The Ontario Securities Commission

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Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Table of Contents

Chapter 1

Notices

1.1 Notices

1.1.1 OSC Staff Notice 81-732 Investment Fund Survey

OSC STAFF NOTICE 81-732 INVESTMENT FUND SURVEY

On April 26, 2021, the Ontario Securities Commission (**OSC**) issued a data request seeking key information about investment funds managed by investment fund managers (**IFM**s) registered in Ontario (the **Investment Fund Survey**). The purpose of the Investment Fund Survey is to collect information that will provide us with greater insights into an important segment of the capital market.

The Investment Fund Survey is focused on a number of key areas, including leverage, liquidity, and asset class exposures. Some of the main data points that are covered include: fund size, types of holdings (e.g. by geographic exposure), derivative exposures, borrowing, ownership, fund flows, and liquidity profiles. The Investment Fund Survey requests this information for the period from January 1, 2020 to December 31, 2020.

In the past, we have collected and sourced data pertaining to the investment fund space through the Risk Assessment Questionnaire (**RAQ**) and a biennial survey related to prospectus-exempt funds (the **Prospectus-Exempt Funds Survey**). Information related to investment funds has also been sourced through external data providers from time to time. The Investment Fund Survey is a continuation of such previous efforts in regard to data collection on the investment fund space. Moving forward, the OSC will collect data through the Investment Fund Survey on an annual basis between January and March.

The Investment Fund Survey feeds into the OSC's ambition to aggregate, streamline, and modernize our data-collection strategies. We are careful not to impose undue burdens on the industry while still collecting data that is necessary to deliver on our mandate. We will continue to consider ways in which this data collection can be further streamlined in future years.

This staff notice provides some background on the Investment Fund Survey and how it integrates into the Investment Funds and Structured Products (**IFSP**) and Regulatory Strategy and Research (**RSR**) branches' plans for data collection and analysis moving forward. Detailed information about the Investment Fund Survey is also available on the OSC's website.

Why is the OSC collecting this information?

The OSC has a mandate to protect investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital markets and confidence in the capital markets, to foster capital formation, and to contribute to the stability of the financial system and the reduction of systemic risk in Ontario.

Within the Ontario capital markets, more than 6,000 funds are offered by more than 400 IFMs. With assets under management exceeding $2 trillion, investment funds form a significant portion of the personal financial wealth of Canadians.

Given the importance of investment funds for Ontario investors and capital markets, the resilience of the investment fund industry is critical, particularly at times of financial and economic crises. As such, it is important for OSC staff to maintain close regulatory oversight of the industry. Access to data on investment funds will allow the OSC to remain proactive in monitoring the health of the industry.

The OSC agrees with stakeholders that our regulatory activities should be evidence-based and that we need to conduct appropriate cost/benefit analyses when developing regulations. Proportionate regulation is also one of the guiding principles set out in section 2.1 of Securities Act (Ontario). In order to inform our regulatory oversight activities and rulemaking with these objectives in mind, it is imperative that we have access to relevant data in a timely fashion.

The OSC also collaborates its monitoring activities with other regulatory bodies with a shared interest in promoting financial stability. Domestically, the OSC is part of the Heads of Regulatory Agencies (**HoA**), which provides a forum for federal and provincial bodies to discuss financial sector issues. Globally, the OSC is a member of the International Organization of Securities Commissions (**IOSCO**) and coordinates information sharing with bodies such as the Financial Stability Board (**FSB**).

The information provided in the Investment Fund Survey will allow for development of a risk-identification framework to help the OSC deliver on its mandate. In addition, the data gathered will allow for comprehensive and meaningful information sharing and interactions with regulatory partners, both domestically and internationally.

Why is the OSC collecting this information now?

Data collection on the investment fund space is not a new endeavor. From 2014 till 2020, the OSC collected information related to prospectus-exempt funds via the biennial Prospectus-Exempt Funds Survey for systemic risk monitoring purposes. The Prospectus-Exempt Funds Survey was conducted either as part of the RAQ (2018, 2016, 2014), which is administered by the Compliance and Registrant Regulation (**CRR**) branch or as a stand-alone survey (2020) administered by RSR. As such, the Investment Fund Survey is a continuation of previous efforts in regard to data collection on the investment fund space.

Starting this year, the Prospectus-Exempt Funds Survey is being expanded to include prospectus-qualified funds and requests some additional key data points.

How does the OSC's data collection compare to global standards and practices?

In the June 2016 *Statement on IOSCO's Priorities Regarding Data Gaps in the Asset Management Industry*, IOSCO encouraged its members to enhance their data collection and use. In particular, the statement indicated that a top priority is to address data gaps around open-ended regulated collective investment schemes, i.e. mutual funds.

Securities regulators in Europe and in the United States have already implemented robust data gathering programs where investment funds provide detailed fund information (including portfolio holdings) on a regular and frequent basis.

With the Investment Fund Survey, OSC staff are balancing our regulatory needs and the potential burden imposed on the industry. Instead of asking for extensive and detailed information on investment funds (e.g. specific portfolio holdings) as other international jurisdictions do, we are currently requesting information on asset classes and types of holdings on an aggregate basis only.

Why is the OSC collecting information on investment funds through a survey?

We are committed to working with the industry to find the most efficient way to collect the required information. Staff examined existing available information and noted several limitations of existing data sources. For example:

1) The Statement of Investment Portfolio provided as part of financial statement filings is not tagged or in a format that allows for download or analysis of this information.

2) Third-party vendor information may not be complete and reliable for regulatory purposes.

3) The RAQ gathers data on investment fund managers and other registrants, but not fund-level data.

Given these limitations, we concluded that a survey request is the appropriate format to collect the required information at this time.

Will the OSC share the information collected from the survey?

IOSCO requests information regarding leverage within investments funds on an annual basis, with a reporting deadline around April every year. In order to respond to IOSCO requests in future years, we will:

- collect data on investment funds on an annual basis; and
- make this data request earlier in the year with the survey rollout in January of every year requesting a response by March.

To contribute to financial stability, we will consider making summary or aggregated data publicly available on a no-names basis. Aggregated data may also be shared with other regulatory partners such as through the HoA and the FSB. In addition, we may also share the information provided in this survey on a confidential basis with other Canadian Securities Administrators jurisdictions.

How will the OSC streamline its data collection moving forward?

The OSC remains committed to delivering on our mandate in a manner that does not impose unnecessary burden on market participants. We are looking at a number of ways to reduce unnecessary regulatory burdens associated with data reporting, including:

- Leveraging technology to extract and aggregate information that is already provided to the OSC, either through regulatory filings or other data requests.
- Finding opportunities to streamline reporting requirements and data requests, where possible, to eliminate unnecessary duplication.

- Explore alternate methods of collecting data that are more aligned with systems and processes used by market participants.
- Finding ways to improve access to the data that we collect (e.g. open data systems).
- Continuing engagement with stakeholders in advance of new data collection initiatives to identify and address pain points associated with data reporting.

Work is already underway on these actions. In particular, the introduction of the Digital Solutions branch is one step forward towards the digital transformation of the OSC. We intend to modernize our business and data collection platforms and our processes with an eye on quality and standardization with fit-for-purpose data governance standards.

Assistance

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1.1.2 Notice of Coming into Force of Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators, Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators, and Consequential Amendments

NOTICE OF COMING INTO FORCE OF
MULTLATERAL INSTRUMENT 25-102 *DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS*,
ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
***DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS*, AND**
CONSEQUENTIAL AMENDMENTS

July 15, 2021

On July 13, 2021, pursuant to section 143.4 of the *Securities Act* (Ontario) and section 69 of the *Commodity Futures Act* (Ontario), the following came into force:

- Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102**),
- Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (**OSC Rule 25-501**), and
- consequential amendments to Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* (the **Consequential Amendments**).

In connection with MI 25-102 and OSC Rule 25-501, the Commission also adopted Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (the **Companion Policies**). The Companion Policies came into effect on July 13, 2021.

MI 25-102, OSC Rule 25-501, the Consequential Amendments and the Companion Policies were published in the Bulletin on April 29, 2021. The text of MI 25-102, OSC Rule 25-501, the Consequential Amendments and the Companion Policies are reproduced in Chapter 5 of this Bulletin.

1.1.3 CSA Notice of Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations to Enhance Protection of Older and Vulnerable Clients

CSA NOTICE OF AMENDMENTS TO

NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

AND TO

COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

TO ENHANCE PROTECTION OF OLDER AND VULNERABLE CLIENTS

July 15, 2021

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments (the **Amendments**) to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103** or the **Rule**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP** or the **Companion Policy**, together the **Instrument**). The Amendments relate to the provisions of the Instrument relating to business operations and client relationships and will enhance protection of older and vulnerable clients by providing registrants with tools and guidance to address issues of financial exploitation and diminished mental capacity.

The CSA worked together with the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (together referred to as the self-regulatory organizations or the **SROs**) to develop the Amendments. The Amendments will apply to all registered firms, including members of IIROC and MFDA. IIROC and the MFDA plan to implement corresponding amendments to the IIROC Rules and the MFDA Rules, respectively. Subject to the necessary approvals, these SRO rule amendments will come into effect on December 31, 2021.

The Amendments are expected to be adopted by each member of the CSA. Provided all necessary ministerial approvals are obtained, the Amendments will come into force on December 31, 2021. Where applicable, Annex F of this notice provides information about each jurisdiction's approval process. Implementation of the Amendments will be subject to a transition provision discussed below.

This notice contains the following annexes:

- Annex A – Summary of Comments and Responses
- Annex B – List of Commenters
- Annex C – Amendments to NI 31-103
- Annex D – Blackline showing changes to NI 31-103
- Annex E – Changes to 31-103CP
- Annex F – Adoption of the Amendments

This notice will also be available on the following websites of CSA jurisdictions:

www.albertasecurities.com
www.lautorite.qc.ca
www.bcsc.bc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca
www.mbsecurities.ca
nssc.novascotia.ca
www.osc.ca

Substance and Purpose

Seniors are a growing segment of investors whose needs and issues demand attention. Delivering strong investor protection and responding to the needs and priorities of older and vulnerable investors are key components of the CSA's mandate. The Amendments are part of the CSA's initiative to enhance protection of older and vulnerable clients by providing registrants with tools and guidance to address issues of financial exploitation and diminished mental capacity.

Trusted Contact Person

The Amendments will require registrants to take reasonable steps to obtain the name and contact information of a trusted contact person (**TCP**), as well as the client's written consent to contact the TCP in prescribed circumstances.

Temporary Holds

In addition, the Amendments will clarify that registered firms and registered individuals are not prohibited from placing a temporary hold on the purchase or sale of a security on behalf of a client or on the withdrawal or transfer of cash or securities from a client's account, provided that they take certain prescribed steps, in the following circumstances:

- where a registered firm reasonably believes that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or
- where a registered firm reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.

Background

Canadians are living longer than ever before, and older Canadians are increasingly making up a greater proportion of the total population.[1] As investors live longer, there is a greater need for targeted financial advice and strategies associated with aging,[2] as well as the need to be more attuned to the sometimes-subtle changes clients may present as they age.

Registrants can be in a unique position to notice signs of financial exploitation, vulnerability, or diminished mental capacity because of the interactions they have with their clients and the knowledge they acquire through the client relationship.

The CSA acknowledges that in order to protect older and vulnerable clients, it is important to provide registrants with tools and guidance that they can use or rely on to take action against financial exploitation and to address issues arising from a client's diminished mental capacity, while being mindful of the importance of upholding client autonomy. It is also important to provide clients with avenues and the autonomy to protect themselves in vulnerable situations. We believe that the Amendments are a step towards achieving these goals.

The CSA recognizes that older clients are not a homogenous group and that not all older clients are vulnerable or unable to protect their own interests. The CSA also recognizes that not all vulnerable clients are older clients. Vulnerability can affect a client of any age, take many forms, and can be temporary, sporadic or permanent in nature.

Relevant Publications

We published proposed amendments to the Instrument for comment on March 5, 2020 (the **Proposals**), and refer to the Proposals for additional background on this initiative, including work by Canadian securities regulators over the past several years to address issues of financial exploitation and diminished mental capacity affecting older and vulnerable investors.[3] We also refer to publications released after the Proposals, including OSC Staff Notice 11-790 *Protecting Aging Investors through Behavioural Insights*, published in November 2020, which identifies behaviourally-informed techniques to encourage older clients to provide TCP information.

As provided in CSA Staff Notice 31-354 *Suggested Practices for Engaging with Older or Vulnerable Clients*, registered firms are encouraged to develop training programs for their employees on: (1) recognizing the potential warning signs that a client could be suffering from diminished mental capacity, how these changes can affect a client's financial decision-making abilities, and the implications that these changes may have for the client; and (2) detecting and responding to potential financial exploitation of their older or vulnerable clients, including training to identify warning signs that a power of attorney or limited trading authorization is being misused to exploit a client. Such training will assist firms in meeting their obligations set out in subsection 11.1(2) of the Rule.

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1 In 2016, Canadian census data showed that approximately 5.9 million Canadians were aged 65 or older, representing nearly 17 per cent of Canada's total population. Source: Statistics Canada, "Census Profile, 2016 Census" (2016).

2 Households led by Canadians aged 65 and older control approximately $541 billion in non-pension financial assets, representing 39 per cent of total non-pension financial assets held by Canadian households. Source: Statistics Canada, Survey of Financial Security (2016).

3 CSA Notice and Request for Comment, *Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Changes to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations to Enhance Protection of Older and Vulnerable Clients* (2020), 43 OSCB 1967.

The Autorité des marchés financiers also refers registrants operating in Quebec to Bill 101, An Act to strengthen the fight against maltreatment of seniors and other persons of full age in vulnerable situations as well as the monitoring of the quality of health services and social services[4] that was introduced in Québec on June 9, 2021. The amendments introduced by this bill will impact the financial sector and therefore the registrants operating in Quebec. Accordingly, once the bill is assented to, the Autorité des marchés financiers will propose further amendments to NI 31-103 in order to harmonize the definition of "vulnerable client" with the definition of "person in a vulnerable situation" found in this Act.

Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 27 commenters. We have considered the comments received and thank all commenters for their input. A summary of comments, together with our responses, is set out in Annex A of this notice. The names of commenters are contained in Annex B of this notice.

Copies of the comment letters were posted on the following websites:

- the Alberta Securities Commission at www.albertasecurities.com
- the Autorité des marchés financiers at www.lautorite.qc.ca
- the Ontario Securities Commission at www.osc.ca

Summary of Changes

In developing the Amendments, we carefully reviewed the comments we received on the Proposals. We found some of the comments recommending changes to be persuasive and revised the Proposals accordingly, and made other drafting changes which are intended to clarify the interpretation of the new requirements. As these changes are not material, we are not publishing the Amendments for a further comment period.

Key changes to the Proposals are summarized below. The changes to the Proposals and our reasons for making them are discussed in more detail in Annex A of this notice.

Definitions

- The Amendments do not include a definition of "mental capacity". In lieu of a definition in the Rule, the Companion Policy includes additional guidance on factors a registrant might consider in identifying warning signs that a client lacks mental capacity to make decisions involving financial matters.
- A definition of "trusted contact person" has been added as "an individual identified by a client to a registrant whom the registrant may contact in accordance with the client's written consent."
- We added guidance to clarify that the examples in the Companion Policy of warning signs of financial exploitation of a client, and signs of a lack of mental capacity of a client to make decisions involving financial matters, are not exhaustive. The guidance also provides that one sign alone may not be indicative of financial exploitation or a lack of mental capacity of a client to make decisions involving financial matters.

Trusted Contact Person

- We moved the TCP requirement from section 13.2 [*know your client*] to a new section 13.2.01 [*know your client – trusted contact person*] to clarify that a registrant is not prevented from opening or maintaining an account if a client refuses or fails to identify a TCP as long as the registrant has taken reasonable steps to obtain the TCP information concurrently with taking reasonable steps to obtain know your client (**KYC**) information. We also added guidance in the Companion Policy around collecting and updating TCP information as part of the KYC process.
- We removed the requirement that the TCP be of the age of majority or older in the TCP's jurisdiction of residence and instead added guidance in the Companion Policy to note that registrants should encourage their clients to name as the TCP an individual who is trusted, is mature and has the ability to communicate and engage in potentially difficult conversations with the registrant about the client's personal situation.
- We added guidance in the Companion Policy to clarify that, although the TCP requirement only applies with respect to clients who are individuals, a registrant is not precluded from asking for TCP information from a non-individual client that, for example, is closely held and is part of an individual's personal investment plan.
- We removed the specific list of individuals (i.e., a legal guardian of the client, an executor of an estate under

[4] Bill 101 was introduced during the 42nd Legislature, 1st Session of the Assemblée Nationale du Québec

which the client is a beneficiary, a trustee of a trust under which the client is a beneficiary) about whom a registrant may confirm or make inquiries with the TCP, and only retained "a legal representative of the client, if any" in the Rule. In the Companion Policy, we added guidance that a TCP could be utilized by the registrant to confirm or make inquiries about the name and contact information of a legal representative of the client, including a legal guardian of the client, an executor of an estate under which the client is a beneficiary, or a trustee of a trust under which the client is a beneficiary.

- We added guidance in the Companion Policy on updating TCP information, including with respect to clients who may have previously refused to provide TCP information.

Temporary Holds

- We clarified in the Companion Policy that the fact that a client has not named a TCP does not preclude a registered firm from placing a temporary hold in accordance with section 13.19 [*conditions for temporary hold*].
- Paragraph 13.19(3)(c) of the Rule clarifies that, where a registered firm or a registered individual places a temporary hold, the firm is required to review the relevant facts as soon as possible after placing the hold, and on a reasonably frequent basis, to determine if continuing the hold is appropriate. In the Companion Policy, we added clarifying guidance on what this review should include.
- We removed the paragraph which stated that the registered firm must "ultimately terminate the temporary hold and decide to proceed or not proceed with the purchase or sale of a security or withdrawal or transfer of cash or securities" as we believe this is implied given that holds under section 13.19 are temporary.

Consequential Amendment

As a result of moving the TCP requirement from section 13.2 [*know your client*] to a new section 13.2.01 [*know your client – trusted contact person*], a consequential amendment to paragraph 11.5(2)(l) [*general requirements for records*] was required, which now includes a reference to section 13.2.01.

Transition

The Amendments will take effect at the same time as the KYC provisions of the Client Focused Reforms (i.e., December 31, 2021).[5]

For clarity, there is no expectation that registrants take reasonable steps to collect TCP information from existing clients as of the effective date of the Amendments. Rather, we would expect registrants to take reasonable steps to collect TCP information from existing clients the first time they update the client's KYC information in accordance with section 13.2 [*know your client*] after December 31, 2021.

Questions

Please refer your questions to any of the following:

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[5] CSA Notice of Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* – Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms) (2019), 42 OSCB.

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ANNEX A

SUMMARY OF COMMENTS AND RESPONSES

This annex summarizes the written public comments we received on the Proposals and our responses to those comments. Out of 27 comment letters we received, eight were from industry associations, nine were from registrants, two were from the legal community, and eight were from investors and investor advocates.

We thank all the commenters for their comments.

No.	Subject	Comment	Response
I. General Comments			
1.	General support	Overall, commenters expressed support for the Proposals as a tool to enhance investor protection. A few commenters expressed support for the harmonized approach across Canada, applicable to CSA registrants and members of IIROC and MFDA. A few commenters applauded the CSA for achieving the delicate balance between upholding clients' autonomy and providing registrants with tools to address issues of financial exploitation and diminished mental capacity.	We thank you for your support.
2.	Transition	A few commenters expressed support for aligning the transition period with the KYC provisions of the Client Focused Reforms. In their view, implementing the Proposals would require technology enhancements, which would result in the need for additional resources in time and investments. Aligning the two regulatory initiatives would result in efficiencies by allowing for concurrent implementation. One commenter recommended extending the transition period. They asked that there be a reasonable and sufficient transition period to collect TCP information from existing clients.	The Amendments will come into force at the same time as the KYC provisions of the Client Focused Reforms. For clarity, there is no expectation that current registrants must take reasonable steps to collect TCP information from existing clients as of the effective date of the Amendments (i.e., December 31, 2021). Rather, we would expect registrants to take reasonable steps to collect TCP information from existing clients the first time they update the client's KYC information in accordance with section 13.2 [*know your client*] after December 31, 2021.
3.	Drafting suggestions	We received a number of non-substantive drafting suggestions and comments.	While we incorporated some of these suggestions, this summary does not include a detailed list of all the drafting changes we made.
4.	Exploitation by registered individuals	One commenter expressed concern that vulnerable investors may also be exploited by registered individuals.	While the Amendments do not address circumstances where a vulnerable investor is exploited by a registered individual, registered individuals are subject to conduct requirements under securities laws, which include the requirement to deal fairly, honestly and in good faith with their clients.

II. Definitions / Concepts			
1.	"Vulnerable client"	Some commenters were of the view that the definition of vulnerable client is too narrow. The commenters suggested expanding the definition to include factors such as language barriers, social isolation, substantial dependence on another person, registrant misconduct, age, visible minority status, and level of knowledge. One commenter suggested that reference to age should be eliminated in describing the class of investors to be protected as tying age to vulnerability could lead to ageism.	We have carefully considered the comments, and at this time, we are not proposing any substantive changes to the definition of "vulnerable client". The definition aligns with the purpose of the Amendments. Broadening the definition to include registrant misconduct or vulnerabilities caused by other factors is outside the scope of this project. However, the CSA may consider conducting a retrospective review to assess the efficacy and engagement of the Amendments, which may include consideration of their relevance for other groups and could lead to future modification of the definition. Recognizing that older clients are not a homogenous group and that not all older clients are vulnerable or unable to protect their own interests, the definition of "vulnerable client" does not include an age-marker.
2.	"Mental capacity"	One commenter suggested narrowing the definition of mental capacity to focus on the ability to understand *relevant* information instead of *any* information as the ability to understand *any* information is too broad. Narrowing it to *relevant* information relating to making financial decisions lowers the threshold. Another commenter suggested that the definition be broadened to include the ability for the client to express their wishes.	As discussed in the Notice, we have removed the definition of mental capacity in the Rule. In lieu of a definition in the Rule, the Companion Policy includes additional guidance on factors a registrant might consider in identifying warning signs that a client lacks mental capacity to make decisions involving financial matters. We believe the nuance raised in this comment is captured in s. 13.19(2) as the firm must reasonably believe that the client does not have the mental capacity *to make decisions involving financial matters*. We have included the difficulty for a client to express their will, intent or wishes among the warning signs that may suggest that a client lacks mental capacity to make decisions involving financial matters.
3.	Registrants are not medical health professionals	A few commenters stated that registrants are not medical health professionals and should not be asked to make an assessment of mental capacity.	We appreciate that registrants do not have the expertise to assess and determine whether clients lack mental capacity, and we do not expect registrants to make such a determination. However, the Amendments recognize that registrants can be in a unique position to notice warning signs that a client lacks mental capacity to make decisions involving financial matters because of the interactions they have with the client, and the knowledge they acquire through the client relationship. The Amendments are intended to provide tools to assist registrants in responding to such situations.

4.	Examples of warning signs	One commenter noted that signs of financial exploitation and diminished mental capacity can be subjective, difficult to identify and may not be directly related to a client's financial decision-making capacity or ability. The commenter suggested that some of these subjective criteria be removed from the Companion Policy.	Because signs of financial exploitation and diminished mental capacity can be subjective and may be difficult to identify, we have provided examples of warning signs to assist registrants. To address the commenter's concern, we have included additional commentary in the Companion Policy that one warning sign alone may not be indicative, and that the examples provided are not exhaustive.
III. Trusted Contact Person			
1.	General comments	A few commenters expressed concern that the Proposals may not achieve the intended outcome, would be costly and have unintended consequences. The commenters noted the following concerns: a. The TCP may be the one exploiting the client. b. Asking for a TCP may strain the adviser-client relationship. c. Advisors may choose not to service older or vulnerable adults. d. The TCP may have little or no information about the client's arrangement for personal representation and for financial decision making.	We recognize that there may be costs to registrants associated with implementing the Amendments, and we are mindful of the need to strike an appropriate balance between costs and benefits. a. As stated in the Companion Policy, if the registrant suspects that the TCP is involved in the financial exploitation of the client, the TCP should not be contacted and consideration should be given as to whether there are other more appropriate resources from which to seek assistance, such as the police, the public guardian and trustee, or an alternative TCP, if named. b. We appreciate that conversations about TCPs are personal, and clients may be reluctant to provide this information. Personal conversations with clients are not unique to the Amendments – registrants face similar challenges under current requirements to collect know your client (**KYC**) information. In the Companion Policy, we set out guidance that registrants are not prevented from opening and maintaining a client account if the client refuses or fails to identify a TCP; however, they must still take reasonable steps to obtain the information as part of the KYC process. In doing so, we expect that registrants will use their professional judgment to consider how best to approach this subject of conversation. c. Since registrants will be required to take reasonable steps to obtain TCP information from all clients, and not just from clients over a certain age or clients a registrant perceives as vulnerable, we do not believe the Amendments will result in registrants choosing not to service older or vulnerable clients. With respect to the temporary hold provision in s. 13.19, the Amendments provide a tool for use by registered firms and registered individuals without an obligation to use the tool.

			d. Even in circumstances where a TCP may have little or no information to contribute regarding the client, the TCP may still be able to assist, for example, by having a conversation with the client about their finances or health, reaching out to other family members or trusted people such as a power of attorney (**POA**), making application to the court to be appointed to assist the client in handling their affairs, or seeking the assistance of a public guardian and trustee.
2.	Role and purpose of TCP	Many commenters sought additional guidance on the role and the purpose of the TCP, including: a. Additional details on how and when to contact the TCP and the level of information that can be discussed with the TCP, especially when the TCP contacts the registrant. b. Additional guidance on who should be a TCP. One commenter recommended that a TCP should be an independent person outside of the client's immediate family; another commenter proposed a prohibition against designating a client's attorney under the POA or a client's registered representative as a TCP; and another commenter suggested allowing a client's healthcare or social worker to act as a TCP. c. Requiring clients to rank the TCPs in order of preference where more than one TCP is named.	a. We believe the Rule and Companion Policy provide sufficient information for registrants to exercise their professional judgment in deciding how and when to contact the TCP to discuss issues of financial exploitation or diminished mental capacity, as well as the level of information to share in the circumstances. Additionally, registrants are expected to act in accordance with privacy laws and client agreements. b. We believe that the Companion Policy adequately addresses this topic, including guidance relating to appointing a client's POA or registered representative as a TCP. We do not agree with excluding family members to be appointed as TCPs as that may be too restrictive, especially for individuals with smaller social circles or support systems. c. The Companion Policy contemplates that a client may name more than one TCP on their account. If the client wishes to do so, there is nothing that would prevent a client from ranking the TCPs in the client's order of preference. However, the Amendments do not require that the TCPs be ranked because such a requirement could take away the flexibility for registrants to use their professional judgment in determining which TCP to contact first in the specific circumstances. For example, if the registrant suspects that the TCP that is ranked first is financially exploiting the client, then the registrant may wish to contact another TCP.
3.	Non-individual clients *(Responses to question #1 in the Proposals)*	Some commenters recommended that the TCP requirement should not apply in respect of non-individual clients because: a. it could be challenging for a registrant to collect TCP information and keep this information current, particularly	After considering the comments received, we have decided to proceed with having the TCP provision apply only in respect of clients that are individuals. However, the Companion Policy provides that a registrant is not precluded from asking for TCP information from a non-individual client that, for example, is closely held and is part of an individual's personal investment plan.

		where there are numerous beneficial owners; b. it is the responsibility of the business owner or manager (and not of a registrant) to establish a succession plan; c. the TCP may not be familiar with or be in a position to deal with matters related to the entity. One commenter suggested not applying the TCP requirement in respect of non-individual clients at this time and re-examining the possibility of expanding the rule at a later time. On the other hand, many commenters supported the idea of the TCP requirement applying to certain types of non-individual clients as there may be value in requiring the collection of TCP information from non-individual clients that are closely held and are, in effect, a part of an individual's personal investment plan.	
4.	Firms that exclusively offer order execution only services *(Responses to question #2 in the Proposals)*	Some commenters were of the view that the TCP requirement should apply to IIROC Dealer Members that exclusively offer order execution only services (**OEO firms**) as OEO firms can play a role in detecting unusual trading or requests for withdrawals or transfers through use of technology. In addition, carving out OEO firms from the requirement may result in exploiters encouraging vulnerable clients to move their accounts to OEO firms to circumvent these investor protection measures. On the other hand, a few commenters recommended carving out OEO firms from the TCP requirement on the basis that OEO firms do not have a suitability obligation, have little information on their clients, and do not have regular communications with their clients for them to be able to identify issues of financial exploitation or diminished mental capacity. One of these commenters asked that the carve out be extended to online advisers. In the absence of a carve out for OEO firms and online advisers, the commenter asked that careful consideration be given to tailor the provisions to the unique constructs of these business channels.	After considering the comments received, we have decided not to carve out OEO firms from the TCP requirement. Since there is no prescribed form for fulfilling the TCP requirement, we believe there is sufficient flexibility for OEO firms to comply with the TCP requirement in a way that fits with their business model.
5.	"Reasonable steps" to obtain the name and contact	Several commenters sought additional guidance on what constitutes "reasonable steps" to obtain TCP information. Several commenters recommended that the account opening forms have a defined entry block where the client can decide if	Please see the Companion Policy under "*Obtaining trusted contact person information and consent*" for relevant guidance. The Amendments do not prescribe a form in order to provide registrants with sufficient

	information of a TCP	they want to name a TCP – this would provide objective evidence that the firm has taken reasonable steps. One commenter suggested that a draft model of authorization to communicate with the TCP should be included in an Appendix of the Companion Policy, as suggested in *Protecting Vulnerable Clients - A practical guide for the financial services industry* published by the Autorité des marchés financiers (the **AMF Guide**). One commenter queried how a registrant will be able to produce documents to satisfy the requirement to keep records that demonstrate that they took reasonable steps to collect TCP information, if a client refuses to designate a TCP and does not provide reasons for the refusal.	flexibility to comply with the TCP requirement in a way that fits their business model. However, registrants are encouraged to refer to other supportive resources, such as the AMF Guide and OSC Staff Notice 11-790 *Protecting Aging Investors through Behavioural Insights*. Registrants should keep in mind that these sample forms are for information purposes only and should be mindful of obligations under applicable privacy legislation and client agreements relating to the collection, use and disclosure of personal information. If a client refuses to provide TCP information, registrants should document the refusal. Documenting the refusal will help demonstrate that the registrant took reasonable steps to collect the TCP information. More generally, registrants are reminded of the obligation to maintain records in accordance with section 11.5 *[General requirements for records]*.
6.	Risk-based approach to collecting TCP information	While commenters were generally supportive of the requirement to collect TCP information from all clients (and not just vulnerable clients or those over a certain age), one commenter suggested allowing registrants to take a risk-based approach to collecting TCP information. Example of a risk-based approach included some criteria that would indicate that a client could be at risk of being vulnerable.	We believe that asking all clients for TCP information at the outset of the client relationship and on an ongoing basis will help the registrant respond promptly if any concerns around financial exploitation or diminished mental capacity arise. Collecting this information from a client when the client may already be vulnerable or have diminished mental capacity might be challenging or too late for registrants to be able to take protective action. We also believe that asking all clients for this information at the outset and on an ongoing basis will encourage clients to turn their mind to these issues to better prepare themselves and plan for how they wish to manage their affairs.
7.	TCP – age requirement	A few commenters were of the view that the TCP need not have reached the age of majority given their limited role with no ability to transact on the client's account.	After considering the comments received, we have eliminated the requirement for the TCP to be of the age of majority or older. In the absence of such a requirement, we have provided guidance in the Companion Policy that registrants should encourage their clients to name as the TCP an individual who is trusted, is mature and has the ability to communicate and engage in these difficult conversations with the registrant about the client's personal situation.
8.	Location of the TCP provision	Some commenters were of the view that the fact that a client may proceed with account opening without naming a TCP could be made clearer. To clarify this, several commenters recommended that the TCP requirement be placed outside of subsection 13.2(2) as other information to be collected under subsection 13.2(2) (i.e., KYC information) are, for all intents and purposes, essential.	To address this concern, we have relocated the TCP requirement to a new section 13.2.01 *[Know your client – trusted contact person]*. In addition, the Companion Policy clarifies that registrants are not prevented from opening and maintaining a client account if the client refuses or fails to identify a TCP.

9.	Updating TCP information for a client who previously refused to appoint a TCP	One commenter requested guidance on regulatory expectations relating to updating existing TCP appointments or refusals to make one. This commenter suggested that "the purpose of updating should be to ensure that the registrant has the correct TCP for the client, along with the TCP's address and contact information. If a client has previously refused to appoint a TCP, the registrant may discuss the reasons for appointing a TCP and offer the client an opportunity to reconsider the prior decision."	We have included guidance in the Companion Policy to clarify that when updating TCP information for a client who has previously refused to provide TCP information, registrants should ask the client if they would like to provide the TCP information.
10.	Timing of collecting and updating TCP information	One commenter recommended that the guidance indicate that at the time KYC information is being collected or updated, registrants should also take reasonable steps to obtain or update TCP information.	The Rule and Companion Policy contemplate that registrants are expected to take reasonable steps to obtain TCP information as part of the KYC process, and that TCP information be updated as part of the process to update KYC information.
IV. Temporary Holds			
1.	Firms that exclusively offer order execution only services *(Responses to question #2 in the Proposals)*	Commenters were uniformly of the view that the temporary hold provision could be a useful resource for OEO firms; accordingly, they felt that OEO firms should not be carved out for the purposes of this provision. One commenter added that it is important for regulators to focus on "reasonable belief" recognizing that these firms may not always be able to identify financial exploitation or diminished mental capacity.	In light of the comments, we have decided to proceed with having the temporary hold provision apply to OEO firms. We note that the Amendments provide a tool for use by registered firms where they have a reasonable belief of financial exploitation of a vulnerable client, or a lack of mental capacity of a client to make decisions involving financial matters. The Amendments do not impose an obligation to use the tool.
2.	Portfolio managers and exempt market dealers	One commenter felt that a portfolio manager acting under discretionary trading authority need not be included in the temporary hold provisions. The commenter also proposed a carve out for exempt market dealers in a transactional relationship as they would not have insight into a client's ongoing mental capacity or vulnerability to exploitation.	Since the temporary hold provision is intended to be a tool and there is no obligation to use the tool, we do not believe that any carve outs are necessary. Registered firms that do not place any temporary holds will not need to comply with section 13.19.
3.	Free and informed financial decision-making (Applicable in Québec)	One commenter from Québec suggested adding the element of free and informed financial decision-making to ensure consistency with the general principle of law set out on the Civil Code of Québec.	We appreciate the comment; however, we consider important that Québec registrants be subject to the same standard when placing temporary holds in situations where there is a reasonable belief that the client does not have the mental capacity to make decisions involving financial matters. The standard set out in section 13.19 (i.e., the conditions under which a temporary hold is placed) is meant to regulate a specific aspect of the relationship between registrants and their clients in the context of securities laws.
4.	Application – holds that are placed where there is a reasonable	Many commenters supported having the temporary hold provision apply where there is a reasonable belief that the client does not have the mental capacity to make financial decisions.	The temporary hold provision will apply to holds that are placed on the basis of a reasonable belief that the client does not have the mental capacity to make decisions involving financial matters.

	belief that the client does not have the mental capacity to make decisions involving financial matters *(Responses to question #3 in the Proposals)*	One commenter felt that the provision should be limited to cases of financial exploitation.	
5.	Application – purchase or sale of securities, and the transfer of cash or securities to another firm *(Responses to question #4 in the Proposals)*	Many commenters supported having the temporary hold provision apply to holds that are placed on the purchase and sale of securities, and the transfer of cash or securities to another firm as these transactions can be equally as harmful as withdrawals. On the other hand, one commenter believed that temporary holds should not be extended to the purchase and sale of securities because the risk can be mitigated in other ways (e.g., documenting waiving of suitability, terminating the client account, contacting the TCP to deal with the issues, alerting the new registrant to the concerns).	The temporary hold provision will apply to holds that are placed on the purchase and sale of a security on behalf of a client, and on the withdrawal or transfer of cash and securities from a client's account. We do not agree that the risk can be adequately mitigated in other ways. Documenting and allowing the client to waive suitability would not protect the client's assets. Terminating the client account may result in the client being placed at greater risk (e.g., the client may be persuaded to take their money to a registrant that does not know the client well enough to identify any suspicious context). A client may not have chosen to name a TCP, or the TCP may not be willing or able to assist the firm. Registrants may not be willing to alert the new registrant because of privacy considerations. On the other hand, placing a temporary hold while the registered firm reviews the relevant facts and takes any other appropriate actions may help preserve client assets.
6.	Placing temporary holds in other circumstances	A few commenters sought clarification that registrants are permitted to place temporary holds in situations other than financial exploitation of a vulnerable client or diminished mental capacity. For example, they wanted to ensure they could continue to place holds in cases of romance frauds, misuse of funds by family and friends of a client who might not be captured by the definition of "vulnerable client". Two commenters also felt that temporary holds should be permitted in other contexts such as account opening or closing, transfer to another account within the same firm (e.g., a joint account), and client instructions generally (e.g., changes of account ownership, beneficiary, power of attorney, or banking instructions).	We understand that there may be other circumstances under which a registered firm and its registered individuals may want to place a temporary hold. The Amendments are not intended to restrict the registrant's ability to place temporary holds in those circumstances. As stated in the Companion Policy, there is nothing in securities legislation that prevents registered firms and individuals from placing a temporary hold that they are otherwise legally entitled to place. When placing a temporary hold, registered firms and their registered individuals are reminded of their obligation to comply with securities laws, including the obligation to deal fairly, honestly and in good faith with their clients. While, at this time, expanding the application of section 13.19 to other circumstances is out of scope for this project, the CSA may consider conducting a retrospective review to assess the efficacy and engagement of the Amendments, which could lead to future modification.

7.	Notice requirement v. time limit *(Responses to question #5 in the Proposals)*	Commenters uniformly preferred a notice requirement over a time limit for a temporary hold. In their view, setting a time limit may not be appropriate given the complex nature of issues of financial exploitation or diminished mental capacity. Requiring that holds be lifted after an arbitrary amount of time could result in rushed or incomplete analysis of each case and investor harm.	In light of the comments, we have retained the notice requirement rather than a time limit for the temporary hold provision.
8.	Initial notification	Some commenters suggested that the timeline for notification in section 13.19(3)(b) be specified rather than "as soon as possible"; however, there could be an exception when extenuating circumstances prevent notification within a specified timeline.	As the commenters noted, there could be extenuating circumstances that would prevent notification within a specified timeline. In order to provide flexibility in these circumstances, section 13.19(3)(b) will require registered firms to provide notice of the temporary hold and the reasons for the temporary hold to the client "as soon as possible" after placing a temporary hold.
9.	Subsequent notification every 30 days	Some commenters expressed that notification every 30 days may not be necessary. These commenters preferred a less prescriptive, principles-based or "reasonableness" approach.	We remain of the view that, where a temporary hold is in place, the client should receive a notification at least every 30 days. This requirement would ensure that the registered firm does not lose sight of the hold, and that the client is provided with reasons for not being able to access their property. However, the extent of the notice need not be burdensome and can be determined contextually and on a case by case basis.
10.	Method of delivery	A few commenters recommended that firms be permitted to make their own determination as to the best method of delivery of the notice to a client.	The Amendments do not prescribe a method of delivery in order to provide registered firms with sufficient flexibility to use their professional judgement. For example, if the suspected perpetrator lives with the vulnerable client that the firm believes is being financially exploited, the firm may determine that notice by mail may not be appropriate as it may fail to reach the client or place the client at further risk. Registered firms are reminded of the obligation to maintain records in accordance with section 11.5 *[General requirements for records]*.
11.	Contacting third parties	A few commenters asked for guidance on whether a registrant can contact the TCP when a temporary hold is placed. A few other commenters proposed that registered firms be required to contact the TCP or the client's legal representative when a temporary hold is placed. Another commenter recommended that regulators provide information on when to involve parties such as the public guardian and trustee and local authorities.	The Amendments do not require registered firms to contact any specific third party, such as the TCP, when placing a temporary hold as there may be circumstances where contacting the third party may not be appropriate (e.g., where the third party may be financially exploiting the vulnerable client). However, as stated in the Companion Policy, while there is no requirement to do so, registered firms may wish to contact a TCP or any other third party, in accordance with applicable privacy laws and client agreements, to assist the client.
12.	TCP and temporary holds as distinct concepts	One commenter asked for clarification that TCP and temporary holds are distinct concepts, and that having a TCP in place is not a pre-condition for a firm to place a temporary hold.	We have added clarification language in the Companion Policy that the fact that a client has not named a TCP does not preclude a firm from placing a temporary hold in accordance with section 13.19.

13.	Non-suspicious transactions while temporary hold is placed	A few commenters asked for clarification that non-suspicious transactions (e.g. to cover living expenses, long-term care, transfer to a RRIF account, payment of regular fees) can continue to take place on an account that is subject to a temporary hold.	As stated in the Companion Policy, a temporary hold contemplated under section 13.19 is not intended as a hold on the entire client account, but rather as a temporary hold over a specific purchase or sale of a security or withdrawal or transfer of cash or securities from a client's account. Transactions unrelated to the suspected financial exploitation or lack of mental capacity should not be subject to the temporary hold. Each purchase or sale of a security or withdrawal or transfer of cash or securities should be reviewed separately. If the transaction, withdrawal or transfer involves all the assets in the account, it may be reasonable to place a temporary hold on the entire account while not limiting the payment of regular expenses.
14.	Concern that temporary hold provision will be used in bad faith	One commenter expressed concern that holds could be used in bad faith by advisors. They asked that the CSA take all necessary steps to ensure that a temporary hold is treated as an investor protection measure that should only be used in good faith, with appropriate rationale and supporting documentation.	As stated in the Companion Policy, when placing a temporary hold in accordance with section 13.19, registered firms and their registered individuals must act in a manner that is consistent with their obligation to deal fairly, honestly and in good faith with their clients. Registered firms and their registered individuals must not use a temporary hold for inappropriate reasons, for example, to delay a disbursement for fear of losing a client.
15.	Policies and procedures	A few commenters recommended that registrants have policies and procedures addressing one or more of the following: a. Identifying and addressing undue influence and diminished capacity. b. Criteria for placing a temporary hold. c. Internal review requirements. d. Criteria as to when a hold can be released. e. Whether fees, interest charges, and other expenses can continue to be charged during the hold period. f. Reporting to a third party (e.g., public guardian and trustee, law enforcement). One commenter recommended that temporary holds only be made by authorized and qualified supervisory and compliance staff.	Please see the Companion Policy under "*Conditions for temporary hold"* for guidance on written policies and procedures registered firms should have in respect of temporary holds. As stated in the Companion Policy, decisions to place a temporary hold should be made by the CCO or authorized and qualified supervisory, compliance or legal staff. In considering whether fees, interest charges, and other expenses can continue to be charged during the hold period, we expect firms to use their professional judgment and act in accordance with client agreement and their obligation to deal fairly, honestly and in good faith with their clients.
16.	Drafting suggestions	As noted above, we received a number of drafting suggestions and comments, including the following: a. A few commenters recommended that the temporary hold provision	Responses to drafting suggestions and comments are as follows: a. As stated in the Companion Policy, there is nothing in securities legislation that prevents registered firms and

		be rephrased to the permissive with one commenter noting they would prefer this approach but understood that this would require legislative amendments and therefore was not the optimal approach. b. One commenter questioned the need for a detailed list in section 13.2(2)(e)(iii) and suggested revising it to read that the TCP may be contacted to make inquiries regarding "the name and contact information of any personal or legal representative of the client." The commenter suggested that the companion policy could include some of the examples currently set out in subparagraph (iii). c. One commenter suggested revising section 13.2(2)(e)(ii) to only refer to mental capacity and delete the remaining language (i.e. "as it relates to the client's financial decision making or lack of decision making").	individuals from placing a temporary hold that they are otherwise legally entitled to place, and accordingly, granting permissive authority for registered firms to place temporary holds is not strictly necessary. In any event, as one commenter appreciates, explicitly granting such permissive authority for the purposes of providing clarity on this point would require legislative amendment to the provincial securities legislation in many of the CSA jurisdictions. b. We agree with this drafting suggestion and have made revisions to the Rule and the Companion Policy accordingly. c. For the purposes of the Amendments, we have retained the language such that the temporary hold provision applies in cases where a registered firm reasonably believes that the client does not have the mental capacity to make decisions involving financial matters. We have opted to retain the language because mental capacity is contextual and depends on the type of decision to be made. For the purposes of the Amendments, the relevant context relates to the ability of the client to make decisions involving financial matters.
V. Requests for "Safe Harbour"			
1.	Safe harbour	Many commenters were concerned that without an explicit "safe harbour" or other assurances that would lessen litigation risk or risk of regulatory action, the Proposals would not achieve the desired outcome. The commenters' primary areas of concern could be categorized as follows: a. **Privacy** – civil liability and regulatory action that may arise from disclosing a client's personal information to a TCP or other third parties such as the public guardian and trustee, law enforcement, or another registrant. **b. Temporary hold** – civil liability and regulatory action that may arise in connection with placing a hold. **c. Market loss** – civil liability that may arise as a result of any market loss experienced in an account during a temporary hold period.	We understand many commenters feel that a "safe harbour" from regulatory and/or civil liability would complement the TCP and temporary hold provisions, particularly as similar initiatives in other jurisdictions contemplate such protections. Below we set out responses in respect of the commenters' primary areas of concern. a. While we plan to forward the commenters' concerns to the Office of the Privacy Commissioner of Canada, as securities regulators, we are unable to provide a regulatory safe harbour in relation to matters outside of our regulatory jurisdiction. For guidance on privacy law matters, we encourage firms to reach out to the Federal Privacy Commissioner or the privacy commissioners in their respective provinces, as applicable. b. We note that the regulatory context in Canada is such that there is nothing in securities legislation that prevents registered firms and individuals from placing a temporary hold that they are otherwise legally entitled to place. Accordingly, a regulatory safe harbour

		d. **Human rights** – concerns relating to allegations of age discrimination. One commenter noted that a safe harbour is not unprecedented and referred to section 138.4(9) of the *Securities Act* (Ontario) and section 3.9(3) [*Standard of Care*] of National Instrument 81-107 *Independent Review Committee for Investment Funds.*	provision is not required within securities legislation. c. In respect of potential civil liability, the Amendments must achieve a balance between protecting investors, offering assurances to registered firms, and respecting clients' autonomy within a private contractual relationship. Accordingly, we are of the view that offering explicit protection from civil liability, which would require legislative amendment, is not appropriate in the circumstances. That being said, we believe that placing a temporary hold in good faith according to the prescribed conditions set out in the Amendments may assist registered firms in defending their actions, should they be challenged. d. We note that the definition of "vulnerable client" does not include an age-marker. For guidance on human rights matters, we encourage firms to reach out to the human rights agency in their respective province or territory, as applicable.
2.	SRO account transfer rules	A few commenters recommended that SROs consider exemptions or amendments to their account transfer rules where a temporary hold is in place. For example, IIROC Dealer Member Rules 2300 Account Transfers and MFDA Rule 2.12 Transfers on Account.	While IIROC and MFDA are proposing conforming amendments to SRO rules consistent with the Amendments, they are not proposing amendments to IIROC Dealer Member Rules 2300 Account Transfers and MFDA Rule 2.12 Transfers on Account at this time.
VI. Other Comments			
1.	Client's existing circle of care	A few commenters stated that CSA guidance should acknowledge that clients likely have an existing circle of care, including medical and legal professionals who may be more equipped to make an informed decision on mental capacity. The commenters recommended collaboration with other trusted professionals.	We have included additional commentary in the Companion Policy to suggest that firms may also wish to consider whether there are other trusted friends and family in the client's network that could assist the client, for example, by accompanying the client to a subsequent meeting. Before contacting another party, the firm should consider whether there may be a risk that the other party is involved in the financial exploitation of the vulnerable client. In addition, firms should be mindful of their privacy obligations under applicable privacy legislation and client agreements when contacting a third party.
2.	Collaboration with other organizations	Some commenters encouraged CSA members to engage with the office of the public guardian and trustee, law enforcement agencies and other relevant parties to provide guidance so that responsibilities of various parties are well-understood when dealing with cases of financial exploitation. One commenter recommended the establishment of an overarching agency or	We plan to notify the Federal Minister of Seniors and the Office of the Privacy Commissioner of Canada of our consultation efforts to the extent that comments and suggestions received touch on matters within their respective mandates. As noted above, approaches to addressing issues of financial exploitation and mental capacity vary widely from province to province; however, several CSA members and SROs provide education resources and conduct

		whistleblower program which specializes in the protection of vulnerable investors and which could investigate alleged cases of financial exploitation.	outreach initiatives in conjunction with local agencies.
3.	Collaboration with third parties	A few commenters recommended increased cooperation with insurance regulators to reduce regulatory burden.	We note that some CSA members, such as the Autorité des Marchés Financiers in Quebec, the Financial and Consumer Services Commission in New Brunswick, the Financial and Consumer Affairs Authority in Saskatchewan, and the Manitoba Securities Commission, are either integrated regulators or are part of a larger organization whose mandate includes regulating the insurance industry. Some of these members are identifying opportunities for synergies between different sectors that they regulate.
4.	Course on financial exploitation & mental capacity	One commenter recommended that the CSA work to develop a national course on issues of financial exploitation and diminished mental capacity.	A national course on the issues of financial exploitation and mental capacity would be difficult to customize and deliver because approaches to addressing these issues vary widely from province to province. As individual securities regulators are better placed to provide more targeted and relevant educational resources, several CSA members provide educational resources and conduct outreach initiatives in conjunction with local agencies. For additional resources on these topics, we would refer you to organizations that specialize in these areas.
5.	Training & educational resources	A few commenters recommended more guidance or requirements for dealing with older and vulnerable investors. Some of these commenters recommended additional requirements around planning and education for investors, training for advisors and escalation procedures.	We believe that that the Amendments together with the requirements in section 11.1 *[Compliance system and training]* provide firms with sufficient direction and guidance. CSA Staff Notice 31-354 *Suggested Practices for Engaging with Older and Vulnerable Clients* provides additional guidance on engaging with older and vulnerable clients.
6.	Reporting and monitoring data	Some commenters recommended that firms share data on temporary holds and TCP with relevant agencies such as the CSA to shape future policy development and to assess the efficacy of the proposed changes. Some commenters recommended that the CSA monitor the use of temporary holds and TCP to consider whether any modifications are required.	While the Amendments do not impose any external reporting requirements, the CSA will monitor the utilization of these tools. In addition, the CSA may consider conducting a retrospective review to assess the efficacy and engagement of the Amendments.
7.	Frequency for updating KYC information	One commenter recommended a minimum KYC update period of one year for vulnerable clients.	Although the frequency at which registrants are required to update a client's KYC information is not within the scope of this project, we encourage registrants to review CSA Staff Notice 31-354 *Suggested Practices for Engaging with Older and Vulnerable Clients*, which discusses the benefits of meeting with older or vulnerable clients more frequently to update their KYC information.
8.	Record retention rules	One commenter expressed concern that there may be inconsistent legislation dealing with how long records must be kept	It is beyond our mandate to comment on record retention requirements under other legislation. We note that the Amendments do not modify

	across various legislation	under securities legislation, privacy legislation and criminal law requirements that might affect records retained in relation to the TCP and temporary holds. The commenter asked the CSA to highlight other legislations or obligations that the CSA is aware of with respect to these record retention rules.	requirements under securities laws relating to record retention.

