the Systems of Members or Service Vendors

The Public Interest Rule Amendment does not impact members or service vendors.

New Rule

The Public Interest Rule Amendment does not introduce any new feature.

Comments

Comments should be provided, in writing, no later than June 26, 2021 to:

Dmitri Smidovich
Head of Regulatory
Neo Exchange Inc.
65 Queen Street West,
Suite 1900
Toronto, ON M5H 2M5
dmitri@neostockexchange.com

with a copy to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
marketregulation@osc.gov.on.ca

Please note that, unless confidentiality is requested, all comments will be publicly available.

Appendix A
Text of the Public Interest Rule Amendment

NEO EXCHANGE LISTING MANUAL
PART II. INITIAL LISTING REQUIREMENTS

2.05 Minimum Listing Standards – Structured Products

(1) ~~Minimum Distribution – Public Float of 1,000,000 securities together with a minimum of 300 Public Security Holders each holding at least a Board Lot.~~

Repealed.

2.06 Minimum Listing Standards – Debt-Based Structured Products

(1) ~~Minimum Distribution – Public Float of 1,000,000 securities together with a minimum of 300 Public Security Holders each holding at least $1,000 of the debt based Structured Product~~.

Repealed.

13.2.2 Nasdaq CXC Limited – Notice of Withdrawal of Proposed Significant Changes

NASDAQ CXC LIMITED

NOTICE OF WITHDRAWAL

PROPOSED SIGNIFICANT CHANGES

In accordance with the Process for the Review and Approval of Rules and Information Contained in Form 21-101F1 and the Exhibits thereto (the "Protocol") in Schedule 4 of the Ontario Securities Commission recognition order recognizing Nasdaq CXC Limited (Nasdaq Canada) as an exchange, Nasdaq Canada has withdrawn its proposal to introduce certain limited exceptions for Members that use Minimum Acceptable Quantity and Minimum Quantity orders to trade against qualifying orders that do not meet the minimum size parameter published on April 23st 2020. To the extent that Nasdaq Canada decides to pursue the proposal again, it will be published for comment in accordance with the requirements of the Protocol.

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