ANNEX B

LIST OF COMMENTERS

1. Jason Brooks, Rebecca Cowdery, Lynn McGrade, Laura Paglia, and Michael Taylor (Borden Ladner Gervais LLP)
2. Harold Geller (MBC Law Professional Corporation)
3. Jim Dale (Leede Jones Gable Inc.)
4. Raymonde Crête and Christine Morin (Antoine-Turmel Research Chair on Legal Protection of Seniors, Université Laval)
5. Greg Pollock and Abe Toews (Advocis, The Financial Advisors Association of Canada)
6. Mark Kent (Portfolio Strategies Corporation)
7. Matthew T. Latimer (Federation of Mutual Fund Dealers)
8. Paul C. Bourque (The Investment Funds Institute of Canada)
9. Andrew Fitzpatrick (Quadrus Investment Services Limited)
10. Melissa Lennox and Bill VanGorder (CARP)
11. Douglas Walker (Canadian Foundation for Advancement of Investor Rights)
12. Jeffrey R. Carney (IG Wealth Management)
13. The Canadian Advocacy Council of CFA Societies Canada
14. Rick Annaert (Manulife Securities)
15. Stéphane Rousseau (Université de Montréal)
16. Bernard Brun (Desjardins)
17. Karen Woodman (Sun Life Financial Investments Services (Canada) Inc.)
18. Katie Walmsley and Margaret Gunawan (Portfolio Management Association of Canada)
19. Linda Clunie
20. Wayne Bolton (Edward Jones)
21. Neil Gross (Investor Advisory Panel)
22. Nancy Allan (Independent Financial Brokers of Canada)
23. Manny DaSilva and Gary Legault (Association of Canadian Compliance Professionals)
24. Michelle Alexander (Investment Industry Association of Canada)
25. Gino-Sébastian Savard (MICA Capital Inc.)
26. Sandra Jakab and Veronica Armstrong (Jakab Law and Compliance and Veronica Armstrong Law Corporation)
27. Kenmar Associates

ANNEX C

AMENDMENTS TO
NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

1. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.

2. Section 1.1 is amended by adding the following definitions:

"financial exploitation" means the use or control of, or deprivation of the use or control of, a financial asset of an individual by a person or company through undue influence, unlawful conduct or another wrongful act;

"temporary hold" means a hold that is placed on the purchase or sale of a security on behalf of a client or on the withdrawal or transfer of cash or securities from a client's account;

"trusted contact person" means an individual identified by a client to a registrant whom the registrant may contact in accordance with the client's written consent;

"vulnerable client" means a client who might have an illness, impairment, disability or aging-process limitation that places the client at risk of financial exploitation;**.**

3. Subsection 11.5 (2) is amended:

(a) by replacing paragraph (l) with the following:

(l) demonstrate compliance with sections 13.2, 13.2.01, 13.2.1 and 13.3;**,**

(b) in paragraph (r) by replacing "." with ";", and

(c) by adding the following paragraph:

(s) demonstrate compliance with section 13.19**.**.

4. The Instrument is amended by adding the following section:

13.2.01 Know your client - trusted contact person

(1) Concurrently with taking the reasonable steps required under subsection 13.2(2), a registrant must take reasonable steps to obtain from the client the name and contact information of a trusted contact person, and the written consent of the client for the registrant to contact the trusted contact person to confirm or make inquiries about any of the following:

(a) the registrant's concerns about possible financial exploitation of the client;

(b) the registrant's concerns about the client's mental capacity as it relates to the ability of the client to make decisions involving financial matters;

(c) the name and contact information of a legal representative of the client, if any;

(d) the client's contact information.

(2) A registrant must take reasonable steps to keep current the information required under this section, including updating that information within a reasonable time after the registrant becomes aware of a significant change in the client's information required under subparagraph 13.2(2)(c)(i).

(3) This section does not apply to a registrant in respect of a client that is not an individual**.**.

5. Part 13 is amended by adding the following Division:

Division 8 Temporary holds

13.19 Conditions for temporary hold

(1) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold on the basis of financial exploitation of a vulnerable client unless the firm reasonably believes all of the following:

(a) the client is a vulnerable client;

(b) financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted.

(2) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold on the basis of a client's lack of mental capacity unless the firm reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.

(3) If a registered firm or a registered individual places a temporary hold referred to in subsection (1) or (2), the firm must do all of the following:

(a) document the facts and reasons that caused the firm or individual to place and, if applicable, to continue the temporary hold;

(b) provide notice of the temporary hold and the reasons for the temporary hold to the client as soon as possible after placing the temporary hold;

(c) review the relevant facts as soon as possible after placing the temporary hold, and on a reasonably frequent basis, to determine if continuing the hold is appropriate;

(d) within 30 days of placing the temporary hold and, until the hold is revoked, within every subsequent 30-day period, do either of the following:

(i) revoke the temporary hold;

(ii) provide the client with notice of the firm's decision to continue the hold and the reasons for that decision.**.**

6. Subsection 14.2 (2) is amended:

(a) by adding the following paragraph:

(l.1) a description of the circumstances under which a registrant might disclose information about the client or the client's account to a trusted contact person referred to in subsection 13.2.01(1);**,**

(b) in paragraph (o) by replacing "." with ";", and

(c) by adding the following paragraph:

(p) a general explanation of the circumstances under which a registered firm or registered individual may place a temporary hold under section 13.19 and a description of the notice that will be given to the client if a temporary hold is placed or continued under that section**.**

7. (1) This Instrument comes into force on December 31, 2021.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after December 31, 2021, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX D

BLACKLINE SHOWING CHANGES TO
NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*
UNDER THE AMENDMENTS

NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

Table of Contents

NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS

Part 1 Interpretation

1.1 Definitions of terms used throughout this Instrument

In this Instrument

"book cost" means the total amount paid to purchase a security, including any transaction charges related to the purchase, adjusted for reinvested distributions, returns of capital and corporate reorganizations;

"Canadian custodian" means any of the following:

- a bank listed in Schedule I, II or III of the *Bank Act* (Canada);
- a trust company that is incorporated under the laws of Canada or a jurisdiction of Canada and licensed or registered under the laws of Canada or a jurisdiction of Canada, and that has equity, as reported in its most recent audited financial statements, of not less than $10,000,000;
- a company that is incorporated under the laws of Canada or a jurisdiction of Canada, and that is an affiliate of a bank or trust company referred to in paragraph (a) or (b), if either of the following applies:
  - (i) the company has equity, as reported in its most recent audited financial statements, of not less than $10,000,000;
  - (ii) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for the cash and securities the company holds for a client or investment fund;
- an investment dealer that is a member of IIROC and that is permitted under the rules of IIROC, as amended from time to time, to hold the cash and securities of a client or investment fund;

"Canadian financial institution" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"connected issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*;

"debt security" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"designated rating" has the same meaning as in paragraph (b) of the definition of "designated rating" in National Instrument 81-102 *Investment Funds*;

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

"DRO affiliate" means an affiliate of a designated rating organization that issues credit ratings in a foreign jurisdiction and that has been designated as such under the terms of the designated rating organization's designation;

"eligible client" means a client of a person or company if any of the following apply:

(a) the client is an individual and was a client of the person or company immediately before becoming resident in the local jurisdiction;

(b) the client is the spouse or a child of a client referred to in paragraph (a);

(c) except in Ontario, the client is a client of the person or company on September 27, 2009 pursuant to the person or company's reliance on an exemption from the registration requirement under Part 5 of Multilateral Instrument 11-101 *Principal Regulator System* on that date;

"exempt market dealer" means a person or company registered in the category of exempt market dealer;

"financial exploitation" means the use or control of, or deprivation of the use or control of, a financial asset of an individual by a person or company through undue influence, unlawful conduct or another wrongful act;

"foreign custodian" means any of the following:

(a) an entity that

(i) is incorporated or organized under the laws of a country, or a political subdivision of a country, other than Canada,

(ii) is regulated as a banking institution or trust company by the government, or an agency of the government, of the country under the laws of which it is incorporated or organized, or a political subdivision of that country, and

(iii) has equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100,000,000;

(b) an affiliate of an entity referred to in paragraph (a), (b) or (c) of the definition of "Canadian custodian", or paragraph (a) of this definition, if either of the following applies:

(i) the affiliate has equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100,000,000;

(ii) the entity referred to in paragraph (a), (b) or (c) of the definition of "Canadian custodian", or paragraph (a) of this definition, has assumed responsibility for all of the custodial obligations of the affiliate for the cash and securities the affiliate holds for a client or investment fund;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"IIROC provision" means a by-law, rule, regulation or policy of IIROC named in Appendix G, as amended from time to time;

"interim period" means a period commencing on the first day of the financial year and ending 9, 6 or 3 months before the end of the financial year;

"investment dealer" means a person or company registered in the category of investment dealer;

"managed account" means an account of a client for which a person or company makes the investment decisions if that person or company has discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"marketplace" has the same meaning as in section 1.1 of National Instrument 21-101 Marketplace Operation;

"MFDA" means the Mutual Fund Dealers Association of Canada;

"MFDA provision" means a by-law, rule, regulation or policy of the MFDA named in Appendix H, as amended from time to time;

"mutual fund dealer" means a person or company registered in the category of mutual fund dealer;

"operating charge" means any amount charged to a client by a registered firm in respect of the operation, transfer or termination of a client's account and includes any federal, provincial or territorial sales taxes paid on that amount;

"original cost" means the total amount paid to purchase a security, including any transaction charges related to the purchase;

"permitted client" means any of the following:

(a) a Canadian financial institution or a Schedule III bank;

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser, investment dealer, mutual fund dealer or exempt market dealer;

(e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;

(f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;

(k) a person or company acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(l) an investment fund if one or both of the following apply:

(i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;

(ii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;

(m) in respect of a dealer, a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(n) in respect of an adviser, a registered charity under the *Income Tax Act* (Canada) that is advised by an eligibility adviser, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(o) an individual who beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million;

(p) a person or company that is entirely owned by an individual or individuals referred to in paragraph (o), who holds the beneficial ownership interest in the person or company directly or through a trust, the trustee of which is a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction;

(q) a person or company, other than an individual or an investment fund, that has net assets of at least $25 million as shown on its most recently prepared financial statements;

(r) a person or company that distributes securities of its own issue in Canada only to persons or companies referred to in paragraphs (a) to (q);

"portfolio manager" means a person or company registered in the category of portfolio manager;

"principal jurisdiction" means

(a) for a person or company other than an individual, the jurisdiction of Canada in which the person or company's head office is located, and

(b) for an individual, the jurisdiction of Canada in which the individual's working office is located;

"principal regulator" has the same meaning as in section 4A.1 of Multilateral Instrument 11-102 *Passport System*;

"qualified custodian" means a Canadian custodian or a foreign custodian;

"registered firm" means a registered dealer, a registered adviser, or a registered investment fund manager;

"registered individual" means an individual who is registered

(a) in a category that authorizes the individual to act as a dealer or an adviser on behalf of a registered firm,

(b) as ultimate designated person, or

(c) as chief compliance officer;

"related issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*;

"restricted dealer" means a person or company registered in the category of restricted dealer;

"restricted portfolio manager" means a person or company registered in the category of restricted portfolio manager;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"scholarship plan dealer" means a person or company registered in the category of scholarship plan dealer;

"sponsoring firm" means the firm registered in a jurisdiction of Canada on whose behalf an individual acts as a dealer, an underwriter, an adviser, a chief compliance officer or an ultimate designated person;

"sub-adviser" means an adviser to

(a) a registered adviser, or

(b) a registered dealer acting as a portfolio manager as permitted by section 8.24 [*IIROC members with discretionary authority*];

"subsidiary" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"successor credit rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions;*

"temporary hold" means a hold that is placed on the purchase or sale of a security on behalf of a client or on the withdrawal or transfer of cash or securities from a client's account;

"total percentage return" means the cumulative realized and unrealized capital gains and losses of an investment, plus income from the investment, over a specified period of time, expressed as a percentage;

"trailing commission" means any payment related to a client's ownership of a security that is part of a continuing series of payments to a registered firm or registered individual by any party;

"transaction charge" means any amount charged to a client by a registered firm in respect of a purchase or sale of a security and includes any federal, provincial or territorial sales taxes paid on that amount;

"trusted contact person" means an individual identified by a client to a registrant whom the registrant may contact in accordance with the client's written consent;

"vulnerable client" means a client who might have an illness, impairment, disability or aging-process limitation that places the client at risk of financial exploitation;

"working office" means the office of the sponsoring firm where an individual does most of his or her business.

1.2 Interpretation of "securities" in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

(1) Subject to sections 8.2, 8.26 and 14.5.1, in British Columbia, a reference to "securities" in this Instrument includes "exchange contracts", unless the context otherwise requires.

(2) Subject to sections 8.2, 8.26 and 14.5.1, in Alberta, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this Instrument includes "derivatives", unless the context otherwise requires.

1.3 Information may be given to the principal regulator

(1) [***repealed***]

(2) For the purpose of a requirement in this Instrument to notify or to deliver or submit a document to the regulator or the securities regulatory authority, the person or company may notify or deliver or submit the document to the person or company's principal regulator.

(3) [***repealed***]

(4) Despite subsection (2)**,** for the purpose of the notice and delivery requirements in section 11.9 [*registrant acquiring a registered firm's securities or assets*], if the principal regulator of the registrant and the principal regulator of the firm identified in paragraph 11.9(1)(a) or 11.9(1)(b), if registered in any jurisdiction of Canada, are not the same, the registrant must deliver the written notice to the following:

(a) the registrant's principal regulator; and

(b) the principal regulator of the firm identified in paragraph 11.9(1)(a) or 11.9(1)(b) as applicable, if registered in any jurisdiction of Canada identified in paragraph 11.9(1)(a) or 11.9(1)(b).

(5) Subsection (2) does not apply to

(a) section 8.18 [*international dealer*], and

(b) section 8.26 [*international adviser*].

Part 2 Categories of registration for individuals

2.1 Individual categories

(1) The following are the categories of registration for an individual who is required, under securities legislation, to be registered to act on behalf of a registered firm:

(a) dealing representative;

(b) advising representative;

(c) associate advising representative;

(d) ultimate designated person;

(e) chief compliance officer.

(2) An individual registered in the category of

(a) dealing representative may act as a dealer or an underwriter in respect of a security that the individual's sponsoring firm is permitted to trade or underwrite,

(b) advising representative may act as an adviser in respect of a security that the individual's sponsoring firm is permitted to advise on,

(c) associate advising representative may act as an adviser in respect of a security that the individual's sponsoring firm is permitted to advise on if the advice has been approved under subsection 4.2(1) [*associate advising representatives – pre-approval of advice*],

(d) ultimate designated person must perform the functions set out in section 5.1 [*responsibilities of the ultimate designated person*], and

(e) chief compliance officer must perform the functions set out in section 5.2 [*responsibilities of the chief compliance officer*].

(3) Subsection (1) does not apply in Ontario.

Note: In Ontario, the same categories of registration for individuals as in subsection 2.1(1) are set out under section 25 of the *Securities Act* (Ontario).

2.2 Client mobility exemption – individuals

(1) The registration requirement does not apply to an individual if all of the following apply:

(a) the individual is registered as a dealing, advising or associate advising representative in the individual's principal jurisdiction;

(b) the individual's sponsoring firm is registered in the firm's principal jurisdiction;

(c) the individual does not act as a dealer, underwriter or adviser in the local jurisdiction other than as he or she is permitted to in his or her principal jurisdiction according to the individual's registration in that jurisdiction;

(d) the individual does not act as a dealer, underwriter or adviser in the local jurisdiction other than for 5 or fewer eligible clients;

(e) the individual complies with Part 13 *Dealing with clients – individuals and firms*;

(f) the individual deals fairly, honestly and in good faith in the course of his or her dealings with an eligible client;

(g) before first acting as a dealer or adviser for an eligible client, the individual's sponsoring firm has disclosed to the client that the individual, and if the firm is relying on section 8.30 *Client mobility exemption – firms*, the firm,

(i) is exempt from registration in the local jurisdiction, and

(ii) is not subject to requirements otherwise applicable under local securities legislation.

(2) If an individual relies on the exemption in this section, the individual's sponsoring firm must submit a completed Form 31-103F3 *Use of Mobility Exemption* to the securities regulatory authority of the local jurisdiction as soon as possible after the individual first relies on this section.

2.3 Individuals acting for investment fund managers

The investment fund manager registration requirement does not apply to an individual acting on behalf of a registered investment fund manager.

Part 3 Registration requirements – individuals

Division 1 General proficiency requirements

3.1 Definitions

In this Part

"Branch Manager Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Canadian Investment Funds Course Exam" means the examination prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Canadian Investment Manager designation" means the designation earned through the Canadian investment manager program prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

"Canadian Securities Course Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Chief Compliance Officers Qualifying Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"CFA Charter" means the charter earned through the Chartered Financial Analyst program prepared and administered by the CFA Institute and so named on the day this Instrument comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

"Exempt Market Products Exam" means the examination prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Investment Funds in Canada Course Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Mutual Fund Dealers Compliance Exam" means the examination prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"New Entrants Course Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"PDO Exam" means

(a) the Officers', Partners' and Directors' Exam prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination, or

(b) the Partners, Directors and Senior Officers Course Exam prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Sales Representative Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Series 7 Exam" means the examination prepared and administered by the Financial Industry Regulatory Authority in the United States of America and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination.

3.2 U.S. equivalency

In this Part, an individual is not required to have passed the Canadian Securities Course Exam if the individual has passed the Series 7 Exam and the New Entrants Course Exam.

3.3 Time limits on examination requirements

(1) For the purpose of this Part, an individual is deemed to have not passed an examination unless the individual passed the examination not more than 36 months before the date of his or her application for registration.

(2) Subsection (1) does not apply if the individual passed the examination more than 36 months before the date of his or her application and has met one of the following conditions:

(a) the individual was registered in the same category in any jurisdiction of Canada at any time during the 36-month period before the date of his or her application;

(b) the individual has gained 12 months of relevant securities industry experience during the 36-month period before the date of his or her application.

(3) For the purpose of paragraph (2)(a), an individual is not considered to have been registered during any period in which the individual's registration was suspended.

(4) Subsection (1) does not apply to the examination requirements in~~:~~

(a) section 3.7 [s*cholarship plan dealer – dealing representative*] if the individual was registered in a jurisdiction of Canada as a dealing representative of a scholarship plan dealer on and since September 28, 2009, and

(b) section 3.9 [e*xempt market dealer – dealing representative*] if the individual was registered as a dealing representative of an exempt market dealer in Ontario or Newfoundland and Labrador on and since September 28, 2009.

Division 2 Education and experience requirements

3.4 Proficiency – initial and ongoing

(1) An individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

(2) A chief compliance officer must not perform an activity set out in section 5.2 [*responsibilities of the chief compliance officer*] unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

3.5 Mutual fund dealer – dealing representative

A dealing representative of a mutual fund dealer must not act as a dealer in respect of the securities listed in paragraph 7.1(2)(b) unless any of the following apply:

(a) the individual has passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam;

(b) the individual has met the requirements of section 3.11 [*portfolio manager – advising representative*];

(c) the individual has earned a CFA Charter and has gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(d) the individual is exempt from section 3.11 [*portfolio manager – advising representative*] because of subsection 16.10(1) [*proficiency for dealing and advising representatives*].

3.6 Mutual fund dealer – chief compliance officer

A mutual fund dealer must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has:

(i) passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam;

(ii) passed the PDO Exam, the Mutual Fund Dealers Compliance Exam or the Chief Compliance Officers Qualifying Exam; and

(iii) gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(b) the individual has met the requirements of section 3.13 [*portfolio manager – chief compliance officer*];

(c) section 3.13 [*portfolio manager – chief compliance officer*] does not apply in respect of the individual because of subsection 16.9(2) [*registration of chief compliance officers*].

3.7 Scholarship plan dealer – dealing representative

A dealing representative of a scholarship plan dealer must not act as a dealer in respect of the securities listed in paragraph 7.1(2)(c) unless the individual has passed the Sales Representative Proficiency Exam.

3.8 Scholarship plan dealer – chief compliance officer

A scholarship plan dealer must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless the individual has:

(a) passed the Sales Representative Proficiency Exam;

(b) passed the Branch Manager Proficiency Exam;

(c) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam, and

(d) gained 12 months of relevant securities industry experience in the 36-month period before applying for registration.

3.9 Exempt market dealer – dealing representative

A dealing representative of an exempt market dealer must not perform an activity listed in paragraph 7.1(2)(d) unless any of the following apply:

(a) the individual has passed the Canadian Securities Course Exam;

(b) the individual has passed the Exempt Market Products Exam;

(c) the individual has earned a CFA Charter and has gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(d) the individual satisfies the conditions set out in section 3.11 [*portfolio manager – advising representative*];

(e) the individual is exempt from section 3.11 [*portfolio manager – advising representative*] because of subsection 16.10(1) [*proficiency for dealing and advising representatives*].

3.10 Exempt market dealer – chief compliance officer

An exempt market dealer must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has:

(i) passed the Exempt Market Products Exam or the Canadian Securities Course Exam;

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam; and

(iii) gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(b) the individual has met the requirements of section 3.13 [*portfolio manager – chief compliance officer*];

(c) section 3.13 [*portfolio manager – chief compliance officer*] does not apply in respect of the individual because of subsection 16.9(2) [*registration of chief compliance officers*].

3.11 Portfolio manager – advising representative

An advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless any of the following apply:

(a) the individual has earned a CFA Charter and has gained 12 months of relevant investment management experience in the 36-month period before applying for registration;

(b) the individual has received the Canadian Investment Manager designation and has gained 48 months of relevant investment management experience, 12 months of which was gained in the 36-month period before applying for registration.

3.12 Portfolio manager – associate advising representative

An associate advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless any of the following apply:

(a) the individual has completed Level 1 of the Chartered Financial Analyst program and has gained 24 months of relevant investment management experience;

(b) the individual has received the Canadian Investment Manager designation and has gained 24 months of relevant investment management experience.

3.13 Portfolio manager – chief compliance officer

A portfolio manager must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam and, unless the individual has earned the CFA Charter, the Canadian Securities Course Exam, and

(iii) either

A) gained 36 months of relevant securities experience while working at an investment dealer, a registered adviser or an investment fund manager, or

B) provided professional services in the securities industry for 36 months and also worked at a registered dealer, a registered adviser or an investment fund manager for 12 months;

(b) the individual has passed the Canadian Securities Course Exam and either the PDO Exam or the Chief Compliance Officers Qualifying Exam and any of the following apply:

(i) the individual has worked at an investment dealer or a registered adviser for 5 years, including for 36 months in a compliance capacity;

(ii) the individual has worked for 5 years at a Canadian financial institution in a compliance capacity relating to portfolio management and also worked at a registered dealer or a registered adviser for 12 months;

(c) the individual has passed either the PDO Exam or the Chief Compliance Officers Qualifying Exam and has met the requirements of section 3.11 [*portfolio manager – advising representative*].

3.14 Investment fund manager – chief compliance officer

An investment fund manager must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam and, unless the individual has earned the CFA Charter, the Canadian Securities Course Exam, and

(iii) either

A) gained 36 months of relevant securities experience while working at a registered dealer, a registered adviser or an investment fund manager, or

B) provided professional services in the securities industry for 36 months and also worked in a relevant capacity at an investment fund manager for 12 months;

(b) the individual has

(i) passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam, or the Investment Funds in Canada Course Exam,

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam, and

(iii) gained 5 years of relevant securities experience while working at a registered dealer, registered adviser or an investment fund manager, including 36 months in a compliance capacity;

(c) the individual has met the requirements of section 3.13 [*portfolio manager – chief compliance officer*];

(d) section 3.13 [*portfolio manager – chief compliance officer*] does not apply in respect of the individual because of subsection 16.9(2) [*registration of chief compliance officers*].

Division 3 Membership in a self-regulatory organization

3.15 Who must be approved by an SRO before registration

(1) A dealing representative of an investment dealer that is a member of IIROC must be an “approved person” as defined under the rules of IIROC.

(2) Except in Québec, a dealing representative of a mutual fund dealer that is a member of the MFDA must be an “approved person” as defined under the rules of the MFDA.

3.16 Exemptions from certain requirements for SRO-approved persons

(1) The following sections do not apply to a registered individual who is a dealing representative of an investment dealer that is a member of IIROC:

(a) subsection 13.2(3) [*know your client*];

(b) section 13.3 [*suitability determination*];

(c) section 13.13 [*disclosure when recommending the use of borrowed money*].

(1.1) Subsection (1) only applies to a registered individual who is a dealing representative of an investment dealer that is a member of IIROC in respect of a requirement specified in any of paragraphs (1)(a) to (c) if the registered individual complies with the corresponding IIROC provisions that are in effect.

(2) The following sections do not apply to a registered individual who is a dealing representative of a mutual fund dealer that is a member of the MFDA:

(a) section 13.3 [*suitability determination*];

(b) section 13.13 [*disclosure when recommending the use of borrowed money*].

(2.1) Subsection (2) only applies to a registered individual who is a dealing representative of a mutual fund dealer that is a member of the MFDA in respect of a requirement specified in paragraph (2)(a) or (b) if the registered individual complies with the corresponding MFDA provisions that are in effect.

(3) In Québec, the requirements listed in subsection (2) do not apply to a registered individual who is a dealing representative of a mutual fund dealer to the extent equivalent requirements to those listed in subsection (2) are applicable to the registered individual under the regulations in Québec.

Part 4 Restrictions on registered individuals

4.1 Restriction on acting for another registered firm

(1) A firm registered in any jurisdiction of Canada must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if either of the following apply:

(a) the individual acts as an officer, partner or director of another firm registered in any jurisdiction of Canada that is not an affiliate of the first-mentioned registered firm;

(b) the individual is registered as a dealing, advising or associate advising representative of another firm registered in any jurisdiction of Canada.

(2) Paragraph (1)(b) does not apply in respect of a representative whose registration as a dealing, advising or associate advising representative of more than one registered firm was granted before July 11, 2011.

4.2 Associate advising representatives – pre-approval of advice

(1) An associate advising representative of a registered adviser must not advise on securities unless, before giving the advice, the advice has been approved by an individual designated by the registered firm under subsection (2).

(2) A registered adviser must designate, for an associate advising representative, an advising representative to review the advice of the associate advising representative.

(3) No later than 7 days following the date of a designation under subsection (2), a registered adviser must provide the regulator or, in Québec, the securities regulatory authority with the names of the advising representative and the associate advising representative who are the subject of the designation.

Part 5 Ultimate designated person and chief compliance officer

5.1 Responsibilities of the ultimate designated person

The ultimate designated person of a registered firm must do all of the following:

(a) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf;

(b) promote compliance by the firm, and individuals acting on its behalf, with securities legislation.

5.2 Responsibilities of the chief compliance officer

The chief compliance officer of a registered firm must do all of the following:

(a) establish and maintain policies and procedures for assessing compliance by the firm, and individuals acting on its behalf, with securities legislation;

(b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation;

(c) report to the ultimate designated person of the firm as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, may be in non-compliance with securities legislation and any of the following apply:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to a client;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to the capital markets;

(iii) the non-compliance is part of a pattern of non-compliance;

(d) submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.

Part 6 Suspension and revocation of registration – individuals

6.1 If individual ceases to have authority to act for firm

If a registered individual ceases to have authority to act as a registered individual on behalf of his or her sponsoring firm because of the end of, or a change in, the individual's employment, partnership, or agency relationship with the firm, the individual's registration with the firm is suspended until reinstated or revoked under securities legislation.

6.2 If IIROC approval is revoked or suspended

If IIROC revokes or suspends a registered individual's approval in respect of an investment dealer, the individual's registration as a dealing representative of the investment dealer is suspended until reinstated or revoked under securities legislation.

6.3 If MFDA approval is revoked or suspended

Except in Québec, if the MFDA revokes or suspends a registered individual's approval in respect of a mutual fund dealer, the individual's registration as a dealing representative of the mutual fund dealer is suspended until reinstated or revoked under securities legislation.

6.4 If sponsoring firm is suspended

If a registered firm's registration in a category is suspended, the registration of each registered dealing, advising or associate advising representative acting on behalf of the firm in that category is suspended until reinstated or revoked under securities legislation.

6.5 Dealing and advising activities suspended

If an individual's registration in a category is suspended, the individual must not act as a dealer, an underwriter or an adviser, as the case may be, under that category.

6.6 Revocation of a suspended registration – individual

If a registration of an individual has been suspended under this Part and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

6.7 Exception for individuals involved in a hearing or proceeding

Despite section 6.6, if a hearing or proceeding concerning a suspended individual is commenced under securities legislation or under the rules of an SRO, the individual's registration remains suspended.

6.8 Application of Part 6 in Ontario

Other than section 6.5 [*dealing and advising activities suspended*], this Part does not apply in Ontario.

Note: In Ontario, measures governing suspension in section 29 of the *Securities Act* (Ontario) are similar to those in Parts 6 and 10.

Part 7 Categories of registration for firms

7.1 Dealer categories

(1) The following are the categories of registration for a person or company that is required, under securities legislation, to be registered as a dealer:

(a) investment dealer;

(b) mutual fund dealer;

(c) scholarship plan dealer;

(d) exempt market dealer;

(e) restricted dealer.

(2) A person or company registered in the category of

(a) investment dealer may act as a dealer or an underwriter in respect of any security,

(b) mutual fund dealer may act as a dealer in respect of any security of

(i) a mutual fund, or

(ii) an investment fund that is a labour-sponsored investment fund corporation or labour-sponsored venture capital corporation under legislation of a jurisdiction of Canada,

(c) scholarship plan dealer may act as a dealer in respect of a security of a scholarship plan, an educational plan or an educational trust,

(d) exempt market dealer may

(i) act as a dealer by trading a security that is distributed under an exemption from the prospectus requirement,

(ii) act as a dealer by trading a security if all of the following apply:

(A) the trade is not a distribution;

(B) an exemption from the prospectus requirement would be available to the seller if the trade were a distribution;

(C) the class of security is not listed, quoted or traded on a marketplace, or

(iii) [***repealed***]

(iv) act as an underwriter in respect of a distribution of securities that is made under an exemption from the prospectus requirement;

(e) restricted dealer may act as a dealer or an underwriter in accordance with the terms, conditions, restrictions or requirements applied to its registration.

(3) [***repealed***]

(4) Subsection (1) does not apply in Ontario.

(5) [***repealed***]

Note: In Ontario, the same categories of registration for firms acting as dealers as in subsection 7.1(1) are set out under subsection 26(2) of the *Securities Act* (Ontario).

7.2 Adviser categories

(1) The following are the categories of registration for a person or company that is required, under securities legislation, to be registered as an adviser:

(a) portfolio manager;

(b) restricted portfolio manager.

(2) A person or company registered in the category of

(a) portfolio manager may act as an adviser in respect of any security, and

(b) restricted portfolio manager may act as an adviser in respect of any security in accordance with the terms, conditions, restrictions or requirements applied to its registration.

(3) Subsection (1) does not apply in Ontario.

Note: In Ontario, the same categories of registration for firms acting as advisers as in subsection 7.2(1) are set out under subsection 26(6) of the *Securities Act* (Ontario).

7.3 Investment fund manager category

The category of registration for a person or company that is required, under securities legislation, to be registered as an investment fund manager is “investment fund manager”.

Part 8 Exemptions from the requirement to register

Division 1 Exemptions from dealer and underwriter registration

8.0.1 General condition to dealer registration requirement exemptions

The exemptions in this Division are not available to a person or company if the person or company is registered in the local jurisdiction and if their category of registration permits the person or company to act as a dealer or trade in a security for which the exemption is provided.

8.1 Interpretation of "trade" in Québec

In this Part, in Québec, "trade" refers to any of the following activities:

(a) the activities described in the definition of "dealer" in section 5 of the *Securities Act* (R.S.Q., c. V-1.1), including the following activities:

(i) the sale or disposition of a security by onerous title, whether the terms of payment are on margin, installment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);

(ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;

(iii) the receipt by a registrant of an order to buy or sell a security;

(b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

8.2 Definition of "securities" in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

Despite section 1.2, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this Division excludes "exchange contracts".

8.3 Interpretation – exemption from underwriter registration requirement

In this Division, an exemption from the dealer registration requirement is an exemption from the underwriter registration requirement.

8.4 Person or company not in the business of trading in British Columbia, Manitoba and New Brunswick

(1) In British Columbia and New Brunswick, a person or company is exempt from the dealer registration requirement if the person or company

(a) is not engaged in the business of trading in securities or exchange contracts as a principal or agent, and

(b) does not hold himself, herself or itself out as engaging in the business of trading in securities or exchange contracts as a principal or agent.

(2) In Manitoba, a person or company is exempt from the dealer registration requirement if the person or company

(a) is not engaged in the business of trading in securities as a principal or agent, and

(b) does not hold himself, herself or itself out as engaging in the business of trading in securities as a principal or agent.

8.5 Trades through or to a registered dealer

The dealer registration requirement does not apply to a person or company in respect of a trade in a security if either of the following applies:

(a) the trade is made through a registered dealer, if the dealer is registered in a category that permits the trade unless, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade;

(b) the trade is made to a registered dealer who is purchasing as principal, if the dealer is registered in a category that permits the trade.

8.5.1 Trades through a registered dealer by registered adviser

The dealer registration requirement does not apply to a registered adviser, or an advising representative or associate advising representative acting on behalf of the registered adviser, in respect of trading activities that are incidental to its providing advice to a client, if the trade is made through a dealer registered in a category that permits the trade or a dealer operating under an exemption from the dealer registration requirement.

8.6 Investment fund trades by adviser to managed account

(1) The dealer registration requirement does not apply to a registered adviser, or an adviser that is exempt from registration under section 8.26 [*international adviser*], in respect of a trade in a security of an investment fund if all of the following apply:

(a) the adviser or an affiliate of the adviser acts as the fund's adviser;

(a.1) the adviser or an affiliate of the adviser acts as the fund's investment fund manager;

(b) the trade is to a managed account of a client of the adviser.

(2) The exemption in subsection (1) is not available if the managed account or investment fund was created or is used primarily for the purpose of qualifying for the exemption.

(3) An adviser that relies on subsection (1) must provide written notice to the regulator or, in Québec, the securities regulatory authority that it is relying on the exemption within 10 days of its first use of the exemption.

8.7 Investment fund reinvestment

(1) Subject to subsections (2), (3), (4) and (5), the dealer registration requirement does not apply to an investment fund, or the investment fund manager of the fund, in respect of a trade in a security with a security holder of the investment fund if the trade is permitted by a plan of the investment fund and is in a security of the investment fund's own issue and if any of the following apply:

(a) a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the security that is of the same class or series as the securities to which the dividends or distributions are attributable;

(b) the security holder makes an optional cash payment to purchase the security of the investment fund and both of the following apply:

(i) the security is of the same class or series of securities described in paragraph (a) that trade on a marketplace;

(ii) the aggregate number of securities issued under the optional cash payment does not exceed, in the financial year of the investment fund during which the trade takes place, 2 per cent of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(2) The exemption in subsection (1) is not available unless the plan that permits the trade is available to every security holder in Canada to which the dividend or distribution is available.

(3) The exemption in subsection (1) is not available if a sales charge is payable on a trade described in the subsection.

(4) At the time of the trade, if the investment fund is a reporting issuer and in continuous distribution, the investment fund must have set out in the prospectus under which the distribution is made

(a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security, and

(b) any right that the security holder has to elect to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund and instructions on how the right can be exercised.

(5) At the time of the trade, if the investment fund is a reporting issuer and is not in continuous distribution, the investment fund must provide the information required by subsection (4) in its prospectus, annual information form or a material change report.

8.8 Additional investment in investment funds

The dealer registration requirement does not apply to an investment fund, or the investment fund manager of the fund, in respect of a trade in a security of the investment fund's own issue with a security holder of the investment fund if all of the following apply:

(a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than $150,000 paid in cash at the time of the acquisition;

(b) the trade is in respect of a security of the same class or series as the securities initially acquired, as described in paragraph (a);

(c) the security holder, as at the date of the trade, holds securities of the investment fund and one or both of the following apply:

(i) the acquisition cost of the securities being held was not less than $150,000;

(ii) the net asset value of the securities being held is not less than $150,000.

8.9 Additional investment in investment funds if initial purchase before September 14, 2005

The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a purchaser that initially acquired a security of the same class as principal before September 14, 2005 if all of the following apply:

(a) the security was initially acquired under any of the following provisions:

(i) in Alberta, section 86(e) and paragraph 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules* (General);

(ii) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia);

(iii) in Manitoba, section 19(3) and paragraph 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;

(iv) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;

(v) in Newfoundland and Labrador, paragraphs 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);

(vi) in Nova Scotia, paragraphs 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);

(vii) in Northwest Territories, sections 3(c) and (z) of Blanket Order No. 1;

(viii) in Nunavut, sections 3(c) and (z) of Blanket Order No. 1;

(ix) in Ontario, section 35(1)5 and paragraph 72(1)(d) of the *Securities Act* (Ontario) as they existed prior to their repeal by sections 5 and 11 of the *Securities Act* (Ontario) S.O. 2009, c. 18, Sch. 26 and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

(x) in Prince Edward Island, paragraph 2(3)(d) of the former *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 *Exempt Distributions - Exemption for Purchase of Mutual Fund Securities*;

(xi) in Québec, former section 51 and subsection 155.1(2) of the *Securities Act* (Québec);

(xii) in Saskatchewan, paragraphs 39(1)(e) and 81(1)(d) of *The Securities Act, 1988* (Saskatchewan);

(b) the trade is for a security of the same class or series as the initial trade;

(c) the security holder, as at the date of the trade, holds securities of the investment fund that have one or both of the following characteristics:

(i) an acquisition cost of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted;

(ii) a net asset value of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted.

8.10 Private investment club

The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if all of the following apply:

(a) the fund has no more than 50 beneficial security holders;

(b) the fund does not seek and has never sought to borrow money from the public;

(c) the fund does not distribute and has never distributed its securities to the public;

(d) the fund does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees;

(e) the fund, for the purpose of financing its operations, requires security holders to make contributions in proportion to the value of the securities held by them.

8.11 Private investment fund – loan and trust pools

(1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if all of the following apply:

(a) the fund is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(b) the fund has no promoter or investment fund manager other than the trust company or trust corporation referred to in paragraph (a);

(c) the fund commingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of paragraph (1)(a).

8.12 Mortgages

(1) In this section, "syndicated mortgage" means a mortgage in which two or more persons or companies participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

(2) Subject to subsection (3), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction of Canada by a person or company who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) Subsection (2) does not apply in respect of a trade in a syndicated mortgage.

(4) [***repealed***].

8.13 Personal property security legislation

(1) The dealer registration requirement does not apply in respect of a trade to a person or company, other than an individual in a security evidencing indebtedness secured by or under a security agreement, secured in accordance with personal property security legislation of a jurisdiction of Canada that provides for the granting of security in personal property.

(2) This section does not apply in Ontario.

Note: In Ontario a similar exemption from the dealer registration requirement is provided under subsection 35(2) of the *Securities Act* (Ontario).

8.14 Variable insurance contract

(1) In this section

"contract", "group insurance", "insurance company", "life insurance" and "policy" have the respective meanings assigned to them in the legislation referenced opposite the name of the local jurisdiction in Appendix A of National Instrument 45-106 *Prospectus Exemptions*;

"variable insurance contract" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract is

(a) a contract of group insurance,

(b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,

(c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or

(d) a variable life annuity.

8.15 Schedule III banks and cooperative associations – evidence of deposit

(1) The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

(2) This section does not apply in Ontario or Alberta.

Note: In Ontario, subsection 8.15(1) is not required because the security described in the exemption is excluded from the definition of "security" in subsection 1(1) of the *Securities Act* (Ontario).

In Alberta, subsection 8.15(1) is not required because the exemption is provided under subsection 1(ggg)(v)(B) of the *Securities Act* (Alberta).

8.16 Plan administrator

(1) In this section

"consultant" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus Exemptions*;

"executive officer" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"permitted assign" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus Exemptions*;

"plan" means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer;

"plan administrator" means a trustee, custodian, or administrator, acting on behalf of, or for the benefit of, employees, executive officers, directors or consultants of an issuer or of a related entity of an issuer;

"related entity" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus Exemptions*.

(2) The dealer registration requirement does not apply in respect of a trade made pursuant to a plan of the issuer in a security of an issuer, or an option to acquire a security of the issuer, made by the issuer, a control person of the issuer, a related entity of the issuer, or a plan administrator of the issuer with any of the following:

(a) the issuer;

(b) a current or former employee, executive officer, director or consultant of the issuer or a related entity of the issuer;

(c) a permitted assign of a person or company referred to in paragraph (b).

(3) The dealer registration requirement does not apply in respect of a trade in a security of an issuer, or an option to acquire a security of the issuer, made by a plan administrator of the issuer if

(a) the trade is pursuant to a plan of the issuer, and

(b) the conditions of one of the following exemptions are satisfied:

(i) except in Alberta and Ontario, section 2.14 or 2.15 of National Instrument 45-102 *Resale of Securities*,

(ii) in Ontario, section 2.7 or 2.8 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*,

(iii) in Alberta, section 10 or 11 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*.

8.17 Reinvestment plan

(1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:

(a) a trade in a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security;

(b) subject to subsection (2), a trade in a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in paragraph (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section is not available in respect of a trade in a security of an investment fund.

(5) Subject to section 8.4 [*transition – reinvestment plan*] of National Instrument 45-106 *Prospectus Exemptions*, if the security traded under a plan described in subsection (1) is of a different class or series than the class or series of the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security traded under the plan or notice of a source from which the participant can obtain the information without charge.

8.18 International dealer

(1) In this section

"foreign security" means

(a) a security issued by an issuer incorporated, formed or created under the laws of a foreign jurisdiction, or

(b) a security issued by a government of a foreign jurisdiction.

(2) Subject to subsections (3) and (4), the dealer registration requirement does not apply in respect of any of the following:

(a) an activity, other than a sale of a security, that is reasonably necessary to facilitate a distribution of securities that are offered primarily in a foreign jurisdiction;

(b) a trade in a debt security with a permitted client if the debt security

(i) is denominated in a currency other than the Canadian dollar, or

(ii) is or was originally offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution;

(c) a trade in a debt security that is a foreign security with a permitted client, other than during the security's distribution;

(d) a trade in a foreign security with a permitted client, unless the trade is made during the security's distribution under a prospectus that has been filed with a Canadian securities regulatory authority;

(e) a trade in a foreign security with an investment dealer;

(f) a trade in any security with an investment dealer that is purchasing as principal.

(3) The exemption under subsection (2) is not available to a person or company unless all of the following apply:

(a) the head office or principal place of business of the person or company is in a foreign jurisdiction;

(b) the person or company is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in the local jurisdiction;

(c) the person or company engages in the business of a dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(d) the person or company is trading as principal or agent for

(i) the issuer of the securities,

(ii) a permitted client, or

(iii) a person or company that is not a resident of Canada;

(e) the person or company has submitted to the securities regulatory authority a completed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*.

(4) The exemption under subsection (2) is not available to a person or company in respect of a trade with a permitted client unless one of the following applies:

(a) the permitted client is a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer;

(b) the person or company has notified the permitted client of all of the following:

(i) the person or company is not registered in the local jurisdiction to make the trade;

(ii) the foreign jurisdiction in which the head office or principal place of business of the person or company is located;

(iii) all or substantially all of the assets of the person or company may be situated outside of Canada;

(iv) there may be difficulty enforcing legal rights against the person or company because of the above;

(v) the name and address of the agent for service of process of the person or company in the local jurisdiction.

(5) A person or company that relied on the exemption in subsection (2) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(6) In Ontario, subsection (5) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

(7) The adviser registration requirement does not apply to a person or company that is exempt from the dealer registration requirement under this section if the person or company provides advice to a client and the advice is

(a) in connection with an activity or trade described under subsection (2), and

(b) not in respect of a managed account of the client.

8.19 Self-directed registered education savings plan

(1) In this section

"self-directed RESP" means an educational savings plan registered under the *Income Tax Act* (Canada)

(a) that is structured so that contributions by a subscriber to the plan are deposited directly into an account in the name of the subscriber, and

(b) under which the subscriber maintains control and direction over the plan that enables the subscriber to direct how the assets of the plan are to be held, invested or reinvested subject to compliance with the *Income Tax Act* (Canada).

(2) The dealer registration requirement does not apply in respect of a trade in a self-directed RESP to a subscriber if both of the following apply:

(a) the trade is made by any of the following:

(i) a dealing representative of a mutual fund dealer who is acting on behalf of the mutual fund dealer in respect of securities listed in paragraph 7.1(2)(b);

(ii) a Canadian financial institution;

(iii) in Ontario, a financial intermediary;

(b) the self-directed RESP restricts its investments in securities to securities in which the person or company who trades the self-directed RESP is permitted to trade.

8.20 Exchange contract – Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

(1) In Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, the dealer registration requirement does not apply to a person or company in respect of a trade in an exchange contract by the person or company if one of the following applies:

(a) the trade is made through a registered dealer, if the dealer is registered in a category that permits the trade unless, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade;

(b) the trade is made to a registered dealer who is purchasing as principal, if the dealer is registered in a category that permits the trade.

(2) [***repealed***]

(3) [***repealed***]

8.20.1 Exchange contract trades through or to a registered dealer – Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

In Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, the dealer registration requirement does not apply to a registered adviser, or an advising representative or associate advising representative acting on behalf of the registered adviser, in respect of trading activities related to exchange contracts that are incidental to its providing advice to a client, if the trade is made through a dealer registered in a category that permits the trade or a dealer operating under an exemption from the dealer registration requirement.

8.21 Specified debt

(1) In this section

"permitted supranational agency" means any of the following:

(a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;

(b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;

(c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;

(d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;

(e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;

(f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada);

(g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The dealer registration requirement does not apply in respect of a trade in any of the following:

(a) a debt security issued by or guaranteed by the Government of Canada or the government of a jurisdiction of Canada;

(b) a debt security issued by or guaranteed by a government of a foreign jurisdiction if the debt security has a designated rating from a designated rating organization or its DRO affiliate;

(c) a debt security issued by or guaranteed by a municipal corporation in Canada;

(d) a debt security secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and collectible by or through the municipality in which the property is situated;

(e) a debt security issued by or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities;

(f) a debt security issued by the Comité de gestion de la taxe scolaire de l'île de Montréal;

(g) a debt security issued by or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

(3) Paragraphs (2)(a), (c) and (d) do not apply in Ontario.

Note: In Ontario, exemptions from the dealer registration requirement similar to those in paragraphs 8.21(a), (c) and (d) are provided under paragraph 2 of subsection 35(1) of the *Securities Act* (Ontario).

8.22 Small security holder selling and purchase arrangements

(1) In this section

"exchange" means

(a) TSX Inc.,

(b) TSX Venture Exchange Inc., or

(c) an exchange that

(i) has a policy that is substantially similar to the policy of the TSX Inc., and

(ii) is designated by the securities regulatory authority for the purpose of this section;

"policy" means,

(a) in the case of TSX Inc., sections 638 and 639 [*Odd lot selling and purchase arrangements*] of the TSX Company Manual, as amended from time to time,

(b) in the case of the TSX Venture Exchange Inc., Policy 5.7 *Small Shareholder Selling and Purchase Arrangements*, as amended from time to time, or

(c) in the case of an exchange referred to in paragraph (c) of the definition of "exchange", the rule, policy or other similar instrument of the exchange on small shareholder selling and purchase arrangements.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer or its agent, in securities of the issuer that are listed on an exchange, if all of the following apply:

(a) the trade is an act in furtherance of participation by the holders of the securities in an arrangement that is in accordance with the policy of that exchange;

(b) the issuer and its agent do not provide advice to a security holder about the security holder's participation in the arrangement referred to in paragraph (a), other than a description of the arrangement's operation, procedures for participation in the arrangement, or both;

(c) the trade is made in accordance with the policy of that exchange, without resort to an exemption from, or variation of, the significant subject matter of the policy;

(d) at the time of the trade after giving effect to a purchase under the arrangement, the market value of the maximum number of securities that a security holder is permitted to hold in order to be eligible to participate in the arrangement is not more than $25,000.

(3) For the purposes of paragraph (2)(c), an exemption from, or variation of, the maximum number of securities that a security holder is permitted to hold under a policy in order to be eligible to participate in the arrangement provided for in the policy is not an exemption from, or variation of, the significant subject matter of the policy.

8.22.1 Short-term debt

(1) In this section "short-term debt instrument" means a negotiable promissory note or commercial paper maturing not more than one year from the date of issue.

(2) Except in Ontario, the dealer registration requirement does not apply to any of the following in respect of a trade in a short-term debt instrument with a permitted client:

(a) a bank listed in Schedule I, II or III to the *Bank Act* (Canada);

(b) an association to which the *Cooperative Credit Associations Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473 (1) of that Act;

(c) a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative or credit union league or federation that is authorized by a statute of

Canada or of a jurisdiction in Canada to carry on business in Canada or in any jurisdiction in Canada, as the case may be;

(d) the Business Development Bank of Canada;

(3) The exemption under subsection (2) is not available to a person or company if the short-term debt instrument is convertible or exchangeable into, or accompanied by a right to purchase, another security other than another short-term debt instrument.

Note: In Ontario, an exemption from the dealer registration requirement similar to that in section 8.22.1 is provided under section 35.1 of the *Securities Act* (Ontario).

Division 2 Exemptions from adviser registration

8.22.2 General condition to adviser registration requirement exemptions

The exemptions in this Division are not available to a person or company if the person or company is registered in the local jurisdiction in a category of registration that permits the person or company to act as an adviser in respect of the activities for which the exemption is provided.

8.23 Dealer without discretionary authority

The adviser registration requirement does not apply to a registered dealer, or a dealing representative acting on behalf of the dealer, that provides advice to a client if the advice is

(a) in connection with a trade in a security that the dealer and the representative are permitted to make under his, her or its registration,

(b) provided by the representative, and

(c) not in respect of a managed account of the client.

8.24 IIROC members with discretionary authority

The adviser registration requirement does not apply to a registered dealer, or a dealing representative acting on behalf of the dealer, that acts as an adviser in respect of a client's managed account if the registered dealer is an investment dealer that is a member of IIROC and the advising activities are conducted in accordance with the rules of IIROC.

8.25 Advising generally

(1) For the purposes of subsections (3) and (4), "financial or other interest" includes the following:

(a) ownership, beneficial or otherwise, in the security or in another security issued by the same issuer;

(b) an option in respect of the security or another security issued by the same issuer;

(c) a commission or other compensation received, or expected to be received, from any person or company in connection with the trade in the security;

(d) a financial arrangement regarding the security with any person or company;

(e) a financial arrangement with any underwriter or other person or company who has any interest in the security.

(2) The adviser registration requirement does not apply to a person or company that acts as an adviser if the advice the person or company provides does not purport to be tailored to the needs of the person or company receiving the advice.

(3) If a person or company that is exempt under subsection (2) recommends buying, selling or holding a specified security, a class of securities or the securities of a class of issuers in which any of the following has a financial or other interest, the person or company must disclose the interest concurrently with providing the advice:

(a) the person or company;

(b) any partner, director or officer of the person or company;

(c) any other person or company that would be an insider of the first-mentioned person or company if the first-mentioned person or company were a reporting issuer.

(4) If the financial or other interest of the person or company includes an interest in an option described in paragraph (b) of the definition of "financial or other interest" in subsection (1), the disclosure required by subsection (3) must include a description of the terms of the option.

(5) This section does not apply in Ontario.

Note: In Ontario, measures similar to those in section 8.25 are in section 34 of the *Securities Act* (Ontario).

8.26 International adviser

(1) Despite section 1.2, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this section excludes "exchange contracts".

(2) In this section

"aggregate consolidated gross revenue" does not include the gross revenue of an affiliate of the adviser if the affiliate is registered in a jurisdiction of Canada;

"foreign security" means

(a) a security issued by an issuer incorporated, formed or created under the laws of a foreign jurisdiction, and

(b) a security issued by a government of a foreign jurisdiction;

(3) The adviser registration requirement does not apply to a person or company if either of the following applies:

(a) the person or company provides advice on a foreign security to a permitted client that is not registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer;

(b) the person or company provides advice on a security that is not a foreign security and the advice is incidental to the advice referred to in paragraph (a).

(4) The exemption under subsection (3) is not available unless all of the following apply:

(a) the adviser's head office or principal place of business is in a foreign jurisdiction;

(b) the adviser is registered in a category of registration, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser would permit it to carry on in the local jurisdiction;

(c) the adviser engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(d) as at the end of its most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the adviser, its affiliates and its affiliated partnerships was derived from the portfolio management activities of the adviser, its affiliates and its affiliated partnerships in Canada;

(e) before advising a client, the adviser notifies the client of all of the following:

(i) the adviser is not registered in the local jurisdiction to provide the advice described under subsection (3);

(ii) the foreign jurisdiction in which the adviser's head office or principal place of business is located;

(iii) all or substantially all of the adviser's assets may be situated outside of Canada;

(iv) there may be difficulty enforcing legal rights against the adviser because of the above;

(v) the name and address of the adviser's agent for service of process in the local jurisdiction;

(f) the adviser has submitted to the securities regulatory authority a completed Form 31-103F2 *Submission to jurisdiction and appointment of agent for service*.

(5) A person or company that relied on the exemption in subsection (3) during the 12 -month period preceding December 1 of a year must notify the regulator, or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(6) In Ontario, subsection (5) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

8.26.1 International sub-adviser

(1) The adviser registration requirement does not apply to a sub-adviser if all of the following apply:

(a) the obligations and duties of the sub-adviser are set out in a written agreement with the registered adviser or registered dealer;

(b) the registered adviser or registered dealer has entered into a written agreement with its clients on whose behalf investment advice is or portfolio management services are to be provided, agreeing to be responsible for any loss that arises out of the failure of the sub-adviser

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) the sub-adviser's head office or principal place of business is in a foreign jurisdiction;

(b) the sub-adviser is registered in a category of registration, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser would permit it to carry on in the local jurisdiction;

(c) the sub-adviser engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located.

Division 3 Exemptions from investment fund manager registration

8.26.2 General condition to investment fund manager registration requirement exemptions

The exemptions in this Division are not available to a person or company if the person or company is registered in the local jurisdiction as an investment fund manager.

8.27 Private investment club

The investment fund manager registration requirement does not apply to a person or company in respect of its acting as an investment fund manager for an investment fund if all of the following apply:

(a) the fund has no more than 50 beneficial security holders;

(b) the fund does not seek and has never sought to borrow money from the public;

(c) the fund does not distribute and has never distributed its securities to the public;

(d) the fund does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees;

(e) the fund, for the purpose of financing its operations, requires security holders to make contributions in proportion to the value of the securities held by them.

8.28 Capital accumulation plan

(1) In this section

"capital accumulation plan" means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, or a deferred profit-sharing plan, that permits a plan member to make investment decisions among two or more investment options offered within the plan, and in Québec and Manitoba, includes a simplified pension plan;

"plan member" means a person that has assets in a capital accumulation plan;

"plan sponsor" means an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a plan service provider to the extent that the plan sponsor has delegated its responsibilities to the plan service provider; and

"plan service provider" means a person that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.

(2) The investment fund manager registration requirement does not apply to a plan sponsor or their plan service provider in respect of activities related to a capital accumulation plan.

8.29 Private investment fund – loan and trust pools

(1) The investment fund manager registration requirement does not apply to a trust company or trust corporation that administers an investment fund if all of the following apply:

(a) the trust company or trust corporation is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(b) the fund has no promoter or investment fund manager other than the trust company or trust corporation;

(c) the fund commingles the money of different estates and trusts for the purpose of facilitating investment.

(2) The exemption in subsection (1) is not available to a trust company or trust corporation registered under the laws of Prince Edward Island unless it is also registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(3) This section does not apply in Ontario.

Note: In Ontario, section 35.1 of the *Securities Act* (Ontario) provides a general exemption from the registration requirement for trust companies, trust corporations and other specified financial institutions.

Division 4 Mobility exemption – firms

8.30 Client mobility exemption – firms

The dealer registration requirement and the adviser registration requirement do not apply to a person or company if all of the following apply:

(a) the person or company is registered as a dealer or adviser in its principal jurisdiction;

(b) the person or company does not act as a dealer, underwriter or adviser in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its registration;

(c) the person or company does not act as a dealer, underwriter or adviser in the local jurisdiction other than in respect of 10 or fewer eligible clients;

(d) the person or company complies with Parts 13 *Dealing with clients – individuals and firms* and 14 *Handling client accounts – firms*;

(e) the person or company deals fairly, honestly and in good faith in the course of its dealings with an eligible client.

Part 9 Membership in a self-regulatory organization

9.1 IIROC membership for investment dealers

An investment dealer must not act as a dealer unless the investment dealer is a "dealer member", as defined under the rules of IIROC.

9.2 MFDA membership for mutual fund dealers

Except in Québec, a mutual fund dealer must not act as a dealer unless the mutual fund dealer is a "member", as defined under the rules of the MFDA.

9.3 Exemptions from certain requirements for IIROC members

(1) Unless it is also registered as an investment fund manager, an investment dealer that is a member of IIROC is exempt from the following requirements:

(a) section 12.1 [*capital requirements*];

(b) section 12.2 [*subordination agreement*];

(c) section 12.3 [*insurance – dealer*];

(d) section 12.6 [*global bonding or insurance*];

(e) section 12.7 [*notifying the regulator of a change, claim or cancellation*];

(f) section 12.10 [*annual financial statements*];

(g) section 12.11 [*interim financial information*];

(h) section 12.12 [*delivering financial information – dealer*];

(i) subsection 13.2(3) [*know your client*];

(j) section 13.3 [*suitability determination*];

(j.1) section 13.3.1 [*waivers*];

(k) section 13.12 [r*estriction on borrowing from, or lending to, clients*];

(l) section 13.13 [*disclosure when recommending the use of borrowed money*];

(l.1) section 13.15 [*handling complaints*];

(m) subsections 14.2(2) to (6) [*relationship disclosure information*];

(m.1) section 14.2.1 [*pre-trade disclosure of charges*];

(m.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(m.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(n) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(n.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(n.2) section 14.6.2 [*custodial provisions relating to short sales*];

(o) [*repealed*];

(p) [*repealed*];

(p.1) section 14.11.1 [*determining market value*];

(q) section 14.12 [*content and delivery of trade confirmation*];

(r) section 14.14 [*account statements*];

(s) section 14.14.1 [*additional statements*];

(t) section 14.14.2 [*security position cost information*];

(u) section 14.17 [*report on charges and other compensation*];

(v) section 14.18 [*investment performance report*];

(w) section 14.19 [*content of investment performance report*];

(x) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(1.1) Subsection (1) only applies to a registered firm in respect of a requirement specified in any of paragraphs (1)(a) to (x) if the registered firm complies with the corresponding IIROC provisions that are in effect.

(2) If an investment dealer is a member of IIROC and is registered as an investment fund manager, the firm is exempt from the following requirements:

(a) section 12.3 [*insurance – dealer*];

(b) section 12.6 [*global bonding or insurance*];

(c) section 12.12 [*delivering financial information – dealer*];

(d) subsection 13.2(3) [*know your client*];

(e) section 13.3 [*suitability determination*];

(e.1) section 13.3.1 [*waivers*];

(f) section 13.12 [r*estriction on borrowing from, or lending to, clients*];

(g) section 13.13 [*disclosure when recommending the use of borrowed money*];

(h) section 13.15 [*handling complaints*];

(i) subsections 14.2(2) to (6) [*relationship disclosure information*];

(i.1) section 14.2.1 [*pre-trade disclosure of charges*];

(i.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(i.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(j) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(j.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(j.2) section 14.6.2 [*custodial provisions relating to short sales*];

(k) [*repealed*];

(l) [*repealed*];

(l.1) section 14.11.1 [*determining market value*];

(m) section 14.12 [*content and delivery of trade confirmation*];

(n) section 14.17 [*report on charges and other compensation*];

(o) section 14.18 [*investment performance report*];

(p) section 14.19 [*content of investment performance report*];

(q) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(2.1) Subsection (2) only applies to a registered firm in respect of a requirement specified in any of paragraphs (2)(a) to (q) if the registered firm complies with the corresponding IIROC provisions that are in effect.

(3) [***repealed***]

(4) [***repealed***]

(5) [***repealed***]

(6) [***repealed***]

9.4 Exemptions from certain requirements for MFDA members

(1) Unless it is also registered as an exempt market dealer, a scholarship plan dealer or an investment fund manager, a mutual fund dealer that is a member of the MFDA is exempt from the following requirements:

(a) section 12.1 [*capital requirements*];

(b) section 12.2 [*subordination agreement*];

(c) section 12.3 [*insurance – dealer*];

(d) section 12.6 [*global bonding or insurance*];

(e) section 12.7 [*notifying the regulator of a change, claim or cancellation*];

(f) section 12.10 [*annual financial statements*];

(g) section 12.11 [*interim financial information*];

(h) section 12.12 [*delivering financial information – dealer*];

(i) section 13.3 [*suitability determination*];

(i.1) section 13.3.1 [*waivers*];

(j) section 13.12 [*restriction on borrowing from, or lending to, clients*];

(k) section 13.13 [*disclosure when recommending the use of borrowed money*];

(l) section 13.15 [*handling complaints*];

(m) subsections 14.2(2), (3) and (5.1) [*relationship disclosure information*];

(m.1) section 14.2.1 [*pre-trade disclosure of charges*];

(m.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(m.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(n) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(n.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(n.2) section 14.6.2 [*custodial provisions relating to short sales*];

(o) [*repealed*];

(p) [*repealed*];

(p.1) section 14.11.1 [*determining market value*];

(q) section 14.12 [*content and delivery of trade confirmation*];

(r) section 14.14 [*account statements*];

(s) section 14.14.1 [*additional statements*];

(t) section 14.14.2 [*security position cost information*];

(u) section 14.17 [*report on charges and other compensation*];

(v) section 14.18 [*investment performance report*];

(w) section 14.19 [*content of investment performance report*];

(x) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(1.1) Subsection (1) only applies to a registered firm in respect of a requirement specified in any of paragraphs (1)(a) to (x) if the registered firm complies with the corresponding MFDA provisions that are in effect.

(1.2) Paragraphs (a) to (g), paragraphs (i) to (m) and paragraphs (p.1) to (x) of subsection (1) do not apply in Québec, to the extent equivalent requirements to those listed in these subparagraphs are applicable to the mutual fund dealer under the regulations in Québec.

(1.3) In Québec, paragraphs (g.2), (g.3), (h), (h.1) and (h.2) of subsection (2) only applies to a registered firm in respect of a requirement specified in any of these paragraphs if the registered firm complies with the corresponding MFDA provisions that are in effect.

(2) If a registered firm is a mutual fund dealer that is a member of the MFDA and is registered as an exempt market dealer, scholarship plan dealer or investment fund manager, the firm is exempt from the following requirements:

(a) section 12.3 [*insurance – dealer*];

(b) section 12.6 [*global bonding or insurance*];

(c) section 13.3 [*suitability determination*];

(c.1) section 13.3.1 [*waivers*];

(d) section 13.12 [r*estriction on borrowing from, or lending to, clients*];

(e) section 13.13 [*disclosure when recommending the use of borrowed money*];

(f) section 13.15 [*handling complaints*];

(g) subsections 14.2(2), (3) and (5.1) [*relationship disclosure information*];

(g.1) section 14.2.1 [*pre-trade disclosure of charges*];

(g.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(g.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(h) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(h.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(h.2) section 14.6.2 [*custodial provisions relating to short sales*];

(i) [*repealed*];

(j) [*repealed*];

(j.1) section 14.11.1 [*determining market value*];

(k) section 14.12 [*content and delivery of trade confirmation*];

(l) section 14.17 [*report on charges and other compensation*];

(m) section 14.18 [*investment performance report*];

(n) section 14.19 [*content of investment performance report*];

(o) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(2.1) Subsection (2) only applies to a registered firm in respect of a requirement specified in any of paragraphs (2)(a) to (o) if the registered firm complies with the corresponding MFDA provisions that are in effect.

Part 10 Suspension and revocation of registration – firms

Division 1 When a firm's registration is suspended

10.1 Failure to pay fees

(1) In this section, "annual fees" means

(a) in Alberta, the fees required under section 5 of ASC Rule 13-501 *Fees*,

(b) in British Columbia, the annual fees required under section 22 of the Securities Regulation, B.C. Reg. 196/97,

(c) in Manitoba, the fees required under paragraph 1.(2)(a) of the *Manitoba Fee Regulation*, M.R 491\88R,

(d) in New Brunswick, the fees required under section 2.2 (c) of Local Rule 11-501 *Fees*,

(e) in Newfoundland and Labrador, the fees required under section 143 of the *Securities Act*,

(f) in Nova Scotia, the fees required under Part XIV of the Regulations,

(g) in Northwest Territories, the fees required under sections 1(c) and 1(e) of the Securities Fee regulations, R-066-2008;

(h) in Nunavut, the fees required under section 1(a) of the Schedule to R-003-2003 to the Securities Fee regulation, R.R.N.W.T. 1990, c.20,

(i) in Prince Edward Island, the fees required under section 175 of the *Securities Act* R.S.P.E.I., Cap. S-3.1,

(j) in Québec, the fees required under section 271.5 of the Québec Securities Regulation,

(k) in Saskatchewan, the annual registration fees required under section 176 of The Securities Regulations (Saskatchewan), and

(l) in Yukon, the fees required under O.I.C. 2009\66, pursuant to section 168 of the *Securities Act*.

(2) If a registered firm has not paid the annual fees by the 30th day after the date the annual fees were due, the registration of the firm is suspended until reinstated or revoked under securities legislation.

10.2 If IIROC membership is revoked or suspended

If IIROC revokes or suspends a registered firm's membership, the firm's registration in the category of investment dealer is suspended until reinstated or revoked under securities legislation.

10.3 If MFDA membership is revoked or suspended

Except in Québec, if the MFDA revokes or suspends a registered firm's membership, the firm's registration in the category of mutual fund dealer is suspended until reinstated or revoked under securities legislation.

10.4 Activities not permitted while a firm's registration is suspended

If a registered firm's registration in a category is suspended, the firm must not act as a dealer, an underwriter, an adviser, or an investment fund manager, as the case may be, under that category.

Division 2 Revoking a firm's registration

10.5 Revocation of a suspended registration – firm

If a registration has been suspended under this Part and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

10.6 Exception for firms involved in a hearing or proceeding

Despite section 10.5, if a hearing or proceeding concerning a suspended registrant is commenced under securities legislation or under the rules of an SRO, the registrant's registration remains suspended.

10.7 Application of Part 10 in Ontario

Other than section 10.4 [*activities not permitted while a firm's registration is suspended*], this Part does not apply in Ontario.

Note: In Ontario, measures governing suspension in section 29 of the *Securities Act* (Ontario) are similar to those in Parts 6 and 10.

Part 11 Internal controls and systems

Division 1 Compliance

11.1 Compliance system and training

(1) A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to

(a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and

(b) manage the risks associated with its business in accordance with prudent business practices.

(2) A registered firm must provide training to its registered individuals on compliance with securities legislation including, without limitation, the obligations under sections 13.2, 13.2.1, 13.3, 13.4 and 13.4.1.

11.2 Designating an ultimate designated person

(1) A registered firm must designate an individual who is registered under securities legislation in the category of ultimate designated person to perform the functions described in section 5.1 [*responsibilities of the ultimate designated person*].

(2) A registered firm must designate an individual under subsection (1) who is one of the following:

(a) the chief executive officer of the registered firm or, if the firm does not have a chief executive officer, an individual acting in a capacity similar to a chief executive officer;

(b) the sole proprietor of the registered firm;

(c) the officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only within the division and the firm has significant other business activities.

(3) If an individual who is registered as a registered firm's ultimate designated person ceases to meet any of the conditions listed in subsection (2), the registered firm must designate another individual to act as its ultimate designated person.

11.3 Designating a chief compliance officer

(1) A registered firm must designate an individual who is registered under securities legislation in the category of chief compliance officer to perform the functions described in section 5.2 [*responsibilities of the chief compliance officer*].

(2) A registered firm must not designate an individual to act as the firm's chief compliance officer unless the individual has satisfied the applicable conditions in Part 3 *Registration requirements – individuals* and the individual is one of the following:

(a) an officer or partner of the registered firm;

(b) the sole proprietor of the registered firm.

(3) If an individual who is registered as a registered firm's chief compliance officer ceases to meet any of the conditions listed in subsection (2), the registered firm must designate another individual to act as its chief compliance officer.

11.4 Providing access to the board of directors

A registered firm must permit its ultimate designated person and its chief compliance officer to directly access the firm's board of directors, or individuals acting in a similar capacity for the firm, at such times as the ultimate designated person or the chief compliance officer may consider necessary or advisable in view of his or her responsibilities.

Division 2 Books and records

11.5 General requirements for records

(1) A registered firm must maintain records to

(a) accurately record its business activities, financial affairs, and client transactions, and

(b) demonstrate the extent of the firm's compliance with applicable requirements of securities legislation.

(2) The records required under subsection (1) include, but are not limited to, records that do the following:

(a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the securities regulatory authority;

(b) permit determination of the registered firm's capital position;

(c) demonstrate compliance with the registered firm's capital and insurance requirements;

(d) demonstrate compliance with internal control procedures;

(e) demonstrate compliance with the firm's policies and procedures;

(f) permit the identification and segregation of client cash, securities, and other property;

(g) identify all transactions conducted on behalf of the registered firm and each of its clients, including the parties to the transaction and the terms of the purchase or sale;

(h) provide an audit trail for

(i) client instructions and orders, and

(ii) each trade transmitted or executed for a client or by the registered firm on its own behalf;

(i) permit the generation of account activity reports for clients;

(j) provide securities pricing as may be required by securities legislation;

(k) document the opening of client accounts, including any agreements with clients;

(l) demonstrate compliance with sections 13.2 ~~[*know your client*]~~, 13.2.01, 13.2.1 ~~[*know your product*]~~ and 13.3 ~~[*suitability determination*]~~;

(m) demonstrate compliance with complaint-handling requirements;

(n) document correspondence with clients;

(o) document compliance, training and supervision actions taken by the firm;

(p) demonstrate compliance with Part 13, Division 2 [c*onflicts of interest*];

(q) document

(i) the firm's sales practices, compensation arrangements and incentive practices, and

(ii) other compensation arrangements and incentive practices from which the firm or its registered individuals, or any affiliate or associate of that firm, benefit;

(r) demonstrate compliance with section 13.18 [*misleading communications*];

(s) demonstrate compliance with section 13.19.

11.6 Form, accessibility and retention of records

(1) A registered firm must keep a record that it is required to keep under securities legislation

(a) for 7 years from the date the record is created,

(b) in a safe location and in a durable form, and

(c) in a manner that permits it to be provided to the regulator or, in Québec, the securities regulatory authority in a reasonable period of time.

(2) A record required to be provided to the regulator or, in Québec, the securities regulatory authority must be provided in a format that is capable of being read by the regulator or the securities regulatory authority.

(3) Paragraph (1)(c) does not apply in Ontario.

Note: In Ontario, how quickly a registered firm is required to provide information to the regulator is addressed in subsection 19(3) of the *Securities Act* (Ontario).

Division 3 Certain business transactions

11.7 Tied settling of securities transactions

A registered firm must not require a person or company to settle that person's or company's transaction with the registered firm through that person's or company's account at a Canadian financial institution as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying a product or service, unless this method of settlement would be, to a reasonable person, necessary to provide the specific product or service that the person or company has requested.

11.8 Tied selling

A dealer, adviser or investment fund manager must not require another person or company

(a) to buy, sell or hold a security as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying or continuing to supply a product or service, or

(b) to buy, sell or use a product or service as a condition, or on terms that would appear to a reasonable person to be a condition, of buying or selling a security.

11.9 Registrant acquiring a registered firm's securities or assets

(1) A registrant must give the regulator or, in Québec, the securities regulatory authority written notice in accordance with subsection (2) if it proposes to acquire any of the following:

(a) for the first time, direct or indirect ownership, beneficial or otherwise, of 10% or more of the voting securities or other securities convertible into voting securities of

(i) a firm registered in any jurisdiction of Canada or any foreign jurisdiction, or

(ii) a person or company of which a firm registered in any jurisdiction of Canada or any foreign jurisdiction is a subsidiary;

(b) all or a substantial part of the assets of a firm registered in any jurisdiction of Canada or any foreign jurisdiction.

(2) The notice required under subsection (1) must be delivered to the regulator or, in Québec, the securities regulatory authority at least 30 days before the proposed acquisition and must include all relevant facts regarding the acquisition sufficient to enable the regulator or the securities regulatory authority to determine if the acquisition is

(a) likely to give rise to a conflict of interest,

(b) likely to hinder the registered firm in complying with securities legislation,

(c) inconsistent with an adequate level of investor protection, or

(d) otherwise prejudicial to the public interest.

(3) [***repealed***]

(4) Except in Ontario and British Columbia, if, within 30 days of the receipt of a notice under subsection (1), the regulator or, in Québec, the securities regulatory authority notifies the registrant making the acquisition that the regulator or, in Québec, the securities regulatory authority objects to the acquisition, the acquisition must not occur until the regulator or the securities regulatory authority approves it.

(5) In Ontario, if, within 30 days of the receipt of a notice under subparagraph (1)(a)(i) or paragraph (1)(b), the regulator notifies the registrant making the acquisition that the regulator objects to the acquisition, the acquisition must not occur until the regulator approves it.

(6) Following receipt of a notice of objection under subsection (4) or (5), the person or company who submitted the notice under subsection (1) may request an opportunity to be heard on the matter by the regulator or, in Québec, the securities regulatory authority objecting to the acquisition.

11.10 Registered firm whose securities are acquired

(1) A registered firm must give the regulator or, in Québec, the securities regulatory authority written notice in accordance with subsection (2) if it knows or has reason to believe that any person or company, alone or in combination with any other person or company, is about to acquire, or has acquired, for the first time, direct or indirect ownership, beneficial or otherwise, of 10% or more of the voting securities or other securities convertible into voting securities of any of the following:

(a) the registered firm;

(b) a person or company of which the registered firm is a subsidiary.

(2) The notice required under subsection (1) must,

(a) be delivered to the regulator or, in Québec, the securities regulatory authority as soon as possible,

(b) include the name of each person or company involved in the acquisition, and

(c) include all facts that to the best of the registered firm's knowledge after reasonable inquiry regarding the acquisition are sufficient to enable the regulator or the securities regulatory authority to determine if the acquisition is

(i) likely to give rise to a conflict of interest,

(ii) likely to hinder the registered firm in complying with securities legislation,

(iii) inconsistent with an adequate level of investor protection, or

(iv) otherwise prejudicial to the public interest.

(3) [***repealed***]

(4) This section does not apply if notice of the acquisition was provided under section 11.9 [*registrant acquiring a registered firm's securities or assets*].

(5) Except in British Columbia and Ontario, if, within 30 days of the receipt of a notice under subsection (1), the regulator or the securities regulatory authority notifies the person or company making the acquisition that the regulator or, in Québec, the securities regulatory authority objects to the acquisition, the acquisition must not occur until the regulator or the securities regulatory authority approves it.

(6) In Ontario, if, within 30 days of the receipt of a notice under paragraph (1)(a), the regulator notifies the person or company making the acquisition that the regulator objects to the acquisition, the acquisition must not occur until the regulator approves it.

(7) Following receipt of a notice of objection under subsection (5) or (6), the person or company proposing to make the acquisition may request an opportunity to be heard on the matter by the regulator or, in Québec, the securities regulatory authority objecting to the acquisition.

Part 12 Financial condition

Division 1 Working capital

12.1 Capital requirements

(1) If, at any time, the excess working capital of a registered firm, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital*, is less than zero, the registered firm must notify the regulator or, in Québec, the securities regulatory authority as soon as possible.

(2) The excess working capital of a registered firm, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital*, must not be less than zero for 2 consecutive days.

(3) For the purpose of completing Form 31-103F1 *Calculation of Excess Working Capital*, the minimum capital is

(a) $25,000, for a registered adviser that is not also a registered dealer or a registered investment fund manager,

(b) $50,000, for a registered dealer that is not also a registered investment fund manager, and

(c) $100,000, for a registered investment fund manager.

(4) Paragraph (3)(c) does not apply to a registered investment fund manager that is exempt from the dealer registration requirement under section 8.6 [*investment fund trades by adviser to managed account*] in respect of all investment funds for which it acts as adviser.

(5) This section does not apply to an investment dealer that is a member of IIROC and is registered as an investment fund manager if all of the following apply:

(a) the firm has a minimum capital of not less than $100,000 as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*;

(b) the firm notifies the regulator or, in Québec, the securities regulatory authority as soon as possible if, at any time, the firm's risk adjusted capital, as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report* is less than zero;

(c) the risk adjusted capital of the firm, as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*, is not less than zero for 2 consecutive days.

(6) This section does not apply to a mutual fund dealer that is a member of the MFDA if it is also registered as an exempt market dealer, a scholarship plan dealer or an investment fund manager and if all of the following apply:

(a) the firm has a minimum capital, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*, of not less than

(i) $50,000, if the firm is registered as an exempt market dealer or scholarship plan dealer,

(ii) $100,000, if the firm is registered as an investment fund manager;

(b) the firm notifies the regulator or, in Québec, the securities regulatory authority as soon as possible if, at any time, the firm's risk adjusted capital, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report* is less than zero;

(c) the risk adjusted capital of the firm, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*, is not less than zero for 2 consecutive days.

12.2 Subordination agreement

(1) If a registered firm has entered into a subordination agreement in the form set out in Appendix B, it may exclude the amount of non-current related party debt subordinated under that agreement from the calculation of its excess working capital on Form 31-103F1 *Calculation of Excess Working Capital*.

(2) The registered firm must deliver an executed copy of the subordination agreement referred to subsection (1) to the regulator or, in Québec, the securities regulatory authority on the earliest of the following dates:

(a) 10 days after the date on which the subordination agreement is executed;

(b) the date on which the amount of the subordinated debt is excluded from the registered firm's non-current related party debt as calculated on Form 31-103F1 *Calculation of Excess Working Capital.*

(3) The registered firm must notify the regulator or, in Québec, the securities regulatory authority 10 days before it

(a) repays the loan or any part of the loan, or

(b) terminates the agreement.

Division 2 Insurance

12.3 Insurance – dealer

(1) A registered dealer must maintain bonding or insurance

(a) that contains the clauses set out in Appendix A [*bonding and insurance clauses*], and

(b) that provides for a double aggregate limit or a full reinstatement of coverage.

(2) A registered dealer must maintain bonding or insurance in respect of each clause set out in Appendix A in the highest of the following amounts for each clause:

(a) $50,000 per employee, agent and dealing representative or $200,000, whichever is less;

(b) one per cent of the total client assets that the dealer holds or has access to, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(c) one per cent of the dealer's total assets, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(d) the amount determined to be appropriate by a resolution of the dealer's board of directors, or individuals acting in a similar capacity for the firm.

(3) In Québec, this section does not apply to a scholarship plan dealer or a mutual fund dealer registered only in Québec.

12.4 Insurance – adviser

(1) A registered adviser must maintain bonding or insurance

(a) that contains the clauses set out in Appendix A [*bonding and insurance clauses*], and

(b) that provides for a double aggregate limit or a full reinstatement of coverage.

(2) A registered adviser that does not hold or have access to client assets must maintain bonding or insurance in respect of each clause set out in Appendix A in the amount of $50,000 for each clause.

(3) A registered adviser that holds or has access to client assets must maintain bonding or insurance in respect of each clause set out in Appendix A in the highest of the following amounts for each clause:

(a) one per cent of assets under management that the adviser holds or has access to, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the adviser's total assets, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the adviser's board of directors or individuals acting in a similar capacity for the firm.

12.5 Insurance – investment fund manager

(1) A registered investment fund manager must maintain bonding or insurance

(a) that contains the clauses set out in Appendix A [*bonding and insurance clauses*], and

(b) that provides for a double aggregate limit or a full reinstatement of coverage.

(2) A registered investment fund manager must maintain bonding or insurance in respect of each clause set out in Appendix A in the highest of the following amounts for each clause:

(a) one per cent of assets under management, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the investment fund manager's total assets, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the investment fund manager's board of directors or individuals acting in a similar capacity for the firm.

12.6 Global bonding or insurance

A registered firm must not maintain bonding or insurance under this Division that benefits, or names as an insured, another person or company unless the bond provides, without regard to the claims, experience or any other factor referable to that other person or company, the following:

(a) the registered firm has the right to claim directly against the insurer in respect of losses, and any payment or satisfaction of those losses must be made directly to the registered firm;

(b) the individual or aggregate limits under the policy must only be affected by claims made by or on behalf of

(i) the registered firm, or

(ii) a subsidiary of the registered firm whose financial results are consolidated with those of the registered firm.

12.7 Notifying the regulator or the securities regulatory authority of a change, claim or cancellation

A registered firm must, as soon as possible, notify the regulator or, in Québec, the securities regulatory authority in writing of any change in, claim made under, or cancellation of any insurance policy required under this Division.

Division 3 Audits

12.8 Direction by the regulator or the securities regulatory authority to conduct an audit or review

A registered firm must direct its auditor in writing to conduct any audit or review required by the regulator or, in Québec, the securities regulatory authority during its registration and must deliver a copy of the direction to the regulator or the securities regulatory authority

(a) with its application for registration, and

(b) no later than the 10th day after the registered firm changes its auditor.

12.9 Co-operating with the auditor

A registrant must not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by an auditor of the registered firm in the course of an audit.

Division 4 Financial reporting

12.10 Annual financial statements

(1) Annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division for financial years beginning on or after January 1, 2011 must include the following:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

(b) a statement of financial position, signed by at least one director of the registered firm, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

(c) notes to the financial statements.

(2) The annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be audited.

12.11 Interim financial information

(1) Interim financial information delivered to the regulator or, in Québec, the securities regulatory authority under this Division for interim periods relating to financial years beginning on or after January 1, 2011 may be limited to the following:

(a) a statement of comprehensive income for the 3-month period ending on the last day of the interim period and for the same period of the immediately preceding financial year, if any;

(b) a statement of financial position, signed by at least one director of the registered firm, as at the end of the interim period and as at the end of the same interim period of the immediately preceding financial year, if any.

(2) The interim financial information delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be prepared using the same accounting principles that the registered firm uses to prepare its annual financial statements.

12.12 Delivering financial information – dealer

(1) A registered dealer must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the dealer's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any.

(2) A registered dealer must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year:

(a) its interim financial information for the interim period;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the dealer's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any.

(2.1) If a registered firm is a mutual fund dealer that is a member of the MFDA and is registered as an exempt market dealer or scholarship plan dealer, the firm is exempt from paragraphs (1)(b) and (2)(b) if all of the following apply:

(a) the firm has a minimum capital of not less than $50,000 as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*;

(b) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 90th day after the end of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any;

(c) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 30th day after the end of the first, second and third interim period of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the interim period and as at the end of the immediately preceding month, if any.

(3) Subsection (2) does not apply to an exempt market dealer unless it is also registered in another category, other than the portfolio manager or restricted portfolio manager category.

(4) Despite paragraph (1)(b), in Québec, a firm registered only in that jurisdiction and only in the category of mutual fund dealer may deliver to the securities regulatory authority, no later than the 90th day after the end of its financial year, the *Monthly Report on Net Free Capital* provided in Appendix I of the *Regulation respecting the trust accounts and financial resources of securities firms*, as that Appendix read on September 27, 2009, that shows the calculation of the firm's net free capital as at the end of its financial year and as at the end of the immediately preceding financial year, if any.

(5) Despite paragraph (2)(b), in Québec, a firm registered only in that jurisdiction and only in the category of mutual fund dealer may deliver to the securities regulatory authority, no later than the 30th day after the end of the first, second and third interim period of its financial year, the *Monthly Report on Net Free Capital* provided in Appendix I of the *Regulation respecting the trust accounts and financial resources of securities firms*, as that Appendix read on September 27, 2009, that shows the calculation of the firm's net free capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any.

12.13 Delivering financial information – adviser

A registered adviser must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the adviser's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any.

12.14 Delivering financial information – investment fund manager

(1) A registered investment fund manager must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any;

(c) a completed Form 31-103F4 *Net Asset Value Adjustments* if any net asset value adjustment has been made in respect of an investment fund managed by the investment fund manager during the financial year.

(2) A registered investment fund manager must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year:

(a) its interim financial information for the interim period;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any;

(c) a completed Form 31-103F4 *Net Asset Value Adjustments* if any net asset value adjustment has been made in respect of an investment fund managed by the investment fund manager during the interim period.

(3) [***repealed***]

(4) If a registered firm is an investment dealer that is a member of IIROC and is registered as an investment fund manager, the firm is exempt from paragraphs (1)(b) and (2)(b) if

(a) the firm has a minimum capital of not less than $100,000, as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*;

(b) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*, no later than the 90th day after the end of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any, and

(c) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*, no later than the 30th day after the end of the first, second and third interim period of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the interim period and as at the end of the immediately preceding month, if any.

(5) If a registered firm is a mutual fund dealer that is a member of the MFDA and is registered as an investment fund manager, the firm is exempt from paragraphs (1)(b) and (2)(b) if

(a) the firm has a minimum capital of not less than $100,000, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*,

(b) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 90th day after the end of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any, and

(c) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 30th day after the end of the first, second and third interim period of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the interim period and as at the end of the immediately preceding month, if any.

12.15 [**lapsed**]

Part 13 Dealing with clients – individuals and firms

Division 1 *Know your client, know your product and suitability determination*

13.1 Investment fund managers exempt from this Division

This Division does not apply to an investment fund manager in respect of its activities as an investment fund manager.

13.2 Know your client

(1) For the purpose of paragraph (2)(b) in Ontario, Nova Scotia and New Brunswick, "insider" has the meaning ascribed to that term in the *Securities Act* except that "reporting issuer", as it appears in the definition of "insider", is to be read as "reporting issuer or any other issuer whose securities are publicly traded".

(2) A registrant must take reasonable steps to

(a) establish the identity of a client and, if the registrant has cause for concern, make reasonable inquiries as to the reputation of the client,

(b) establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded,

(c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 [*suitability determination*] or, if applicable, the suitability requirement imposed by an SRO:

(i) the client's personal circumstances;

(ii) the client's financial circumstances;

(iii) the client's investment needs and objectives;

(iv) the client's investment knowledge;

(v) the client's risk profile;

(vi) the client's investment time horizon, and

(d) establish the creditworthiness of the client if the registered firm is financing the client's acquisition of a security.

(3) For the purpose of establishing the identity of a client that is a corporation, partnership or trust, the registrant must establish the following:

(a) the nature of the client's business;

(b) the identity of any individual who,

(i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation, or

(ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.

(3.1) Within a reasonable time after receiving the information, a registrant must take reasonable steps to have a client confirm the accuracy of the information collected under subsection (2).

(4) A registrant must take reasonable steps to keep current the information required under this section, including updating the information within a reasonable time after the registrant becomes aware of a significant change in the client's information required under this section.

(4.1) A registrant must review the information collected under paragraph (2)(c)

(a) for managed accounts, no less frequently than once every 12 months,

(b) if the registrant is an exempt market dealer, within 12 months before making a trade for, or recommending a trade to, the client, and

(c) in any other case, no less frequently than once every 36 months.

(5) This section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

(6) Paragraph (2)(b) does not apply to a registrant in respect of a client for which the registrant only trades securities referred to in paragraphs 7.1(2)(b) and (2)(c).

(7) Paragraph (2)(c) and subsection (4.1) do not apply to a registered dealer in respect of a client if the registered dealer purchases or sells securities for the client only as directed by a registered adviser acting for the client.

13.2.01 Know your client - trusted contact person

(1) Concurrently with taking the reasonable steps required under subsection 13.2(2), a registrant must take reasonable steps to obtain from the client the name and contact information of a trusted contact person, and the written consent of the client for the registrant to contact the trusted contact person to confirm or make inquiries about any of the following:

(a) the registrant's concerns about possible financial exploitation of the client;

(b) the registrant's concerns about the client's mental capacity as it relates to the ability of the client to make decisions involving financial matters;

(c) the name and contact information of a legal representative of the client, if any;

(d) the client's contact information.

(2) A registrant must take reasonable steps to keep current the information required under this section, including updating that information within a reasonable time after the registrant becomes aware of a significant change in the client's information required under subparagraph 13.2(2)(c)(i).

(3) This section does not apply to a registrant in respect of a client that is not an individual.

13.2.1 Know your product

(1) A registered firm must not make securities available to clients unless the firm has taken reasonable steps to:

(a) assess the relevant aspects of the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs,

(b) approve the securities to be made available to clients, and

(c) monitor the securities for significant changes.

(2) A registered individual must not purchase or sell securities for, or recommend securities to, a client unless the registered individual takes steps to understand the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs.

(2.1) For purposes of subsection (2), the steps required to understand the security are those that are reasonable to enable the registered individual to meet their obligations under section 13.3 [*suitability determination*].

(3) A registered individual must not purchase securities for, or recommend securities to, a client unless the securities have been approved by the firm to be made available to clients.

(4) This section does not apply to a registered dealer in respect of a security if it purchases or sells the security for a client only as directed by a registered adviser acting for the client.

13.3 Suitability determination

(1) Before a registrant opens an account for a client, purchases, sells, deposits, exchanges or transfers securities for a client's account, takes any other investment action for a client, makes a recommendation or exercises discretion to take any such action, the registrant must determine, on a reasonable basis, that the action satisfies the following criteria:

(a) the action is suitable for the client, based on the following factors:

(i) the client's information collected in accordance with section 13.2 [*know your client*];

(ii) the registrant's assessment or understanding of the security consistent with section 13.2.1 [*know your product*];

(iii) the impact of the action on the client's account, including the concentration of securities within the account and the liquidity of those securities;

(iv) the potential and actual impact of costs on the client's return on investment;

(v) a reasonable range of alternative actions available to the registrant through the registered firm, at the time the determination is made;

(b) the action puts the client's interest first.

(2) A registrant must review a client's account and the securities in the client's account to determine whether the criteria in subsection (1) are met, and take reasonable steps, within a reasonable time, after any of the following events:

(a) a registered individual is designated as responsible for the client's account;

(b) the registrant becomes aware of a change in a security in the client's account that could result in the security or account not satisfying subsection (1);

(c) the registrant becomes aware of a change in the client's information collected in accordance with subsection 13.2(2) that could result in a security or the client's account not satisfying subsection (1);

(d) the registrant reviews the client's information in accordance with subsection 13.2(4.1).

(2.1) Despite subsection (1), if a registrant receives an instruction from a client to take an action that, if taken, does not satisfy subsection (1), the registrant may carry out the client's instruction if the registrant has

(a) informed the client of the basis for the determination that the action will not satisfy subsection (1),

(b) recommended to the client an alternative action that satisfies subsection (1), and

(c) received recorded confirmation of the client's instruction to proceed with the action despite the determination referred to in paragraph (a).

(3) This section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

(4) This section does not apply to a registered dealer in respect of a client if it purchases or sells securities for the client only as directed by a registered adviser acting for the client.

13.3.1 Waivers

(1) Paragraph 13.2(2)(c), subsection 13.2(4.1), and section 13.3 do not apply to a registrant in respect of a permitted client if

(a) the client is not an individual, and

(b) the client has requested, in writing, that the registrant not make suitability determinations for the client's account.

(2) Paragraph 13.2(2)(c), subsection 13.2(4.1), and section 13.3 do not apply to a registrant in respect of a permitted client if

(a) the client is an individual,

(b) the client has requested, in writing, that the registrant not make suitability determinations for the client's account, and

(c) the client's account is not a managed account.

Division 2 Conflicts of interest

13.4 Identifying, addressing and disclosing material conflicts of interest – registered firm

(1) A registered firm must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable,

(a) between the firm and the client, and

(b) between each individual acting on the firm's behalf and the client.

(2) A registered firm must address all material conflicts of interest between a client and itself, including each individual acting on its behalf, in the best interest of the client.

(3) A registered firm must avoid any material conflict of interest between a client and the firm, including each individual acting on its behalf, if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.

(4) A registered firm must disclose in writing all material conflicts of interest identified under subsection (1) to a client whose interests are affected by the conflicts of interest if a reasonable client would expect to be informed of those conflicts of interest.

(5) Without limiting subsection (4), the information required to be delivered to a client under that subsection must include a description of each of the following:

(a) the nature and extent of the conflict of interest;

(b) the potential impact on and risk that the conflict of interest could pose to the client;

(c) how the conflict of interest has been, or will be, addressed.

(6) The disclosure required under subsection (4) must be presented in a manner that, to a reasonable person, is prominent, specific and written in plain language.

(7) A registered firm must disclose a conflict of interest to a client under subsection (4)

(a) before opening an account for the client if the conflict has been identified at that time, or

(b) in a timely manner, upon identification of a conflict that must be disclosed under subsection (4) that has not previously been disclosed to the client.

(8) For greater certainty, a registrant does not satisfy subsection (2) or subsection 13.4.1(3) solely by providing disclosure to the client.

13.4.1 Identifying, reporting and addressing material conflicts of interest – registered individual

(1) A registered individual must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the registered individual and the client.

(2) If a registered individual identifies a material conflict of interest under subsection (1), the registered individual must promptly report that conflict of interest to the registered individual's sponsoring firm.

(3) A registered individual must address all material conflicts of interest between the client and the individual in the best interest of the client.

(4) A registered individual must avoid any material conflict of interest between a client and the registered individual if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.

(5) A registered individual must not engage in any trading or advising activity in connection with a material conflict of interest identified by the registered individual under subsection (1) unless

(a) the conflict has been addressed in the best interest of the client, and

(b) the registered individual's sponsoring firm has given the registered individual its consent to proceed with the activity.

13.4.2 Investment fund managers

Sections 13.4 and 13.4.1 do not apply to an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

13.5 Restrictions on certain managed account transactions

(1) In this section, "responsible person" means, for a registered adviser,

(a) the adviser,

(b) a partner, director or officer of the adviser, and

(c) each of the following who has access to, or participates in formulating, an investment decision made on behalf of a client of the adviser or advice to be given to a client of the adviser:

(i) an employee or agent of the adviser;

(ii) an affiliate of the adviser;

(iii) partner, director, officer, employee or agent of an affiliate of the adviser.

(2) A registered adviser must not knowingly cause an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to do any of the following:

(a) purchase a security of an issuer in which a responsible person, or an associate of a responsible person is a partner, officer or director unless

(i) this fact is disclosed to the client, and

(ii) the written consent of the client to the purchase is obtained before the purchase;

(b) purchase or sell a security from or to the investment portfolio of any of the following:

(i) a responsible person;

(ii) an associate of a responsible person;

(iii) an investment fund for which a responsible person acts as an adviser;

(c) provide a guarantee or loan to a responsible person or an associate of a responsible person.

13.6 Disclosure when recommending related or connected securities

A registered firm must not make a recommendation in any medium of communication to buy, sell or hold a security issued by the registered firm, a security of a related issuer or, during the security's distribution, a security of a connected issuer of the registered firm, unless any of the following apply:

(a) the firm discloses, in the same medium of communication, the nature and extent of the relationship or connection between the firm and the issuer;

(b) the recommendation is in respect of a security of a mutual fund, a scholarship plan, an educational plan or an educational trust that is an affiliate of, or is managed by an affiliate of, the registered firm and the names of the

registered firm and the fund, plan or trust, as the case may be, are sufficiently similar to indicate that they are affiliated.

Division 3 *Referral arrangements*

13.7 Definitions – referral arrangements

In this Division,

"client" includes a prospective client;

"referral arrangement" means any arrangement in which a registrant agrees to provide or receive a referral fee to or from another person or company;

"referral fee" means any benefit provided for the referral of a client to or from a registrant.

13.8 Permitted referral arrangements

A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not participate in a referral arrangement with another person or company unless~~,~~

(a) before a client is referred by or to the registrant, the terms of the referral arrangement are set out in a written agreement between the registered firm and the person or company~~;~~,

(b) the registered firm records all referral fees, and

(c) the registered firm ensures that the information prescribed by subsection 13.10(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the party receiving the referral either opens an account for the client or provides services to the client.

13.9 Verifying the qualifications of the person or company receiving the referral

A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not refer a client to another person or company unless the firm first takes reasonable steps to satisfy itself that the person or company has the appropriate qualifications to provide the services, and if applicable, is registered to provide those services.

13.10 Disclosing referral arrangements to clients

(1) The written disclosure of the referral arrangement required by paragraph 13.8(c) [*permitted referral arrangements*] must include the following:

(a) the name of each party to the agreement referred to in paragraph 13.8(a);

(b) the purpose and material terms of the agreement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the agreement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration of each registrant that is a party to the agreement with a description of the activities that the registrant is authorized to engage in under that category and, giving consideration to the nature of the referral, the activities that the registrant is not permitted to engage in;

(f) if a referral is made to a registrant, a statement that all activity requiring registration resulting from the referral arrangement will be provided by the registrant receiving the referral;

(g) any other information that a reasonable client would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the registrant must ensure that written disclosure of that change is provided to each client affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

13.11 [***lapsed***]

Division 4 Borrowing and lending

13.12 Restriction on borrowing from, or lending to, clients

(1) A registrant must not lend money, extend credit or provide margin to a client~~.~~ unless any of the following apply:

(a) in the case of a loan, the registrant is an investment fund manager, and the money is loaned on a short-term basis to an investment fund it manages, if the loan is for the purpose of funding redemptions of the investment fund's securities or paying expenses incurred by the investment fund in the normal course of its business;

(b) in the case of a registrant that is a registered firm, the client is

(i) a registered individual sponsored by the firm,

(ii) a permitted individual, as defined in National Instrument 33-109 *Registration Information*, of the firm, or

(iii) a director, officer, or employee of the firm;

(c) in the case of a registrant that is a registered individual, both of the following apply:

(i) the client and the registered individual are related to each other for the purposes of the *Income Tax Act* (Canada);

(ii) the registered individual has obtained the written approval of the registered individual's sponsoring firm to lend the money, extend the credit or provide the margin.

(2) A registered individual must not borrow money, securities or other assets or accept a guarantee in relation to borrowed money, securities or any other assets, from a client, unless either or both of the following apply:

(a) the client is a financial institution whose business includes lending money to the public, and the loan to the registered individual is in the normal course of the financial institution's business;

(b) both of the following apply:

(i) the client and the registered individual are related to each other for the purposes of the *Income Tax Act* (Canada);

(ii) the registered individual has obtained the written approval of the individual's sponsoring firm to borrow the money, securities or other assets or accept the guarantee.

13.13 Disclosure when recommending the use of borrowed money

(1) If a registrant recommends that a client should use borrowed money to finance any part of a purchase of a security, the registrant must, before the purchase, provide the client with a written statement that is substantially similar to the following:

"Using borrowed money to finance the purchase of securities involves greater risk than a purchase using cash resources only. If you borrow money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the securities purchased declines."

(2) Subsection (1) does not apply if one of the following applies:

(a) the registrant has provided the client with the statement described under subsection (1) no earlier than the 180th day before the date of the proposed purchase;

(b) [***repealed***]

(c) the client is a permitted client.

Division 5 Complaints

13.14 Application of this Division

(1) This Division does not apply to an investment fund manager in respect of its activities as an investment fund manager.

(2) In Québec, a registered firm is deemed to comply with this Division if it complies with sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec).

13.15 Handling complaints

A registered firm must document and, in a manner that a reasonable investor would consider fair and effective, respond to each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm.

13.16 Dispute resolution service

(1) In this section,

"complaint" means a complaint that

(a) relates to a trading or advising activity of a registered firm or a representative of the firm, and

(b) is received by the firm within 6 years of the day when the client first knew or reasonably ought to have known of an act or omission that is a cause of or contributed to the complaint;

"OBSI" means the Ombudsman for Banking Services and Investments.

(2) If a registered firm receives a complaint from a client, the firm must, as soon as possible, provide the client with a written acknowledgement of the complaint that includes the following:

(a) a description of the firm's obligations under this section;

(b) the steps that the client must take in order for an independent dispute resolution or mediation service to be made available to the client under subsection (4);

(c) the name of the independent dispute resolution or mediation service that will be made available to the client under subsection (4) and contact information for the service.

(3) If a registered firm decides to reject a complaint or to make an offer to resolve a complaint, the firm must, as soon as possible, provide the client with written notice of the decision and include the information referred to in subsection (2).

(4) A registered firm must as soon as possible ensure that an independent dispute resolution or mediation service is made available to a client at the firm's expense with respect to a complaint if either of the following apply:

(a) after 90 days of the firm's receipt of the complaint, the firm has not given the client written notice of a decision under subsection (3), and the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service;

(b) within 180 days of the client's receipt of written notice of the firm's decision under subsection (3), the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service.

(5) Subsection (4) does not apply unless the client agrees that any amount the client will claim for the purpose of the independent dispute resolution or mediation service's consideration of the complaint will be no greater than $350,000.

(6) For the purposes of the requirement to make available an independent dispute resolution or mediation service under subsection (4), a registered firm must take reasonable steps to ensure that OBSI will be the service that is made available to the client.

(7) Subsection (6) does not apply in Québec.

(8) This section does not apply in respect of a complaint made by a permitted client that is not an individual.

Division 6 – Registered sub-advisers

13.17 Exemption from certain requirements for registered sub-advisers

(1) A registered sub-adviser is exempt from the following in respect of its activities as a sub-adviser:

(a) division 2 [*conflicts of interest*] of Part 13, except section 13.5 [*restrictions on certain managed account transactions*] and section 13.6 [*disclosure when recommending related or connected securities*];

(b) division 3 [*referral arrangements*] of Part 13;

(c) division 5 [*complaints*] of Part 13;

(d) section 14.3 [*disclosure to clients about the fair allocation of investment opportunities*];

(e) section 14.5 [*notice to clients by non-resident registrants*];

(f) section 14.14 [*account statements*];

(g) section 14.14.1 [*additional statements*];

(h) section 14.14.2 [*security position cost information*];

(i) section 14.17 [*report on charges and other compensation*];

(j) section 14.18 [*investment performance report*].

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) the obligations and duties of the registered sub-adviser are set out in a written agreement with the sub-adviser's registered adviser or registered dealer;

(b) the registered adviser or registered dealer has entered into a written agreement with its clients on whose behalf investment advice is or portfolio management services are to be provided agreeing to be responsible for any loss that arises out of the failure of the registered sub-adviser

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Division 7 Misleading communications

13.18 Misleading communications

(1) Registered individuals must not hold themselves out, and a registered firm must not hold itself or its registered individuals out, in a manner that could reasonably be expected to deceive or mislead any person or company as to any of the following matters:

(a) the proficiency, experience, qualifications or category of registration of the registrant;

(b) the nature of the person's relationship, or potential relationship, with the registrant;

(c) the products or services provided, or to be provided, by the registrant.

(2) For greater certainty, and without limiting subsection (1), a registered individual who interacts with clients must not use any of the following:

(a) if based partly or entirely on that registered individual's sales activity or revenue generation, a title, designation, award, or recognition;

(b) a corporate officer title, unless their sponsoring firm has appointed that registered individual to that corporate office pursuant to applicable corporate law;

(c) if the individual's sponsoring firm has not approved the use by that registered individual of a title or designation, that title or designation.

Division 8 Temporary holds

13.19 Conditions for temporary hold

(1) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold on the basis of financial exploitation of a vulnerable client unless the firm reasonably believes all of the following:

(a) the client is a vulnerable client;

(b) financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted.

(2) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold on the basis of a client's lack of mental capacity unless the firm reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.

(3) If a registered firm or a registered individual places a temporary hold referred to in subsection (1) or (2), the firm must do all of the following:

(a) document the facts and reasons that caused the firm or individual to place and, if applicable, to continue the temporary hold;

(b) provide notice of the temporary hold and the reasons for the temporary hold to the client as soon as possible after placing the temporary hold;

(c) review the relevant facts as soon as possible after placing the temporary hold, and on a reasonably frequent basis, to determine if continuing the hold is appropriate;

(d) within 30 days of placing the temporary hold and, until the hold is revoked, within every subsequent 30-day period, do either of the following:

(i) revoke the temporary hold;

(ii) provide the client with notice of the firm's decision to continue the hold and the reasons for that decision.

Part 14 Handling client accounts – firms

Division 1 Investment fund managers

14.1 Application of this Part to investment fund managers

Other than sections 14.1.1, 14.5.1, 14.5.2, 14.5.3, 14.6, 14.6.1 and 14.6.2, subsection 14.12(5) and section 14.15, this Part does not apply to an investment fund manager in respect of its activities as an investment fund manager.

14.1.1 Duty to provide information – investment fund managers

A registered investment fund manager of an investment fund must, within a reasonable period of time, provide a registered dealer or a registered adviser that has a client that owns securities of the investment fund with the information that is required by the dealer or adviser in order for the dealer or adviser to comply with paragraph 14.12(1)(c), subsections 14.14(4) and (5), 14.14.1(2) and 14.14.2(1) and paragraph 14.17(1)(h).

Division 2 Disclosure to clients

14.2 Relationship disclosure information

(0.1) In this section, "proprietary product" means a security of an issuer if one or more of the following apply:

(a) the issuer of the security is a connected issuer of the registered firm;

(b) the issuer of the security is a related issuer of the registered firm;

(c) the registered firm or an affiliate of the registered firm is the investment fund manager or portfolio manager of the issuer of the security.

(1) A registered firm must deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant.

(2) Without limiting subsection (1), the information delivered to a client under that subsection must include the following:

(a) a description of the nature or type of the client's account;

(a.1) in the case of a registered firm that holds the client's assets, or directs or arranges which custodian will hold the client's assets, disclosure of the location where, and a general description of the manner in which, the client's assets are held, and a description of the risks and benefits to the client arising from the assets being held at that location and in that manner;

(a.2) in the case of a registered firm that has access to the client's assets

(i) disclosure of the location where, and a general description of the manner in which, the client's assets are held, and a description of the risks and benefits to the client arising from the assets being held in that location and in that manner, and

(ii) a description of the manner in which the client's assets are accessible by the registered firm, and a description of the risks and benefits to the client arising from having access to the assets in that manner;

(b) a general description of the products and services the registered firm will offer to the client, including

(i) a description of the restrictions on the client's ability to liquidate or resell a security, and

(ii) a statement of the investment fund management expense fees or other ongoing fees the client may incur in connection with a security or service the registered firm provides;

(b.1) a general description of any limits on the products and services the registered firm ~~offers~~will offer to the client, including

(i) whether the firm will primarily or exclusively offer proprietary products to the client, and

(ii) whether there will be other limits on the availability of products or services;

(c) a general description of the types of risks that a client should consider when making an investment decision;

(d) a description of the risks to a client of using borrowed money to finance a purchase of a security;

(e) a description of the conflicts of interest that the registered firm is required to disclose to a client under securities legislation;

(f) disclosure of the operating charges the client might be required to pay related to the client's account;

(g) a general description of the types of transaction charges the client might be required to pay;

(h) a general description of any benefits received, or expected to be received, by the registrant, from a person or company other than the registrant's client, in connection with the client's purchase or ownership of a security through the registrant;

(i) a description of the content and frequency of reporting for each account or portfolio of a client;

(j) disclosure of the firm's obligations if a client has a complaint contemplated under section 13.16 [*dispute resolution service*] and the steps that the client must take in order for an independent dispute resolution or mediation service to be made available to the client at the firm's expense;

(k) a statement that the registered firm must determine that any investment action it takes, recommends or decides on, for the client is suitable for the client and puts the client's interest first;

(l) the information the registered firm has collected about the client under section 13.2 [*know your client*];

(l.1) a description of the circumstances under which a registrant might disclose information about the client or the client's account to a trusted contact person referred to in subsection 13.2.01(1);

(m) a general explanation of how investment performance benchmarks might be used to assess the performance of a client's investments and any options for benchmark information that might be made available to clients by the registered firm;

(n) if the registered firm is a scholarship plan dealer, an explanation of any terms of the scholarship plan offered to the client by the registered firm that, if those terms are not met by the client or the client's designated beneficiary under the plan, might cause the client or the designated beneficiary to suffer a loss of contributions, earnings or government contributions in the plan;

(o) a general explanation of the potential impact on a client's investment returns from each of the fees described in subparagraph (b)(ii) and the charges described in paragraphs (f) and (g), including the effect of compounding over time;

(p) a general explanation of the circumstances under which a registered firm or registered individual may place a temporary hold under section 13.19 and a description of the notice that will be given to the client if a temporary hold is placed or continued under that section.

(3) A registered firm must deliver the information in subsection (1), if applicable, and subsection (2) to the client in writing, except that the information in paragraph (2)(b) may be provided orally or in writing, before the firm first

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(4) If there is a significant change in respect of the information delivered to a client under subsections (1) or (2), the registered firm must take reasonable steps to notify the client of the change in a timely manner and, if possible, before the firm next

(a) purchases or sells a security for the client; or

(b) advises the client to purchase, sell or hold a security.

(5) [***repealed***]

(5.1) A registered firm must not impose any new operating charge in respect of an account of a client, or increase the amount of any operating charge in respect of an account of a client, unless written notice of the new or increased operating charge is provided to the client at least 60 days before the date on which the imposition or increase becomes effective.

(6) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

(7) Except for subsections (5.1), (6) and (8), this section does not apply to a registered dealer in respect of a client for whom the dealer purchases or sells securities only as directed by a registered adviser acting for the client.

(8) A registered dealer referred to in subsection (7) must deliver the information required under paragraphs (2)(a) and (e) to (j) to the client in writing, and the information in paragraph (2)(b) orally or in writing, before the dealer first purchases or sells a security for the client.

14.2.1 Pre-trade disclosure of charges

(1) Before a registered firm accepts an instruction from a client to purchase or sell a security in an account other than a managed account, the firm must disclose to the client

(a) the charges the client will be required to pay in respect of the purchase or sale, or a reasonable estimate if the actual amount of the charges is not known to the firm at the time of disclosure,

(b) in the case of a purchase to which deferred charges apply, that the client might be required to pay a deferred sales charge on the subsequent sale of the security and the fee schedule that will apply,

(c) whether the firm will receive trailing commissions in respect of the security, and

(d) whether there are any investment fund management expense fees or other ongoing fees that the client may incur in connection with the security.

(2) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

(3) This section does not apply to a dealer in respect of a client for whom the dealer purchases or sells securities only as directed by a registered adviser acting for the client

14.3 Disclosure to clients about the fair allocation of investment opportunities

A registered adviser must deliver to a client a summary of the policies required under section 11.1 [*compliance system*] that provide reasonable assurance that the firm and each individual acting on its behalf complies with section 14.10 [*allocating investment opportunities fairly*] and that summary must be delivered

(a) when the adviser opens an account for the client, and

(b) if there is a significant change to the summary last delivered to the client, in a timely manner and, if possible, before the firm next

(i) purchases or sells a security for the client, or

(ii) advises the client to purchase, sell or hold a security.

14.4 When the firm has a relationship with a financial institution

(1) If a registered firm opens a client account to trade in securities, in an office or branch of a Canadian financial institution or a Schedule III bank, the registered firm must give the client a written notice stating that it is a separate legal entity from the Canadian financial institution or Schedule III bank and, unless otherwise advised by the registrant, securities purchased from or through the registrant

(a) are not insured by a government deposit insurer,

(b) are not guaranteed by the Canadian financial institution or Schedule III bank, and

(c) may fluctuate in value.

(2) A registered firm that is subject to subsection (1) must receive a written confirmation from the client that the client has read and understood the notice before the registered firm

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(3) This section does not apply to a registered firm if the client is a permitted client.

14.5 Notice to clients by non-resident registrants

(1) A registered firm whose head office is not located in the local jurisdiction must provide a client in the local jurisdiction with a statement in writing disclosing the following:

(a) the firm is not resident in the local jurisdiction;

(b) the jurisdiction in Canada or the foreign jurisdiction in which the head office or the principal place of business of the firm is located;

(c) all or substantially all of the assets of the firm may be situated outside the local jurisdiction;

(d) there may be difficulty enforcing legal rights against the firm because of the above;

(e) the name and address of the agent for service of process of the firm in the local jurisdiction.

(2) This section does not apply to a registered firm whose head office is in Canada if the firm is registered in the local jurisdiction.

Division 3 Client assets and investment fund assets

14.5.1 Definition of "securities" in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

Despite section 1.2, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this Division excludes "exchange contracts".

14.5.2 Restriction on self-custody and qualified custodian requirement

(1) A registered firm must not be a custodian or sub-custodian for a client of the firm or for an investment fund in respect of the client's or investment fund's cash or securities unless the registered firm

(a) is a Canadian custodian under paragraph (a), (b) or (d) of the definition of "Canadian custodian", and

(b) has established and maintains a system of controls and supervision that a reasonable person would conclude is sufficient to manage the risks to the client or investment fund associated with the custody of the client's or investment fund's cash or securities.

(2) A registered firm must ensure that any custodian for a client of the firm or for an investment fund managed by the firm in respect of the client's or investment fund's cash or securities is a Canadian custodian if the firm

(a) directs or arranges which custodian will hold the cash or securities of the client or investment fund, or

(b) holds or has access to the cash or securities of the client or investment fund.

(3) Despite the requirement to use a Canadian custodian in subsection (2), a foreign custodian may be a custodian of the cash or securities of the client or investment fund if a reasonable person would conclude, considering all of the relevant circumstances, including, for greater certainty, the nature of the regulation and the sufficiency of the equity of the foreign custodian, that using the foreign custodian is more beneficial to the client or investment fund than using a Canadian custodian.

(4) Despite the requirement to use a Canadian custodian in subsection (2), a Canadian financial institution may be a custodian of the cash of the client or investment fund.

(5) For the purposes of subsections (2) and (3), the registered firm must ensure that the qualified custodian is functionally independent of the registered firm unless

(a) the qualified custodian is a Canadian custodian under paragraph (a), (b) or (d) of the definition of "Canadian custodian", and

(b) the registered firm ensures that the qualified custodian has established and maintains a system of controls and supervision that a reasonable person would conclude is sufficient to manage the risks to the client or investment fund associated with the custody of the client's or investment fund's cash or securities.

(6) For the purpose of subsection (4), the registered firm must ensure that the Canadian financial institution is functionally independent of the registered firm.

(7) This section does not apply to a registered firm in respect of any of the following:

(a) an investment fund that is subject to National Instrument 81-102 *Investment Funds*;

(b) an investment fund that is subject to National Instrument 41-101 *General Prospectus Requirements*;

(c) a security that is recorded on the books of the security's issuer, or the transfer agent of the security's issuer, only in the name of the client or investment fund;

(d) cash or securities of a permitted client, if the permitted client

(i) is not an individual or an investment fund, and

(ii) has acknowledged in writing that the permitted client is aware that the requirements in this section that would otherwise apply to the registered firm do not apply;

(e) customer collateral subject to custodial requirements under National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*;

(f) a security that evidences a debt obligation secured by a mortgage registered or published against the title of real estate if

(i) the mortgage is registered or published in the name of the client or investment fund as mortgagee, or

(ii) in the case of a syndicated mortgage, the mortgage is registered or published in the name of either of the following as mortgagee:

(A) a person or company that is registered or licensed under mortgage brokerage, mortgage administrators or mortgage dealer legislation of a jurisdiction of Canada if that mortgage is held in trust for the client or investment fund, as applicable;

(B) each investor that is a mortgagee in respect of that mortgage.

14.5.3 Cash and Securities held by a qualified custodian

A registered firm that is subject to subsection 14.5.2(2), (3) or (4) must take reasonable steps to ensure that cash and securities of a client or an investment fund,

(a) except as provided in paragraphs (b) and (c), are held by the qualified custodian or, in respect of cash, the Canadian financial institution using an account number or other designation in the records of the qualified custodian or the Canadian financial institution, as applicable, sufficient to show that the beneficial ownership of the cash or securities of the client or investment fund is vested in that client or investment fund,

(b) in the case of cash held in an account in the name of the registered firm, is held separate and apart from the registered firm's own property and held by the qualified custodian, or the Canadian financial institution, in a designated trust account in trust for clients or investment funds, or

(c) in the case of cash or securities held for the purpose of bulk trading, are held in the name of the registered firm in trust for its clients or investment funds if the cash or securities are transferred to the client's or investment fund's account held by that client's or investment fund's qualified custodian or, in respect of cash, Canadian financial institution as soon as possible following a trade.

14.6 Client and investment fund assets held by a registered firm in trust

(1) If a registered firm holds client assets or investment fund assets other than cash or securities, or if a registered firm holds cash or securities of a client or an investment fund as permitted by section 14.5.2, the registered firm must hold the assets

(a) separate and apart from its own property,

(b) in trust for the client or investment fund, and

(c) in the case of cash, in a designated trust account with a Canadian custodian or Canadian financial institution.

(2) Despite paragraph (1)(c), a foreign custodian may be a custodian for the cash of the client or investment fund if a reasonable person would conclude, considering all of the relevant circumstances, including, for greater certainty, the nature of the regulation and the sufficiency of the equity of the foreign custodian, that using the foreign custodian is more beneficial to the client or investment fund than using a Canadian custodian or a Canadian financial institution.

14.6.1 Custodial provisions relating to certain margin or security interests

(1) In this section,

"cleared specified derivative", "clearing corporation option", "futures exchange", "option on futures", "specified derivative" and "standardized future" have the same meaning as in section 1.1 of National Instrument 81-102 *Investment Funds*;

"regulated clearing agency" has the same meaning as in subsection 1(1) of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*.

(2) Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited with a member of a regulated clearing agency or a dealer as margin for transactions outside of Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if

(a) the member or dealer is a member of a regulated clearing agency, futures exchange or stock exchange, and, as a result in any case, is subject to a regulatory audit,

(b) the member or dealer has a net worth, determined from its most recent audited financial statements, in excess of $50 million, and

(c) a reasonable person would conclude that using the member or dealer is more beneficial to the client or investment fund than using a Canadian custodian.

(3) Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited with the client's or investment fund's counterparty over which the client or investment fund has granted a security interest in connection with a particular specified derivatives transaction.

(4) The registered firm must take reasonable steps to ensure that any agreement by which cash or securities of a client or investment fund are deposited in accordance with subsection (2) or (3) requires the person or company holding the cash or securities to ensure that its records show that the client or investment fund is the beneficial owner of the cash or securities.

14.6.2 Custodial provisions relating to short sales

Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited as security in connection with a short sale of securities with a dealer outside of Canada if

(a) the dealer is a member of a stock exchange and is subject to a regulatory audit,

(b) the dealer has a net worth, determined from its most recent audited financial statements, in excess of $50 million, and

(c) a reasonable person would conclude that using the dealer is more beneficial to the client or investment fund than using a Canadian custodian.

14.7 [*repealed*]

14.8 [*repealed*]

14.9 [*repealed*]

Division 4 Client accounts

14.10 Allocating investment opportunities fairly

A registered adviser must ensure fairness in allocating investment opportunities among its clients.

14.11 Selling or assigning client accounts

If a registered firm proposes to sell or assign a client's account in whole or in part to another registrant, the registered firm must, prior to the sale or assignment, give a written explanation of the proposal to the client and inform the client of the client's right to close the client's account.

Division 5 Reporting to clients

14.11.1 Determining market value

(1) For the purposes of this Division, the market value of a security

(a) that is issued by an investment fund which is not listed on an exchange must be determined by reference to the net asset value provided by the investment fund manager of the fund on the relevant date,

(b) in any other case, is the amount that the registered firm reasonably believes to be the market value of the security

(i) after referring to a price quotation on a marketplace, if one is published for the security, using the last bid price in the case of a long security and the last ask price in the case of a short security, as shown on a consolidated pricing list or exchange quotation sheet as of the close of business on the relevant date or the last trading day before the relevant date, and after making any adjustments considered by the registered firm to be necessary to accurately reflect the market value,

(ii) if no reliable price for the security is quoted on a marketplace, after referring to a published market report or inter-dealer quotation sheet, on the relevant date or the last trading day before the relevant date, and after making any adjustments considered by the registered firm to be necessary to accurately reflect the market value,

(iii) if the market value for the security cannot be reasonably determined in accordance with subparagraph (i) or (ii), after applying the policy of the registered firm for determining market value, which must include procedures to assess the reliability of valuation inputs and assumptions and provide for

(A) the use of inputs that are observable, and

(B) the use of unobservable inputs and assumptions, if observable inputs are not reasonably available.

(2) If a registered firm determines the market value of a security in accordance with subparagraph (1)(b)(iii), when it refers to the market value in a statement under section 14.14 [*account statements*], 14.14.1 [*additional statements*], 14.14.2 [*security position cost information*], 14.15 [*security holder statements*] or 14.16 [*scholarship plan dealer statements*], the registered firm must include the following notification or a notification that is substantially similar:

"*There is no active market for this security so we have estimated its market value.*"

(3) If a registered firm reasonably believes that it cannot determine the market value of a security in accordance with subsection (1), the market value of the security must be reported in a statement delivered under section 14.14 [*account statements*], 14.14.1 [*additional statements*], 14.14.2 [*security position cost information*], 14.15 [*security holder statements*] or 14.16 [*scholarship plan dealer statements*] as not determinable, and the market value of the security must be excluded from the total market value referred to in paragraphs 14.14(5)(e), 14.14.1(2)(e) and 14.14.2(5)(c).

14.12 Content and delivery of trade confirmation

(1) A registered dealer that has acted on behalf of a client in connection with a purchase or sale of a security must promptly deliver to the client or, if the client consents in writing, to a registered adviser acting for the client, a written confirmation of the transaction, setting out the following:

(a) the quantity and description of the security purchased or sold;

(b) the price per security paid or received by the client;

(b.1) in the case of a purchase of a debt security, the security's annual yield;

(c) the amount of each transaction charge, deferred sales charge or other charge in respect of the transaction, and the total amount of all charges in respect of the transaction;

(c.1) in the case of a purchase or sale of a debt security, either of the following:

(i) the total amount of any mark-up or mark-down, commission or other service charges the registered dealer applied to the transaction;

(ii) the total amount of any commission charged to the client by the registered dealer and, if the dealer applied a mark-up or mark-down or any service charge other than a commission, the following notification or a notification that is substantially similar:

"*Dealer firm remuneration has been added to the price of this security (in the case of a purchase) or deducted from the price of this security (in the case of a sale). This amount was in addition to any commission this trade confirmation shows was charged to you.*";

(d) whether the registered dealer acted as principal or agent;

(e) the date and the name of the marketplace, if any, on which the transaction took place, or if applicable, a statement that the transaction took place on more than one marketplace or over more than one day;

(f) the name of the dealing representative, if any, involved in the transaction;

(g) the settlement date of the transaction;

(h) if applicable, that the security is a security issued by the registered dealer, a security issued by a related issuer of the registered dealer or, if the transaction occurred during the security's distribution, a security issued by a connected issuer of the registered dealer.

(2) If a transaction under subsection (1) involved more than one transaction or if the transaction took place on more than one marketplace the information referred to in subsection (1) may be set out in the aggregate if the confirmation also contains a statement that additional details concerning the transaction will be provided to the client upon request and without additional charge.

(3) Paragraph (1)(h) does not apply if all of the following apply:

(a) the security is a security of a mutual fund that is established and managed by the registered dealer or by an affiliate of the registered dealer, in its capacity as investment fund manager of the mutual fund;

(b) the names of the dealer and the mutual fund are sufficiently similar to indicate that they are affiliated or related.

(4) For the purpose of paragraph (1)(f), a dealing representative may be identified by means of a code or symbol if the confirmation also contains a statement that the name of the dealing representative will be provided to the client on request of the client.

(5) A registered investment fund manager that has executed a redemption order received directly from a security holder must promptly deliver to the security holder a written confirmation of the redemption, setting out the following:

(a) the quantity and description of the security redeemed;

(b) the price per security received by the client;

(c) the commission, sales charge, service charge and any other amount charged in respect of the redemption;

(d) the settlement date of the redemption.

(6) Subsection 14.12 (5) does not apply to trades in a security of an investment fund made in reliance on section 8.6 [*investment fund trades by adviser to managed account*].

(7) In Newfoundland and Labrador, Ontario and Saskatchewan, a registered dealer that complies with the requirements of this section in respect of a purchase or sale of a security is not subject to any of subsections 37(1), (2) or (3) of the *Securities Act* (Newfoundland and Labrador), subsection 36(1) of the *Securities Act* (Ontario) and subsection 42(1) of *The Securities Act, 1988* (Saskatchewan).

14.13 Confirmations for certain automatic plans

The requirement under section 14.12 [*content and delivery of trade confirmation*] to deliver a confirmation promptly does not apply to a registered dealer in respect of a transaction if all of the following apply:

(a) the client gave the dealer prior written notice that the transaction is made pursuant to the client's participation in an automatic payment plan, including a dividend reinvestment plan, or an automatic withdrawal plan in which a transaction is made at least monthly;

(b) the registered dealer delivered a confirmation as required under section 14.12 [*content and delivery of trade confirmation*] for the first transaction made under the plan after receiving the notice referred to in paragraph (a);

(c) the transaction is in a security of a mutual fund, scholarship plan, educational plan or educational trust.

(d) [***repealed***]

14.14 Account statements

(1) A registered dealer must deliver to a client a statement that includes the information referred to in subsections (4) and (5)

(a) at least once every 3 months, or

(b) if the client has requested to receive statements on a monthly basis, for each one-month period.

(2) A registered dealer must deliver to a client a statement that includes the information referred to in subsections (4) and (5) after the end of any month in which a transaction was effected in securities held by the dealer in the client's account, other than a transaction made under an automatic withdrawal plan or an automatic payment plan, including a dividend reinvestment plan.

(2.1) Paragraph 1(b) and subsection (2) do not apply to a mutual fund dealer in connection with its activities as a dealer in respect of the securities listed in paragraph 7.1(2)(b) [*dealer categories*].

(3) A registered adviser must deliver to a client a statement that includes the information referred to in subsections (4) and (5) at least once every 3 months, except that if the client has requested to receive statements on a monthly basis, the adviser must deliver a statement to the client for each one-month period.

(3.1) [***repealed***]

(4) If a registered dealer or registered adviser made a transaction for a client during the period covered by a statement delivered under subsection (1), (2) or (3), the statement must include the following:

(a) the date of the transaction;

(b) whether the transaction was a purchase, sale or transfer;

(c) the name of the security;

(d) the number of securities purchased, sold or transferred;

(e) the price per security if the transaction was a purchase or sale;

(f) the total value of the transaction if it was a purchase or sale.

(5) If a registered dealer or registered adviser holds securities owned by a client in an account of the client, a statement delivered under subsection (1), (2) or (3) must indicate that the securities are held for the client by the registered firm and must include the following information about the client's account determined as at the end of the period for which the statement is made:

(a) the name and quantity of each security in the account;

(b) the market value of each security in the account and, if applicable, the notification in subsection 14.11.1(2) [*determining market value*];

(c) the total market value of each security position in the account;

(d) any cash balance in the account;

(e) the total market value of all cash and securities in the account;

(f) whether the account is eligible for coverage under an investor protection fund approved or recognized by the securities regulatory authority and, if it is, the name of the investor protection fund;

(g) which securities in the account might be subject to a deferred sales charge if they are sold.

(6) [***repealed***]

(7) For the purposes of this section, a security is considered to be held by a registered firm for a client if

(a) the firm is the registered owner of the security as nominee on behalf of the client, or

(b) the firm has physical possession of a certificate evidencing ownership of the security.

14.14.1 Additional statements

(1) A registered dealer or registered adviser must deliver a statement that includes the information referred to in subsection (2) to a client if any of the following apply in respect of a security owned by the client that is held or controlled by a party other than the dealer or adviser:

(a) the dealer or adviser has trading authority over the security or the client's account in which the security is held or was transacted;

(b) the dealer or adviser receives continuing payments related to the client's ownership of the security from the issuer of the security, the investment fund manager of the issuer or any other party;

(c) the security is issued by a scholarship plan, a mutual fund or an investment fund that is a labour-sponsored investment fund corporation, or labour-sponsored venture capital corporation, under legislation of a jurisdiction of Canada and the dealer or adviser is the dealer or adviser of record for the client on the records of the issuer of the security or the records of the issuer's investment fund manager.

(2) A statement delivered under subsection (1) must include the following in respect of the securities or the account referred to in subsection (1), determined as at the end of the period for which the statement is made:

(a) the name and quantity of each security;

(b) the market value of each security and, if applicable, the notification in subsection 14.11.1(2) [*determining market value*];

(c) the total market value of each security position;

(d) any cash balance in the account;

(e) the total market value of all of the cash and securities;

(f) disclosure in respect of the party that holds or controls each security and a description of the way it is held;

(g) whether the securities are, or the account is, eligible for coverage under an investor protection fund approved or recognized by the securities regulatory authority;

(h) which of the securities might be subject to a deferred sales charge if they are sold.

(2.1) Paragraph (2)(g) does not apply if the party referred to in paragraph (2)(f) is required under section 14.14, or under an IIROC provision or MFDA provision, to deliver a statement to the client in respect of the securities or the account referred to in subsection (1) of this section.

(3) If subsection (1) applies to a registered dealer or a registered adviser, the dealer or adviser must deliver a statement that includes the information in subsection (2) to a client at least once every 3 months, except that if a client has requested to receive statements on a monthly basis, the adviser must deliver a statement to the client every month.

(4) If subsection (1) applies to a registered dealer or a registered adviser that is also required to deliver a statement to a client under subsection 14.14(1) or (3), a statement delivered under subsection (1) must be delivered to the client in one of the following ways:

(a) combined with a statement delivered to the client under subsection 14.14(1) or (3) for the period ending on the same date;

(b) as a separate document accompanying a statement delivered to the client under subsection 14.14(1) or (3) for the period ending on the same date;

(c) as a separate document delivered within 10 days after the statement delivered to the client under subsection 14.14(1) or (3) for the period ending on the same date.

(5) For the purposes of this section, a security is considered to be held for a client by a party other than the registered firm if any of the following apply:

(a) the other party is the registered owner of the security as nominee on behalf of the client;

(b) ownership of the security is recorded on the books of its issuer in the client's name;

(c) the other party has physical possession of a certificate evidencing ownership of the security;

(d) the client has physical possession of a certificate evidencing ownership of the security.

(6) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

14.14.2 Security position cost information

(1) If a registered dealer or registered adviser is required to deliver a statement to a client that includes information required under subsection 14.14(5) [*account statements*] or 14.14.1(2) [*additional statements*], the dealer or adviser must deliver the information referred to in subsection (2) to a client at least once every 3 months.

(2) The information delivered under subsection (1) must disclose the following:

(a) for each security position, in the statement, opened on or after July 15, 2015, presented on an average cost per unit or share basis or an aggregate basis,

(i) the cost of the security position, determined as at the end of the period for which the information referred to in subsection 14.14(5) or 14.14.1(2) is provided, or

(ii) if the security position was transferred from another registered firm, the information referred to in subparagraph (i) or the market value of the security position as at the date of the transfer of the security position;

(b) for each security position, in the statement, opened before July 15, 2015, presented on an average cost per unit or share basis or an aggregate basis,

(i) the cost of the security position, determined as at the end of the period for which the information referred to in subsection 14.14(5) or 14.14.1(2) is provided, or

(ii) the market value of the security position on

(A) December 31, 2015, or

(B) a date that is earlier than December 31, 2015 if the registered firm reasonably believes accurate, recorded historical position cost information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date;

(c) the total cost of all of the security positions in the statement, determined in accordance with paragraphs (a) and (b);

(d) for each security position for which the registered firm reasonably believes it cannot determine the cost in accordance with paragraphs (a) and (b), disclosure of that fact in the statement.

(2.1) If a registered firm reports one or more security positions of a client using the market value determined as at the date referred to in subparagraph (2)(a)(ii) or (2)(b)(ii), the firm must disclose in the statement that it is providing the market value of the security position as at the relevant date, instead of the cost of the security position.

(3) The cost of security positions required to be disclosed under subsection (2) must be either the book cost or the original cost and must be accompanied by the definition of "book cost" in section 1.1 [*definitions of terms used throughout this Instrument*] or the definition of "original cost" in section 1.1, as applicable.

(4) The information delivered under subsection (1) must be delivered to the client in one of the following ways:

(a) combined with a statement delivered to the client that includes the information required under subsection 14.14(5) or 14.14.1(2) for the period ending on the same date;

(b) in a separate document accompanying a statement delivered to the client that includes information required under subsection 14.14(5) or 14.14.1(2) for the period ending on the same date;

(c) in a separate document delivered within 10 days after a statement delivered to the client that includes information required under subsection 14.14(5) or 14.14.1(2) for the period ending on the same date.

(5) If the information under subsection (1) is delivered to the client in a separate document in accordance with paragraph (4)(c), the separate document must also include the following:

(a) the market value of each security in the statement and, if applicable, the notification in subsection 14.11.1(2) [*determining market value*];

(b) the total market value of each security position in the statement;

(c) the total market value of all cash and securities in the statement.

(6) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

14.15 Security holder statements

If there is no dealer or adviser of record for a security holder on the records of a registered investment fund manager, the investment fund manager must deliver to the security holder at least once every 12 months a statement that includes the following:

(a) the information required under subsection 14.14(4) [*account statements*] for each transaction that the registered investment fund manager made for the security holder during the period;

(b) the information required under subsection 14.14.1(2) [*additional statements*] for the securities of the security holder that are on the records of the registered investment fund manager;

(c) the information required under section 14.14.2 [*security position cost information*].

14.16 Scholarship plan dealer statements

Sections 14.14 [*account statements*], 14.14.1 [*additional statements*] and 14.14.2 [*security position cost information*] do not apply to a scholarship plan dealer if both of the following apply:

(a) the scholarship plan dealer is not registered in another dealer or adviser category;

(b) the scholarship plan dealer delivers to a client a statement at least once every 12 months that provides the information required under subsections 14.14(4) and 14.14.1(2).

14.17 Report on charges and other compensation

(1) For each 12-month period, a registered firm must deliver to a client a report on charges and other compensation containing the following information, except that the first report delivered after a client has opened an account may cover a period of less than 12 months:

(a) the registered firm's current operating charges which might be applicable to the client's account;

(b) the total amount of each type of operating charge related to the client's account paid by the client during the period covered by the report, and the total amount of those charges;

(c) the total amount of each type of transaction charge related to the purchase or sale of securities paid by the client during the period covered by the report, and the total amount of those charges;

(d) the total amount of the operating charges reported under paragraph (b) and the transaction charges reported under paragraph (c);

(e) if the registered firm purchased or sold debt securities for the client during the period covered by the report, either of the following:

(i) the total amount of any mark-ups, mark-downs, commissions or other service charges the firm applied on the purchases or sales of debt securities;

(ii) the total amount of any commissions charged to the client by the firm on the purchases or sales of debt securities and, if the firm applied mark-ups, mark-downs or any service charges other than commissions on the purchases or sales of debt securities, the following notification or a notification that is substantially similar:

"*For debt securities purchased or sold for you during the period covered by this report, dealer firm remuneration was added to the price you paid (in the case of a purchase) or deducted from the price you received (in the case of a sale). This amount was in addition to any commissions you were charged.*";

(f) if the registered firm is a scholarship plan dealer, the unpaid amount of any enrolment fee or other charge that is payable by the client;

(g) the total amount of each type of payment, other than a trailing commission, that is made to the registered firm or any of its registered individuals by a securities issuer or another registrant in relation to registerable services to the client during the period covered by the report, accompanied by an explanation of each type of payment;

(h) if the registered firm received trailing commissions related to securities owned by the client during the period covered by the report, the following notification or a notification that is substantially similar:

"*We received $[amount] in trailing commissions in respect of securities you owned during the 12-month period covered by this report.*

Investment funds pay investment fund managers a fee for managing their funds. The managers pay us ongoing trailing commissions for the services and advice we provide you. The amount of the trailing commission depends on the sales charge option you chose when you purchased the fund. You are not directly charged the trailing commission or the management fee. But, these fees affect you because they reduce the amount of the fund's return to you. Information about management fees and other charges to your investment funds is included in the prospectus or fund facts document for each fund."

(2) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14(5) [*account statements*] must be delivered in a separate report on charges and other compensation for each of the client's accounts.

(3) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14.1(1) [*additional statements*] must be delivered in a report on charges and other compensation for the client's account through which the securities were transacted.

(4) Subsections (2) and (3) do not apply if the registered firm provides a report on charges and other compensation that consolidates, into a single report, the required information for more than one of a client's accounts and any securities of the client required to be reported under subsection 14.14(5) or 14.14.1(1) and if the following apply:

(a) the client has consented in writing to the form of disclosure referred to in this subsection;

(b) the consolidated report specifies the accounts and securities with respect to which information is required to be reported under subsection 14.14.1(1) [*additional statements*].

(5) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

14.18 Investment performance report

(1) A registered firm must deliver an investment performance report to a client every 12 months, except that the first report delivered after a registered firm first makes a trade for a client may be sent within 24 months after that trade.

(2) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14(5) [*account statements*] must be delivered in a separate report for each of the client's accounts.

(3) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14.1(1) [*additional statements*] must be delivered in the report for each of the client's accounts through which the securities were transacted.

(4) Subsections (2) and (3) do not apply if the registered firm provides a report that consolidates, into a single report, the required information for more than one of a client's accounts and any securities of the client required to be reported under subsection 14.14(5) or 14.14.1(1) and if the following apply:

(a) the client has consented in writing to the form of disclosure referred to in this subsection;

(b) the consolidated report specifies the accounts and securities with respect to which information is required to be reported under subsection 14.14.1(1) [*additional statements*].

(5) This section does not apply to

(a) a client's account that has existed for less than a 12-month period;

(b) a registered dealer in respect of a client's account in which the dealer executes trades only as directed by a registered adviser acting for the client; and

(c) a registered firm in respect of a permitted client that is not an individual.

(6) Despite subsection (1), a registered firm is not required to deliver a report to a client for a 12-month period referred to in that subsection if the firm reasonably believes

(a) there are no securities of the client with respect to which information is required to be reported under subsection 14.14(5) [*account statements*] or subsection 14.14.1(1) [*additional statements*], or

(b) no market value can be determined for any securities of the client in respect to which information is required to be reported under subsection 14.14(5) or 14.14.1(1).

14.19 Content of investment performance report

(1) An investment performance report required to be delivered under section 14.18 by a registered firm must include all of the following in respect of the securities referred to in a statement in respect of which subsection 14.14(1), (2) or (3) [*account statements*] or 14.14.1(1) [*additional statements*] apply:

(a) the market value of all cash and securities in the client's account as at the beginning of the 12-month period covered by the investment performance report;

(b) the market value of all cash and securities in the client's account as at the end of the 12-month period covered by the investment performance report;

(c) the market value of all deposits and transfers of cash and securities into the client's account, and the market value of all withdrawals and transfers of cash and securities out of the account, in the 12-month period covered by the investment performance report;

(d) the market values determined under subsection (1.1);

(e) **[*repealed*]**

(f) the annual change in the market value of the client's account for the 12-month period covered by the investment performance report, determined using the following formula

$$A - B - C + D$$

where

A = the market value of all cash and securities in the account as at the end of the 12-month period covered by the investment performance report;

B = the market value of all cash and securities in the account at the beginning of that 12-month period;

C = the market value of all deposits and transfers of cash and securities into the account in that 12-month period; and

D = the market value of all withdrawals and transfers of cash and securities out of the account in that 12-month period;

(g) subject to subsection (1.2), the cumulative change in the market value of the account since the account was opened, determined using the following formula

$$A - E + F$$

where

A = the market value of all cash and securities in the account as at the end of the 12-month period covered by the investment performance report;

E = the market value of all deposits and transfers of cash and securities into the account since account opening; and

F = the market value of all withdrawals and transfers of cash and securities out of the account since account opening;

(h) **[*repealed*]**

(i) the amount of the annualized total percentage return for the client's account calculated net of charges, using a money-weighted rate of return calculation method generally accepted in the securities industry;

(j) the definition of "total percentage return" in section 1.1 and a notification indicating the following:

(i) that the total percentage return in the investment performance report was calculated net of charges;

(ii) the calculation method used;

(iii) a general explanation in plain language of what the calculation method takes into account.

(1.1) For the purposes of paragraph (1)(d), the investment performance report must include the following, as applicable:

(a) if the client's account was opened on or after July 15, 2015, the market value of all deposits and transfers of cash and securities into the client's account, and the market value of all withdrawals and transfers of cash and securities out of the account, since opening the account;

(b) if the client's account was opened before July 15, 2015, and the firm has not delivered an investment performance report for the 12-month period ending December 31, 2016,

(i) the market value of all cash and securities in the client's account as at

(A) July 15, 2015, or

(B) a date that is earlier than July 15, 2015 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date, and

(ii) the market value of all deposits and transfers of cash and securities into the account, and the market value of all withdrawals and transfers of cash and securities out of the account, since the date referred to in clause (i)(A) or (B), as applicable;

(c) if the client's account was opened before July 15, 2015, and the firm delivered an investment performance report for the 12-month period ending December 31, 2016,

(i) the market value of all cash and securities in the client's account as at

(A) January 1, 2016, or

(B) a date that is earlier than January 1, 2016 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date, and

(ii) the market value of all deposits and transfers of cash and securities into the account, and the market value of all withdrawals and transfers of cash and securities out of the account, since the date referred to in clause (i)(A)or (B), as applicable.

(1.2) Paragraph (1)(g) does not apply if the client's account was opened before July 15, 2015 and the registered firm includes in the investment performance report the cumulative change in the market value of the account determined using the following formula, instead of the formula in paragraph (g):

$$A - G - H + I$$

where

A = the market value of all cash and securities in the account as at the end of the 12-month period covered by the investment performance report;

G = the market value of all cash and securities in the account determined as follows:

(a) if the firm has not delivered an investment performance report for the 12-month period ending December 31, 2016, the market value of all cash and securities in the client's account as at

(i) July 15, 2015, or

(ii) a date that is earlier than July 15, 2015 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date,

(b) if the firm has delivered an investment performance report for the 12-month period ending December 31, 2016, the market value of all cash and securities in the client's account as at

(i) January 1, 2016, or

(ii) a date that is earlier than January 1, 2016 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date;

H = the market value of all deposits and transfers of cash and securities into the account since the date used for the purposes of the definition of "G"; and

I = the market value of all withdrawals and transfers of cash and securities out of the account since the date used for the purposes of the definition of "G".

(2) The information delivered for the purposes of paragraph (1)(i) must be provided for each of the following periods:

(a) the 12-month period covered by the investment performance report;

(b) the 3-year period preceding the end of the 12-month period covered by the report;

(c) the 5-year period preceding the end of the 12-month period covered by the report;

(d) the 10-year period preceding the end of the 12-month period covered by the report;

(e) subject to subsection (3.1), the period since the client's account was opened if the account has been open for more than one year before the date of the report or, if the account was opened before July 15, 2015, the period since

(i) July 15, 2015, or

(ii) a date that is earlier than July 15, 2015 if the registered firm reasonably believes accurate, recorded annualized total percentage return information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date.

(3) Despite subsection (2), if any portion of a period referred to in paragraph (2)(b), (c) or (d) was before July 15, 2015, the registered firm is not required to report the annualized total percentage return for that period.

(3.1) Paragraph (2)(e) does not apply to a registered firm that delivered an investment performance report for the 12-month period ending December 31, 2016 if the firm provides, in the report, the annualized total percentage return information referred to in that paragraph for the period since

(a) January 1, 2016, or

(b) a date that is earlier than January 1, 2016 if the registered firm reasonably believes accurate, recorded annualized total percentage return information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date.

(4) Despite subsection (1), the information a scholarship plan dealer is required to deliver under section 14.18 [*investment performance report*] in respect of each scholarship plan in which a client has invested through the scholarship plan dealer is the following:

(a) the total amount that the client has invested in the plan as at the date of the investment performance report;

(b) the total amount that would be returned to the client if, as at the date of the investment performance report, the client ceased to make prescribed payments into the plan;

(c) a reasonable projection of future payments that the plan might pay to the client's designated beneficiary under the plan, or to the client, at the maturity of the client's investment in the plan;

(d) a summary of any terms of the plan that, if not met by the client or the client's designated beneficiary under the plan, might cause the client or the designated beneficiary to suffer a loss of contributions, earnings or government contributions in the plan.

(5) The information delivered under section 14.18 [*investment performance report*] must be presented using text, tables and charts, and must be accompanied by notes in the investment performance report explaining

(a) the content of the report and how a client can use the information to assess the performance of the client's investments; and

(b) the changing value of the client's investments as reflected in the information in the report.

(6) If a registered firm delivers information required under this section in a report to a client for a period of less than one year, the firm must not calculate the disclosed information on an annualized basis.

(7) If the registered firm reasonably believes the market value cannot be determined for a security position, the market value must be assigned a value of zero in the calculation of the information delivered under subsection 14.18(1) and the fact that its market value could not be determined must be disclosed to the client.

14.20 Delivery of report on charges and other compensation and investment performance report

(1) A report under section 14.17 [*report on charges and other compensation*] and a report under section 14.18 [*investment performance report*] must include information for the same 12-month period and the reports must be delivered together in one of the following ways:

(a) combined with a statement delivered to the client that includes information required under subsection 14.14(1), (2) or (3) [*account statements*], subsection 14.14.1(2) [*additional statements*] or section 14.16 [*scholarship plan dealer statements*];

(b) accompanying a statement delivered to the client that includes information required under subsection 14.14(1), (2) or (3) [*account statements*], subsection 14.14.1(2) [*additional statements*] or section 14.16 [*scholarship plan dealer statements*];

(c) within 10 days after a statement delivered to the client that includes information required under subsection 14.14(1),(2) or (3) [*account statements*], subsection 14.14.1(2) [*additional statements*] or section 14.16 [*scholarship plan dealer statements*].

(2) Subsection (1) does not apply in respect of the first report under section 14.17 [*report on charges and other compensation*] and the first report under section 14.18 [*investment performance report*] for a client.

Part 15 Granting an exemption

15.1 Who can grant an exemption

(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 16 Transition

16.1 [***lapsed***]

16.2 [***lapsed***]

16.3 [***lapsed***]

16.4 [***lapsed***]

16.5 [***lapsed***]

16.6 [***lapsed***]

16.7 [***lapsed***]

16.8 [***lapsed***]

16.9 Registration of chief compliance officers

(1) [***lapsed***]

(2) If an individual applies to be registered as the chief compliance officer of a registered firm within 3 months after this Instrument comes into force and the individual was identified on the National Registration Database as the firm's compliance officer in a jurisdiction of Canada on the date this Instrument came into force, the following sections do not apply in respect of the individual so long as he or she remains registered as the firm's chief compliance officer:

(a) section 3.6 [*mutual fund dealer – chief compliance officer*], if the registered firm is a mutual fund dealer;

(b) section 3.8 [*scholarship plan dealer – chief compliance officer*], if the registered firm is a scholarship plan dealer;

(c) section 3.10 [*exempt market dealer – chief compliance officer*], if the registered firm is an exempt market dealer;

(d) section 3.13 [*portfolio manager – chief compliance officer*], if the registered firm is a portfolio manager.

(3) [*lapsed*]

(4) [*lapsed*]

16.10 Proficiency for dealing and advising representatives

If an individual is registered in a jurisdiction of Canada as a dealing or advising representative in a category referred to in a section of Division 2 [*education and experience requirements*] of Part 3 on the day this Instrument comes into force, that section does not apply to the individual so long as the individual remains registered in the category.

16.11 [***lapsed***]

16.12 Continuation of existing discretionary relief

A person or company that was entitled to rely on an exemption, waiver or approval granted to it by a regulator or securities regulatory authority relating to a requirement under securities legislation or securities directions existing immediately before this Instrument came into force is exempt from any substantially similar provision of this Instrument to the same extent and on the same conditions, if any, as contained in the exemption, waiver or approval.

16.13 [***lapsed***]

16.14 [***lapsed***]

16.15 [***lapsed***]

16.16 [***lapsed***]

16.17 [***lapsed***]

16.18 [***lapsed***]

16.19 [***lapsed***]

16.20 [***lapsed***]

Part 17 When this Instrument comes into force

17.1 Effective date

(1) Except in Ontario, this Instrument comes into force on September 28, 2009.

(2) In Ontario, this Instrument comes into force on the later of the following:

(a) September 28, 2009;

(b) the day on which sections 4, 5 and subsections 20(1) to (11) of Schedule 26 of the *Budget Measures Act, 2009* are proclaimed in force.

FORM 31-103F1 CALCULATION OF EXCESS WORKING CAPITAL

_____

Firm Name

Capital Calculation

(as at _____ with comparative figures as at _____)

	Component	Current period	Prior period
1.	Current assets		
2.	Less current assets not readily convertible into cash (e.g., prepaid expenses)		
3.	Adjusted current assets Line 1 minus line 2 =		
4.	Current liabilities		
5.	Add 100% of non-current related party debt unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and the firm has delivered a copy of the agreement to the regulator or, in Québec, the securities regulatory authority. See section 12.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*		
6.	Adjusted current liabilities Line 4 plus line 5 =		
7.	Adjusted working capital Line 3 minus line 6 =		

8.	Less minimum capital		
9.	Less market risk		
10.	Less any deductible under the bonding or insurance policy required under Part 12 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or, in Québec, for a firm registered only in that jurisdiction and solely in the category of mutual fund dealer, less the deductible under the liability insurance required under section 193 of the Québec Securities Regulation		
11.	Less Guarantees		
12.	Less unresolved differences		
13.	**Excess working capital**		

Notes:

Form 31-103F1 *Calculation of Excess Working Capital* must be prepared using the accounting principles that you use to prepare your financial statements in accordance with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*. Section 12.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* provides further guidance in respect of these accounting principles.

Line 5. Related-party debt – Refer to the CICA Handbook for the definition of "related party" for publicly accountable enterprises. The firm is required to deliver a copy of the executed subordination agreement to the regulator or, in Québec, the securities regulatory authority on the earlier of a) 10 days after the date the agreement is executed or b) the date an amount subordinated by the agreement is excluded from its calculation of excess working capital on Form 31-103F1 *Calculation of Excess Working Capital*. **The firm must notify the regulator or, in Québec, the securities regulatory authority, 10 days before it repays the loan (in whole or in part), or terminates the subordination agreement.** See section 12.2 of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations*.

Line 8. Minimum Capital – The amount on this line must be not less than (a) $25,000 for an adviser and (b) $50,000 for a dealer. For an investment fund manager, the amount must be not less than $100,000 unless subsection 12.1(4) of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations* applies.

Line 9. Market Risk – The amount on this line must be calculated according to the instructions set out in Schedule 1 to Form 31-103F1 *Calculation of Excess Working Capital*. A schedule supporting the calculation of any amounts included in Line 9 as market risk should be provided to the regulator or, in Québec, the securities regulatory authority in conjunction with the submission of Form 31-103F1 *Calculation of Excess Working Capital*.

Line 11. Guarantees – If the registered firm is guaranteeing the liability of another party, the total amount of the guarantee must be included in the capital calculation. If the amount of a guarantee is included in the firm's statement of financial position as a current liability and is reflected in line 4, do not include the amount of the guarantee on line 11.

Line 12. Unresolved differences – Any unresolved differences that could result in a loss from either firm or client assets must be included in the capital calculation. The examples below provide guidance as to how to calculate unresolved differences:

(i) If there is an unresolved difference relating to client securities, the amount to be reported on Line 12 will be equal to the fair value of the client securities that are short, plus the applicable margin rate for those securities.

(ii) If there is an unresolved difference relating to the registrant's investments, the amount to be reported on Line 12 will be equal to the fair value of the investments (securities) that are short.

(iii) If there is an unresolved difference relating to cash, the amount to be reported on Line 12 will be equal to the amount of the shortfall in cash.

Please refer to section 12.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* for further guidance on how to prepare and file Form 31-103F1 *Calculation of Excess Working Capital*.

Management Certification

Registered Firm Name: _____

We have examined the attached capital calculation and certify that the firm is in compliance with the capital requirements as at

_____.

Name and Title	**Signature**	**Date**
1. _____	_____	_____
_____		
2. _____	_____	_____
_____		

Schedule 1 of Form 31-103F1 Calculation of Excess Working Capital

(calculating line 9 [market risk])

For purposes of completing this form:

(1) "Fair value" means the value of a security determined in accordance with Canadian GAAP applicable to publicly accountable enterprises.

(2) For each security whose value is included in line 1, Current Assets, multiply the fair value of the security by the margin rate for that security set out below. Add up the resulting amounts for all of the securities you hold. The total is the "market risk" to be entered on line 9.

(a) Bonds, Debentures, Treasury Bills and Notes

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or of any other national foreign government (provided those foreign government securities have a current credit rating described in subparagraph (i.1)) maturing (or called for redemption):

within 1 year:	1% of fair value multiplied by the fraction determined by dividing the number of days to maturing by 365
over 1 year to 3 years:	1 % of fair value
over 3 years to 7 years:	2% of fair value
over 7 years to 11 years:	4% of fair value
over 11 years:	4% of fair value

(i.1) A credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is the same as one of the following corresponding rating categories or that is the same as a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	Long Term Debt	Short Term Debt
DBRS Limited	AAA	R-1(high)
Fitch Ratings, Inc.	AAA	F1+
Moody's Canada Inc.	Aaa	Prime-1
S&P Global Ratings Canada	AAA	A-1+

(ii) Bonds, debentures, treasury bills and other securities of or guaranteed by any jurisdiction of Canada and obligations of the International Bank for Reconstruction and Development, maturing (or called for redemption):

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year to 3 years:	3 % of fair value
over 3 years to 7 years:	4% of fair value
over 7 years to 11 years:	5% of fair value
over 11 years:	5% of fair value

(iii) Bonds, debentures or notes (not in default) of or guaranteed by any municipal corporation in Canada or the United Kingdom maturing:

within 1 year:	3% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year to 3 years:	5 % of fair value
over 3 years to 7 years:	5% of fair value
over 7 years to 11 years:	5% of fair value
over 11 years:	5% of fair value

(iv) Other non-commercial bonds and debentures~~,~~ (not in default): 10% of fair value

(v) Commercial and corporate bonds, debentures and notes (not in default) and non-negotiable and non-transferable trust company and mortgage loan company obligations registered in the registered firm's name maturing:

within 1 year:	3% of fair value
over 1 year to 3 years:	6 % of fair value
over 3 years to 7 years:	7% of fair value
over 7 years to 11 years:	10% of fair value
over 11 years:	10% of fair value

(b) Bank Paper

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year:	apply rates for commercial and corporate bonds, debentures and notes

(c) Acceptable foreign bank paper

Deposit certificates, promissory notes or debentures issued by a foreign bank, readily negotiable and transferable and maturing:

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year:	apply rates for commercial and corporate bonds, debentures and notes

"Acceptable Foreign Bank Paper" consists of deposit certificates or promissory notes issued by a bank other than a Canadian chartered bank with a net worth (i.e., capital plus reserves) of not less than $200,000,000.

(d) Mutual Funds

Securities of mutual funds qualified by prospectus for sale in any jurisdiction of Canada:

(i) 5% of the net asset value per security as determined in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, where the fund is a money market mutual fund as defined in National Instrument 81-102 *Investment Funds*; or

(ii) the margin rate determined on the same basis as for listed stocks multiplied by the net asset value per security of the fund as determined in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*.

Securities of mutual funds qualified by prospectus for sale in the United States of America: 5% of the net asset value per security if the fund is registered as an investment company under the *Investment Company Act of 1940*, as amended from time to time, and complies with Rule 2a-7 thereof.

(e) Stocks

In this paragraph, "securities" includes rights and warrants and does not include bonds and debentures.

(i) On securities including investment fund securities, rights and warrants, listed on any exchange in Canada or the United States of America:

Long Positions – Margin Required

Securities selling at $2.00 or more – 50% of fair value

Securities selling at $1.75 to $1.99 – 60% of fair value

Securities selling at $1.50 to $1.74 – 80% of fair value

Securities selling under $1.50 – 100% of fair value

Short Positions – Credit Required

Securities selling at $2.00 or more – 150% of fair value

Securities selling at $1.50 to $1.99 – $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of fair value

Securities selling at less than $0.25 – fair value plus $0.25 per share

(ii) For positions in securities that are constituent securities on a major broadly-based index of one of the following exchanges, 50% of the fair value:

(a) Australian Stock Exchange Limited

(b) Bolsa de Madrid

(c) Borsa Italiana

(d) Copenhagen Stock Exchange

(e) Euronext Amsterdam

(f) Euronext Brussels

(g) Euronext Paris S.A.

(h) Frankfurt Stock Exchange

(i) London Stock Exchange

(j) New Zealand Exchange Limited

(k) Stockholm Stock Exchange

(l) SIX Swiss Exchange

(m) The Stock Exchange of Hong Kong Limited

(n) Tokyo Stock Exchange

(f) Mortgages

(i) For a firm registered in any jurisdiction of Canada except Ontario:

(a) Insured mortgages (not in default): 6% of fair value

(b) Mortgages which are not insured (not in default): 12% of fair value.

(ii) For a firm registered in Ontario:

(a) Mortgages insured under the *National Housing Act* (Canada) (not in default): 6% of fair value

(b) Conventional first mortgages (not in default): 12% of fair value.

If you are registered in Ontario regardless of whether you are also registered in another jurisdiction of Canada, you will need to apply the margin rates set forth in (ii) above.

(g) For all other securities – 100% of fair value.

FORM 31-103F2 SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

(sections 8.18 [international dealer] and 8.26 [international adviser])

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm.

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's chief compliance officer.

   Name:

   E-mail address:

   Phone:

   Fax:

6. Section of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* the International Firm is relying on:

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on section 8.18 [*international dealer*] or section 8.26 [*international adviser*], the International Firm must submit to the securities regulatory authority

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name and Title of authorized signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of (Insert name of International Firm) under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of Agent for Service or authorized signatory)

_____
(Name and Title of authorized signatory)

FORM 31-103F3 USE OF MOBILITY EXEMPTION

(section 2.2 [client mobility exemption – individuals])

This is to notify the securities regulatory authority that the individual named in paragraph 1 is relying on the exemption in section 2.2 [*client mobility exemption – individuals*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

1. Individual information

Name of individual: _____

NRD number of individual: _____

The individual is relying on the client mobility exemption in each of the following jurisdictions of Canada:

_____

_____

2. Firm information

Name of the individual's sponsoring firm:_____

NRD number of firm:_____

Dated: _____

_____
(Signature of an authorized signatory of the individual's sponsoring firm)

_____
(Name and title of authorized signatory)

FORM 31-103F4 NET ASSET VALUE ADJUSTMENTS

(Section 12.14 [*delivering financial information – investment fund manager*])

This is to notify the regulator or, in Québec, the securities regulatory authority, of a net asset value (NAV) adjustment made in respect of an investment fund managed by the investment fund manager in accordance with paragraph 12.14(1)(c) or paragraph 12.14(2)(c). All of the information requested should be provided on a fund by fund basis. Please attach a schedule if necessary.

1. Name of the investment fund manager:

2. Name of each of the investment funds for which a NAV adjustment occurred:

3. Date(s) the NAV error occurred:

4. Date the NAV error was discovered:

5. Date of the NAV adjustment:

6. Original total NAV on the date the NAV error first occurred:

7. Original NAV per unit on each date(s) the NAV error occurred:

8. Revised NAV per unit on each date(s) the NAV error occurred:

9. NAV error as percentage (%) of the original NAV on each date(s) the NAV error occurred:

10. Total dollar amount of the NAV adjustment:

11. Effect (if any) of the NAV adjustment per unit or share:

12. Total amount reimbursed to security holders, or any corrections made to purchase and redemption transactions affecting the security holders of each investment fund affected, if any:

13. Date of the NAV reimbursement or correction to security holder transactions, if any:

14. Total amount reimbursed to investment fund, if any:

15. Date of the reimbursement to investment fund, if any:

16. Description of the cause of the NAV error:

17. Was the NAV error discovered by the investment fund manager?

    Yes ☐ No ☐

18. If No, who discovered the NAV error?

19. Was the NAV adjustment a result of a material error under the investment fund manager's policies and procedures?

    Yes ☐ No ☐

20. Have the investment fund manager's policies and procedures been changed following the NAV adjustment?

    Yes ☐ No ☐

21. If Yes, describe the changes:

22. If No, explain why not:

23. Has the NAV adjustment been communicated to security holders of each of the investment funds affected?

    Yes ☐ No ☐

24. If Yes, describe the communications:

Notes:

Line 2. NAV adjustment – Refers to the correction made to make the investment fund's NAV accurate.

Line 3. NAV error – Refers to the error discovered on the Original NAV. Please refer to Section 12.14 of *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations* for guidance on NAV error and causes of NAV errors.

Line 3. Date(s) the NAV error occurred – Means the date of the NAV error first occurred and the subsequent dates of the NAV error.

Line 8. Revised NAV per unit – Refers to the NAV per unit calculated after taking into account the NAV error.

Line 9. NAV error as a percentage (%) of the original NAV – Refers to the following calculation:

(Revised NAV / Original NAV) – 1 x 100

APPENDIX A – BONDING AND INSURANCE CLAUSES

(section 12.3 [insurance – dealer], section 12.4 [insurance – adviser] and section 12.5 [insurance – investment fund manager])

Clause	Name of Clause	Details
A	Fidelity	This clause insures against any loss through dishonest or fraudulent act of employees.
B	On Premises	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized place of safe-deposit.
C	In Transit	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any employee or any person acting as messenger except while in the mail or with a carrier for hire other than an armoured motor vehicle company.
D	Forgery or Alterations	This clause insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities.
E	Securities	This clause insures against any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments.

APPENDIX B – SUBORDINATION AGREEMENT

(Line 5 of Form 31-103F1 Calculation of excess working capital)

SUBORDINATION AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 20___

BETWEEN:

[insert name]

(the "**Lender**")

AND

[insert name]

(the "**Registered Firm**", which term shall include all successors and assigns of the Registered Firm)

(collectively, the "**Parties**")

This Agreement is entered into by the Parties under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") in connection with a loan made on the ____day of _____, 20__ by the Lender to the Registered Firm in the amount of $ _____(the "**Loan**") for the purpose of allowing the Registered Firm to carry on its business.

For good and valuable consideration, the Parties agree as follows:

1. Subordination

The repayment of the loan and all amounts owed thereunder are subordinate to the claims of the other creditors of the Registered Firm.

2. Dissolution, winding-up, liquidation, insolvency or bankruptcy of the Registered Firm

In the event of the dissolution, winding-up, liquidation, insolvency or bankruptcy of the Registered Firm:

(a) the creditors of the Registered Firm shall be paid their existing claims in full in priority to the claims of the Lender;

(b) the Lender shall not be entitled to make any claim upon any property belonging or having belonged to the Registered Firm, including asserting the right to receive any payment in respect to the Loan, before the existing claims of the other creditors of the Registered Firm have been settled.

3. Terms and conditions of the Loan

During the term of this Agreement:

(a) interest can be paid at the agreed upon rate and time, provided that the payment of such interest does not result in a capital deficiency under NI 31-103;

(b) any loan or advance or posting of security for a loan or advance by the Registered Firm to the Lender, shall be deemed to be a payment on account of the Loan.

4. Notice to the Securities Regulatory Authority

The Registered Firm must notify the Securities Regulatory Authority 10 days before the full or partial repayment of the loan. Further documentation may be requested by the Securities Regulatory Authority after receiving the notice from the Registered Firm.

5. Termination of this Agreement

This Agreement may only be terminated by the Lender once the notice required pursuant to Section 4 of this Agreement is received by the Securities Regulatory Authority.

The Parties have executed and delivered this Agreement as of the date set out above.

[Registered Firm]

_____
Authorized signatory

_____
Authorized signatory

[Lender]

_____
Authorized signatory

_____
Authorized signatory

APPENDIX C

[*lapsed*]

APPENDIX D

[*lapsed*]

APPENDIX E

[*lapsed*]

APPENDIX F

[*lapsed*]

APPENDIX G – EXEMPTIONS FROM CERTAIN REQUIREMENTS FOR IIROC MEMBERS

(Section 9.3 [*exemptions from certain requirements for IIROC members*])

NI 31-103 Provision	IIROC Provision
section 12.1 [*capital requirements*]	1. Dealer Member Rule 17.1; and 2. Form 1
section 12.2 [*subordination agreement*]	1. Dealer Member Rule 5.2; and 2. Dealer Member Rule 5.2A
section 12.3 [*insurance – dealer*]	1. Dealer Member Rule 17.5 2. Dealer Member Rule 400.2 [*Financial Institution Bond*]; 3. Dealer Member Rule 400.4 [*Amounts Required*]; and 4. Dealer Member Rule 400.5 [*Provisos with respect to Dealer Member Rules 400.2, 400.3 and 400.4*]
section 12.6 [*global bonding or insurance*]	1. Dealer Member Rule 400.7 [*Global Financial Institution Bonds*]
section 12.7 [*notifying the regulator of a change, claim or cancellation*]	1. Dealer Member Rule 17.6; 2. Dealer Member Rule 400.3 [*Notice of Termination*]; and 3. Dealer Member Rule 400.3B [*Termination or Cancellation*]
section 12.10 [*annual financial statements*]	1. Dealer Member Rule 16.2 [*Dealer Member Filing Requirements*]; and 2. Form 1
section 12.11 [*interim financial information*]	1. Dealer Member Rule 16.2 [*Dealer Member Filing Requirements*]; and 2. Form 1
section 12.12 [*delivering financial information – dealer*]	1. Dealer Member Rule 16.2 [*Dealer Member Filing Requirements*]
subsection 13.2(3) [*know your client*]	1. Dealer Member Rule 1300.1(a)-(n) [*Identity and Creditworthiness*]; 2. Dealer Member Rule 1300.2; 3. Dealer Member Rule 2500, Part II [*Opening New Accounts*]; 4. Dealer Member Rule 2700, Part II [*New Account Documentation and Approval*]; and 5. Form 2 *New Client Application Form*
section 13.3 [*suitability determination*]	1. Dealer Member Rule 1300.1(o) [*Business Conduct*]; 2. Dealer Member Rule 1300.1(p) [*Suitability determination required when accepting order*]; 3. Dealer Member Rule 1300.1(q) [*Suitability determination required when recommendation provided*]; 4. Dealer Member Rule 1300.1(r) [*Suitability determination required for account positions held when certain events occur*]; 5. Dealer Member Rule 1300.1(s) [*Suitability of investments in client accounts*]; 6. Dealer Member Rule 1300.1(t) – (v) [*Exemptions from the suitability assessment requirements*]; 7. Dealer Member Rule 1300.1(w) [*Corporation approval*]; 8. Dealer Member Rule 2700, Part I [*Customer Suitability*]; and 9. Dealer Member Rule 3200 [*Minimum requirements for Dealer Members seeking approval under Rule 1300.1(t) to offer an order-execution only service*]
section 13.3.1 [*waivers*]	1. Dealer Member Rule 1300.1(o) [*Business Conduct*]; 2. Dealer Member Rule 1300.1(p) [*Suitability determination required when accepting order*]; 3. Dealer Member Rule 1300.1(q) [*Suitability determination required when recommendation provided*]; 4. Dealer Member Rule 1300.1(r) [*Suitability determination required for account positions held when certain events occur*]; 5. Dealer Member Rule 1300.1(s) [*Suitability of investments in client accounts*];

NI 31-103 Provision	IIROC Provision
	6. Dealer Member Rule 1300.1(t) – (v) [*Exemptions from the suitability assessment requirements*]; 7. Dealer Member Rule 1300.1(w) [*Corporation approval*]; 8. Dealer Member Rule 2700, Part I [*Customer Suitability*]; and 9. Dealer Member Rule 3200 [*Minimum requirements for Dealer Members seeking approval under Rule 1300.1(t) to offer an order-execution only service*]
section 13.12 [*restriction on borrowing from, or lending to, clients*]	1. Dealer Member Rule 17.11; and 2. Dealer Member Rule 100 [*Margin Requirements*]
section 13.13 [*disclosure when recommending the use of borrowed money*]	1. Dealer Member Rule 29.26
section 13.15 [*handling complaints*]	1. Dealer Member Rule 2500, Part VIII [*Client Complaints*]; and 2. Dealer Member Rule 2500B [*Client Complaint Handling*]
subsection 14.2(2) [*relationship disclosure information*]	1. Dealer Member Rule 3500.5 [*Content of relationship disclosure*]
subsection 14.2(3) [*relationship disclosure information*]	1. Dealer Member Rule 3500.4 [*Format of relationship disclosure*]
subsection 14.2(4) [*relationship disclosure information*]	1. Dealer Member Rule 3500.1 [*Objective of relationship disclosure requirements*]
subsection 14.2(5.1) [*relationship disclosure information*]	1. Dealer Member Rule 29.8
subsection 14.2(6) [*relationship disclosure information*]	1. Dealer Member Rule 3500.1 [*Objective of relationship disclosure requirements*]
section 14.2.1 [*pre-trade disclosure of charges*]	1. Dealer Member Rule 29.9
section 14.5.2 [*restriction on self-custody and qualified custodian requirement*]	1. Dealer Member Rule 17.2A [*Establishment and maintenance of adequate internal controls in accordance with Dealer Member Rule 2600*]; 2. Dealer Member Rules 17.3, 17.3A, 17.3B and 2000 [*Segregation Requirements*]; 3. Dealer Member Rule 2600 – Internal Control Policy Statement 4 [*Segregation of Clients' Securities*]; 4. Dealer Member Rule 2600 - Internal Control Policy Statement 5 [*Safekeeping of Clients' Securities*]; 5. Dealer Member Rule 2600 - Internal Control Policy Statement 6 [*Safeguarding of Securities and Cash*]; and 6. Definition of "acceptable securities locations", General Notes and Definitions to Form 1
section 14.5.3 [*cash and securities held by a qualified custodian*]	1. Dealer Member Rule 200 [*Minimum Records*]
section 14.6 [*client and investment fund assets held by a registered firm in trust*]	1. Dealer Member Rule 17.3
section 14.6.1 [*custodial provisions relating to certain margin or security interests*]	1. Dealer Member Rules 17.2, 17.2A, 17.3, 17.3A, 17.3B, 17.11 and 2000 [*Segregation Requirements*]; 2. Dealer Member Rule 100 [*Margin Requirements*]; 3. Dealer Member Rule 2200 [*Cash and Securities Loan Transactions*]; 4. Dealer Member Rule 2600 – Internal Control Policy Statement 4 [*Segregation of Clients' Securities*]; 5. Dealer Member Rule 2600 - Internal Control Policy Statement 5 [*Safekeeping of Clients' Securities*]; 6. Dealer Member Rule 2600 - Internal Control Policy Statement 6 [*Safeguarding of Securities and Cash*]; and

NI 31-103 Provision	IIROC Provision
	7. Definitions of “acceptable counterparties”, “acceptable institutions”, “acceptable securities locations”, “regulated entities”, General Notes and Definitions to Form 1
section 14.6.2 [*custodial provisions relating to short sales*]	1. Dealer Member Rule 100 [*Margin Requirements*]; 2. Dealer Member Rule 2200 [*Cash and Securities Loan Transactions*]; 3. Dealer Member Rule 2600 – Internal Control Policy Statement 6 [*Safeguarding of Securities and Cash*]; and 4. Definitions of “acceptable counterparties”, “acceptable institutions”, “acceptable securities locations”, “regulated entities”, General Notes and Definitions to Form 1
section 14.11.1 [*determining market value*]	1. Dealer Member Rule 200.1(c); and 2. Definition (g) of the General Notes and Definitions to Form 1
section 14.12 [*content and delivery of trade confirmation*]	1. Dealer Member Rule 200.2(l) [*Trade confirmations*]
section 14.14 [*account statements*]	1. Dealer Member Rule 200.2(d) [*Client account statements*]; and 2. “Guide to Interpretation of Rule 200.2”, Item (d)
section 14.14.1 [*additional statements*]	1. Dealer Member Rule 200.2(e) [*Report on client positions held outside of the Dealer Member*]; 2. Dealer Member Rule 200.4 [*Timing of sending documents to clients*]; and 3. “Guide to Interpretation of Rule 200.2”, Item (e)
section 14.14.2 [*security position cost information*]	1. Dealer Member Rule 200.1(a); 2. Dealer Member Rule 200.1(b); 3. Dealer Member Rule 200.1(e); 4. Dealer Member Rule 200.2(d)(ii)(F) and (H); and 5. Dealer Member Rule 200.2(e)(ii)(C) and (E)
section 14.17 [*report on charges and other compensation*]	1. Dealer Member Rule 200.2(g) [*Fee/ charge report*]; and 2. “Guide to Interpretation of Rule 200.2”, Item (g)
section 14.18 [*investment performance report*]	1. Dealer Member Rule 200.2(f) [*Performance report*]; and 2. “Guide to Interpretation of Rule 200.2”, Item (f)
section 14.19 [*content of investment performance report*]	1. Dealer Member Rule 200.2(f) [*Performance report*]; and 2. “Guide to Interpretation of Rule 200.2”, Item (f)
section 14.20 [*delivery of report on charges and other compensation and investment performance report*]	1. Dealer Member Rule 200.4 [*Timing of the sending of documents to clients*]

APPENDIX H – EXEMPTIONS FROM CERTAIN REQUIREMENTS FOR MFDA MEMBERS

(Section 9.4 [*exemptions from certain requirements for MFDA members*])

NI 31-103 Provision	MFDA Provision
section 12.1 [*capital requirements*]	1. Rule 3.1.1 [*Minimum Levels*]; 2. Rule 3.1.2 [*Notice*]; 3. Rule 3.2.2 [*Member Capital*]; 4. Form 1; and 5. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 2: Capital Adequacy*]
section 12.2 [*subordination agreement*]	1. Form 1, Statement F [*Statement of Changes in Subordinated Loans*]; and 2. Membership Application Package – Schedule I (Subordinated Loan Agreement)
section 12.3 [*insurance – dealer*]	1. Rule 4.1 [*Financial Institution Bond*]; 2. Rule 4.4 [*Amounts Required*]; 3. Rule 4.5 [*Provisos*]; 4. Rule 4.6 [*Qualified Carriers*]; and 5. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 3: Insurance*]
section 12.6 [*global bonding or insurance*]	1. Rule 4.7 [*Global Financial Institution Bonds*]
section 12.7 [*notifying the regulator of a change, claim or cancellation*]	1. Rule 4.2 [*Notice of Termination*]; and 2. Rule 4.3 [*Termination or Cancellation*]
section 12.10 [*annual financial statements*]	1. Rule 3.5.1 [*Monthly and Annual*]; 2. Rule 3.5.2 [*Combined Financial Statements*]; and 3. Form 1
section 12.11 [*interim financial information*]	1. Rule 3.5.1 [*Monthly and Annual*]; 2. Rule 3.5.2 [*Combined Financial Statements*]; and 3. Form 1
section 12.12 [*delivering financial information – dealer*]	1. Rule 3.5.1 [*Monthly and Annual*]
section 13.3 [*suitability determination*]	1. Rule 2.2.1 [*"Know-Your-Client"*]; and 2. Policy No. 2 [*Minimum Standards for Account Supervision*]
section 13.3.1 [*waivers*]	1. Rule 2.2.1 [*"Know-Your-Client"*]; and 2. Policy No. 2 [*Minimum Standards for Account Supervision*]
section 13.12 [*restriction on borrowing from, or lending to, clients*]	1. Rule 3.2.1 [*Client Lending and Margin*]; and 2. Rule 3.2.3 [*Advancing Mutual Fund Redemption Proceeds*]
section 13.13 [*disclosure when recommending the use of borrowed money*]	1. Rule 2.6 [*Borrowing for Securities Purchases*]
section 13.15 [*handling complaints*]	1. Rule 2.11 [*Complaints*]; 2. Policy No. 3 [*Complaint Handling, Supervisory Investigations and Internal Discipline*]; and 3. Policy No. 6 [*Information Reporting Requirements*]
subsections 14.2(2), (3) and (5.1) [*relationship disclosure information*]	1. Rule 2.2.5 [*Relationship Disclosure*]; and 2. Rule 2.4.3 [*Operating Charges*]
section 14.2.1 [*pre-trade disclosure of charges*]	1. Rule 2.4.4 [*Transaction Fees or Charges*]
section 14.5.2 [*restriction on self-custody and qualified custodian requirement*]	1. Rule 3.3.1 [*General*]; 2. Rule 3.3.2 [*Cash*]; 3. Rule 3.3.3 [*Securities*]; and

NI 31-103 Provision	MFDA Provision
	4. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 4: Cash and Securities, and Policy Statement 5: Segregation of Clients' Securities*]
section 14.5.3 [*cash and securities held by a qualified custodian*]	1. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 4: Cash and Securities, and Policy Statement 5: Segregation of Clients' Securities*]
section 14.6 [*client and investment fund assets held by a registered firm in trust*]	1. Rule 3.3.1 [*General*]; 2. Rule 3.3.2 [*Cash*]; 3. Rule 3.3.3 [*Securities*]; and 4. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 4: Cash and Securities, and Policy Statement 5: Segregation of Clients' Securities*]
section 14.6.1 [*custodial provisions relating to certain margin or security interests*]	1. Rule 3.2.1 [*Client Lending and Margin*]
section 14.6.2 [*custodial provisions relating to short sales*]	1. Rule 3.2.1 [*Client Lending and Margin*]
section 14.11.1 [*determining market value*]	1. Rule 5.3(1)(f) [*definition of "market value*"]; and 2. Definitions to Form 1 [*definition of "market value of a security"*]
section 14.12 [*content and delivery of trade confirmation*]	1. Rule 5.4.1 [*Delivery of Confirmations*]; 2. Rule 5.4.2 [*Automatic Plans*]; and 3. Rule 5.4.3 [*Content*]
section 14.14 [*account statements*]	1. Rule 5.3.1 [*Delivery of Account Statement*]; and 2. Rule 5.3.2 [*Content of Account Statement*]
section 14.14.1 [*additional statements*]	1. Rule 5.3.1 [*Delivery of Account Statement*]; and 2. Rule 5.3.2 [*Content of Account Statement*]
section 14.14.2 [*security position cost information*]	1. Rule 5.3(1)(a) [*definition of "book cost*"]; 2. Rule 5.3(1)(c) [*definition of "cost*"]; and 3. Rule 5.3.2(c) [*Content of Account Statement – Market Value and Cost Reporting*]
section 14.17 [*report on charges and other compensation*]	1. Rule 5.3.3 [*Report on Charges and Other Compensation*]
section 14.18 [*investment performance report*]	1. Rule 5.3.4 [*Performance Report*]; and 2. Policy No. 7 *Performance Reporting*
section 14.19 [*content of investment performance report*]	1. Rule 5.3.4 [*Performance Report*]; and 2. Policy No. 7 *Performance Reporting*
section 14.20 [*delivery of report on charges and other compensation and investment performance report*]	1. Rule 5.3.5 [*Delivery of Report on Charges and Other Compensation and Performance Report*]

ANNEX E

CHANGES TO
COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

1. Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations is changed by this Document.

2. Section 1.2 is changed by adding the following at the end of the section:

Definitions related to sections 13.2.01 and 13.19

Appendix G provides guidance on the terms "financial exploitation", "temporary hold", "trusted contact person" and "vulnerable client"**..**

3. Division 1 of Part 13 is changed by adding the following, immediately before section 13.2.1:

"13.2.0 Know your client – trusted contact person

Appendix G sets out how we interpret the requirements under sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients' mental capacity to make decisions involving financial matters.**" *immediately after the sentence "***In those circumstances, registrants should consider restricting activities in the client's account to liquidating trades, transfers or disbursements.***".***

4. Part 13 is changed by adding the following at the end of the part:

Division 8 Temporary holds

13.19 Conditions for temporary hold

Appendix G sets out how we interpret the requirements under sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients' mental capacity to make decisions involving financial matters**.***.*

5. The Companion Policy is changed by adding the following appendix:

Appendix G - Part 13 - Addressing Issues of Financial Exploitation and Concerns About Clients' Mental Capacity

This appendix sets out how we interpret the requirements under sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. This appendix also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients' mental capacity to make decisions involving financial matters.

1. Financial exploitation

Financial exploitation of a client may be committed by any person or company. Examples of warning signs of financial exploitation of a client may include:

- unexplained or sudden withdrawals from accounts or account closures,
- unexplained changes in the risk profile of an account from low risk or capital preservation to high risk,
- sudden reluctance to discuss financial matters,
- being accompanied to meetings by new or unknown caregivers, friends or family members, or the registrant having difficulty communicating directly with the client without the involvement of others,
- sudden or unusual requests to change ownership of assets (for example, requesting that investments be transferred to a joint account held by family members, friends or caregivers),

- sudden or unexplained changes to legal or financial documents, such as a power of attorney (POA) or a will, or account beneficiaries,
- an attorney under a POA providing instructions that seem inconsistent with the client's pattern of instructions to the firm,
- unusual anxiety when meeting or speaking to the registrant (in-person or over the phone),
- unusual difficulty with, or lack of response to, communications or meeting requests,
- limited knowledge about their financial investments or circumstances when the client would have customarily been well informed in this area,
- increasing isolation from family or friends, or
- signs of physical neglect or abuse.

One warning sign alone may not be indicative of financial exploitation. Additionally, the warning signs listed above are not exhaustive; a registrant may notice other signs that are not listed above.

2. Vulnerable client

Vulnerable clients are those clients that might have an illness, impairment, disability or aging process limitation that places them at risk of financial exploitation. Registered firms and individuals should recognize that not all older clients are vulnerable or unable to protect their own interests. Vulnerability can affect a client of any age, take many forms, and can be temporary, sporadic or permanent in nature.

It is important to recognize vulnerabilities in clients because such vulnerabilities could make clients more susceptible to financial exploitation. While financial exploitation may be committed by any person or company, vulnerable clients may be especially susceptible to such exploitation by an individual who is close to the vulnerable client, such as a family member, friend, neighbour or another trusted individual such as an attorney under a POA, service provider or caregiver.

3. Mental capacity

Registrants can be in a unique position to notice the warning signs that a client lacks mental capacity to make decisions involving financial matters because of the interactions they have with the client, and the knowledge they acquire through the client relationship.

We acknowledge that registrants do not have the expertise to assess and determine whether clients lack mental capacity, and we do not expect registrants to make such a determination. However, where a registrant detects signs that a client lacks mental capacity to make decisions involving financial matters, the registrant may wish to take certain actions. For example, the registrant may wish to contact a trusted contact person or, in the case of a registered firm having formed a reasonable belief that the client lacks mental capacity to make decisions involving financial matters, place a temporary hold.

When considering whether one or more warning signs that a client lacks mental capacity to make decisions involving financial matters is present, registrants might consider, among others things, the client's ability to understand information that is relevant to their decision making and appreciate the reasonably foreseeable consequence of making or failing to make a decision. Examples of warning signs that a client lacks mental capacity to make decisions involving financial matters may include:

- memory loss, such as forgetting previously given instructions or repeating questions,
- increased difficulty completing forms or understanding disclosure documents,
- increased difficulty making decisions involving financial matters or understanding important aspects of investment accounts,
- confusion or unfamiliarity with previously understood basic financial terms and concepts,
- reduced ability to solve everyday math problems,

- exhibiting unfamiliarity with surroundings or social settings or missing appointments,
- difficulty communicating, including expressing their will, intent or wishes, or
- increased passivity, anxiety, aggression or other changes in mood or personality, or an uncharacteristically unkempt appearance.

We acknowledge that one sign alone may not be indicative of a client's lack of mental capacity and that signs may arise subtly and over time. The warning signs listed above are not exhaustive; a registrant may notice other signs that are not listed above. It is also important to note that mental capacity can fluctuate over time, is contextual and depends on the type of decision to be made.

4. Trusted contact person

Purpose of the trusted contact person

Subsection 13.2.01(1) requires registrants to take reasonable steps to obtain the name and contact information of a trusted contact person or "TCP" with whom they may communicate in specific circumstances in accordance with the client's written consent. Although this requirement only applies with respect to clients who are individuals, a registrant is not precluded from asking for TCP information from a non-individual client that, for example, is closely held and is part of an individual's personal investment plan.

A TCP is intended to be a resource for a registrant to assist in protecting a client's financial interests or assets when responding to possible circumstances of financial exploitation or concerns about a client's mental capacity. A TCP could also be utilized by the registrant to confirm or make inquiries about the name and contact information of a legal representative of the client, including a legal guardian of the client, an executor of an estate under which the client is a beneficiary, or a trustee of a trust under which the client is a beneficiary.

A client may name more than one TCP on their account.

While there is no requirement for the TCP to be at or over the age of majority, registrants should encourage their clients to name as the TCP an individual who is trusted, is mature and has the ability to communicate and engage in potentially difficult conversations with the registrant about the client's personal situation.

A TCP does not replace or assume the role of a client-designated attorney under a POA, nor does a TCP have the authority to transact on the client's account or to make any other decision on behalf of the client by virtue of being named a TCP. A client-designated attorney under a POA can be named as a TCP, but clients should be encouraged to select an individual who is not involved in making decisions with respect to the client's account. A TCP should not be the client's dealing representative or advising representative on the account.

Obtaining trusted contact person information and consent

There is no prescribed form for obtaining TCP information. Registrants may wish to develop a stand-alone form or incorporate the information into an existing form such as an account application form. The stand-alone form or relevant sections of an existing form might include:

- an overview of the circumstances under which the registrant may contact the TCP,
- space to document information about the TCP, including the TCP's name, mailing address, telephone number, email address and nature of the relationship with the client,
- a signature box to document the client's consent to contact the TCP,
- a statement that confirms the client's right to withdraw consent to contact the TCP, and
- a description of how to change a TCP.

Understanding the nature of the relationship between the client and the TCP may provide insight into the support network that the client has so that the registrant can assess whether it is appropriate to contact the TCP. Also, demonstrating that the registrant has knowledge of the relationship between the client and the TCP may alleviate concerns the TCP may have about speaking to the registrant about the client.

Registrants are not prevented from opening and maintaining a client account if the client refuses or fails to identify a TCP; however, they must still take reasonable steps to obtain the information as part of the know your client or "KYC" process.

Examples of reasonable steps include explaining to the client the purpose of a TCP, providing the client with the disclosure required by paragraph 14.2(2)(l.1), and asking the client to provide the name and contact information of a TCP. If a client refuses to provide the name and contact information for a TCP, the registrant may make further inquiries about the reasons for the refusal. Registered firms are reminded of the requirement to maintain records which demonstrate compliance with section 13.2.01, document correspondence with clients, and document compliance, training and supervision actions taken by the firm, under paragraphs 11.5(2)(l), (n) and (o), respectively.

Updating trusted contact person information

Under subsection 13.2.01(2), registrants are required to take reasonable steps to keep the TCP information current. Registrants are expected to update the TCP information as part of the process to update KYC information. In a situation where a client may have previously refused to provide TCP information, at each update, registrants should ask such clients if they would like to provide the information.

Contacting the trusted contact person and other parties

When concerns about financial exploitation or mental capacity to make decisions involving financial matters arise, registrants should speak with the client about concerns they have with the client's account or wellbeing before contacting others, including the TCP.

Although there is no requirement to notify a TCP that they have been named by a client, registrants should encourage their clients to notify their TCP that they have been named and explain that the TCP will only be contacted in specific circumstances in accordance with the client's written consent.

If the client's consent has been obtained, a registrant might contact a TCP if the registrant notices signs of financial exploitation or if the client exhibits signs that they lack mental capacity to make decisions involving financial matters. Examples of warning signs of financial exploitation and a lack of mental capacity are discussed in sections 1 and 3 of this appendix. If the TCP is suspected of being involved in the financial exploitation of the client, the TCP should not be contacted and consideration should be given as to whether there are other more appropriate resources from which to seek assistance, such as the police, the public guardian and trustee or an alternative TCP, if named. A registrant might also contact the TCP to confirm the client's contact information if the registrant is unsuccessful in contacting the client after repeated attempts and where failure to contact the client would be unusual. A registrant may also ask the TCP to confirm the name and contact information of a legal guardian, executor, trustee, an attorney under a POA or any other legal representative.

When contacting a TCP, registrants should be mindful of privacy obligations under applicable privacy legislation and client agreements relating to the collection, use and disclosure of personal information.

Notwithstanding that the client has named a TCP, a registrant may also contact an attorney under a POA, government organizations, departments or individuals (including police, or the public guardian and trustee) that they might otherwise consult with in instances where the registrant suspects financial exploitation or has concerns about a client's mental capacity to make decisions involving financial matters.

Policies and procedures

We expect registered firms to have written policies and procedures in respect of TCPs. These policies and procedures should address:

- how to collect and document TCP information and keep this information up-to-date,
- how to obtain the written consent of a client to contact their TCP, and document any restrictions on contacting the TCP and what type of information can be shared,
- the specific circumstances in which a registrant may wish to contact a TCP,
- how to document discussions with a TCP, and
- circumstances where a decision to contact a TCP must be escalated for review (for example, to the CCO or to authorized and qualified supervisory, compliance or legal staff), and how to document this review.

Having written policies and procedures that address situations that may result in contacting a TCP or placing a temporary hold under section 13.19 will help the registered firm demonstrate that it has a system of controls and supervision in accordance with section 11.1.

5. Temporary Holds

General principles

Registered firms and individuals can be in a unique position to notice signs of financial exploitation, vulnerability and a lack of mental capacity in clients because of the interactions they have with them, and the knowledge they acquire through the client relationship. Yet, many firms and individuals express concerns about acting to protect their clients, particularly by placing temporary holds, fearing regulatory repercussion. The intent of section 13.19 is to clarify that if a registered firm reasonably believes that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or that a client lacks mental capacity to make decisions involving financial matters, there is nothing in securities legislation that prevents the firm or its registered individuals from placing a temporary hold that they are otherwise legally entitled to place. Section 13.19 also prescribes requirements on how temporary holds in these circumstances must be placed. We acknowledge that there may be other circumstances under which a registered firm and its registered individuals may want to place a hold on an account. Section 13.19 and this guidance do not address these circumstances.

When placing temporary holds in accordance with section 13.19, registered firms and their registered individuals must act in a manner that is consistent with their obligation to deal fairly, honestly and in good faith with their clients. Registered firms and their registered individuals must not use a temporary hold for inappropriate reasons, for example, to delay a disbursement for fear of losing a client. Before a temporary hold is placed, the registered firm must reasonably believe that either financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or the client does not have the mental capacity to make decisions involving financial matters. Decisions to place temporary holds should be made by the CCO or authorized and qualified supervisory, compliance or legal staff.

We do not expect registered firms and their registered individuals to be the final arbiter in matters of vulnerability, financial exploitation or mental capacity, but rather, believe that they may want to place temporary holds in these circumstances so that they can take steps to protect their clients.

A temporary hold contemplated under section 13.19 is not intended as a hold on the entire client account, but rather as a temporary hold over a specific purchase or sale of a security or withdrawal or transfer of cash or securities from a client's account. Transactions unrelated to the suspected financial exploitation or lack of mental capacity should not be subject to the temporary hold. Each purchase or sale of a security or withdrawal or transfer of cash or securities should be reviewed separately. If the transaction, withdrawal or transfer involves all the assets in the account, it may be reasonable to place a temporary hold on the entire account while not limiting the payment of regular expenses.

A temporary hold contemplated under section 13.19 is not intended to be available where a registrant has decided not to accept a client order or instruction that does not, in their view, meet the criteria for a suitability determination. In this circumstance, the registrant must comply with the requirements set out in subsection 13.3(2.1).

A client may provide an instruction to take an investment action which would not, in the registrant's view, meet the criteria for suitability determination and which may otherwise be considered a poor financial decision; however, these facts alone do not necessarily mean that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or that the client lacks mental capacity to make decisions involving financial matters.

Conditions for temporary hold

Section 13.19 contains the steps that a registered firm must take if it or its registered individuals place a temporary hold. These steps, when taken in good faith, are consistent with the obligation to deal fairly, honestly and in good faith with the client.

We expect registered firms to have written policies and procedures in respect of temporary holds. These policies and procedures should:

- set out detailed warning signs of financial exploitation of a vulnerable client, and signs of a lack of mental capacity of a client to make decisions involving financial matters,

- clearly delineate firm and individual responsibilities for addressing concerns of financial exploitation of a vulnerable client or a lack of mental capacity of a client, such as:
    - who at the firm is authorized to place and revoke a temporary hold, for example, the CCO or authorized and qualified supervisory, compliance or legal staff;
    - who at the firm is responsible for supervising client accounts when a temporary hold is in place,
- set out the steps to take once a concern regarding financial exploitation of a vulnerable client, or a lack of mental capacity of a client, has been identified, such as:
    - escalating the concern;
    - proceeding or not proceeding with the instructions,
- establish lines of communication within the firm to ensure proper reporting, and
- outline when suspected abuse of a POA should be escalated to the appropriate external authorities, for example the public guardian and trustee or local law enforcement pursuant to section 331 of the *Criminal Code*.

Under paragraph 13.19(3)(a), when documenting the facts and reasons that caused the registered firm or its registered individuals to place and, if applicable, to continue the temporary hold, the firm is expected to include signs of financial exploitation and client vulnerability, or a lack of mental capacity of a client to make decisions involving financial matters, that were observed. As the signs of financial exploitation, vulnerability, and declining mental capacity often appear and change over a period of time, it is important to document signs and interactions with the client, the client's representatives, family or other individuals which led to the decision to place and, if applicable, to continue the temporary hold.

Under paragraph 13.19(3)(b), the registered firm must, as soon as possible, provide notice of the temporary hold and the reasons for the temporary hold to the client. While firms often opt to send written notice, there may be circumstances where they may also want to attempt to contact the client verbally. In cases of financial exploitation, the person perpetrating the exploitation may be withholding the client's mail. Additionally, if a client is experiencing a decline in mental capacity, they may not be reviewing their mail on a regular basis. Firms should be as transparent as possible with their clients about the reasons for placing the temporary hold, and be mindful of their obligation to deal fairly, honestly and in good faith with their clients.

Under paragraph 13.19(3)(c), once a registered firm or a registered individual places a temporary hold, the firm must, as soon as possible after placing the temporary hold, and on a reasonably frequent basis, review the relevant facts to determine if continuing the hold is appropriate. This review should include verifying whether the reasons for placing the temporary hold are still present, and considering any other information that is relevant to determining whether continuing the hold is appropriate. The review may prompt the registered firm to review account activity or initially contact or follow up with other parties who could provide assistance to the client, such as an attorney under a POA, a TCP, or provincial or federal government organizations and services such as the police, public guardian and trustee, which may be conducting their own review, or provincial seniors advocate offices. Firms may also consider whether there are other trusted friends and family in the client's network that could assist the client, for example, by accompanying the client to meetings. Before contacting another party, the firm should consider whether there may be a risk that the other party is involved in the financial exploitation of the vulnerable client. The review conducted under paragraph 13.19(3)(c) and, if applicable, the reasons for continuing the temporary hold are required to be documented under paragraph 13.19(3)(a).

While there is no requirement for firms to contact a TCP prior to or when a temporary hold is placed, firms may wish to contact a TCP at this point for a number of reasons, if they have not already done so, as outlined in the guidance in section 4 of this appendix. However, before contacting the TCP, firms should assess whether there is a risk that the TCP is a perpetrator of the exploitation. If the firm suspects that the TCP is involved in the financial exploitation, a notification to the TCP may have detrimental effects on the client.

For clarity, the fact that a client has not named a TCP does not preclude a firm from placing a temporary hold in accordance with section 13.19.

Before contacting any third party with the intent of sharing or obtaining personal information regarding a client, firms should assess their obligations under applicable privacy legislation and client agreements.

Paragraph 13.19(3)(d) requires that every 30 days, the firm either notifies the client of its decision to continue the temporary hold, or revokes the temporary hold. If the firm decides to continue the temporary hold, it must also provide

the client with the reasons for its decision. Firms should be as transparent as possible with their clients about the reasons for continuing the temporary hold, and be mindful of their obligation to deal fairly, honestly and in good faith with their clients.

If the registered firm no longer has a reasonable belief that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or no longer has a reasonable belief that their client does not have the mental capacity to make decisions involving financial matters, the temporary hold must end. If ending the temporary hold would result in an investment action that requires a suitability determination, such a determination will be required. A firm may also decide to end the temporary hold for other reasons, such as if it decides to accept the client instructions with respect to the transaction, withdrawal or transfer, or alternatively, decides not to accept the client's instructions..

6. These changes become effective on December 31, 2021.

ANNEX F

ADOPTION OF THE AMENDMENTS

The Amendments to NI 31-103 will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon,
- a regulation in Québec, and
- a commission regulation in Saskatchewan.

The Changes to 31-103CP will be adopted as a policy in each of the CSA member jurisdictions.

In Ontario, the Amendments to NI 31-103, as well as other required materials, were delivered to the Minister of Finance on July 15, 2021. The Minister may approve or reject these Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action, the Amendments and the Changes will come into force on December 31, 2021.

In Québec, the Amendments to NI 31-103 are adopted as a regulation made under section 331.1 of the Securities Act (Québec) and must be approved, with or without amendment, by the Minister of Finance. The regulation will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Amendments to NI 31-103 is subject to ministerial approval. If all necessary approvals are obtained, British Columbia expects these Amendments to come into force on December 31, 2021.

In Saskatchewan, the implementation of the Amendments to NI 31-103 is subject to ministerial approval. If all necessary approvals are obtained, these Amendments will come into force on December 31, 2021 or if after December 31, 2021, on the day on which they are filed with the Registrar of Regulations.

1.2 Notices of Hearing

1.2.1 David Sharpe

FILE NO.: 2021-26

IN THE MATTER OF
DAVID SHARPE

NOTICE OF HEARING

PROCEEDING TYPE: Other Application

HEARING DATE AND TIME: July 22, 2021 at 9:00 a.m.

LOCATION: By Videoconference

PURPOSE

The purpose of the proceeding is to consider whether the Commission should grant the relief requested in the Application dated July 7, 2021.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 7(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 9th day of July, 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 Vantage Global Prime Pty Ltd and Vantage International Group Ltd – ss. 127, 127.1

FILE NO.: 2021-25

IN THE MATTER OF
VANTAGE GLOBAL PRIME PTY LTD AND
VANTAGE INTERNATIONAL GROUP LTD

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: In writing

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 July 7, 2021, between Staff of the Commission and Vantage Global Prime Pty Ltd and Vantage International Group Ltd in respect of the Statement of Allegations filed by Staff of the Commission dated July 8, 2021.

REPRESENTATION

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

FAILURE TO PARTICIPATE

IF A PARTY DOES NOT PARTICIPATE, 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 8th day of July, 2021

"Grace Knakowski"
Secretary to the Commission

For more information

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

IN THE MATTER OF
VANTAGE GLOBAL PRIME PTY LTD AND
VANTAGE INTERNATIONAL GROUP LTD

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

A. OVERVIEW

1. Regulators across the globe serve to protect the investing public and preserve the integrity of the capital markets in their respective jurisdictions; therefore, it is imperative that foreign market participants, including online trading platforms, make a real and meaningful effort to identify and comply with local securities laws prior to entering a jurisdiction. Regulatory obligations cannot be avoided or delayed by relocating businesses otherwise subject to oversight in Ontario.

2. Vantage Global Prime Pty Ltd (**VGP)** and Vantage International Group Ltd (**VIG**) (collectively, **Vantage FX** or the **Respondents**) operated online trading platforms under the trade name "Vantage FX" on which investors could trade in contracts for difference (**CFDs**).

3. In 2019, the Australian Securities & Investments Commission (**ASIC**) advised its licensees to examine the legality of their offerings in overseas jurisdictions and to wind down their operations if there was a breach of the law in the overseas jurisdictions.

4. Consequently, VGP, an ASIC licensee that offered online trading services to Ontario investors, ceased its operations in Ontario in July 2019. When VGP ceased offering trading services to Ontario investors, it offered existing Ontario investors the option to close out their existing positions or request that they be transferred to VIG, a related company registered and regulated in the Cayman Islands. The Ontario investors that did not close out their accounts continued to trade on the related company's online trading platform.

5. Online trading platforms operating globally are expected to have compliance systems which provide reasonable assurance that the platform is in compliance with local securities laws. Under Ontario securities law, CFDs are derivative products that constitute securities when offered to Ontario investors, and involve a distribution of a security when issued to Ontario investors. An issuer offering and distributing such securities must therefore comply with the registration and prospectus requirements of the *Securities Act*, RSO 1990, c S.5, as amended (the **Act**) and the trade reporting requirements under OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*.

6. These requirements apply to foreign companies offering online trading of securities or derivatives to Ontario investors.

B. FACTS

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

(1) VANTAGE FX

7. The Respondents used the trade name "Vantage FX" to offer CFDs for trading by investors, including Ontario investors, on online platforms. VGP ceased offering CFDs to Ontario investors in July 2019.

8. The Respondents were not reporting issuers in Ontario; nor did they file a prospectus or a preliminary prospectus with the Commission. The Respondents were also not registered with the Commission in any capacity.

9. Between January 2014 and July 2019, VGP, an Australian Financial Services (**AFS**) licensee of ASIC, engaged in unregistered trading and made distributions that did not comply with Ontario securities law by opening and operating trading accounts for Ontario residents through the Vantage FX platform.

10. In or around April 2019, ASIC advised AFS licensees to, among other things, review and seek advice on the legality of their services in overseas jurisdictions and to cease the provision of services or solicitation of clients in jurisdictions where the relevant conduct is a breach of law.

11. In May 2019, VGP notified its non-Australian investors, including Ontario investors, that it would cease offering CFDs and gave investors the option to either close their open positions and trading accounts or request to be transferred to VIG. Since May 2019, VGP has not opened accounts for clients who provide an address in Canada and/or who log in from an Internet Protocol (IP) address located in Canada.

12. When VGP ceased its trading services to Ontario investors, it offered existing Ontario investors the option to close out their existing positions or request that they be transferred to VIG, a related company registered and regulated by the Cayman Islands Monetary Authority. The many Ontario investors that did not close out their accounts continued to trade on the related company's "Vantage FX" online trading platform.

13. VIG continued to open and operate trading accounts for Ontario residents through the Vantage FX platform. Since, like VGP, VIG was neither a registrant or a reporting issuer with the Commission, VIG's conduct also constituted unregistered trading and making distributions contrary to the Act.

(2) ONTARIO INVESTORS

14. From January 2014 to September 2020 (the **Material Time**), Vantage FX opened and operated approximately 2,700 accounts for Ontario investors (the **Ontario Accounts**), with most of the Ontario Accounts opened on or after 2018.

15. The Ontario Accounts were opened using an online account application process accessed through the Vantage FX platform. In the Ontario Accounts, Ontario investors traded CFDs through the Vantage FX platform based on exposure to underlying assets, which included cryptocurrencies, currency pairs, indices, soft commodities, precious metals and equities. The CFDs were issued by the Respondents. Each issuance of a CFD to an Ontario investor involved a distribution of a security to that investor under Ontario securities law.

16. Prior to July 2019, VGP was the counterparty for CFDs entered into with Ontario investors through the Vantage FX platform. From July 2019, VIG was the counterparty to all CFDs issued to investors.

17. The Vantage FX platform allowed retail investors to engage in leveraged trading from 100:1 to a maximum of 500:1 on various CFDs.

18. During the Material Time, Vantage FX earned approximately USD 3,000,000 in revenue from the Ontario Accounts. All fees and charges were disclosed to investors.

19. Upon being informed by Enforcement Staff that it may be conducting registrable activity in Ontario, VIG advised that it was prepared to cease doing business in Ontario and took voluntary steps to achieve this on its own initiative. VGP had ceased doing business in Ontario from July 2019.

(3) VANTAGE FX'S SOLICITATION OF ONTARIO INVESTORS

20. By making its products available to Ontario investors on its website, Vantage FX solicited Ontario investors through its website and referral partner programs, Introducing Brokers and Cost per Acquisition (**CPA**) Affiliated Programs.

21. Under the Introducing Brokers Program, an Introducing Broker (**IB**), which introduced new business to Vantage FX, could receive payments. In total, 99 IBs from Ontario were compensated by VIG and VGP under the Introducing Brokers Program during the Material Time.

22. Similarly, the CPA Affiliated Program was a type of marketing program where a person or business (a **CPA Affiliate**) referred other people to Vantage FX in return for a cost per acquisition financial reward. In total, 22 CPA Affiliates from Ontario referred investors to the Respondents and were compensated for doing so during the Material Time.

C. BREACHES OF ONTARIO SECURITIES LAW

Enforcement Staff allege the following breaches of Ontario securities law:

23. Vantage FX engaged in the business of trading in securities without registration in accordance with Ontario securities law, contrary to subsection 25(1) of the Act; and

24. Vantage FX distributed securities without a preliminary prospectus or a prospectus having been filed, contrary to subsection 53(1) of the Act.

D. ORDER SOUGHT

25. Enforcement Staff request that the Commission make an order pursuant to subsection 127(1) and section 127.1 of the Act to approve the settlement agreement dated as of July 7, 2021 between the Respondents and Enforcement Staff.

26. Enforcement Staff reserve the right to amend these allegations and to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

DATED this 8th day of July, 2021.

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Anna Huculak
Email: ahuculak@osc.gov.on.ca
Tel.: 416.593.8291

Staff of the Enforcement Branch of the Ontario Securities Commission

1.4 Notices from the Office of the Secretary

1.4.1 Vantage Global Prime Pty Ltd and Vantage International Group Ltd

FOR IMMEDIATE RELEASE
July 8, 2021

VANTAGE GLOBAL PRIME PTY LTD AND
VANTAGE INTERNATIONAL GROUP LTD,
File No. 2021-25

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 Vantage Global Prime Pty Ltd and Vantage International Group Ltd in the above named matter.

A copy of the Notice of Hearing dated July 8, 2021 and the Statement of Allegations dated July 8, 2021 are 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 Alvin Jones

FOR IMMEDIATE RELEASE
July 8, 2021

ALVIN JONES,
File No. 2021-5

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on July 30, 2021 at 10:00 a.m., will be heard on July 30, 2021 at 2:00 p.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

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For General Inquiries:

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

1.4.3 David Sharpe

FOR IMMEDIATE RELEASE
July 9, 2021

DAVID SHARPE,
File No. 2021-26

TORONTO – The Office of the Secretary issued a Notice of Hearing to consider whether the Commission should grant the relief requested in the Application dated July 7, 2021.

A preliminary attendance will be held on July 22, 2021 at 9:00 a.m.

A copy of the Notice of Hearing dated July 9, 2021 and the Application dated July 7, 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

For General Inquiries:

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

1.4.4 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
July 9, 2021

BRIDGING FINANCE INC.,
DAVID SHARPE,
BRIDGING INCOME FUND LP,
BRIDGING MID-MARKET DEBT FUND LP,
BRIDGING INCOME RSP FUND,
BRIDGING MID-MARKET DEBT RSP FUND,
BRIDGING PRIVATE DEBT INSTITUTIONAL LP,
BRIDGING REAL ESTATE LENDING FUND LP,
BRIDGING SMA 1 LP,
BRIDGING INFRASTRUCTURE FUND LP, AND
BRIDGING INDIGENOUS IMPACT FUND,
File No. 2021-15

TORONTO – Take notice that an attendance to consider the Application dated July 7, 2021 in the above named matter is scheduled to be heard on July 22, 2021 at 9:00 a.m.

A copy of the Application dated July 7, 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

1.4.5 Jay Rasik Modi et al.

FOR IMMEDIATE RELEASE
July 12, 2021

JAY RASIK MODI,
ARTI RAJEEV SINGH, ALSO KNOWN AS ARTI RAJEEV MODI,
RAJEEV JAGDISH SINGH,
982 MEDIA HOUSE INC.,
1611385 ALBERTA LTD.,
OMNIARCH CAPITAL GROUP INC.,
OMNIARCH VENTURES INC., ALSO KNOWN AS NEW WAVE VENTURES INC.,
LENDINGARCH FINANCIAL INC.,
OMNIARCH GLOBAL BOND CORP., ALSO KNOWN AS OMNIARCH GLOBAL SECURED CORPORATION, ALSO KNOWN AS CALASSET BOND CORP.,
1505106 ALBERTA LTD., and
1502631 ALBERTA LTD.,
File No. 2021-11

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above named matter.

A copy of the Reasons and Decision dated July 9, 2021 and the Order dated July 9, 2021 are 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 Wilks Brothers, LLC

FOR IMMEDIATE RELEASE
July 12, 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 in the above named matter scheduled to be heard on July 13, 2021 will not proceed as scheduled.

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

1.4.7 Krystal Jean Vanlandschoot

FOR IMMEDIATE RELEASE
July 13, 2021

KRYSTAL JEAN VANLANDSCHOOT,
File No. 2021-6

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on July 15, 2021 at 9:00 a.m.

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

1.4.8 Miner Edge Inc. et al.

FOR IMMEDIATE RELEASE
July 13, 2021

MINER EDGE INC.,
MINER EDGE CORP. and
RAKESH HANDA,
File No. 2019-44

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on July 13, 2021 at 3:00 p.m.

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

1.4.9 Bybit Fintech Limited

FOR IMMEDIATE RELEASE
July 13, 2021

BYBIT FINTECH LIMITED,
File No. 2021-21

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

A copy of the Order dated July 13, 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

1.4.10 Wilks Brothers, LLC

FOR IMMEDIATE RELEASE
July 13, 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 July 13, 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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 CI Investments Inc. and Cambridge Monthly Income Corporate Class

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – approval of mutual fund merger – approval required because merger does not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 Investment Funds – merger will occur on a taxable basis – merger otherwise comply with pre-approval criteria, including securityholder vote, IRC approval – securityholders provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b) and 19.1(2).

July 6, 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
CI INVESTMENTS INC.
(the Manager)

AND

CAMBRIDGE MONTHLY INCOME CORPORATE CLASS
(the Terminating Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager on behalf of the Terminating Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) approving the proposed merger (the **Merger**) of the Terminating Fund into Cambridge Global High Income Fund (the **Continuing Fund**, and collectively with the Terminating Fund, the **Funds**) pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Merger Approval**).

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

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the Manager 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, Yukon, Northwest Territories and Nunavut (together with Ontario, the **Jurisdictions**).

Interpretation

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

Continuing Fund means Cambridge Global High Income Fund;

Corporation means CI Corporate Class Limited;

Fund means each of the Terminating Fund and the Continuing Fund;

Income Tax Act means the *Income Tax Act* (Canada);

IRC means the independent review committee for the Terminating Fund; and

Terminating Fund means Cambridge Monthly Income Corporate Class.

Representations

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

The Manager and the Funds

1. The Manager is a corporation amalgamated under the laws of Ontario with its head office located in Ontario. The Manager is registered as follows:

   (a) under the securities legislation of each Jurisdiction as a portfolio manager and an exempt market dealer;

   (b) under the securities legislation of Ontario, Quebec and Newfoundland and Labrador as an investment fund manager; and

(c) under the *Commodity Futures Act* (Ontario) as a commodity trading counsel and a commodity trading manager.

2. The Manager is the manager of the Funds.

3. The Terminating Fund is an open-end mutual fund comprised of two or more classes of convertible special shares of CI (the **Corporation**).

4. The Continuing Fund is an open-end mutual fund governed by a declaration of trust under the laws of Ontario.

5. Neither the Manager nor the Funds are in default of securities legislation in any Jurisdiction.

6. Each Fund follows the standard investment restrictions and practices established under securities legislation of each Jurisdiction, except to the extent that a Fund has received an exemption from the Canadian securities administrators to deviate therefrom.

7. Each Fund is a reporting issuer under the securities legislation of each Jurisdiction and is subject to the requirements of NI 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

8. Each Fund currently distributes its securities in all Jurisdictions pursuant to a simplified prospectus and annual information form dated July 29, 2020, as amended.

Reason for Merger Approval

9. Regulatory approval of the Merger is required because the Merger complies with all of the criteria for pre-approved reorganizations and transfers as set out in section 5.6 of NI 81-102, except that the Merger will not be a "qualifying exchange" within the meaning of section 132.2 of the *Income Tax Act* (Canada) (the **Income Tax Act**) or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the Income Tax Act.

The Proposed Merger

10. The proposed Merger was announced in the following documents, each of which has been filed on SEDAR:

(a) a press release dated May 3, 2021;

(b) a material change report dated May 4, 2021;

(c) amendments to the Terminating Fund's simplified prospectus, annual information form, as well as revised fund facts, dated May 10, 2021.

11. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Manager presented the terms of the Merger to the IRC for its review. The IRC determined that the Merger, if implemented, will achieve a fair and reasonable result for the Terminating Fund.

12. The Manager is convening a special meeting of the securityholders of the Terminating Fund in order to seek the approval of securityholders to complete the Merger (the **Meeting**), as required by paragraph 5.1(1)(f) of NI 81-102. The Meeting will be held on July 12, 2021.

13. The Manager has concluded that the Merger is not a material change to the Continuing Fund, and accordingly, there is no intention to convene a meeting of securityholders of the Continuing Fund to approve the Merger pursuant to paragraph 5.1(1)(g) of NI 81-102.

14. By way of order dated July 28, 2017, the Manager was granted relief (the **Notice-and-Access Relief**) from the requirement set out in paragraph 12.2(2)(a) of National Instrument 81-106 *Investment Fund Continuous Disclosure* to send a printed management information circular to securityholders while proxies are being solicited, and, subject to certain conditions, instead allows a notice-and-access document (as described in the Notice-and-Access Relief) to be sent to such securityholders. In accordance with the Manager's standard of care owed to the Terminating Fund pursuant to securities legislation, the Manager will only use the notice-and-access procedure for a particular meeting where it has concluded it is appropriate and consistent with the purposes of notice-and-access (as described in the Companion Policy to NI 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*) to do so, also taking into account the purpose of the Meeting and whether the Terminating Fund would obtain a better participation rate by sending the management information circular with the other proxy-related materials.

15. Pursuant to requirements of the Notice-and-Access Relief, a notice-and-access document and applicable proxies in connection with the Meeting, along with the fund facts of the Continuing Fund, will be mailed to securityholders on or about June 11, 2021 and, concurrently, will be filed via SEDAR. The management information circular (the **Circular**), which the notice-and-access document provides a link to, will be filed via SEDAR at the same time.

16. If all required approvals for the Merger are obtained, it is intended that the Merger will occur after the close of business on or about July 23, 2021 (the **Effective Date**). The Manager therefore anticipates that each securityholder of the Terminating Fund will become a securityholder of the Continuing Fund after the close of business on the Effective Date. The Terminating Fund will be wound-up as soon as reasonably possible following the Merger.

17. The tax implications of the Merger, as well as the differences between the Terminating Fund and the Continuing Fund and the IRC's recommendation of the Merger are described in the Circular, so that securityholders may make an informed decision before voting on whether to approve the Merger. The Circular also describes the various ways in which securityholders can obtain a copy of the prospectus of the Continuing Fund.

18. Securityholders of the Terminating Fund will continue to have the right to redeem their securities of the Terminating Fund at any time up to the close of business on the Effective Date. Following the Merger, all optional plans (including pre-authorized purchase programs, automatic withdrawal plans, systematic switch programs and automatic rebalancing services) which were established with respect to the Terminating Fund will be re-established in comparable plans with respect to its Continuing Fund, unless securityholders advise otherwise.

19. The costs of effecting the Merger (consisting primarily of legal and regulatory fees, and proxy solicitation, printing and mailing costs) will be borne by the Manager.

20. No sales charges will be payable by securityholders of the Terminating Fund in connection with the Merger.

21. Securities of the Continuing Fund received by securityholders of the Terminating Fund as a result of the Merger will have the same sales charge option and, for securities purchased under a deferred sales charge option, the same remaining deferred sales charge schedule, as their securities in the Terminating Fund.

22. The investment portfolio and other assets of the Terminating Fund to be acquired by the Continuing Fund in order to effect the Merger are currently, or will be, acceptable, on or prior to the Effective Date, to the portfolio manager of the Continuing Fund and are, or will be, consistent with the investment objective of the Continuing Fund.

Merger Steps

23. The specific steps to implement the Merger are as follows:

    (a) Prior to the Merger, if required, the Corporation will sell any securities in the portfolio underlying the Terminating Fund that do not meet the investment objectives and strategies of the Continuing Fund. As a result, the portfolio underlying the Terminating Fund may temporarily hold cash or money market instruments and may not be fully invested in accordance with their investment objectives for a brief period of time prior to the Merger being effected.

    (b) The value of the Terminating Fund's investment portfolio and other assets will be determined at the close of business on the Effective Date of the Merger in accordance with the constating documents of the Terminating Fund.

    (c) The Corporation may declare, pay and automatically reinvest ordinary dividends or capital gains dividends to securityholders of the Terminating Fund, as determined by the Manager at the time of the Merger. The Continuing Fund will declare, pay and automatically reinvest a distribution to its securityholders of net realized capital gains and net income, if any, to ensure that the Continuing Fund will not be subject to tax for its current tax year. For the Terminating Fund's securityholders, this will also ensure that they will not be subject to tax on any income generated prior to the Merger in the Continuing Fund.

    (d) The Corporation will transfer substantially all the assets attributed to the Terminating Fund to the Continuing Fund. In return, the Continuing Fund will issue to the Corporation units of the Continuing Fund having an aggregate net asset value equal to the value of the assets transferred to the Continuing Fund.

    (e) The Continuing Fund will not assume any of the liabilities of the Corporation attributed to the Terminating Fund. Instead, the Corporation will retain sufficient assets to satisfy the Terminating Fund's estimated liabilities, if any, as of the Effective Date of the Merger.

    (f) Immediately thereafter, units of the Continuing Fund received by the Corporation will be distributed to securityholders of the Terminating Fund in exchange for their securities in the Terminating Fund on a dollar-for-dollar and series-by-series basis, so that securityholders of the Terminating Fund become securityholders of the Continuing Fund.

    (g) As soon as reasonably possible following the Merger, the articles of incorporation of the Corporation, as amended, will be further amended so that the shares of the Terminating Fund are cancelled.

24. The result of the Merger will be that investors in the Terminating Fund will cease to be securityholders of the Terminating Fund and will become securityholders of the Continuing Fund.

Benefits of the Merger

25. In the opinion of the Manager, the Merger will be beneficial to securityholders of the Terminating Fund for the following reasons:

    (a) it is expected that the Merger will result in a more streamlined and simplified product line-up with less duplication that is easier for investors to understand;

    (b) following the Merger, the Continuing Fund will have more assets, thereby allowing for increased portfolio diversification opportunities and a smaller proportion of assets to be set aside for fund redemptions;

    (c) securityholders of the Terminating Fund will benefit by moving to a Continuing Fund with a much larger net asset value, and the Continuing Fund will benefit from its larger profile in the marketplace; and

    (d) the management fee and fixed administration fee with respect to each series of the Continuing Fund will be the same as the management fee and fixed administration fee that are currently payable by securityholders of the corresponding series of the Terminating Fund.

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 Merger Approval is granted, provided that the Manager obtains the prior approval of the securityholders of the Terminating Fund at a special meeting held for that purpose.

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

Application File #: 2021/0286
Sedar No. 3221676

2.1.2 Connor, Clark & Lunn Funds Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds for an 8-day extension of the lapse date of their prospectus – Extension will not affect the currency or accuracy of the information in the current prospectus.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

February 19, 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
CONNOR, CLARK & LUNN FUNDS INC.
(the Filer)

AND

CC&L ALTERNATIVE GLOBAL EQUITY FUND,
CC&L ALTERNATIVE CANADIAN EQUITY FUND AND
CC&L ALTERNATIVE INCOME FUND
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the time limit pertaining to filing the renewal prospectus of the Funds dated February 25, 2020 (the **Current Prospectus**) be extended to the time limits that would apply as if the lapse date was March 5, 2021 (the **Exemption Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

    (i) the Ontario Securities Commission is the principal regulator for this application; and

    (ii) 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 each of the other provinces and territories of Canada (together with the

Province of Ontario, the **Canadian Jurisdictions**).

Interpretation

Unless expressly defined herein, terms in this application have the respective meanings given to them in MI 11-102, National Instrument 14-101 *Definitions* and National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* and is registered as an Investment Fund Manager in Ontario, Québec and Newfoundland and Labrador and as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, Newfoundland and Labrador and Prince Edward Island. The head office of the Filer is located in in Toronto, Ontario.

2. The Filer is the manager of the Funds, as well as the PCJ Absolute Return II Fund (the **New Fund**).

3. Each of the Funds was established as an open-end unit trust under the laws of Ontario pursuant to separate supplemental trust agreements between the Manager and RBC Investor Services Trust (the **Trustee**) each dated as of January 2, 2019.

4. The New Fund was established as an open-end unit trust under the laws of Ontario pursuant to a supplemental trust agreement between the Manager and the Trustee dated as of January 2, 2021.

5. Each of the Funds is a reporting issuer in each of the Canadian Jurisdictions.

6. Neither the Filer nor any of the Funds are in default of the Legislation.

7. The units of the Funds are currently distributed to the public in the Canadian Jurisdictions pursuant to the Current Prospectus. The lapse date for the Current Prospectus under the Legislation is February 25, 2021 (the **Lapse Date**).

8. In order to continue the distribution of units of the Funds for a further 12 months from the Lapse Date, under subsection 62(2) of the Legislation, a *pro forma* simplified prospectus must be filed no less than 30 days before the Lapse Date, such date being January 26, 2021 (the **Pro Forma Filing Deadline**), and the final simplified prospectus would be required to be filed no later than 10 days after the Lapse Date.

9. Primarily due to an inadvertent miscalculation of the Pro Forma Filing Deadline, the Filer filed the renewal prospectus for the Funds and a preliminary simplified prospectus for the New Fund on January 27, 2021, one day after the Pro Forma Filing Deadline, in each of the Jurisdictions. As a result, the Filer is required to file the Final Prospectus for the Funds by the Lapse Date.

10. If the Exemption Sought is not granted, the Filer will incur additional costs in order to finalize and file the Final Prospectus on the Lapse Date.

11. The Filer will also realize significant administrative and operational efficiencies in relation to the Funds and its other publicly offered investment funds if the Final Prospectus is filed on March 5, 2021.

12. The Filer respectfully submits that granting the Exemption Sought is not prejudicial to the public interest as it will not affect the accuracy of the information contained in the Current Prospectus or the fund facts document(s) of the Funds, no investor harm was caused by the delay, nor was the length of the delay from the Pro Forma Filing Deadline material.

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.

"Darren McKall"
Investment Funds and Structured Products
Ontario Securities Commission

Application File #: 2021/0064

2.1.3 Triple Flag Precious Metals Corp.

Headnote

National Instrument 43-101 Standards of Disclosure for Mineral Projects (NI 43-101) – relief from requirement to file technical reports granted to issuer having royalty interests or stream interests – Filer to become a reporting issuer pursuant to a proposed initial public offering – relevant technical disclosure for royalty interests or stream interests previously disclosed by operators or owners of the mineral projects.

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, ss. 4.1(1) and 9.1(1).

May 19, 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
TRIPLE FLAG PRECIOUS METALS CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer be exempted from the requirement in subsection 4.1(1) of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**) to file a technical report, upon the Filer becoming a reporting issuer, for each mineral property material to the Filer, in the circumstances described below (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon, the Northwest Territories and Nunavut (the **Non-Principal Jurisdictions**).

Interpretation

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

Representations

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

1. the Filer is a corporation existing under the laws of Canada, with a head office in Toronto, Ontario;

2. the Filer is not a reporting issuer under the Legislation or applicable securities legislation in any Non-Principal Jurisdiction;

3. the Filer is not in default of the requirements of applicable securities legislation in the Jurisdiction or any Non-Principal Jurisdiction;

4. the Filer, at the time of the filing of the Final Prospectus (as defined below), will hold through a wholly-owned subsidiary, Triple Flag International Ltd. (**TF International**), among other assets, stream interests in the Northparkes Joint Venture's (**Northparkes**) Northparkes copper-gold mine, Nexa Resources S.A.'s (**Nexa**) Cerro Lindo mine and Royal Bafokeng Platinum Limited's (**RBPlat**) PGM mine;

5. the Filer, at the time of the filing of the Final Prospectus, will hold through an indirect wholly-owned subsidiary, TF Australia Holdings Ltd., among other assets, a royalty interest in Kirkland Lake Gold Ltd.'s (**Kirkland Lake**) Fosterville mine;

6. under subsection 4.2(1) of NI 43-101, an issuer is required to file a technical report that relates to a mineral project on a property material to the issuer upon the issuer filing certain documents, including a preliminary prospectus;

7. the definition of mineral project under section 1.1 of NI 43-101 includes a royalty interest or similar interest;

8. under subsection 4.1(1) of NI 43-101, an issuer is required to file a technical report for a mineral property material to the issuer upon becoming a reporting issuer in a jurisdiction of Canada;

9. the Filer obtained a decision dated October 22, 2019 from the Ontario Securities Commission (the **Prior Decision**) providing for exemptive relief comparable to the Exemption Sought with respect to its material properties. The Prior Decision was issued in connection with a preliminary prospectus for a proposed initial public offering in 2019 which was subsequently withdrawn. The Prior Decision will not be relied upon in connection with the IPO (as defined below) or otherwise;

10. the Filer will become a reporting issuer under the Legislation and the applicable securities legislation in the Non-Principal Jurisdictions following the filing of, and obtaining a receipt for, a (final) base PREP prospectus (the **Final Prospectus**) in connection with a proposed initial public offering (**IPO**). The Filer filed, and received a receipt for, a preliminary base PREP prospectus (the **Preliminary Prospectus**) in connection with the IPO on May 10, 2021;

11. the Filer's stream interests in the Northparkes, Cerro Lindo and PGM properties and royalty interest in the Fosterville property make those properties material to the Filer;

12. the Filer made scientific and technical disclosure regarding the Northparkes, Cerro Lindo, PGM and Fosterville properties in the Preliminary Prospectus and will make such disclosure in the Final Prospectus;

13. the Filer is not the owner or operator of the Northparkes property, the Cerro Lindo property, the PGM property or the Fosterville property;

14. according to the public disclosure record of China Molybdenum Co., Ltd. (**CMOC**), (i) the Northparkes property is operated by CMOC, whose securities trade on the Hong Kong Stock Exchange (a specified exchange under NI 43-101) (**HKSE**), and (ii) CMOC would be a "producing issuer" for purposes of NI 43-101 based on its gross revenue derived from mining operations for the year ended December 31, 2020, as reflected in its audited financial statements for that period. CMOC is not a reporting issuer in any jurisdiction of Canada;

15. CMOC discloses mineral resources and mineral reserves prepared in accordance with the guidelines and principles of the JORC Code. CMOC discloses information required by the listing rules of the HKSE on the HKSE website at https://www.hkexnews.hk/. The scientific and technical information material to the Filer in respect of the Northparkes property is available on the Northparkes website at www.northparkes.com under the heading "Northparkes Mining and Technical Information";

16. according to the public disclosure record of Nexa, the Cerro Lindo property is owned and operated directly or indirectly by Nexa, which is a reporting issuer in all of the provinces and territories of Canada;

17. a technical report for the Cerro Lindo property entitled Technical Report on the Cerro Lindo Mine, Department of Ica, Peru (the **Cerro Lindo Report**) was filed by Nexa on March 22, 2021. The Cerro Lindo Report is available on SEDAR under Nexa's profile at www.sedar.com. According to the public disclosure record of Nexa, the Cerro Lindo Report was prepared in accordance with NI 43-101;

18. according to the public disclosure record of RBPlat, (i) the PGM properties are owned and operated directly or indirectly by RBPlat, whose securities trade on the Johannesburg Stock Exchange (the **JSX**) (a specified exchange under NI 43-101), and (ii) RBPlat would be a "producing issuer" for purposes of NI 43-101 based on its gross revenue derived from mining operations for the year ended December 31, 2020, as reflected in its audited financial statements for that period. RBPlat is not a reporting issuer in any jurisdiction of Canada;

19. RBPlat discloses mineral resources and mineral reserves in accordance with the guidelines and principles of the SAMREC Code and in accordance with the requirements of the JSX and applicable corporate laws. A mineral resources and mineral reserves statement in respect of the PGM properties entitled Mineral Resources and Mineral Reserves Statement 2020 is available on RBPlat's website at bafokengplatinum.co.za;

20. according to the public disclosure record of Kirkland Lake, the Fosterville property is owned and operated directly or indirectly by Kirkland Lake, which is a reporting issuer in each of the provinces of Canada other than Quebec;

21. a technical report for the Fosterville property entitled Updated NI 43-101 Technical Report, Fosterville Gold Mine in the State of Victoria, Australia (the **Fosterville Report**) was filed by Kirkland Lake on April 1, 2019. The Fosterville Report is available on SEDAR under Kirkland Lake's profile at www.sedar.com. According to the public disclosure record of Kirkland Lake, the Fosterville Report was prepared in accordance with NI 43-101;

22. the Filer will identify in any document that it files under subsection 4.2(1) of NI 43-101 the source of the scientific and technical information it discloses on the Northparkes, Cerro Lindo, PGM and Fosterville properties; and

23. to the best of the Filer's knowledge, information and belief, the current or predecessor owners or operators of the Northparkes, Cerro Lindo, PGM and Fosterville properties have disclosed the scientific and technical information that is material to the Filer.

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.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2020/0621

2.2 Orders

2.2.1 Sunwah International Limited

Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

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

July 6, 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
SUNWAH INTERNATIONAL LIMITED
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

2.2.2 Jay Rasik Modi et al.

File No. 2021-11

IN THE MATTER OF
JAY RASIK MODI,
ARTI RAJEEV SINGH, ALSO KNOWN AS ARTI RAJEEV MODI,
RAJEEV JAGDISH SINGH,
982 MEDIA HOUSE INC.,
1611385 ALBERTA LTD.,
OMNIARCH CAPITAL GROUP INC.,
OMNIARCH VENTURES INC., ALSO KNOWN AS NEW WAVE VENTURES INC.,
LENDINGARCH FINANCIAL INC.,
OMNIARCH GLOBAL BOND CORP., ALSO KNOWN AS OMNIARCH GLOBAL SECURED CORPORATION,
ALSO KNOWN AS CALASSET BOND CORP.,
1505106 ALBERTA LTD., and
1502631 ALBERTA LTD.

Cathy Singer, Commissioner and Chair of the Panel

July 9, 2021

ORDER

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing in writing to consider a request by Staff of the Commission (**Staff**) for an order imposing sanctions against Jay Rasik Modi (**Jay Modi**), Arti Rajeev Singh, also known as Arti Rajeev Modi (**Arti Modi**), Rajeev Jagdish Singh (**Singh**), 982 Media House Inc. (**982 Media**), 1611385 Alberta Ltd., OmniArch Capital Group Inc. (**OmniArch Capital Group**), OmniArch Ventures Inc., also known as New Wave Ventures Inc. (**OmniArch Ventures**), LendingArch Financial Inc. (**LendingArch**), OmniArch Global Bond Corp., also known as OmniArch Global Secured Corporation, also known as Calasset Bond Corp. (**OmniArch Global**), 1505106 Alberta Ltd. and 1502631 Alberta Ltd. (collectively, the **Respondents**) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the materials filed by Staff, including a Settlement Agreement and Undertaking between the Respondents and the Alberta Securities Commission (the **ASC**) dated May 11, 2020 (the **Settlement Agreement**), and on considering that the Respondents, except 982 Media and 1502631 Alberta Ltd., agree to the order requested by Staff, and 982 Media and 1502631 Alberta Ltd. filing no materials, although properly served;

IT IS ORDERED THAT:

1. Against Jay Modi:

   (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Jay Modi cease until May 11, 2040, except where all of the following conditions are met:

      (i) trades are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) trades are made in a registered retirement savings plan (**RRSP**), registered retirement income fund (**RRIF**), or tax-free savings account (**TFSA**) (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Jay Modi has sole beneficial ownership;

   (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Jay Modi cease until May 11, 2040, except where all of the following conditions are met:

      (i) acquisitions are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) acquisitions are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Jay Modi has sole beneficial ownership;

   (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Jay Modi until May 11, 2040;

   (d) pursuant to paragraph 7 of subsection 127(1) of the Act, Jay Modi resign any positions that he holds as a director or officer of any issuer;

(e) pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Jay Modi is prohibited from becoming or acting as a director or officer of any issuer or registrant until May 11, 2040; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Jay Modi is prohibited from becoming or acting as a registrant or promoter until May 11, 2040.

2. Against Arti Modi:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Arti Modi cease until May 11, 2030, except where all of the following conditions are met:

(i) trades are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

(ii) trades are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Arti Modi has sole beneficial ownership;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Arti Modi cease until May 11, 2030, except where all of the following conditions are met:

(i) acquisitions are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

(ii) acquisitions are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Arti Modi has sole beneficial ownership;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Arti Modi until May 11, 2030;

(d) pursuant to paragraph 7 of subsection 127(1) of the Act, Arti Modi resign any positions that she holds as a director or officer of any issuer;

(e) pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Arti Modi is prohibited from becoming or acting as a director or officer of any issuer or registrant until May 11, 2030; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Arti Modi is prohibited from becoming or acting as a registrant or promoter until May 11, 2030.

3. Against Singh:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Singh cease until May 11, 2023, except where all of the following conditions are met:

(i) trades are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

(ii) trades are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Singh has sole beneficial ownership;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Singh cease until May 11, 2023, except where all of the following conditions are met:

(i) acquisitions are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

(ii) acquisitions are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Singh has sole beneficial ownership;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Singh until May 11, 2023;

(d) pursuant to paragraph 7 of subsection 127(1) of the Act, Singh resign any positions that he holds as a director or officer of any issuer, with the exception that he can act in those capacities with respect to Fuelled Energy Marketing Inc. (or any of its subsidiaries or successor entities);

(e) pursuant to paragraph 8 of subsection 127(1) of the Act, Singh is prohibited from becoming or acting as a director or officer of any issuer until May 11, 2023, with the exception that he can act in those capacities with

respect to Fuelled Energy Marketing Inc. (or any of its subsidiaries or successor entities) provided that Fuelled Energy Marketing Inc. does not issue or propose to issue securities or exchange contracts to the public except as stock options to its employees in respect of equity based compensation;

(f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Singh is prohibited from becoming or acting as a director or officer of any registrant until May 11, 2023; and

(g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Singh is prohibited from becoming or acting as a registrant or promoter until May 11, 2023.

4. Against 982 Media, 1611385 Alberta Ltd., OmniArch Capital Group, OmniArch Ventures, OmniArch Global, 1505106 Alberta Ltd. and 1502631 Alberta Ltd.:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by each of them cease permanently, with the exception that OmniArch Ventures shall be permitted to trade its existing shares of LendingArch provided that the net proceeds of any such trade are utilized first to satisfy any remaining required Repayment as defined in the Settlement Agreement, and second used to satisfy any remaining monetary settlement amount owing by Jay Modi to the ASC;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by each of them cease permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of them permanently, with the exception that OmniArch Ventures shall be permitted to rely on such applicable exemptions to trade its existing shares of LendingArch provided that the net proceeds of any such trade are utilized first to satisfy any remaining required Repayment as defined in the Settlement Agreement, and second used to satisfy any remaining monetary settlement amount owing by Jay Modi to the ASC; and

(d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of them is prohibited from becoming or acting as a registrant or promoter permanently.

5. Against LendingArch:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by LendingArch cease permanently, with the exception that it may trade through a registered dealer that has first been provided with a copy of the Settlement Agreement and this order;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by LendingArch cease permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to LendingArch permanently, with the exception that it may use capital raising exemptions through a registered dealer that has first been provided with a copy of the Settlement Agreement and this order; and

(d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, LendingArch is prohibited from becoming or acting as a registrant or promoter permanently.

“Cathy Singer”

2.2.3 Atlantic Power Limited Partnership

Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Applicable Legislative Provisions

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

July 12, 2021

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

AND

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

AND

IN THE MATTER OF
ATLANTIC POWER LIMITED PARTNERSHIP
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2021/0362

2.2.4 Bybit Fintech Limited

File No. 2021-21

IN THE MATTER OF
BYBIT FINTECH LIMITED

Lawrence P. Haber, Commissioner and Chair of the Panel

July 13, 2021

ORDER

WHEREAS the Ontario Securities Commission held a hearing in writing;

ON READING the correspondence from Staff of the Commission (**Staff**) and the representatives for Bybit Fintech Limited (the **Respondent**) dated July 13, 2021 setting out that the parties' consent to the schedule set out below;

IT IS ORDERED THAT:

1. pursuant to section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 23(3) of the *Commission's Rules of Procedures and Forms* (2019) 42 OSCB 9714 the first attendance scheduled for July 15, 2021 is held in writing;

2. Staff shall disclose to the Respondent non-privileged relevant documents and things in the possession or control of Staff, by 4:30 p.m. on August 16, 2021;

3. the Respondent shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents, by 4:30 p.m. on October 12, 2021;

4. Staff shall serve and file a witness list, and serve a summary of each witness' anticipated evidence on the Respondent, and indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence, by 4:30 p.m. on October 15, 2021; and

5. a further attendance in this matter is scheduled for October 22, 2021 at 10:00 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.

"Lawrence P. Haber"

2.2.5 Wilks Brothers, LLC

File No. 2021-12

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.

Timothy Moseley, Vice-Chair and Chair of the Panel
Lawrence P. Haber, Commissioner
Frances Kordyback, Commissioner

July 13, 2021

ORDER

WHEREAS on July 12, 2021, the Ontario Securities Commission held a hearing by videoconference to consider the application (the **Application**) brought 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 Calfrac's motion challenging Wilks's standing to bring the Application (the **Standing Motion**);

ON READING the materials filed by the parties, and on hearing the submissions of the representatives for Wilks, Calfrac, TSX, Staff of the Commission, and the intervenors Glendon Capital Management LP, Signature Global Asset Management, a division of CI Investments Inc., and EdgePoint Investment Group, Inc.;

IT IS ORDERED, for reasons to follow, that:

1. the Standing Motion is dismissed and Wilks has standing to bring the Application; and

2. the Application is dismissed.

"Timothy Moseley"

"Lawrence P. Haber"

"Frances Kordyback"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Jay Rasik Modi et al. – ss. 127(1), 127(10)

Citation: *Modi (Re)*, 2021 ONSEC 17
Date: 2021-07-09
File No. 2021-11

IN THE MATTER OF
JAY RASIK MODI,
ARTI RAJEEV SINGH, ALSO KNOWN AS ARTI RAJEEV MODI,
RAJEEV JAGDISH SINGH,
982 MEDIA HOUSE INC.,
1611385 ALBERTA LTD.,
OMNIARCH CAPITAL GROUP INC.,
OMNIARCH VENTURES INC., ALSO KNOWN AS NEW WAVE VENTURES INC.,
LENDINGARCH FINANCIAL INC.,
OMNIARCH GLOBAL BOND CORP., ALSO KNOWN AS OMNIARCH GLOBAL SECURED CORPORATION,
ALSO KNOWN AS CALASSET BOND CORP.,
1505106 ALBERTA LTD., and
1502631 ALBERTA LTD.

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	In Writing	
Decision:	July 9, 2021	
Panel:	Cathy Singer	Commissioner and Chair of the Panel
Submissions:	Alvin Qian	For Staff of the Commission
	Ken T. Lenz	For Jay Rasik Modi, Arti Rajeev Singh, also known as Arti Rajeev Modi, Rajeev Jagdish Singh, 1611385 Alberta Ltd., OmniArch Capital Group Inc., OmniArch Ventures Inc., also known as New Wave Ventures Inc., LendingArch Financial Inc., OmniArch Global Bond Corp., also known as OmniArch Global Secured Corporation, also known as Calasset Bond Corp., and 1505106 Alberta Ltd. No submissions made by or on behalf of 982 Media House Inc. and 1502631 Alberta Ltd.

REASONS AND DECISION

I. INTRODUCTION

[1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) requests that an order be issued against the Respondents (as defined below) pursuant to the inter-jurisdictional enforcement provisions in subsection 127(10) of the Ontario *Securities Act*[1] (the **Act**). The Respondents are Jay Rasik Modi (**Jay Modi**), Arti Rajeev Singh, also known as Arti Rajeev Modi (**Arti Modi**), Rajeev Jagdish Singh (**Singh**), 982 Media House Inc. (**982 Media**), 1611385 Alberta Ltd., OmniArch Capital Group Inc. (**OmniArch Capital Group**), OmniArch Ventures Inc., also known as New Wave Ventures Inc. (**OmniArch Ventures**), LendingArch Financial Inc. (**LendingArch**), OmniArch Global Bond Corp., also known as OmniArch Global Secured Corporation or Calasset Bond Corp. (**OmniArch Global**), 1505106 Alberta Ltd. and 1502631 Alberta Ltd. (together, the **Respondents**).

[1] RSO 1990, c S.5

[2] On May 11, 2020, the Respondents entered into a Settlement Agreement and Undertaking with the Alberta Securities Commission (**ASC**) (the **Settlement Agreement**). In the Settlement Agreement, the Respondents admitted to breaching sections of the Alberta *Securities Act*[2] (the **Alberta Act**).

[3] Paragraph 5 of subsection 127(10) authorizes the Commission to make orders in the public interest under subsection 127(1) where a person or company has agreed with another securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements.

[4] The issues for me to consider are (1) whether the Respondents were properly served, (2) whether one or more of the circumstances under subsection 127(10) of the Act apply to the Respondents, and (3) if so, whether the Commission should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the Act.

[5] I find that service was effected, the threshold under subsection 127(10) is met as the Respondents entered into a Settlement Agreement with the ASC, and it is in the public interest to issue the order requested by Staff. My reasons are as set out below.

II. SERVICE AND PARTICIPATION

[6] Staff elected to proceed with a hearing in writing using the expedited procedure for inter-jurisdictional enforcement proceedings set out in Rule 11(3) of the Commission's *Rules of Procedure and Forms.*[3]

[7] Staff filed an Affidavit of Service of Rita Pascuzzi, sworn May 4, 2021,[4] to demonstrate that the Respondents were served in accordance with the Rules with the Statement of Allegations dated April 15, 2021 and with Staff's written submissions, hearing brief[5] and book of authorities.

[8] On May 18, 2021, counsel representing the Respondents, other than 982 Media and 1502631 Alberta Ltd., informed the Commission that the Respondents he represents agree to the order requested by Staff.[6]

[9] No request for an oral hearing was made and no materials were filed by 982 Media and 1502631 Alberta Ltd.

[10] The Affidavit of Service confirms that counsel for the Respondents, who is a lawyer at Bennett Jones LLP's Calgary Office, did not accept service on behalf of 982 Media and 1502631 Alberta Ltd., and that 982 Media and 1502631 Alberta Ltd. were served by courier at their last known mailing address. The Affidavit of Service included Corporate Profile Reports from the Government of Alberta for both 982 Media and 1502631 Alberta Ltd.[7] These reports, which were dated April 14, 2021, show that both 982 Media and 1502631 Alberta Ltd. are active companies with their registered offices listed at Bennett Jones LLP's Calgary Office and a Bennett Jones LLP email address is also listed for both companies. Staff used the information on the Corporate Profile Reports when serving 982 Media and 1502631 Alberta Ltd. and the FedEx receipts show that Staff's materials were delivered.

[11] The Rules set out the different methods of service. Rule 6(2)(d) of the Rules provides that service can be effected by serving a respondent by courier to a respondent's last known address. I find that Staff complied with Rule 6(2)(d) by using the last known addresses listed on the Corporate Profile Reports, and that service was effected on April 29, 2021 and 982 Media and 1502631 Alberta Ltd. were provided with adequate notice of this proceeding. There is no reason to dispute the accuracy of any of the information in the Corporate Profile Reports relied on by Staff. The Commission may proceed in the absence of a party who has been given notice of the hearing.[8]

III. ASC SETTLEMENT AGREEMENT

[12] In November 2009, OmniArch Capital Corporation (**OmniArch**) was incorporated in Alberta for the purpose of soliciting, accumulating and utilizing investment funds for indirect investment into downgraded and discounted Residential Mortgage Backed Securities (**RMBS**) in the United States.

[13] The directors of OmniArch included Jay Modi, Arti Modi and Singh. OmniArch's shareholders were 1502631 Alberta Ltd. and 1505106 Alberta Ltd., entities which were controlled and owned by Jay Modi, Arti Modi and Singh.

[14] Between 2010 and 2015, OmniArch raised approximately $127 million through nine Offering Memoranda (**OMs**). OmniArch raised these funds by distributing bonds to investors. Each OM was signed by Jay Modi, Arti Modi and Singh and each contained a certificate stating that the OM did not contain any misrepresentations.

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2 RSA 2000, c S-4
3 (2019) 42 OSCB 9714 (***Rules***)
4 Exhibit 1, Affidavit of Service of Rita Pascuzzi sworn May 4, 2021
5 Exhibit 2, Hearing Brief of Staff dated April 15, 2021
6 Exhibit 3, Letter from Ken T. Lenz to the Registrar of the Commission dated May 18, 2021
7 Exhibit 1, Tabs 5 and 7
8 *Statutory Powers Procedure Act,* RSO 1990, c S.22, s 7(2); *Rules*, r 21(3)

[15] OmniArch's OMs dated January 24, 2014 and May 9, 2014 each stated that the net proceeds raised from the offerings, and any excess cash flows, would be used to acquire downgraded and discounted RMBS.

[16] Between December 31, 2014 and June 10, 2016, Jay Modi and Arti Modi caused OmniArch to make a series of related party loans (**RPLs**) to 982 Media, 1611385 Alberta Ltd., OmniArch Capital Group and OmniArch Ventures, entities which they controlled and/or owned, contrary to the business purposes stated in OmniArch's OMs. Certain amounts paid to OmniArch Ventures were in turn loaned to LendingArch and OmniArch Global.

[17] The RPLs provided that interest be paid at a rate of 6% and were for terms of 10 years, which were terms more favourable than the terms on bonds issued to OmniArch investors. None of the funds lent pursuant to the RPLs were used by the recipients to invest in RMBS.

[18] OmniArch's OMs dated January 24, 2014, May 9, 2014, and August 26, 2013 also contained inaccurate statements about OmniArch's fund managers, Jay Modi's experience and/or Singh's compensation.

[19] In the Settlement Agreement, Jay Modi, Arti Modi, Singh, 1502631 Alberta Ltd. and 1505106 Alberta Ltd. each admitted that they breached subsection 92(4.1) of the Alberta Act by authorizing, permitting, or acquiescing in:

a. OmniArch's failure to disclose the RPLs to investors; and

b. OmniArch making misleading statements in their OMs about OmniArch's fund managers, Jay Modi's experience and Singh's compensation.

[20] LendingArch, 982 Media, 1611385 Alberta Ltd., OmniArch Capital Group, OmniArch Ventures and OmniArch Global each admitted that they breached subsection 92(4.1) of the Alberta Act by receiving funds from the RPLs and acquiescing in the failure to disclose the RPLs to investors.

[21] The Respondents agreed to sanctions which are set out in detail in the Settlement Agreement at paragraphs 73 to 77 (inclusive). They can be summarized as follows:

a. Jay Modi agreed to a 20-year prohibition from (1) participating in the securities markets (with a carve out to permit trading through a registrant, that has first been provided with a copy of the Settlement Agreement, in registered accounts as defined in the *Income Tax Act*[9] with sole beneficial ownership), (2) accessing exemptions in Alberta securities law, (3) acting as a director or officer for any issuer (or other person or company that is authorized to issue securities) as well as resigning from any such positions, and (4) engaging in investor relations activities, advising in securities or derivatives, becoming a registrant, investment fund manager or promoter and acting in a management or consultative capacity in connection with activities in the securities market. Jay Modi also agreed to pay a monetary settlement of $500,000 inclusive of costs.

b. Arti Modi agreed to a 10-year prohibition from (1) participating in the securities markets (with a carve out to permit trading through a registrant, that has first been provided with a copy of the Settlement Agreement, in registered accounts as defined in the *Income Tax Act* with sole beneficial ownership), (2) accessing exemptions in Alberta securities law, (3) acting as a director or officer for any issuer (or other person or company that is authorized to issue securities) as well as resigning from any such positions, and (4) engaging in investor relations activities, advising in securities or derivatives, becoming a registrant, investment fund manager or promoter and acting in a management or consultative capacity in connection with activities in the securities market. Arti Modi also agreed to pay a monetary settlement of $180,000 inclusive of costs.

c. Singh agreed to a 3-year prohibition from (1) participating in the securities markets (with a carve out to permit trading through a registrant, that has first been provided with a copy of the Settlement Agreement, in registered accounts as defined in the *Income Tax Act* with sole beneficial ownership), (2) accessing exemptions in Alberta securities law, (3) acting as a director or officer for any issuer (or other person or company that is authorized to issue securities), as well as resigning from any such positions, with the exception that he can act in those capacities with respect to Fuelled Energy Marketing Inc. (or any of its subsidiaries or successor entities) provided that Fuelled Energy Marketing Inc. does not issue or propose to issue securities or exchange contracts to the public except as stock options to its employees in respect of equity based compensation, and (4) engaging in investor relations activities, advising in securities or derivatives, becoming a registrant, investment fund manager or promoter and acting in a management or consultative capacity in connection with activities in the securities market. Singh also agreed to pay a monetary settlement of $115,000 inclusive of costs.

d. 982 Media, 1611385 Alberta Ltd., OmniArch Capital Group, OmniArch Ventures, OmniArch Global, 1505106 Alberta Ltd. and 1502631 Alberta Ltd. each agreed to a permanent prohibition from (1) participating in the securities markets and accessing exemptions in Alberta securities law with limited exceptions to permit OmniArch Ventures to trade its existing shares of LendingArch provided that the net proceeds of any such trade

[9] RSC 1985, c 1

are utilized first to satisfy any remaining required repayment to OmniArch by OmniArch Ventures of $2.5 million, which was secured by personal guarantees given by Jay Modi and Arti Modi (**Repayment**), and second used to satisfy any remaining monetary settlement amount owing by Jay Modi to the ASC, (2) acting as an issuer or registrant, and (3) engaging in investor relations activities, advising in securities or derivatives, becoming a registrant, investment fund manager or promoter and acting in a management or consultative capacity in connection with activities in the securities market.

e. LendingArch agreed to a permanent prohibition from (1) participating in the securities markets and accessing capital raising exemptions contained in Alberta securities law, (2) acting as a registrant or investment fund manager, and (3) engaging in investor relations activities, advising in securities or derivatives, becoming a registrant, investment fund manager or promoter and acting in a management or consultative capacity in connection with activities in the securities market, with the exception that for items e(1) and (3) LendingArch may trade or use capital raising exemptions through a registrant that has first been provided with a copy of the Settlement Agreement.

IV. LAW AND ANALYSIS

[22] Staff seeks an order imposing sanctions that substantially mirror those in the Settlement Agreement with the ASC.

[23] The issues for the Panel to consider are:

a. whether one or more of the circumstances under subsection 127(10) of the Act apply to the Respondents; and

b. if so, whether the Commission should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the Act.

A. Do any of the circumstances under subsection 127(10) of the Act apply?

[24] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1).

[25] Paragraph 5 of subsection 127(10) of the Act provides that the Commission may make an order under subsection 127(1) where the person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements.

[26] The ASC is a securities regulatory authority. By entering into the Settlement Agreement, the Respondents agreed to be made subject to sanctions imposed by the ASC as described above. In addition, at paragraph 82 of the Settlement Agreement, the "Respondents understand and acknowledge that this [Settlement] Agreement may form the basis for securities-related orders in other jurisdictions in Canada." The threshold test under s. 127(10)5 of the Act is therefore satisfied. I must now consider whether it is in the public interest to issue an order under s. 127(1) of the Act.

B. Is it in the public interest to make an order under subsection 127(1) of the Act?

[27] Subsection 127(1) of the Act empowers the Commission to make various orders where it is in the public interest to do so. Orders made under subsection 127(1) of the Act are "protective and preventive" and are made to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets.[10]

[28] In exercising its jurisdiction to make an order in reliance on subsection 127(10) of the Act, the Commission does not require that the underlying conduct have a connection to Ontario.[11]

[29] Staff submits that the Respondents' conduct warrants an order designed to protect Ontario investors, by limiting the Respondents' participation in Ontario's capital markets. Staff submits that the sanctions it requests are proportionate to the Respondents' misconduct and appropriate in the circumstances. The Respondents, other than 982 Media and 1502631 Alberta Ltd., agree with the order requested by Staff.

[30] I agree. It is important that the Commission impose sanctions that will protect Ontario investors by specifically deterring the Respondents from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons. I accept Staff's submission that it would be in the public interest to order sanctions that are substantially similar to those set out in the Settlement Agreement.

[10] *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43
[11] *Hable (Re)*, 2018 ONSEC 11, (2018) 41 OSCB 2351 at para 8; *Michaels (Re)*, 2019 ONSEC 22, (2019) 42 OSCB 5757 at para 19

C. Differences between the Alberta and Ontario Statutes

[31] Due to differences between the Ontario Act and the Alberta Act, some of the sanctions I impose will differ from those agreed to in the Settlement Agreement.

[32] First, the Settlement Agreement prohibits the Respondents from engaging in "investor relations activities", from providing "advise in securities or derivatives" and from acting "in a management or consultative capacity in connection with activities in the securities market".

[33] The Ontario Act does not use those terms. Instead, as Staff submits, such activities would largely be covered by prohibiting the Respondents from becoming or acting as a registrant or promotor, and the individual respondents from becoming or acting as a director or officer of a registrant.

[34] Second, the carve-outs in the Settlement Agreement permit the Respondents to trade securities and derivatives or acquire securities in certain accounts as long as those activities are carried out through a "registrant". Staff seeks a narrower carve-out to permit trading only through a "registered dealer". In my view, a narrower carve-out is appropriate in the circumstances of this case. In the Ontario Act, "registrant" is defined as "a person or company registered or required to be registered under this Act." It is important to ensure that any trading and acquiring is only done through a registered person or company in order to avoid the possibility that a respondent could trade with someone who is required to be registered but is in fact not registered.

[35] I also note that the respondents, other than 982 Media and 1502631 Alberta Ltd., agree with the order requested by Staff and did not raise any issues with respect to the wording of the order requested by Staff.

V. CONCLUSION

[36] For the reasons set out above, I find that it is in the public interest to limit the Respondents' future participation in Ontario's capital markets by imposing the sanctions requested by Staff. I have issued a separate order stating as follows:

1. Against Jay Modi:

   (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Jay Modi cease until May 11, 2040, except where all of the following conditions are met:

      (i) trades are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) trades are made in a registered retirement savings plan (**RRSP**), registered retirement income fund (**RRIF**), or tax-free savings account (**TFSA**) (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Jay Modi has sole beneficial ownership;

   (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Jay Modi cease until May 11, 2040, except where all of the following conditions are met:

      (i) acquisitions are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) acquisitions are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Jay Modi has sole beneficial ownership;

   (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Jay Modi until May 11, 2040;

   (d) pursuant to paragraph 7 of subsection 127(1) of the Act, Jay Modi resign any positions that he holds as a director or officer of any issuer;

   (e) pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Jay Modi is prohibited from becoming or acting as a director or officer of any issuer or registrant until May 11, 2040; and

   (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Jay Modi is prohibited from becoming or acting as a registrant or promoter until May 11, 2040.

2. Against Arti Modi:

   (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Arti Modi cease until May 11, 2030, except where all of the following conditions are met:

      (i) trades are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) trades are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Arti Modi has sole beneficial ownership;

   (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Arti Modi cease until May 11, 2030, except where all of the following conditions are met:

      (i) acquisitions are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) acquisitions are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Arti Modi has sole beneficial ownership;

   (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Arti Modi until May 11, 2030;

   (d) pursuant to paragraph 7 of subsection 127(1) of the Act, Arti Modi resign any positions that she holds as a director or officer of any issuer;

   (e) pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Arti Modi is prohibited from becoming or acting as a director or officer of any issuer or registrant until May 11, 2030; and

   (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Arti Modi is prohibited from becoming or acting as a registrant or promoter until May 11, 2030.

3. Against Singh:

   (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Singh cease until May 11, 2023, except where all of the following conditions are met:

      (i) trades are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) trades are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Singh has sole beneficial ownership;

   (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Singh cease until May 11, 2023, except where all of the following conditions are met:

      (i) acquisitions are made through a registered dealer who has first been given a copy of the Settlement Agreement and this order; and

      (ii) acquisitions are made in a RRSP, RRIF, or TFSA (as defined in the *Income Tax Act,* RSC 1985, c 1 as amended), of which Singh has sole beneficial ownership;

   (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Singh until May 11, 2023;

   (d) pursuant to paragraph 7 of subsection 127(1) of the Act, Singh resign any positions that he holds as a director or officer of any issuer, with the exception that he can act in those capacities with respect to Fuelled Energy Marketing Inc. (or any of its subsidiaries or successor entities);

   (e) pursuant to paragraph 8 of subsection 127(1) of the Act, Singh is prohibited from becoming or acting as a director or officer of any issuer until May 11, 2023, with the exception that he can act in those capacities with respect to Fuelled Energy Marketing Inc. (or any of its subsidiaries or successor entities) provided that Fuelled Energy Marketing Inc. does not issue or propose to issue securities or exchange contracts to the public except as stock options to its employees in respect of equity based compensation;

   (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Singh is prohibited from becoming or acting as a director or officer of any registrant until May 11, 2023; and

(g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Singh is prohibited from becoming or acting as a registrant or promoter until May 11, 2023.

4. Against 982 Media, 1611385 Alberta Ltd., OmniArch Capital Group, OmniArch Ventures, OmniArch Global, 1505106 Alberta Ltd. and 1502631 Alberta Ltd.:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by each of them cease permanently, with the exception that OmniArch Ventures shall be permitted to trade its existing shares of LendingArch provided that the net proceeds of any such trade are utilized first to satisfy any remaining required Repayment as defined in the Settlement Agreement, and second used to satisfy any remaining monetary settlement amount owing by Jay Modi to the ASC;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by each of them cease permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of them permanently, with the exception that OmniArch Ventures shall be permitted to rely on such applicable exemptions to trade its existing shares of LendingArch provided that the net proceeds of any such trade are utilized first to satisfy any remaining required Repayment as defined in the Settlement Agreement, and second used to satisfy any remaining monetary settlement amount owing by Jay Modi to the ASC; and

(d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of them is prohibited from becoming or acting as a registrant or promoter permanently.

5. Against LendingArch:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by LendingArch cease permanently, with the exception that it may trade through a registered dealer that has first been provided with a copy of the Settlement Agreement and this order;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by LendingArch cease permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to LendingArch permanently, with the exception that it may use capital raising exemptions through a registered dealer that has first been provided with a copy of the Settlement Agreement and this order; and

(d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, LendingArch is prohibited from becoming or acting as a registrant or promoter permanently.

Dated at Toronto this 9th day of July, 2021.

“Cathy Singer”

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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
BellRock Brands Inc.	July 9, 2021	
BetterU Education Corp.	September 18, 2020	June 17, 2021
Encanto Potash Corp.	July 7, 2021	
King Global Ventures Inc.	July 6, 2021	July 9, 2021
Hi Ho Silver Resources Inc.	July 6, 2021	
Lake Winn Resources Corp.	July 7, 2021	
Thoughtful Brands Inc.	July 7, 2021	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Bhang Inc.	May 3, 2021	July 6, 2021
King Global Ventures Inc.	May 3, 2021	July 6, 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	
Bhang Inc.	May 3, 2021	July 6, 2021
Ionic Brands Corp.	May 3, 2021	
King Global Ventures Inc.	May 3, 2021	July 6, 2021
Empower Clinics Inc.	May 4, 2021	
Red White & Bloom Brands Inc.	May 4, 2021	
Reservoir Capital Corp.	May 5, 2021	

Company Name	Date of Order	Date of Lapse
Ionic Brands Corp.	June 3, 2021	
Rapid Dose Therapeutics Corp.	June 29, 2021	
Sproutly Canada, Inc.	June 30, 2021	

Chapter 5

Rules and Policies

5.1.1 Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators

MULTILATERAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

Note: The text box in this Instrument located after subsection 1(6) refers to terms defined in securities legislation. This text box does not form part of this Instrument.

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1.(1) In this Instrument,

"benchmark individual" means any DBA individual who participates in the provision of, or overseeing the provision of, a designated benchmark;

"board of directors" includes, in the case of a person or company that does not have a board of directors, a group that acts in a capacity similar to a board of directors;

"contributing individual" means an individual who contributes input data, as an employee or agent, on behalf of a benchmark contributor;

"CSAE 3000" means Canadian Standard on Assurance Engagements 3000 *Attestation Engagements Other than Audits or Reviews of Historical Financial Information*, as amended from time to time;

"CSAE 3001" means Canadian Standard on Assurance Engagements 3001 *Direct Engagements*, as amended from time to time;

"CSAE 3530" means Canadian Standard on Assurance Engagements 3530 *Attestation Engagements to Report on Compliance*, as amended from time to time;

"CSAE 3531" means Canadian Standard on Assurance Engagements 3531 *Direct Engagements to Report on Compliance*, as amended from time to time;

"DBA individual" means an individual who is

(a) a director, officer or employee of a designated benchmark administrator, or

(b) an agent of a designated benchmark administrator who performs services on behalf of the designated benchmark administrator;

"designated benchmark" means a benchmark that is designated for the purposes of this Instrument by a decision of the securities regulatory authority;

"designated benchmark administrator" means

(a) in Québec, a benchmark administrator that is subject to securities legislation by a decision of the securities regulatory authority, and

(b) in every other jurisdiction, a benchmark administrator that is designated for the purposes of this Instrument by a decision of the securities regulatory authority;

"designated critical benchmark" means a benchmark that is designated for the purposes of this Instrument as a "critical benchmark" by a decision of the securities regulatory authority;

"designated interest rate benchmark" means a benchmark that is designated for the purposes of this Instrument as an "interest rate benchmark" by a decision of the securities regulatory authority;

"designated regulated-data benchmark" means a benchmark that is designated for the purposes of this Instrument as a "regulated-data benchmark" by a decision of the securities regulatory authority;

"expert judgment" means the discretion exercised by

(a) a designated benchmark administrator with respect to the use of input data in determining a benchmark, and

(b) a benchmark contributor with respect to input data;

"input data" means data in respect of any measurement of one or more assets, interests or elements, including, but not limited to, the value or price of the asset, interest or element, if that data is contributed, or otherwise obtained, by a designated benchmark administrator for the purpose of determining a designated benchmark;

"ISAE 3000" means International Standard on Assurance Engagements 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, as amended from time to time;

"limited assurance report on compliance" means

(a) a public accountant's limited assurance report, on management's statement that a person or company complied with the applicable subject requirements, if the report is prepared in accordance with CSAE 3000 and CSAE 3530 or ISAE 3000, or

(b) a public accountant's limited assurance report, on the compliance of a person or company with the applicable subject requirements, if the report is prepared in accordance with CSAE 3001 and CSAE 3531 or ISAE 3000;

"management's statement" means a statement of management of a designated benchmark administrator or a benchmark contributor, as applicable;

"methodology" means a document describing how a designated benchmark administrator determines a designated benchmark;

"reasonable assurance report on compliance" means

(a) a public accountant's reasonable assurance report, on management's statement that a person or company complied with the applicable subject requirements, if the report is prepared in accordance with CSAE 3000 and CSAE 3530 or ISAE 3000, or

(b) a public accountant's reasonable assurance report, on the compliance of a person or company with the applicable subject requirements, if the report is prepared in accordance with CSAE 3001 and CSAE 3531 or ISAE 3000;

"subject requirements" means

(a) paragraphs 32(1)(a) and (b),

(b) paragraphs 33(1)(a) and (b),

(c) paragraphs 36(1)(a) and (b),

(d) paragraphs 37(1)(a) and (b), and

(e) paragraphs 38(1)(a), (b) and (c);

"transaction data" means the data in respect of a price, rate, index or value representing transactions

(a) between persons or companies each of which is not an affiliated entity of one another, and

(b) occurring in an active market subject to competitive supply and demand forces.

(2) Terms defined in National Instrument 21-101 *Marketplace Operation* and used in this Instrument have the respective meanings ascribed to them in that Instrument.

(3) For the purposes of this Instrument, input data is considered to have been contributed to a designated benchmark administrator if

(a) it is not reasonably available to

(i) the designated benchmark administrator, or

(ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and

(b) it is provided to the designated benchmark administrator or the other person or company referred to in subparagraph (a)(ii) for the purpose of determining a benchmark.

(4) For the purposes of this Instrument, a designated benchmark administrator is considered to have provided a designated benchmark if any of the following apply:

(a) the administrator collects, analyzes, processes or otherwise uses the input data for the purposes of determining the benchmark;

(b) the administrator determines the benchmark through the application of the methodology applicable to the benchmark;

(c) the administrator administers any other arrangements for determining the benchmark.

(5) Subject to subsections (6), (7) and (8), Appendix A contains definitions of terms used in this Instrument.

(6) Subsection (5) does not apply in Alberta, New Brunswick, Nova Scotia, Ontario or Saskatchewan.

Note: In Alberta, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the terms in Appendix A are defined in securities legislation.

(7) In British Columbia, the definitions of "benchmark" and "benchmark contributor" in the *Securities Act* (British Columbia) apply to this Instrument.

(8) In Québec, the definitions of "benchmark" and "benchmark administrator" in the *Securities Act* (Québec) apply to this Instrument.

(9) In this Instrument, a person or company is an affiliated entity of another person or company if either of the following applies:

(a) one is the subsidiary of the other;

(b) each is a subsidiary of, or controlled by, the same person or company.

(10) For the purposes of paragraph (9)(b), a person or company (first person) controls another person or company (second person) if any of the following apply:

(a) the first person beneficially owns, or controls or directs, directly or indirectly, securities of the second person carrying votes that, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than a 50% interest in the partnership;

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person;

(d) the second person is a trust and the first person is a trustee of the trust.

PART 2
DELIVERY REQUIREMENTS

Information on a designated benchmark administrator

2.(1) In this section, the following terms have the same meaning as in section 1.1 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*:

(a) "accounting principles";

(b) "auditing standards";

(c) "U.S. GAAP";

(d) "U.S. PCAOB GAAS".

(2) In this section, "parent issuer" means an issuer in respect of which a designated benchmark administrator is a subsidiary.

(3) A designated benchmark administrator must deliver to the regulator or securities regulatory authority

(a) information that a reasonable person would consider describes the designated benchmark administrator's organization, structure and administration of benchmarks, including, for greater certainty, a description of its policies and procedures required under this Instrument, conflicts of interest and potential conflicts of interest, any person or company referred to in section 13 to which a designated benchmark administrator has outsourced a function, service or activity in the provision of a designated benchmark, benchmark individuals, the officer referred to in section 6 and sources of revenue, and

(b) annual financial statements for the designated benchmark administrator's most recently completed financial year that include all of the following:

(i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

(A) the most recently completed financial year, and

(B) the financial year, if any, immediately preceding the most recently completed financial year;

(ii) a statement of financial position at the end of each of the periods referred to in subparagraph (i);

(iii) notes to the annual financial statements.

(4) For the purposes of paragraph (3)(b), if a designated benchmark administrator is a subsidiary of a parent issuer, the designated benchmark administrator may instead deliver consolidated annual financial statements, for the most recently completed financial year of the parent issuer, that include all of the following:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

(i) the most recently completed financial year, and

(ii) the financial year, if any, immediately preceding the most recently completed financial year;

(b) a statement of financial position at the end of each of the periods referred to in paragraph (a);

(c) notes to the annual financial statements.

(5) The annual financial statements delivered under paragraph (3)(b) or subsection (4) must be audited.

(6) The notes to the annual financial statements delivered under paragraph (3)(b) or subsection (4) must identify the accounting principles used to prepare the annual financial statements.

(7) The annual financial statements delivered under paragraph (3)(b) or subsection (4) must

(a) be prepared in accordance with one of the following accounting principles:

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) Canadian GAAP applicable to private enterprises, if

(A) the financial statements consolidate any subsidiaries and account for significantly influenced investees and joint ventures using the equity method, and

(B) the designated benchmark administrator or parent issuer, as applicable, is a "private enterprise" as defined in the Handbook;

(iii) IFRS;

(iv) U.S. GAAP,

(b) be audited in accordance with one of the following auditing standards:

(i) Canadian GAAS;

(ii) International Standards on Auditing;

(iii) U.S. PCAOB GAAS, and

(c) be accompanied by an auditor's report that,

(i) if subparagraph (b)(i) or (ii) applies, expresses an unmodified opinion,

(ii) if subparagraph (b)(iii) applies, expresses an unqualified opinion, and

(iii) identifies the auditing standards used to conduct the audit.

(8) The information required under subsection (3) must be provided for the periods set out in, and be prepared in accordance with, Form 25-102F1 *Designated Benchmark Administrator Annual Form* and must be delivered

(a) on or before the 30th day after the designated benchmark administrator is designated, and

(b) no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(9) If any of the information delivered by a designated benchmark administrator under paragraph (3)(a) becomes inaccurate, and a reasonable person would consider the inaccuracy to be significant, the designated benchmark administrator must promptly deliver a completed amended Form 25-102F1 *Designated Benchmark Administrator Annual Form* that includes the accurate information.

Information on a designated benchmark

3.(1) A designated benchmark administrator must, for each designated benchmark that it administers, deliver to the regulator or securities regulatory authority

(a) information about the provision and distribution of the designated benchmark, including, for greater certainty, its procedures, methodologies and distribution model, and

(b) the code of conduct, if any, for the benchmark contributors.

(2) The information required under subsection (1) must be provided for the periods set out in, and be prepared in accordance with, Form 25-102F2 *Designated Benchmark Annual Form* and must be delivered

(a) on or before the 30th day after the designated benchmark is designated, and

(b) no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(3) If any of the information delivered by a designated benchmark administrator under paragraph (1)(a) in respect of a designated benchmark it administers becomes inaccurate, and a reasonable person would consider the inaccuracy to be significant, the designated benchmark administrator must promptly deliver a completed amended Form 25-102F2 *Designated Benchmark Annual Form* that includes the accurate information.

Submission to jurisdiction and appointment of agent for service of process

4.(1) A designated benchmark administrator must, if the designated benchmark administrator is incorporated or organized under the laws of a foreign jurisdiction, submit to the non-exclusive jurisdiction of the judiciary and quasi-judicial and other administrative bodies of the local jurisdiction and appoint an agent for service of process in Canada in a jurisdiction in which the designated benchmark administrator is designated**.**

(2) The submission to jurisdiction and appointment required under subsection (1) must be prepared in accordance with Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and must be delivered on or before the 30th day after the designated benchmark administrator is designated.

(3) A designated benchmark administrator, or a benchmark administrator referred to in subsection (4), must deliver an amended Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* containing updated information at least 30 days before the effective date of any change that would result in a change to the information provided in the Form.

(4) Subsection (3) applies to a benchmark administrator until the date that is 6 years after the date on which the benchmark administrator ceases to be a designated benchmark administrator.

PART 3
GOVERNANCE

Accountability framework requirements

5.(1) A designated benchmark administrator must establish, document, maintain and apply an accountability framework of policies and procedures that are reasonably designed to

(a) ensure and evidence compliance with securities legislation relating to benchmarks, and

(b) for each designated benchmark it administers, ensure and evidence that the designated benchmark administrator follows the methodology applicable to the designated benchmark.

(2) An accountability framework referred to in subsection (1) must specify how the designated benchmark administrator complies with each of the following:

(a) Part 7;

(b) subsection 2(5), paragraph 18(1)(c), sections 32 and 36 and subsection 39(7) as they relate to internal review or audit, a public accountant's limited assurance report on compliance or a reasonable assurance report on compliance;

(c) the policies and procedures referred to in section 12.

Compliance officer

6.(1) A designated benchmark administrator must designate an officer to be responsible for monitoring and assessing compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks.

(2) A designated benchmark administrator must not prevent or restrict the officer referred to in subsection (1) from directly accessing the designated benchmark administrator's board of directors or a member of the board of directors.

(3) An officer referred to in subsection (1) must do all of the following:

(a) monitor and assess compliance by the designated benchmark administrator and its DBA individuals with the accountability framework referred to in section 5, the control framework referred to in section 8 and securities legislation relating to benchmarks;

(b) at least once every 12 months, submit a report to the designated benchmark administrator's board of directors that describes

(i) the officer's activities referred to in paragraph (a),

(ii) compliance by the designated benchmark administrator and its DBA individuals with the accountability framework referred to in section 5, the control framework referred to in section 8 and securities legislation relating to benchmarks, and

(iii) whether the designated benchmark administrator has followed the methodology applicable to each designated benchmark it administers;

(c) submit a report to the designated benchmark administrator's board of directors as soon as reasonably possible if the officer becomes aware of any circumstances indicating that the designated benchmark administrator or its DBA individuals might not be in compliance with securities legislation relating to benchmarks and any of the following apply:

(i) a reasonable person would consider that the suspected non-compliance, if actual, poses a significant risk of financial loss to a benchmark user or to any other person or company;

(ii) a reasonable person would consider that the suspected non-compliance, if actual, poses a significant risk of harm to the integrity of capital markets;

(iii) a reasonable person would consider that the suspected non-compliance, if actual, is part of a pattern of non-compliance.

(4) An officer referred to in subsection (1) must not participate in any of the following:

(a) the provision of a designated benchmark;

(b) the determination of compensation for any DBA individuals, other than for a DBA individual who reports directly to the officer.

(5) An officer referred to in subsection (1) must certify that a report submitted under paragraph (3)(b) is accurate and complete.

(6) A designated benchmark administrator must not provide a payment or other financial incentive to an officer referred to in subsection (1), or any DBA individual who reports directly to the officer, if the payment or other financial incentive would create a conflict of interest.

(7) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure compliance with subsection (6).

(8) A designated benchmark administrator must deliver to the regulator or securities regulatory authority, promptly after it is submitted to the board of directors, a report referred to in paragraph (3)(b) or (c).

Oversight committee

7.(1) In this section, "oversight committee" means the committee referred to in subsection (2).

(2) A designated benchmark administrator must establish and maintain a committee to oversee the provision of a designated benchmark.

(3) The oversight committee must not include any individual who is a member of the board of directors of the designated benchmark administrator.

(4) The oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator.

(5) A designated benchmark administrator must establish, document, maintain and apply policies and procedures regarding the structure and mandate of the oversight committee.

(6) The board of directors of a designated benchmark administrator must appoint the members of the oversight committee.

(7) A designated benchmark administrator must not distribute information relating to a designated benchmark unless its board of directors has

(a) approved the policies and procedures referred to in subsection (5), and

(b) approved the procedures referred to in paragraph (8)(d).

(8) The oversight committee must, for each designated benchmark that the designated benchmark administrator administers, do all of the following:

(a) review the methodology of the designated benchmark at least once every 12 months and consider if any changes to the methodology are required;

(b) oversee any changes to the methodology of the designated benchmark, including requesting that the designated benchmark administrator consult with benchmark contributors or benchmark users on any significant changes to the methodology of the designated benchmark;

(c) oversee the management and operation of the designated benchmark, including the designated benchmark administrator's control framework referred to in section 8;

(d) review and approve procedures for any cessation of the designated benchmark, including procedures governing consultations about a cessation of the designated benchmark;

(e) oversee any person or company referred to in section 13 to which a designated benchmark administrator has outsourced a function, service or activity in the provision of the designated benchmark, including calculation agents and dissemination agents;

(f) assess any report resulting from an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(g) monitor the implementation of any remedial actions relating to an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(h) keep minutes of its meetings;

(i) if the designated benchmark is based on input data from a benchmark contributor,

(i) oversee the designated benchmark administrator's establishment, documentation, maintenance and application of the code of conduct referred to in section 23,

(ii) monitor each of the following:

(A) the input data;

(B) the contribution of input data by the benchmark contributor;

(C) the actions of the designated benchmark administrator in challenging or validating contributions of input data,

(iii) take reasonable measures regarding any breach of the code of conduct referred to in section 23 to mitigate the impact of the breach and prevent additional breaches in the future, if a reasonable person would consider that the breach is significant, and

(iv) promptly notify the board of directors of the designated benchmark administrator of any breach of the code of conduct referred to in section 23, if a reasonable person would consider that the breach is significant.

(9) If the oversight committee becomes aware that the board of directors of the designated benchmark administrator has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting.

(10) If the oversight committee becomes aware of any of the following, the oversight committee must promptly report it to the regulator or securities regulatory authority:

(a) any misconduct by the designated benchmark administrator in relation to the provision of a designated benchmark, if a reasonable person would consider that the misconduct is significant;

(b) any misconduct by a benchmark contributor in respect of a designated benchmark that is based on input data from the benchmark contributor, if a reasonable person would consider that the misconduct is significant;

(c) any input data that

(i) a reasonable person would consider is anomalous or suspicious, and

(ii) is used in determining the benchmark or is contributed by a benchmark contributor.

(11) The oversight committee, and each of its members, must carry out its, and their, actions and duties under this Instrument with integrity.

(12) A member of the oversight committee must disclose in writing to the committee the nature and extent of any conflict of interest the member has in respect of the designated benchmark or the designated benchmark administrator.

Control framework

8.(1) In this section, "control framework" means the policies, procedures and controls referred to in subsections (2), (3) and (4).

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated benchmark is provided in accordance with this Instrument.

(3) Without limiting the generality of subsection (2), a designated benchmark administrator must ensure that its control framework includes controls relating to all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingency procedures in the event of a disruption to the provision of the designated benchmark or the process applied to provide the designated benchmark.

(4) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls reasonably designed to

(a) ensure that benchmark contributors comply with the code of conduct referred to in section 23 and the standards for input data in the methodology of the designated benchmark,

(b) monitor input data before any publication relating to the designated benchmark, and

(c) validate input data after publication to identify errors and anomalies.

(5) A designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any security incident or any systems issue relating to a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant.

(6) A designated benchmark administrator must review and update its control framework on a reasonably frequent basis and at least once every 12 months.

(7) A designated benchmark administrator must make its control framework available, on request and free of charge, to any benchmark user.

Governance requirements

9.(1) A designated benchmark administrator must establish and document its organizational structure.

(2) The organizational structure referred to in subsection (1) must establish well-defined roles and responsibilities for each person or company involved in the provision of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that each of its benchmark individuals

(a) has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual, and

(b) is subject to adequate management and supervision.

(4) A designated benchmark administrator must ensure that any information published by the benchmark administrator relating to a designated benchmark is approved by a manager of the designated benchmark administrator.

Conflicts of interest

10.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that the exercise of expert judgment by the benchmark administrator or DBA individuals is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated benchmark,

(d) ensure that an officer referred to in section 6, or any DBA individual who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affect the integrity of the benchmark determination, and

(e) ensure that each of its benchmark individuals is not subject to undue influence, undue pressure or conflicts of interest, including, for greater certainty, ensuring that each of the benchmark individuals

(i) is not subject to compensation or performance evaluations from which conflicts of interest arise or that otherwise adversely affect the integrity of the benchmark determination,

(ii) does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator,

(iii) does not contribute to a determination of a designated benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator, and

(iv) is subject to policies and procedures to prevent the exchange of information that might affect a designated benchmark with the following, except as permitted under the policies and procedures of the designated benchmark administrator:

(A) any other DBA individual if that individual is involved in an activity that results in a conflict of interest or a potential conflict of interest,

(B) a benchmark contributor or any other person or company.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of a designated benchmark administrator relating to the designated benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated benchmark.

(3) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated benchmark

(a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and

(b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.

(4) A designated benchmark administrator must ensure that the policies and procedures referred to in subsection (1)

(a) take into account the nature and categories of the designated benchmarks it administers and the risks that each designated benchmark poses to capital markets and benchmark users,

(b) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under Part 5, and

(c) identify and eliminate or manage conflicts of interest, including, for greater certainty, those that arise as a result of

(i) expert judgment or other discretion exercised in the benchmark determination process,

(ii) the ownership or control of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, and

(iii) any other person or company exercising control or direction over the designated benchmark administrator in relation to determining the designated benchmark.

(5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in subsection (4), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

Reporting of contraventions

11.(1) A designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed to detect and promptly report to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve the following:

(a) manipulation or attempted manipulation of a designated benchmark;

(b) provision or attempted provision of false or misleading information in respect of a designated benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures for its DBA individuals to report any contravention of securities legislation relating to benchmarks to the officer referred to in section 6.

(3) A designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any conduct that it, or any of its DBA individuals, becomes aware of that might involve the following:

(a) manipulation or attempted manipulation of a designated benchmark;

(b) provision or attempted provision of false or misleading information in respect of a designated benchmark.

Complaint procedures

12.(1) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures reasonably designed to ensure that the designated benchmark administrator receives, investigates and resolves complaints relating to a designated benchmark, including, for greater certainty, complaints in respect of each of the following:

(a) whether a determination of a designated benchmark accurately and reliably represents that part of the market or economy the benchmark is intended to represent;

(b) whether a determination of a designated benchmark was made in accordance with the methodology of the designated benchmark;

(c) the methodology of a designated benchmark or any proposed change to the methodology.

(2) A designated benchmark administrator must do all of the following:

(a) provide a written copy of the complaint procedures at no cost to any person or company on request;

(b) investigate a complaint in a timely and fair manner;

(c) communicate the outcome of the investigation of a complaint to the complainant within a reasonable period;

(d) conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint.

Outsourcing

13.(1) A designated benchmark administrator must not outsource a function, service or activity relating to the administration of a designated benchmark in such a way as to significantly impair any of the following:

(a) the designated benchmark administrator's control over the provision of the designated benchmark;

(b) the ability of the designated benchmark administrator to comply with securities legislation relating to benchmarks.

(2) A designated benchmark administrator that outsources a function, service or activity in the provision of a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure that

(a) the person or company performing the function or activity or providing the service has the ability, capacity, and any authorization required by law, to perform the outsourced function or activity, or provide the service, reliably and effectively,

(b) the designated benchmark administrator maintains records documenting the identity and the tasks of the person or company performing the function or activity or providing the service and that those records are available in a manner that permits them to be provided to the regulator or, in Québec, the securities regulatory authority, in a reasonable period,

(c) the designated benchmark administrator and the person or company to which a function, service or activity is outsourced enter into a written agreement that

(i) imposes service level requirements on the person or company,

(ii) allows the designated benchmark administrator to terminate the agreement when appropriate,

(iii) requires the person or company to disclose to the designated benchmark administrator any development that may have a significant impact on the person or company's ability to perform the outsourced function or activity, or provide the outsourced service, in compliance with applicable law,

(iv) requires the person or company to cooperate with the regulator or securities regulatory authority regarding a compliance review or investigation involving the outsourced function, service or activity,

(v) allows the designated benchmark administrator to directly access

(i) the books, records and other documents related to the outsourced function, service or activity, and

(ii) the business premises of the person or company, and

(vi) requires the person or company to keep sufficient books, records and other documents to record its activities relating to the designated benchmark and to provide the designated benchmark administrator with copies of those books, records and other documents on request,

(d) the designated benchmark administrator takes reasonable measures if the administrator becomes aware of any circumstances indicating that the person or company to which a function, service or activity is outsourced might not be performing the outsourced function or activity, or providing the outsourced service, in compliance with this Instrument or with the agreement referred to in paragraph (c),

(e) the designated benchmark administrator conducts reasonable supervision of the outsourced function, service or activity and manages any risks to the designated benchmark administrator or to the accuracy or reliability of the designated benchmark resulting from the outsourcing,

(f) the designated benchmark administrator retains the expertise that a reasonable person would consider necessary to conduct reasonable supervision of the outsourced function, service or activity and to manage any risks to the designated benchmark administrator or to the accuracy or reliability of the designated benchmark resulting from the outsourcing, and

(g) the designated benchmark administrator takes steps, including developing contingency plans, that a reasonable person would consider necessary to avoid or mitigate operational risk related to the person or company performing the function or activity or providing the service.

(3) A designated benchmark administrator that outsources a function, service or activity in the provision of a designated benchmark must ensure that the regulator or securities regulatory authority has reasonable access to

(a) the applicable books, records and other documents of the person or company performing the function or activity or providing the service, and

(b) the applicable business premises of the person or company performing the function or activity or providing the service.

PART 4
INPUT DATA AND METHODOLOGY

Input data

14.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that all of the following are satisfied in respect of input data used in the provision of a designated benchmark:

(a) the input data, in aggregate, is sufficient to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) the input data will continue to be reliably available;

(c) if appropriate transaction data is available to satisfy paragraphs (a) and (b), the input data is transaction data;

(d) if appropriate transaction data is not available to satisfy paragraphs (a) and (b), the designated benchmark administrator uses, in accordance with the methodology of the designated benchmark, relevant and appropriate estimated prices, quotes or other values as input data;

(e) the input data is capable of being verified as being accurate, reliable and complete.

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that input data for a designated benchmark is accurate, reliable and complete and that include all of the following:

(a) criteria for determining who may act as benchmark contributors and contributing individuals;

(b) a process for determining benchmark contributors and contributing individuals;

(c) a process for assessing a benchmark contributor's compliance with the code of conduct referred to in section 23;

(d) a process for applying measures that a reasonable person would consider appropriate in the event of a benchmark contributor failing to comply with the code of conduct referred to in section 23;

(e) if appropriate, a process for stopping a benchmark contributor from contributing further input data;

(f) a process for verifying input data to ensure its accuracy, reliability and completeness.

(3) If a reasonable person would consider that the input data results in a designated benchmark that does not accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent, the designated benchmark administrator must do either of the following:

(a) within a reasonable time, change the input data, the benchmark contributors or the methodology of the designated benchmark in order to ensure that the designated benchmark accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) cease to provide the designated benchmark.

(4) A designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority if the designated benchmark administrator is required to take an action under paragraph (3)(a) or (b).

(5) A designated benchmark administrator must publish both of the following:

(a) the policies and procedures referred to in subsection (1) regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgment in the determination of a designated benchmark;

(b) the methodology of the designated benchmark.

Contribution of input data

15.(1) For the purpose of paragraph 14(1)(a) in respect of a designated benchmark that is based on input data from benchmark contributors, the designated benchmark administrator must obtain, if a reasonable person would consider it to be appropriate, input data from a representative sample of benchmark contributors.

(2) A designated benchmark administrator must not use input data from a benchmark contributor if

(a) a reasonable person would consider that the benchmark contributor has breached the code of conduct referred to in section 23, and

(b) a reasonable person would consider that the breach is significant.

(3) If the circumstances referred to in subsection (2) occur, and if a reasonable person would consider it to be appropriate, a designated benchmark administrator must obtain alternative representative data in accordance with the policies and procedures referred to in subsection 16(3).

(4) If input data is contributed from any front office of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any activities that relate to or might affect the input data, the designated benchmark administrator must

(a) obtain information from other sources, if reasonably available, that confirms the accuracy, reliability and completeness of the input data in accordance with its policies and procedures, and

(b) ensure that the benchmark contributor has in place internal oversight and verification procedures that a reasonable person would consider adequate.

(5) In this section, "front office" means any department, division or other internal grouping of a benchmark contributor, or any employee or agent of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the benchmark contributor.

Methodology

16.(1) A designated benchmark administrator must not follow a methodology for determining a designated benchmark unless all of the following apply:

(a) the methodology is sufficient to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) the methodology identifies how and when expert judgment may be exercised in the determination of the designated benchmark;

(c) the accuracy and reliability of the methodology, with respect to determinations made under it, is capable of being verified, including, if appropriate, by back-testing;

(d) the methodology is reasonably designed to ensure that a determination under the methodology can be made in all reasonable circumstances, without compromising the accuracy and reliability of the methodology;

(e) a determination under the methodology is capable of being verified as being accurate, reliable and complete.

(2) A designated benchmark administrator must not implement a methodology for a designated benchmark unless the methodology,

(a) when it is prepared, takes into account all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to represent,

(b) if applicable, determines what constitutes an active market for the purposes of the designated benchmark, and

(c) establishes the priority to be given to different types of input data.

(3) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures that

(a) identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent, and

(b) indicate whether and how the designated benchmark is to be determined in those circumstances.

Proposed significant changes to methodology

17.(1) In this section, "significant change" means a change that a reasonable person would consider to be significant.

(2) A designated benchmark administrator must not implement a significant change to a methodology for determining a designated benchmark, unless all of the following apply:

(a) the designated benchmark administrator has published notice of the proposed significant change to the methodology of a designated benchmark;

(b) the designated benchmark administrator has provided a means for benchmark users and other members of the public to comment on the proposed significant change and its effect on the designated benchmark;

(c) the designated benchmark administrator has published

(i) any comments received, unless the commenter has requested that its comments be held in confidence,

(ii) the name of each commenter, unless a commenter has requested that its name be held in confidence, and

(iii) the designated benchmark administrator's response to the comments that are published;

(d) the designated benchmark administrator has published notice of implementation of any significant change to the methodology of the designated benchmark.

(3) For the purposes of subsection (2),

(a) the notice under paragraph (2)(a) must be published on a date that provides benchmark users and other members of the public with reasonable time to consider and comment on the proposed change,

(b) the publication of comments under paragraph (2)(c) may permit a part of a written comment to be excluded from publication if both of the following apply:

(i) the designated benchmark administrator considers that disclosure of that part of the comment would be seriously prejudicial to the interests of the designated benchmark administrator or would contravene privacy laws;

(ii) the designated benchmark administrator includes, with the publication, a description of the nature of the comment, and

(c) the notice under paragraph (2)(d) must be published sufficiently before the effective date of the change to provide benchmark users and other members of the public with reasonable time to consider the implementation of the significant change.

PART 5
DISCLOSURE

Disclosure of methodology

18.(1) A designated benchmark administrator must publish all of the following in respect of the methodology of a designated benchmark:

(a) the information that

(i) a reasonable benchmark contributor might need in order to carry out its responsibilities as a benchmark contributor, and

(ii) a reasonable benchmark user might need in order to evaluate whether the designated benchmark accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) an explanation of all of the elements of the methodology, including, for greater certainty, the following:

(i) a description of the designated benchmark and of that part of the market or economy the designated benchmark is intended to represent;

(ii) the currency or other unit of measurement of the designated benchmark;

(iii) the criteria used by the designated benchmark administrator to select the sources of input data used to determine the designated benchmark;

(iv) the types of input data used to determine the designated benchmark and the priority given to each type;

(v) a description of the benchmark contributors and the criteria used to determine the eligibility of a benchmark contributor;

(vi) a description of the constituents of the designated benchmark and the criteria used to select and give weight to them;

(vii) any minimum liquidity requirements for the constituents of the designated benchmark;

(viii) any minimum requirements for the quantity of input data, and any minimum standards for the quality of input data, used to determine the designated benchmark;

(ix) provisions that identify how and when expert judgment may be exercised in the determination of the designated benchmark;

(x) whether the designated benchmark takes into account any reinvestment of dividends paid on securities that are included in the designated benchmark;

(xi) if the methodology may be changed periodically to ensure the designated benchmark continues to accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent, all of the following:

(A) any criteria to be used to determine when such a change is necessary;

(B) any criteria to be used to determine the frequency of such a change;

(C) any criteria to be used to rebalance the constituents of the designated benchmark as part of making such a change;

(xii) the potential limitations of the methodology and details of any methodology to be used in exceptional circumstances, including in the case of an illiquid market or in periods of stress or if transaction data may be inaccurate, unreliable or incomplete;

(xiii) a description of the roles of any third parties involved in data collection for, or in the calculation or dissemination of, the designated benchmark;

(xiv) the model or method used for the extrapolation and any interpolation of input data;

(c) the process for the internal review and approval of the methodology and the frequency of such reviews and approvals;

(d) the process referred to in section 17 for making significant changes to the methodology;

(e) examples of the types of changes that may constitute a significant change to the methodology.

(2) A designated benchmark administrator must provide written notice to the regulator or securities regulatory authority of a proposed significant change to the methodology of a designated benchmark referred to in section 17 at least 45 days before the significant change is implemented.

(3) Subsection (2) does not apply with respect to a proposal to make a significant change to a methodology of a designated benchmark referred to in section 17 if

(a) the proposal is intended to be implemented within 45 days of the decision to make the change,

(b) the proposal is intended to preserve the integrity, accuracy or reliability of the designated benchmark or the independence of the designated benchmark administrator, and

(c) the designated benchmark administrator promptly, after making the decision to make the significant change, provides written notice to the regulator or securities regulatory authority of the proposed significant change.

Benchmark statement

19.(1) In this section, “benchmark statement” means a written statement that includes all of the following:

(a) a description of that part of the market or economy the designated benchmark is intended to represent, including, for greater certainty, the following:

(i) the geographical area, if any, of that part of the market or economy the designated benchmark is intended to represent;

(ii) any other information that a reasonable person would consider to be useful to help existing or potential benchmark users to understand the relevant features of that part of the market or economy the designated benchmark is intended to represent, including both of the following, to the extent that accurate and reliable information is available:

(A) information on existing or potential participants in that part of the market or economy the designated benchmark is intended to represent;

(B) an indication of the dollar value of that part of the market or economy the designated benchmark is intended to represent;

(b) an explanation of the circumstances in which the designated benchmark might, in the opinion of a reasonable person, not accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent;

(c) information that sets out all of the following:

(i) the elements of the methodology of the designated benchmark in relation to which expert judgment may be exercised by the designated benchmark administrator or any benchmark contributor;

(ii) the circumstances in which expert judgment would be exercised by the designated benchmark administrator or any benchmark contributor;

(iii) the job title of the individuals who are authorized to exercise expert judgment;

(d) whether the expert judgment referred to in paragraph (c) will be evaluated by the designated benchmark administrator or the benchmark contributor and the parameters that will be used to conduct the evaluation;

(e) notice that factors, including external factors beyond the control of the designated benchmark administrator, could necessitate changes to, or the cessation of, the designated benchmark;

(f) notice that changes to, or the cessation of, the designated benchmark could have an impact on contracts and instruments that reference the designated benchmark or on the measurement of the performance of an investment fund that references the designated benchmark;

(g) an explanation of all key terms used in the statement that relate to the designated benchmark and its methodology;

(h) the rationale for adopting the methodology for determining the designated benchmark;

(i) the procedures for the review and approval of the methodology of the designated benchmark;

(j) a summary of the methodology of the designated benchmark, including, for greater certainty, the following, if applicable:

(i) a description of the types of input data to be used;

(ii) the priority given to different types of input data;

(iii) the minimum data needed to determine the designated benchmark;

(iv) the use of any models or methods of extrapolation of input data;

(v) any criteria for rebalancing the constituents of the designated benchmark;

(vi) any other restrictions or limitations on the exercise of expert judgment;

(k) the procedures that govern the provision of the designated benchmark in periods of market stress or when transaction data might be inaccurate, unreliable or incomplete, and the potential limitations of the designated benchmark during those periods;

(l) the procedures for dealing with errors in input data or in the determination of the designated benchmark, including when a re-determination of the designated benchmark is required;

(m) potential limitations of the designated benchmark, including its operation in illiquid or fragmented markets and the possible concentration of input data.

(2) No later than 15 days after the designation of a designated benchmark, the designated benchmark administrator of the designated benchmark must publish a benchmark statement.

(3) A designated benchmark administrator must, with respect to each designated benchmark it administers, review the applicable benchmark statement at least every 2 years.

(4) If there is a change to the information required under this section in a benchmark statement, and if a reasonable person would consider the change to be significant, the designated benchmark administrator must promptly update the benchmark statement to reflect the change.

(5) If the benchmark statement is updated under subsection (4), the designated benchmark administrator must promptly publish the updated benchmark statement.

Changes to and cessation of a designated benchmark

20.(1) A designated benchmark administrator must not cease to provide a designated benchmark, unless the designated benchmark administrator has provided notice of the cessation on a date that provides benchmark users and other members of the public with reasonable time to consider the impact of the cessation.

(2) A designated benchmark administrator must publish, simultaneously with the benchmark statement referred to in subsection 19(2), the procedures it will follow in the event of a significant change to the methodology or provision of the designated benchmark it administers, or the cessation of the designated benchmark, including procedures for advance notice of the implementation of a significant change or a cessation.

(3) If a designated benchmark administrator makes a significant change to the procedures referred to in subsection (2), the designated benchmark administrator must promptly publish the changed procedures.

Registrants, reporting issuers and recognized entities

21.(1) If a person or company uses a designated benchmark, and if a significant change to the methodology or provision of the benchmark, or the cessation of the benchmark, could have a significant impact on the person or company, a security issued by the person or company or a derivative to which the person or company is a party, the person or company must establish and maintain a written plan setting out the actions that the person or company will take in the event of any of the following:

(a) a significant change to the methodology or provision of the designated benchmark;

(b) a cessation of the designated benchmark.

(2) Subsection (1) does not apply unless the person or company is any of the following:

(a) a registrant;

(b) a reporting issuer;

(c) a recognized exchange;

(d) a recognized quotation and trade reporting system;

(e) a recognized clearing agency within the meaning of National Instrument 24-102 *Clearing Agency Requirements*.

(3) Subsection (1) does not apply with respect to a security issued or a derivative entered into before the date this Instrument comes into force.

(4) If a reasonable person would consider it appropriate, a person or company referred to in subsection (1) must

(a) identify, in the plan referred to in subsection (1), one or more benchmarks suitable as substitutes for the designated benchmark, and

(b) indicate why the substitution would be suitable.

(5) If a reasonable person would consider it appropriate, a person or company referred to in subsection (1) must refer to the plan referred in subsection (1) in any security issued by the person or company, or any derivative to which the person or company is a party, that references the designated benchmark.

Publishing and disclosing

22. If, under this Instrument, a designated benchmark administrator is required to publish a document or information, or disclose a document or information to a benchmark user or benchmark contributor, the designated benchmark administrator must publicly include the document or information on the designated benchmark administrator's website in a prominent manner and, for greater certainty, free of charge.

PART 6
BENCHMARK CONTRIBUTORS

Code of conduct for benchmark contributors

23.(1) If a designated benchmark is determined using input data from a benchmark contributor, the designated benchmark administrator of the designated benchmark must establish, document, maintain and apply a code of conduct that specifies the responsibilities of the benchmark contributor with respect to the contribution of input data.

(2) A designated benchmark administrator must include in the code of conduct referred to in subsection (1) all of the following:

(a) a description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with sections 14 and 15;

(b) the method by which a benchmark contributor will confirm the identity of each contributing individual who might contribute input data;

(c) the method by which the designated benchmark administrator will confirm the identity of a benchmark contributor and any contributing individual;

(d) the procedures that a benchmark contributor will use to determine who is suitable to be authorized as a contributing individual;

(e) the procedures that a benchmark contributor will use to ensure that the benchmark contributor contributes all relevant input data;

(f) a description of the procedures, systems and controls that a benchmark contributor will establish, document, maintain and apply, including the following:

(i) procedures for contributing input data;

(ii) specifying whether input data is transaction data;

(iii) confirming whether input data conforms to the designated benchmark administrator's requirements;

(iv) procedures for the exercise of expert judgment in contributing input data;

(v) if the designated benchmark administrator requires the validation of input data before it is contributed, the requirement;

(vi) a requirement to maintain records relating to its activities as a benchmark contributor;

(vii) a requirement that the benchmark contributor report to the designated benchmark administrator any instance when a reasonable person would consider that a contributing individual, acting on a behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate, unreliable or incomplete;

(viii) a requirement to identify and eliminate or manage conflicts of interest and potential conflicts of interest that may affect the integrity, accuracy or reliability of the designated benchmark;

(ix) a procedure for the designation of an officer of the benchmark contributor who is to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct and securities legislation relating to benchmarks;

(x) a requirement that the benchmark contributor's officer referred to in subparagraph (ix) and the benchmark contributor's chief compliance officer not be prevented or restricted from directly accessing the benchmark contributor's board of directors.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to, at least once every 12 months and promptly after any change to the code of conduct referred to in subsection (1), assess whether each benchmark contributor to a designated benchmark that it administers is complying with the code of conduct.

Governance and control requirements for benchmark contributors

24.(1) Except in Québec, a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure all of the following:

(a) input data contributed by the benchmark contributor is not affected by any conflict of interest or potential conflict of interest involving the benchmark contributor or its employees, officers, directors or agents, if a reasonable person would consider that the input data might be inaccurate, unreliable or incomplete;

(b) if expert judgment is exercised by the benchmark contributor in contributing input data, the benchmark contributor exercises the expert judgment independently, in good faith and in compliance with the code of conduct referred to in section 23.

(2) Except in Québec, a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the accuracy, reliability and completeness of each contribution of input data, including policies, procedures and controls governing all of the following:

(a) the manner in which the input data is contributed in compliance with this Instrument and the code of conduct referred to in section 23;

(b) who may contribute input data, including, as applicable, a process for approval by an individual holding a position senior to that of a contributing individual;

(c) training for contributing individuals with respect to compliance with this Instrument;

(d) the identification and elimination or management of conflicts of interest and potential conflicts of interest, including, for greater certainty,

(i) policies, procedures and controls that are reasonably designed to keep separate, operationally or otherwise, contributing individuals from employees or agents whose responsibilities include transacting in a contract, derivative, instrument or security that uses the designated benchmark for reference;

(ii) policies, procedures and controls that are reasonably designed to prevent contributing individuals from receiving compensation or other financial incentive from which conflicts of interest arise, including for greater certainty, conflicts of interest that adversely affect the accuracy, reliability and completeness of each contribution of input data.

(3) Except in Québec, before a benchmark contributor contributes input data for a designated benchmark, the benchmark contributor must

(a) establish, document, maintain and apply policies and procedures reasonably designed to establish criteria, including any restrictions or limitations, for the exercise of expert judgment, and

(b) if expert judgment is exercised in relation to input data, retain records that record the rationale for any decision made to exercise that expert judgment, the rationale applied in the exercise of the expert judgment and the manner of the exercise of the expert judgment.

(4) Except in Québec, a benchmark contributor that contributes input data for a designated benchmark must keep, for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later, records relating to all of the following:

(a) communications, including, for greater certainty, telephone conversations, in relation to the contribution of input data;

(b) all information used or considered by the benchmark contributor in making each contribution, including details of contributions made and the names of contributing individuals;

(c) the records relating to expert judgment referred to in paragraph 3(b);

(d) all documentation relating to the identification and elimination or management of conflicts of interest and potential conflicts of interest;

(e) a description of the potential for financial loss or gain of the benchmark contributor and each contributing individual to financial instruments that reference the designated benchmark for which it acts as a benchmark contributor;

(f) any internal or external review of the benchmark contributor, including, for greater certainty, each limited assurance report on compliance or reasonable assurance report on compliance required under this Instrument.

(5) Except in Québec, a benchmark contributor that contributes input data for a designated benchmark must

(a) cooperate with the designated benchmark administrator in the review and supervision of the provision of the designated benchmark, including, for greater certainty, cooperation in connection with any limited assurance report on compliance or reasonable assurance report on compliance required under this Instrument, and

(b) make available the records kept in accordance with subsection (4) to all of the following:

(i) the designated benchmark administrator;

(ii) a public accountant involved with the preparation of a limited assurance report on compliance or reasonable assurance report on compliance required under this Instrument.

Compliance officer for benchmark contributors

25.(1) Except in Québec, a benchmark contributor that contributes input data for a designated benchmark must designate an officer of the benchmark contributor who is to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section 23, this Instrument and securities legislation relating to benchmarks.

(2) Except in Québec, a benchmark contributor must not prevent or restrict the officer referred to in subsection (1) and its chief compliance officer from directly accessing the benchmark contributor's board of directors or a member of the board of directors.

PART 7
RECORD KEEPING

Books, records and other documents

26.(1) A designated benchmark administrator must keep the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated benchmarks.

(2) A designated benchmark administrator must keep books, records and other documents of the following:

(a) all input data, including how the data was used;

(b) if data is rejected as input data for a designated benchmark despite the data conforming to the methodology of the designated benchmark, the rationale for rejecting the input data;

(c) the methodology of each designated benchmark administered by the designated benchmark administrator;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of a designated benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls or methodologies;

(f) the identities of contributing individuals and of benchmark individuals;

(g) all documents relating to a complaint;

(h) communications, including, for greater certainty, telephone conversations, between any benchmark individual and benchmark contributors or contributing individuals in respect of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must keep the records referred to in subsection (2) in a form that

(a) identifies the manner in which the determination of a designated benchmark was made, and

(b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance.

(4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and other documents to be provided promptly on request to the regulator or securities regulatory authority.

PART 8
DESIGNATED CRITICAL BENCHMARKS, DESIGNATED INTEREST RATE BENCHMARKS AND DESIGNATED REGULATED-DATA BENCHMARKS

DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Administration of a designated critical benchmark

27.(1) If a designated benchmark administrator decides to cease providing a designated critical benchmark, the designated benchmark administrator must

(a) promptly notify the regulator or securities regulatory authority, and

(b) not more than 4 weeks after notifying the regulator or securities regulatory authority, submit a plan to the regulator or securities regulatory authority for how the designated critical benchmark can be transitioned to another designated benchmark administrator or cease to be provided.

(2) Following the submission of the plan referred to paragraph (1)(b), a designated benchmark administrator must continue to provide the designated critical benchmark until one or more of the following have occurred:

(a) the provision of the designated critical benchmark has been transitioned to another designated benchmark administrator;

(b) the designated benchmark administrator receives notice from the regulator or securities regulatory authority authorizing the cessation;

(c) the designation of the designated benchmark has been revoked or varied to reflect that the designated benchmark is no longer a designated critical benchmark;

(d) 12 months have elapsed from the submission of the plan referred to in paragraph (1)(b), unless, before the expiration of the period, the regulator or securities regulatory authority has provided written notice that the written notice has been extended.

Access

28. A designated benchmark administrator of a designated critical benchmark must take reasonable steps to ensure that benchmark users and potential benchmarks users have direct access to the designated critical benchmark on a fair, reasonable, transparent and non-discriminatory basis.

Assessment

29. A designated benchmark administrator of a designated critical benchmark must, at least once every 2 years, submit to the regulator or securities regulatory authority an assessment of the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated critical benchmark is intended to represent.

Benchmark contributor to a designated critical benchmark

30.(1) Except in Québec, if a benchmark contributor to a designated critical benchmark decides it will cease contributing input data, it must promptly notify in writing the designated benchmark administrator that administers the designated critical benchmark.

(2) Except in Québec, a benchmark contributor that is required to give notice under subsection (1) must continue contributing input data until the earlier of

(a) the date referred to in subparagraph (3)(b)(ii), and

(b) 6 months after the notice referred to in subsection (1) is received by the designated benchmark administrator that administers the designated critical benchmark.

(3) If a designated benchmark administrator receives a notice referred to in subsection (1), the designated benchmark administrator must

(a) promptly notify the regulator or securities regulatory authority of the decision referred to in subsection (1), and

(b) no later than 14 days after receipt of the notice,

(i) submit to the regulator or securities regulatory authority an assessment of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent, and

(ii) notify in writing the benchmark contributor of the date after which the designated benchmark administrator no longer requires the benchmark contributor to contribute input data, if that date is less than 6 months after the date the designated benchmark administrator received the notice referred to in subsection (1).

Oversight committee

31.(1) For a designated critical benchmark, at least half of the members of the oversight committee referred to in section 7 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be expected to interfere with the exercise of the member's independent judgment.

(3) The oversight committee referred to in section 7 must

(a) publish details of its membership, declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold at least one meeting every 4 months.

Assurance report on designated benchmark administrator

32.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, either a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated critical benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with sections 5, 8 to 16 and 26, and

(b) following of the methodology applicable to the designated critical benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once every 12 months.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report referred to in subsection (1), publish the report and deliver a copy of the report to the regulator or securities regulatory authority.

Assurance report on benchmark contributor

33.(1) Except in Québec, if required by the oversight committee referred to in section 7 as a result of a concern with the conduct of a benchmark contributor to a designated critical benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, either a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and its

(a) compliance with section 24, and

(b) following of the methodology applicable to the designated critical benchmark.

(2) Except in Québec, a benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

(b) the board of directors of the designated benchmark administrator, and

(c) the regulator or securities regulatory authority.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Order of priority of input data

34. For the purposes of subsection 14(1) and paragraph 14(5)(a), if a designated interest rate benchmark is based on a contribution of input data from a benchmark contributor, input data for the determination of the designated interest rate benchmark must be used by the designated benchmark administrator in accordance with the order of priority specified in the methodology of the designated interest rate benchmark.

Oversight committee

35.(1) For a designated interest rate benchmark, at least half of the members of the oversight committee referred to in section 7 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be expected to interfere with the exercise of the member's judgment.

(3) The oversight committee referred to in section 7 must

(a) publish details of its membership, any declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold at least one meeting every 4 months.

Assurance report on designated benchmark administrator

36.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, in respect of each designated interest rate benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with sections 5, 8 to 16, 26 and 34, and

(b) following of the methodology of the designated interest rate benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 23 and subsequently once every 2 years.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report referred to in subsection (1), publish the report and deliver a copy of the report to the regulator or securities regulatory authority.

Assurance report on benchmark contributor required by oversight committee

37.(1) Except in Québec, if required by the oversight committee referred to in section 7 as a result of a concern with the conduct of a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public

accountant to provide, as specified by the oversight committee, either a limited assurance report on compliance or a reasonable assurance report on compliance, regarding the conduct of the benchmark contributor and its

(a) compliance with sections 24 and 39, and

(b) following of the methodology of the designated interest rate benchmark.

(2) Except in Québec, the benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

(b) the board of directors of the designated benchmark administrator, and

(c) the regulator or securities regulatory authority.

Assurance report on benchmark contributor required at certain times

38.(1) Except in Québec, a benchmark contributor to a designated interest rate benchmark must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, regarding the conduct and input data of the benchmark contributor and its

(a) compliance with sections 24 and 39,

(b) following of the methodology of the designated interest rate benchmark, and

(c) following of the code of conduct referred to in section 23.

(2) Except in Québec, a benchmark contributor must ensure an engagement referred to in subsection (1) occurs for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 23 and subsequently once every 2 years.

(3) Except in Québec, the benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

(b) the board of directors of the designated benchmark administrator, and

(c) the regulator or securities regulatory authority.

Benchmark contributor policies and procedures

39.(1) Subsections (2) to (7) do not apply to a person or company except in respect of a designated interest rate benchmark.

(2) Except in Québec, a contributing individual of the benchmark contributor and a manager of that contributing individual must provide a written statement to the benchmark contributor and the designated benchmark administrator that the contributing individual and the manager will comply with the code of conduct referred to in section 23.

(3) Except in Québec, a benchmark contributor must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the following:

(a) that there is an outline of responsibilities within the benchmark contributor's organization, including internal reporting lines and accountabilities;

(b) the maintenance of a current list of the names and locations of contributing individuals and managers and their alternates;

(c) that there are internal procedures governing contributions of input data and the approval of contributions of input data, including keeping a record for each daily or other contribution of input data that shows:

(i) how the procedures were applied, and

(ii) all qualitative and quantitative factors, including market data and expert judgment, used for each contribution of input data;

(d) that there are disciplinary procedures to address the following conduct of a person or company, including, for greater certainty, a person or company that is external to the process governing contributions of input data:

(i) the manipulation or attempted manipulation of a designated benchmark, or the failure to report the manipulation or attempted manipulation of a designated benchmark, to which the person or company is a benchmark contributor;

(ii) the provision or attempted provision of false or misleading information in respect of a designated benchmark, or the failure to report the provision or attempted provision of false or misleading information in respect of a designated benchmark, to which the person or company is a benchmark contributor;

(e) that there are conflict of interest identification and management procedures and communication controls, both within the benchmark contributor's organization and among benchmark contributors and other third parties, reasonably designed to avoid any external influence over those responsible for contributing input data, if a reasonable person would consider that the external influence might adversely affect the accuracy, reliability or completeness of the input data;

(f) that there is a requirement that contributing individuals employed by the benchmark contributor work in locations physically separated from interest rate derivatives traders;

(g) the prevention or control of the exchange of information between persons or companies engaged in activities involving a conflict of interest or a potential conflict of interest, if a reasonable person would consider that the exchange of that information might adversely affect the accuracy, reliability or completeness of the input data contributed by a benchmark contributor;

(h) that there are requirements to avoid collusion

(i) among benchmark contributors, and

(ii) among benchmark contributors and the designated benchmark administrator;

(i) that there are measures to prevent, or limit, any person from exercising influence over the way a contributing individual contributes input data, if a reasonable person would consider that the influence might adversely affect the accuracy, reliability or completeness of the input data;

(j) the removal of any direct connection between the remuneration of an employee involved in the contribution of input data and the remuneration of, or revenues generated by, a person or company engaged in another activity, if a conflict of interest exists or might arise in relation to the other activity;

(k) that there are controls to identify a reverse transaction subsequent to the contribution of input data.

(4) Except in Québec, a benchmark contributor must keep, for a period of 7 years from the date the record was made or received by the benchmark contributor, whichever is later, records of all of the following:

(a) all details of contributions of input data that a reasonable person would consider relevant to demonstrate the accuracy, reliability and completeness of the input data;

(b) the process governing input data determination and the approval of contributions of input data, including the records referred to in paragraph (3)(c);

(c) the name of each contributing individual and the individual's responsibilities;

(d) any communications, including, for greater certainty, telephone conversations, between the contributing individuals and other persons or companies, including internal and external traders and brokers, in relation to the determination or contribution of input data;

(e) any interaction of contributing individuals with the designated benchmark administrator or any calculation agent;

(f) any queries regarding the input data and the outcome of those queries;

(g) sensitivity analysis for interest rate swap trading books and any other derivative trading books with an exposure to interest rate fixings in respect of input data, if a reasonable person would consider that the exposure is significant;

(h) the written statements referred to in subsection (2);

(i) the policies, procedures and controls referred to in subsection (3).

(5) Except in Québec with respect to benchmark contributors, a benchmark contributor and a designated benchmark administrator must keep their records in a medium that allows records to be accessible and with a documented audit trail.

(6) Except in Québec, the benchmark contributor's officer referred to in section 25 or the benchmark contributor's chief compliance officer must report all the following to the benchmark contributor's board of directors on a reasonably frequent basis:

(a) breaches of the code of conduct referred to in section 23;

(b) the failure to follow or apply the policies, procedures and controls referred to in subsection (3);

(c) reverse transactions subsequent to the contribution of input data.

(7) Except in Québec, a benchmark contributor that contributes input data to a designated interest rate benchmark must conduct, on a reasonably frequent basis, internal reviews of the benchmark contributor's input data and procedures.

(8) Except in Québec, a benchmark contributor to a designated interest rate benchmark must make available the information and records kept in accordance with subsection (4) to each of the following:

(a) the designated benchmark administrator in connection with the assessment under subsection 23(3) or for the purposes of paragraph 24(5)(a);

(b) a public accountant involved with the preparation of a limited assurance report on compliance or reasonable assurance report on compliance required under this Instrument.

DIVISION 3 – DESIGNATED REGULATED-DATA BENCHMARKS

Non-application to designated regulated-data benchmarks

40. A designated regulated-data benchmark is exempt from the following:

(a) subsections 11(1) and (2);

(b) subsection 14(2);

(c) subsections 15(1), (2) and (3);

(d) sections 23, 24 and 25;

(e) paragraph 26(2)(a).

PART 9
DISCRETIONARY EXEMPTIONS

Exemptions

41.(1) The regulator or securities regulatory authority may grant an exemption from the provisions of 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 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 10
EFFECTIVE DATE

Effective date

42.(1) This Instrument comes into force on July 13, 2021.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after July 13, 2021, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

APPENDIX A
TO
MULTILATERAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

Definitions Applying in Certain Jurisdictions
(subsections 1(5) to (8))

"benchmark" means a price, estimate, rate, index or value that is

(a) determined from time to time by reference to an assessment of one or more underlying interests,

(b) made available to the public, including, for greater certainty, either free of charge or on payment, and

(c) used for reference for any purpose, including for greater certainty,

(i) determining the interest payable, or other sums that are due, under a contract, derivative, instrument or security,

(ii) determining the value of a contract, derivative, instrument or security or the price at which it may be traded,

(iii) measuring the performance of a contract, derivative, investment fund, instrument or security, or

(iv) any other use by an investment fund;

"benchmark administrator" means a person or company that administers a benchmark;

"benchmark contributor" means a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark;

"benchmark user" means a person or company that, in relation to a contract, derivative, investment fund, instrument or security, uses a benchmark.

FORM 25-102F1
Designated Benchmark Administrator
Annual Form

Instructions

(1) Terms used but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under securities legislation to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Organization and Structure of Designated Benchmark Administrator

Describe the organizational structure of the designated benchmark administrator, including, as applicable, an organizational chart that identifies the ultimate and intermediate parent companies, subsidiaries, and material affiliated entities of the designated benchmark administrator (if any); an organizational chart showing the divisions, departments, and business units of the designated benchmark administrator; and an organizational chart showing the managerial structure of the designated benchmark administrator, including the officer referred to in section 6 of the Instrument and the oversight committee referred to in section 7 of the Instrument. Provide detailed information regarding the designated benchmark administrator's legal structure and ownership.

Item 3. Designated Benchmark

Provide the name of the designated benchmark.

Item 4. Policies and Procedures re Confidential Information

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained by the designated benchmark administrator to prevent the misuse of confidential information.

Item 5. Policies and Procedures re Conflicts of Interest

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained with respect to conflicts of interest and potential conflicts of interest.

Item 6. Conflicts of Interest Arising from the Control or Ownership Structure of the Applicant

(a) Describe any conflict of interest or potential conflict of interest that arises from the control or ownership structure of the designated benchmark administrator, or from any other activities of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, in relation to a designated benchmark administered by the designated benchmark administrator.

(b) Describe the designated benchmark administrator's policies and procedures to identify and eliminate or manage each conflict of interest or potential conflict of interest described in paragraph (a).

Item 7. Policies and Procedures re Control Framework

Describe the designated benchmark administrator's control framework referred to in section 8 of the Instrument and policies and procedures designed to ensure the quality of the designated benchmark.

Item 8. Policies and Procedures re Complaints

Describe the designated benchmark administrator's policies and procedures regarding complaints.

Item 9. Policies and Procedures re Books, Records and Other Documents

Describe the designated benchmark administrator's policies and procedures regarding record keeping.

Item 10. Outsourcing

Describe the designated benchmark administrator's policies and procedures regarding outsourcing and disclose the following information about any person or company referred to in section 13 of the Instrument to which a designated benchmark administrator has outsourced a function, service or activity in the provision of a designated benchmark (the "provider") and the individuals who supervise the provider:

- the identity of the provider and each of its key individual contacts;
- the total number of individuals who supervise the provider;
- a general description of the minimum qualifications required of the provider for any outsourcing;
- a general description of the minimum qualifications required of individuals who supervise the provider for any outsourcing, including education level and work experience.

Item 11. Benchmark Individuals

Disclose the following information about the benchmark individuals of the designated benchmark administrator and the individuals who supervise the benchmark individuals:

- the total number of benchmark individuals;
- the total number of supervisors of benchmark individuals;
- a general description of the minimum qualifications required of the benchmark individuals, including education level and work experience (if applicable, distinguish between junior, mid, and senior level benchmark individuals);
- a general description of the minimum qualifications required of the supervisors of benchmark individuals, including education level and work experience.

Item 12. Compliance Officer

Disclose the following information about the officer of the designated benchmark administrator referred to in section 6 of the Instrument:

- name;
- employment history;
- post-secondary education;
- whether employed full-time or part-time by the designated benchmark administrator.

Item 13. Specified Revenue

Disclose the following information, as applicable, regarding the designated benchmark administrator's aggregate revenue for the most recently completed financial year:

- revenue from determining the designated benchmark;
- revenue from determining any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator);
- revenue from granting licences or rights to publish information about the designated benchmark;
- revenue from granting licences or rights to publish information about any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator).

Include financial information on the revenue of the designated benchmark administrator divided into fees from benchmark and non-benchmark activities, including a comprehensive description of each.

This information is not required to be audited, but any disaggregation of revenue must be determined using the same accounting principles as the annual financial statements required by section 2 of the Instrument.

Item 14. Financial Statements

Attach a copy of the annual financial statements required under section 2 of the Instrument.

Item 15. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-102F1 *Designated Benchmark Administrator Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are incorporated into and form part of this Form, are true and correct.

_____ _____
(Date) (Name of the Designated Benchmark Administrator)

By: _____
(Print Name and Title)

_____
(Signature)

FORM 25-102F2
DESIGNATED BENCHMARK
ANNUAL FORM

Instructions

(1) Terms used but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under securities legislation to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Designated Benchmark

Provide the name of the designated benchmark and whether it is also any of the following:

- interest rate benchmark;
- critical benchmark;
- regulated-data benchmark.

Item 3. Benchmark Distribution Model

Describe how the designated benchmark administrator makes the designated benchmark readily accessible for free or for a fee. If a person must pay a fee to obtain information about the designated benchmark made readily accessible by the designated benchmark administrator, provide a fee schedule or describe the prices charged.

Item 4. Procedures and Methodologies

Describe the procedures and methodologies used by the designated benchmark administrator to determine the designated benchmark. The description must be sufficiently detailed to provide an understanding of the processes employed by the designated benchmark administrator in determining the designated benchmark, including the following, as applicable:

- the public and non-public sources of information used in determining the designated benchmark, including information provided by benchmark contributors;
- procedures for monitoring, reviewing, and updating the designated benchmark,
- the methodologies, policies and procedures described in the Instrument.

A designated benchmark administrator may provide the location on its website where additional information about the methodologies, policies and procedures is located.

Item 5. Code of Conduct for Benchmark Contributors

Unless previously provided, attach a copy of any code of conduct for benchmark contributors.

Item 6. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-102F2 *Designated Benchmark Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are incorporated into and form part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Designated Benchmark Administrator)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-102F3
SUBMISSION TO JURISDICTION AND
APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of the designated benchmark administrator (the "DBA"):

2. Jurisdiction of incorporation, or equivalent, of the DBA:

3. Address of principal place of business of the DBA:

4. Name, email address, phone number and fax number of contact person at principal place of business of the DBA:

5. Name of agent for service of process (the "Agent"):

6. Agent's address in Canada for service of process:

7. Name, email address, phone number and fax number of contact person of the Agent:

8. The DBA designates and appoints the Agent at the address of the Agent stated in Item 6 as its agent on whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (a "proceeding") arising out of, relating to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator, and irrevocably waives any right to raise as a defence in any proceeding any alleged lack of jurisdiction to bring a proceeding.

9. The DBA irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judiciary and quasi-judicial and other administrative bodies of each of the provinces and territories of Canada in which it is a designated benchmark administrator, and

   (b) any judicial, quasi-judicial and other administrative proceeding in any such province or territory,

   in any proceeding arising out of or related to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator.

10. This submission to jurisdiction and appointment of agent for service of process is governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

_____ _____
Signature of Designated Benchmark Administrator Date

_____
Print name and title of signing officer
of Designated Benchmark Administrator

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of DBA] under the terms and conditions of the appointment of agent for service of process set out in this document.

_____ _____

Signature of Agent Date

_____

Print name of person signing and, if Agent is not an individual, the title of the person

5.1.2 Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators

COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

PART 1
GENERAL COMMENTS

Introduction

This companion policy (the "Policy") provides guidance on how the Canadian Securities Administrators ("we") interpret various matters in Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (the "Instrument").

Except for Parts 1 and 8, the numbering and headings of Parts, sections and subsections in this Policy generally correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Introduction to the Instrument

Designation of Benchmarks and Benchmark Administrators

Securities legislation provides for the designation of a benchmark and a benchmark administrator. In all Canadian jurisdictions that have adopted the Instrument, a benchmark administrator or a regulator may apply to a securities regulatory authority to request the designation of a benchmark or a benchmark administrator. In Alberta, British Columbia and Québec, the securities regulatory authority may make the designation on its own initiative. In Québec, the decision of the securities regulatory authority to designate a benchmark has the legal effect of the benchmark administrator becoming subject to the *Securities Act* (Québec). "Regulator" and "securities regulatory authority" are defined in National Instrument 14-101 *Definitions*.

We expect that a regulator may apply to a securities regulatory authority to request the designation of a benchmark or benchmark administrator, or in Alberta, British Columbia or Québec, the securities regulatory authority may make the designation on its own initiative, on public interest grounds, including where:

- a benchmark is sufficiently important to financial markets in Canada, or
- we become aware of activities of a benchmark administrator, benchmark contributor or benchmark user that raise public interest concerns and conclude that the administrator and benchmark in question should be designated.

Where the regulator intends to apply for the designation of a benchmark or benchmark administrator, or in Alberta, British Columbia or Québec, the securities regulatory authority intends to make the designation on its own initiative, we generally expect to give the affected benchmark administrator reasonable notice of our intention and the reasons for it. In addition, in certain jurisdictions, securities legislation provides the benchmark administrator with an opportunity to be heard and, where necessary, to provide documents before the securities regulatory authority makes its decision. Furthermore, we would generally not expect that a designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Categories of Designation

The Instrument contains requirements that apply to designated benchmark administrators, benchmark contributors and certain benchmark users in respect of a designated benchmark. In addition to requirements in the Instrument that generally apply in respect of any designated benchmark, there are additional requirements in the Instrument that apply to designated critical benchmarks and designated interest rate benchmarks.

The Instrument also includes a number of exemptions from certain provisions for designated benchmarks administrators and benchmark contributors in respect of designated regulated-data benchmarks. In addition to these specific exemptions, given the interpretation provided by subsection 1(3) of the Instrument as to when input data is considered to have been "contributed", as described later in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed would not apply to a benchmark that is designated as a regulated-data benchmark.

When designating a benchmark, a securities regulatory authority will issue a decision document designating the benchmark as a designated benchmark. If applicable, the decision document will indicate if the benchmark is also designated as a designated critical benchmark, a designated interest rate benchmark or a designated regulated-data benchmark. It is possible that a designated benchmark will receive more than one designation. For example,

- a designated interest rate benchmark may also be designated as a designated critical benchmark, and
- a designated regulated-data benchmark may also be designated as a designated critical benchmark.

As discussed below, we expect a benchmark administrator that applies for designation of a benchmark to provide written submissions on whether the administrator considers the benchmark to be a critical benchmark, an interest rate benchmark or a regulated-data benchmark.

When designating a benchmark or benchmark administrator, a securities regulatory authority will issue a decision document that may designate the benchmark administrator as a designated benchmark administrator of one or more designated benchmarks.

We expect that a benchmark administrator that applies under securities legislation for the designation of the administrator or a benchmark will provide written submissions that contain the same information as that required by Form 25-102F1 *Designated Benchmark Administrator Annual Form* and Form 25-102F2 *Designated Benchmark Annual Form* in a format that is consistent with those forms.

If we consider it would be in the public interest, or not be prejudicial to the public interest, to do so, we may also apply for a change in the designation of a designated benchmark. In some jurisdictions, such a change may be made by the securities regulatory authority without application. For example, if a designated benchmark is initially designated as a designated interest rate benchmark but over time it becomes more significant to Canadian financial markets, we may apply for it to also be designated as a critical benchmark. If this were to occur, securities legislation in certain jurisdictions would provide the designated benchmark administrator with an opportunity to be heard and, where necessary, to provide documents before a decision to make such a change is made. Accordingly, we would not expect that a change in the category of designation would be made without reasonable notice being provided to the affected benchmark administrator. Furthermore, we would generally not expect that a change in the category of designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Suspending, Revoking or Cancelling a Designation or Amending or Revoking Terms and Conditions

Securities legislation also provides that a securities regulatory authority may cancel or revoke, and in Alberta and Québec the securities regulatory authority may also suspend, the designation of a designated benchmark administrator or designated benchmark or may amend or revoke the terms and conditions relating to designation. However, before doing so, securities legislation in certain jurisdictions provides the benchmark administrator with an opportunity to be heard or a right to be heard and, where necessary, to provide documents. Accordingly, we would not expect a designation would be cancelled, revoked or suspended or that terms or conditions would be amended or revoked without reasonable notice being provided to the affected benchmark administrator. Additionally, in jurisdictions where the regulator may apply to the securities regulatory authority for the cancellation or revocation of a designation of a designated benchmark administrator or designated benchmark or the amendment or revocation of terms and conditions, we would not expect to make such an application unless it would be in the public interest. Furthermore, we would generally not expect that a cancellation or revocation of a designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public.

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

“Designated critical benchmark” is a benchmark that is designated for the purposes of the Instrument as a “critical benchmark” by a decision of the securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are specific requirements in Division 1 of Part 8 of the Instrument that apply to designated critical benchmarks.

Staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark as a “critical benchmark” if the benchmark is critical to financial markets in Canada or a region of Canada. The following two factors are among those that will be considered:

(a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds, having a total value in Canada of at least $400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable; or

(b) the benchmark satisfies all of the following criteria:

(i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable;

(ii) the benchmark has no, or very few, appropriate market-led substitutes;

(iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on

(A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or

(B) a significant number of market participants in one or more jurisdictions of Canada.

For the purpose of paragraph (a) and subparagraph (b)(i), staff of a securities regulatory authority will consider, among other things, the outstanding principal amount of any debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and the outstanding net asset value of any investment funds that use the benchmark to measure performance.

We note that the above list is not a complete list of factors and the existence of one of these factors by itself will not necessarily determine whether a benchmark is a critical benchmark. Instead, staff intend to follow a holistic approach where all relevant factors are considered.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the securities regulatory authority should designate the benchmark as a critical benchmark.

Subsection 1(1) – Definition of designated interest rate benchmark

"Designated interest rate benchmark" is a benchmark that is designated for the purposes of the Instrument as an "interest rate benchmark" by a decision of the securities regulatory authority. In addition to general requirements in the Instrument that apply in respect of any designated benchmark, there are specific requirements in Division 2 of Part 8 of the Instrument that apply to designated interest rate benchmarks.

Staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark as an "interest rate benchmark" if the benchmark is used to set interest rates of debt securities or is otherwise used as a reference in derivatives or other instruments. Factors that will be considered include the following:

(a) the benchmark is determined on the basis of the rate at which financial institutions may lend to, or borrow from, other financial institutions, or market participants other than financial institutions, in the money market; or

(b) the benchmark is determined from a survey of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

We note that the above list is not exhaustive.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the securities regulatory authority should designate the benchmark as an interest rate benchmark.

Subsection 1(1) – Definition of designated regulated-data benchmark

"Designated regulated-data benchmark" is a benchmark that is designated for the purposes of the Instrument as a "regulated-data benchmark" by a decision of the securities regulatory authority. Benchmark administrators of regulated-data benchmarks are exempted from certain governance and control requirements relating to the contribution of input data (see Division 3 of Part 8 of the Instrument).

Staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark as a "regulated-data benchmark" if the benchmark is determined by the application of a formula from any of the following:

(a) input data contributed entirely, or almost entirely, from

(i) any of the following, but only with reference to transaction data relating to securities or derivatives:

(A) a recognized exchange in a jurisdiction of Canada or an exchange that is subject to appropriate regulation in a foreign jurisdiction;

(B) a recognized quotation and trade reporting system in a jurisdiction of Canada or a quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction;

(C) an alternative trading system that is registered as a dealer in a jurisdiction of Canada and is a member of a self-regulatory entity or an alternative trading system that is subject to appropriate regulation in a foreign jurisdiction;

(D) an entity that is similar or analogous to the entities referred to in clause (A), (B) or (C) and that is subject to appropriate regulation in a jurisdiction of Canada or a foreign jurisdiction;

(ii) a service provider to which the designated benchmark administrator of the designated benchmark has outsourced the data collection in accordance with section 13 of the Instrument, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);

(b) net asset values of investment funds that are reporting issuers in a jurisdiction of Canada or subject to appropriate regulation in a foreign jurisdiction.

We expect that a benchmark administrator that applies under securities legislation for the designation of a benchmark will provide, with its application, written submissions on whether the regulator or the securities regulatory authority should designate the benchmark as a regulated-data benchmark.

Subsection 1(1) – Definition of expert judgment

"Expert judgment" is the discretion exercised by:

- a designated benchmark administrator with respect to the use of input data in determining a benchmark, and
- a benchmark contributor with respect to input data.

Expert judgment may involve various activities, including:

- extrapolating values from prior or related transactions,
- adjusting values for factors that might influence the quality of data such as market data, economic factors, market events or impairment of a buyer or seller's credit quality, or
- assigning a greater weight to data relating to bids or offers than the weight assigned to a relevant concluded transaction.

Subsection 1(1) – Definition of input data

"Input data" is the data in respect of any measurement of one or more assets, interests or elements that is contributed, or otherwise obtained, by a designated benchmark administrator for the purpose of determining a designated benchmark. For example, input data may include estimated prices, quotes, committed quotes or other values.

The reference to "or otherwise obtained" would include the following scenarios where data is "reasonably available" (within the meaning of s. 1(3) of the Instrument) on a source's website (free of charge or behind a paywall):

- "Active" scenario – the source takes deliberate action to provide the data to a benchmark administrator.
- "Passive" scenario – the source simply publishes the data and is not aware that the benchmark administrator is using it as input data.

Subsection 1(1) – Definitions of limited assurance report on compliance and reasonable assurance report on compliance

A "limited assurance report on compliance" and a "reasonable assurance report on compliance" must be prepared in accordance with the applicable Canadian Standard on Assurance Engagements (CSAE) or the applicable International Standard on Assurance Engagements (IASE). The CSAE and ISAE require that any public accountant that prepares such a report be independent.

Subsection 1(1) – Definition of transaction data

"Transaction data" means the data in respect of a price, rate, index or value representing transactions between unaffiliated parties in an active market subject to competitive supply and demand forces.

We consider that:

- transaction data would include published or onscreen data available to the public generally or by subscription, and
- the reference to "active market subject to competitive supply and demand forces" would include a market in which transactions take place, or are reported, between arm's length parties with sufficient frequency and volume to provide pricing information on an ongoing basis. This reference is separate and different from any definition for accounting purposes.

Subsection 1(1) – Interpretation of certain definitions

Definitions of each of the following terms are considered to apply only in respect of the designated benchmark to which they pertain:

- "benchmark administrator";
- "benchmark contributor";
- "benchmark individual";
- "benchmark user";
- "contributing individual";
- "DBA individual";
- "designated benchmark administrator";
- "input data";
- "transaction data".

Subsection 1(3) – Interpretation of contribution of input data

There are provisions in the Instrument that apply to (i) all input data or (ii) only input data that is contributed.

Subsection 1(3) of the Instrument provides that input data is considered to have been "contributed" if

(a) it is not reasonably available to

  (i) the designated benchmark administrator, or

  (ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and

(b) it is provided to the designated benchmark administrator or the other person or company referred to in subparagraph (a)(ii) above for the purpose of determining a benchmark.

We consider that the reference to "not reasonably available" would include situations where input data is not published or otherwise available to a designated benchmark administrator or another person or company, other than the benchmark contributor, using reasonable effort, on reasonable terms or a reasonable cost and the designated benchmark administrator therefore needs to obtain the input data from a benchmark contributor who has access to that data. For example, an interest rate benchmark may be based on a survey by a benchmark administrator of bid-side rates contributed by benchmark contributors that are financial

institutions which routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

Where a benchmark administrator engages the services of an agent to aggregate input data from multiple sources, we would not consider this input data to be contributed by the data aggregator, as an agent of the benchmark administrator, provided that the input data is collected from one or more reasonably available sources.

Input data for regulated-data benchmarks would generally not be considered to be contributed because the nature of this data is that it is reasonably available and not created for the purpose of determining the benchmark.

Subsections 1(5) to (8) – Definitions of benchmark, benchmark administrator, benchmark contributor and benchmark user in Appendix A

Subsection 1(5) of the Instrument indicates that, for purposes of the Instrument, the definitions in Appendix A apply. Appendix A contains definitions of "benchmark", "benchmark administrator", "benchmark contributor" and "benchmark user". However,

- Subsection 1(6) indicates that subsection 1(5) does not apply in Alberta, New Brunswick, Nova Scotia, Ontario or Saskatchewan. In these jurisdictions, the terms in Appendix A are defined in securities legislation.
- Subsection 1(7) provides that, in British Columbia, the definitions of "benchmark" and "benchmark contributor" in the *Securities Act* (British Columbia) apply.
- Subsection 1(8) provides that, in Québec, the definitions of "benchmark" and "benchmark administrator" in the *Securities Act* (Québec) apply.

The definition of benchmark refers to a "price, estimate, rate, index or value". We consider that "index" would include any indicator that is:

- made available to the public, and
- regularly determined
    - entirely or partially by the application of a formula or any other method of calculation, and
    - on the basis of the measurement of one or more assets, interests or elements, including, but not limited to, the value or price of the asset, interest or element.

Public authorities

Where public authorities (for example, national statistics agencies, universities or research centres) contribute data to, or provide or have control over the provision of, a benchmark for public policy purposes, we would generally not designate such a benchmark as a "designated benchmark" or its administrator as a "designed benchmark administrator". In this regard, we would generally consider a "public authority" to include a government, a government agency or an entity performing public functions, having public responsibilities or providing public services under the control of a government or a government agency.

Use of "reasonable person"

Certain provisions of the Instrument use the concept of a "reasonable person" to introduce an objective test, rather than a subjective test. In these provisions, the test will turn on what a "reasonable person" would believe, consider, conclude or determine or what the opinion of a "reasonable person" would be, in the circumstances.

PART 2
DELIVERY REQUIREMENTS

Section 2 – References to Canadian GAAP, Canadian GAAS, Handbook, IFRS and International Standards on Auditing

There are references in section 2 of the Instrument to "Canadian GAAP", "Canadian GAAS", "Handbook", "IFRS" and "International Standards on Auditing", which are defined in National Instrument 14-101 *Definitions*.

Subparagraph 2(7)(a)(ii) – Canadian GAAP applicable to private enterprises

Subject to certain conditions, subparagraph 2(7)(a)(ii) of the Instrument permits audited annual financial statements of a designated benchmark administrator to be prepared using Canadian GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprise in Part II of the Handbook.

Subsection 2(8) – Information on designated benchmark administrator

Subsection 2(8) requires that certain information be provided on Form 25-102F1 *Designated Benchmark Administrator Annual Form* and delivered on or before the 30th day after the designated benchmark administrator is designated. A benchmark administrator that provided a completed Form 25-102F1 with their application for designation does not need to re-file the form within the 30 day period after designation.

Subsection 3(2) – Information on designated benchmark

Subsection 3(2) requires that certain information be provided on Form 25-102F2 *Designated Benchmark Annual Form* and delivered on or before the 30th day after the designated benchmark is designated. A benchmark administrator that provided a completed Form 25-102F2 with their application for designation does not need to re-file the form within the 30 day period after designation.

Subsection 4(2) – Submission to jurisdiction and appointment of agent for service of process

Subsection 4(2) requires that certain information be provided on Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and delivered on or before the 30th day after the designated benchmark administrator is designated. A benchmark administrator that provided a completed Form 25-102F3 with their application for designation does not need to re-file the form after designation.

PART 3
GOVERNANCE

Board of directors

The Instrument has various obligations for the board of directors of a designated benchmark administrator. The Instrument does not include requirements as to the composition of the board of directors as this will be generally dictated by the corporate laws under which the benchmark administrator is organized. In addition to independence requirements under applicable corporate or other laws with respect to the composition of the board of directors of the benchmark administrator, there are several provisions of the Instrument that foster independence in the oversight of a designated benchmark and the proper management of potential conflicts of interest, including:

- **subsection 6(6)** – a designated benchmark administrator must not provide a payment or other financial incentive to a compliance officer referred to in subsection 6(1), or any DBA individual that reports directly to the officer, if the payment or other financial incentive would create a conflict of interest. Such a payment would compromise the independence of the compliance officer or the DBA individual;

- **subsections 7(2) and (3)** – a designated benchmark administrator must establish an oversight committee, the members of which must not be members of the board of directors;

- **subsections 7(4) and (9)** – the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator and, if the oversight committee becomes aware that the board of directors has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting;

- **subsection 10(1)** – a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to, among other things, ensure that any expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised and protect the integrity and independence of the provision of a designated benchmark;

- **subsection 12(2)** – a benchmark administrator must conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint; and

- **subsections 31(1) and 35(1)** – for a designated critical benchmark and a designated interest rate benchmark, respectively, at least half of the members of the oversight committee of the designated benchmark administrator must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

Subsection 6(1) – Reference to securities legislation relating to benchmarks

Subsection 6(1) of the Instrument refers to “securities legislation relating to benchmarks”, which would include the Instrument and benchmark provisions in local securities legislation. “Securities legislation” is defined in National Instrument 14-101 *Definitions*.

Paragraph 6(4)(b) – Determining compensation for DBA individuals

Paragraph 6(4)(b) of the Instrument prohibits the compliance officer of a designated benchmark administrator from participating in the determination of compensation for any DBA individuals, other than for a DBA individual who reports directly to the compliance officer. We expect that a designated benchmark administrator will consider compliance, including past compliance issues and how compensation policies may be used to manage conflicts of interest, when establishing compensation policies and determining compensation of any DBA individuals and we do not consider this to be prohibited by paragraph 6(4)(b) of the Instrument, even if the compliance officer is providing input in relation to a DBA individual.

Subsection 7(3) – Oversight committee must not include members of board of directors

While subsection 7(3) of the Instrument prohibits the oversight committee from including individuals that are members of the board of directors of the designated benchmark administrator, we do not consider this provision to prohibit a member of the board of directors from being invited, when appropriate, to an oversight committee meeting, provided that the member of the board of directors does not perform or influence the independent performance of the roles of the oversight committee set out in section 7 of the Instrument.

Subsection 7(7) – Information relating to a designated benchmark

We consider that the reference to "information relating to a designated benchmark" in subsection 7(7) of the Instrument would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

Subsection 7(8) – Required actions for oversight committee of a designated benchmark administrator

Subsection 7(8) of the Instrument requires the oversight committee of a designated benchmark administrator to carry out certain actions. We expect that the oversight committee will carry out these actions in a manner that reasonably reflects the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Paragraph 7(8)(e) – Calculation agents and dissemination agents

Paragraph 7(8)(e) of the Instrument requires the oversight committee of a designated benchmark administrator to oversee any service provider involved in the provision of the designated benchmark, including calculation agents or dissemination agents. We consider that

- a "dissemination agent" is a person or company with delegated responsibility for disseminating a designated benchmark to benchmark users in accordance with the instructions provided by the designated benchmark administrator for the designated benchmark, including any review, adjustment and modification to the dissemination process, and
- a "calculation agent" is a person or company with delegated responsibility for determining a designated benchmark through the application of a formula or other method of calculating the information or expressions of opinions provided for that purpose, in accordance with the methodology set out by the designated benchmark administrator for the designated benchmark.

A dissemination agent would not include:

- a publisher that pays a licensing fee to publish a benchmark under a non-exclusive publishing license, or
- a publisher that pays a licensing fee to publish a benchmark under an exclusive publishing license if the benchmark administrator also makes the benchmark publicly available through other means.

We understand that a designated benchmark administrator may establish lines of supervision of service providers as contemplated by section 13 of the Instrument, where supervision is performed by certain DBA individuals and the oversight committee receives and reviews reports on this supervision. We would consider an oversight committee to satisfy its obligations under paragraph 7(8)(e) of the Instrument if it oversees the supervision of the service providers referred to in the paragraph, for example, through the receipt and review of regular reporting from those responsible for the supervision contemplated by section 13 of the Instrument.

Subparagraph 7(8)(i)(ii) – Monitoring of input data

Subparagraph 7(8)(i)(ii) of the Instrument requires the oversight committee of a designated benchmark administrator to monitor the input data, the contribution of input data by the benchmark contributor, and the actions of the designated benchmark administrator in challenging or validating contributions of input data. We understand that a designated benchmark may have several lines of monitoring where real-time monitoring is performed by certain DBA individuals and the oversight committee receives and reviews reports on this monitoring. We would consider an oversight committee to satisfy its obligations under subparagraph 7(8)(i)(ii) of the Instrument if it oversees the monitoring of items in the subparagraph, for example, through the receipt and review of regular reporting from those responsible for real-time monitoring.

Subparagraph 7(8)(i)(iii) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference in subparagraph 7(8)(i)(iii) of the Instrument to a "breach" of a code of conduct that is "significant" would include non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark or the designated benchmark administrator.

Section 8 – Control framework

Section 8 of the Instrument requires a designated benchmark administrator to establish a control framework to ensure that a designated benchmark is provided in accordance with the Instrument. Similarly, except in Québec, subsection 24(2) of the Instrument requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy, reliability and completeness of each contribution of input data to the designated benchmark administrator, including controls that the input data is provided in accordance with the Instrument.

We expect that the control framework provided for under subsection 8(2) of the Instrument and the controls provided for under subsection 24(2) of the Instrument will be proportionate to all of the following:

- the level of conflicts of interest identified in relation to the designated benchmark, the designated benchmark administrator or the benchmark contributor,
- the extent of expert judgment in the provision of the designated benchmark,
- the nature of the input data for the designated benchmark.

In establishing the control framework required under subsection 8(2) of the Instrument, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 24(2) of the Instrument.

The control framework and the controls used should be consistent with guidance published by a body or group that has developed the guidance through a process that includes the broad distribution of the proposed guidance for public comment.

Examples of suitable guidance that a designated benchmark administrator or a benchmark contributor could follow include:

(a) the *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Chartered Professional Accountants of Canada;

(b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and

(c) the *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* published by U.K. Financial Reporting Council.

These examples of suitable guidance include, in the definition or interpretation of "internal control", controls for compliance with applicable laws and regulations.

Subsection 8(5) – Reporting of significant security incident or systems issue

Subsection 8(5) of the Instrument provides that a designated benchmark administrator must promptly provide written notice to the regulator or securities regulatory authority describing any security incident or any systems issue relating to a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant. We consider a failure, malfunction, delay or other incident or issue to be a "significant security incident" or a "significant systems issue" if the designated benchmark administrator would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology.

Subsection 10(2) – Conflict of interest requirements for designated benchmark administrators

Subsection 10(2) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark administrator relating to a designated benchmark, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated benchmark.

We expect that, when contemplating the nature and scope of such a conflict of interest, a designated benchmark administrator would consider a variety of matters, including the following:

- the provision of benchmarks often involves discretion in the determination of benchmarks and is inherently subject to certain types of conflicts of interest, which implies the existence of various opportunities and incentives to manipulate benchmarks, and
- in order to ensure the integrity of designated benchmarks, designated benchmark administrators should implement adequate governance arrangements to control such conflicts of interest and to safeguard confidence in the integrity of benchmarks.

For example, if the designated benchmark administrator does identify such a conflict of interest, the administrator should ensure that persons responsible for the administration of the designated benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities.

Subsection 11(1) – Reporting of contraventions

Subsection 11(1) of the Instrument provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed to detect and promptly report to the regulator or securities regulatory authority any conduct by a DBA individual or a benchmark contributor that might involve:

- manipulation or attempted manipulation of a designated benchmark, or
- provision or attempted provision of false or misleading information in respect of a designated benchmark.

As part of that reporting to the regulator or securities regulatory authority, we expect that the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the regulator or securities regulatory authority.

Paragraph 12(2)(c) – Complaint procedures

Paragraph 12(2)(c) of the Instrument provides that a designated benchmark administrator must communicate the outcome of the investigation of a complaint to the complainant within a reasonable period.

We expect that, in establishing the policies and procedures for complaints relating to the designated benchmark required by subsection 12(1) of the Instrument, the designated benchmark administrator would include a target timetable for investigating complaints.

A designated benchmark administrator may, on a case-by-case basis, apply for exemptive relief from paragraph 12(2)(c) of the Instrument if such a communication to the complainant would be seriously prejudicial to the interests of the designated benchmark administrator or would violate confidentiality provisions.

Section 13 – Outsourcing

Section 13 of the Instrument sets out requirements on outsourcing by a designated benchmark administrator. For purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Section 13 does not apply to the oversight committees contemplated by the Instrument.

Paragraph 13(2)(c) – Written agreement for outsourcing

Paragraph 13(2)(c) of the Instrument provides that the policies and procedures of a designated benchmark administrator in relation to outsourcing must be reasonably designed to ensure that the designated benchmark administrator and the service provider enter into a written agreement that covers the matters set out in subparagraphs 13(2)(c)(i) to (vi). We consider the reference to "written agreement" to include one or more written agreements.

Where a benchmark administrator of a designated regulated-data benchmark uses the services of an agent to facilitate delivery of aggregate input data from multiple sources, we would not consider this to be outsourcing a function, service or activity in the provision of the designated benchmark. While such an arrangement would not be subject to section 13 of the Instrument, the benchmark administrator would still be required to comply with other applicable provisions of the Instrument, including the

accountability framework in section 5 and the control framework in section 8, so it should have appropriate agreements in place with the agent.

PART 4
INPUT DATA AND METHODOLOGY

Subsection 15(2) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference in subsection 15(2) of the Instrument to a "breach" of a code of conduct that is "significant" would include non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark or the designated benchmark administrator.

Subsection 15(3) – Requirement to obtain alternative representative data

Subsection 15(3) of the Instrument provides that, in the event of a breach referred to in subsection 15(2), if a reasonable person would consider it to be appropriate, a designated benchmark administrator must obtain alternative representative data in accordance with the guidelines referred to in subsection 16(3) of the Instrument. However, those guidelines may contemplate the circumstances in which the designated benchmark administrator may conclude that the other benchmark contributors from which it obtained input data are a sufficient representative sample of benchmark contributors for purposes of subsection 15(1) of the Instrument.

Subsection 15(4) – Verification of input data from front office of a benchmark contributor

Paragraph 15(4)(a) of the Instrument requires that, if input data is contributed from any front office of a benchmark contributor, or an affiliated entity that performs any activities that relate to or might affect the input data, the designated benchmark administrator must obtain information from other sources, if reasonably available, that confirms the accuracy and completeness of the input data in accordance with the benchmark administrator's policies and procedures.

There may be instances where there are no other sources of information reasonably available to the designated benchmark administrator to confirm the accuracy and completeness of the input data. We expect the designated benchmark administrator to consider the steps it would take to confirm the accuracy and completeness of such input data in such instances when establishing the policies, procedures and controls required under section 8 of the Instrument.

Subsection 15(5) – Front office of a benchmark contributor

Subsection 15(5) of the Instrument provides that "front office" of a benchmark contributor or an applicable affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.

Paragraph 16(1)(e) – Capability to verify determination under the methodology

Paragraph 16(1)(e) of the Instrument provides that a determination under the methodology of a designated benchmark must be capable of being verified as being accurate, reliable and complete.

A determination under a methodology that is based on information such as input data would be verified as being accurate, reliable and complete if:

- it can be clearly linked to the original information, and
- it can be linked to complementary, but separate information.

For example, in the case of an interest rate benchmark that is determined daily and calculated as the arithmetic average of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances and are market-makers in bankers' acceptances, the daily determination would be verified as being accurate, reliable and complete if:

- the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and
- the benchmark administrator's record of the rates contributed by the financial institutions can be matched to the records of those rates maintained by the applicable financial institutions.

In the case of an interest rate benchmark, we recognize that any verification done by a designated benchmark administrator or a public accountant would require access to the records of benchmark contributors pursuant to subsection 39(8) of the Instrument and may only be feasible if based on samples of rates on certain dates.

Paragraph 16(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph 16(2)(a) of the Instrument provides that a designated benchmark administrator must take into account, in the preparation of the methodology of a designated benchmark, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to represent.

In this context, we consider that "applicable characteristics" include:

- the size and reasonably expected liquidity of the market,
- the transparency of trading and the positions of participants in the market,
- market concentration,
- market dynamics, and
- the adequacy of any sample to reasonably represent that part of the market or economy the designated benchmark is intended to represent.

Subsection 17(2) – Proposed or implemented significant changes to methodology

Subsection 17(2) of the Instrument provides that a designated benchmark administrator must provide for public notice of and comment on a proposed or implemented significant change to the methodology of a designated benchmark.

As part of the methodology disclosure required under section 18, paragraph 18(1)(e) of the Instrument provides that a designated benchmark administrator must publish examples of the types of changes that may constitute a significant change to the methodology of the designated benchmark.

In general, we would consider a change to the methodology of a designated benchmark to be significant if, in the opinion of a reasonable person, it would have a significant effect on the provision of the designated benchmark (within the meaning of subsection 1(4) of the Instrument).

We consider publication on the designated benchmark administrator's website of a proposed or implemented change to the methodology of a designated benchmark, accompanied by a news release advising of the publication of the proposed or implemented change, as sufficient notification in these contexts. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of such a publication by email.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the proposed or implemented change to the methodology of a designated benchmark on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subparagraph 18(1)(b)(v) – Methodology disclosure

As part of the methodology disclosure required under section 18, subparagraph 18(1)(b)(v) of the Instrument provides that a designated benchmark administrator must publish a complete explanation of all elements of the methodology, including the benchmark contributors and the criteria used to determine eligibility of a benchmark contributor. This disclosure would include a list of existing benchmark contributors and may include a description of persons who may be benchmark contributors in the future.

Compliance with methodology

Several requirements in the Instrument foster a designated benchmark administrator's compliance with its own benchmark methodology, including:

- paragraph 5(1)(b) – a designated benchmark administrator must establish, document, maintain and apply an accountability framework of policies and procedures that are reasonably designed to, for each designated benchmark it administers, ensure and evidence that it follows the methodology applicable to the designated benchmark;
- paragraph 6(3)(b) – at least once every 12 months, the compliance officer must submit a report to the designated benchmark administrator's board of directors that describes whether the designated administrator has followed the methodology applicable to each designated benchmark it administers;

- paragraph 8(4)(a) – a designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that benchmark contributors comply with the standards for input data in the methodology of the designated benchmark;

- paragraph 16(1)(c) – the accuracy and reliability of a methodology, with respect to determinations made under it, must be capable of being verified, including, if appropriate, by back-testing; and

- paragraph 18(1)(c) – a designated benchmark administrator must publish the process for the internal review and approval of the methodology and the frequency of such reviews and approvals.

When complying with these requirements, a designated benchmark administrator should generally attempt to ensure that compliance with a benchmark methodology is monitored by staff that are independent of staff that determine and apply the methodology.

PART 5
DISCLOSURE

Subsection 19(1) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 19(1)(a) through (m) of the Instrument, are designed to provide transparency to benchmark users to understand the purpose or intention of the benchmark, the limitations of the benchmark, and how the designated benchmark administrator will apply the methodology to provide the benchmark. In preparing the benchmark statement, a designated benchmark administrator should attempt to ensure that benchmark users have sufficient information to understand what the benchmark is intended to represent and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph 19(1)(a) – Applicable part of the market or economy for purposes of the benchmark statement

Paragraph 19(1)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of that part of the market or economy the designated benchmark is intended to represent. This relates to the benchmark's purpose.

For example, an interest rate benchmark may be intended to represent the cost of unsecured interbank lending and may be intended to be used as a benchmark interest rate in interbank loan agreements. In this example, we consider it problematic if

- the type of prime bank lending rate the benchmark is intended to record is unclear, or

- the calculation method does not work well in periods of low liquidity.

Subsection 20(2) – Significant change to designated benchmark

Subsection 20(2) of the Instrument provides that a designated benchmark administrator must publish the procedures it will follow in the event of a significant change to or the cessation of a designated benchmark it administers, including procedures for advance notice of the implementation of a significant change or a cessation. We would consider a change in the person or company acting as the benchmark administrator of a designated benchmark to be an example of a significant change. Consequently, we would expect the designated benchmark administrator's procedures to include procedures in the event of a change in the administrator of a designated benchmark it administers, including procedures for advance notice of the change in administrator.

PART 6
BENCHMARK CONTRIBUTORS

General

Part 6 of the Instrument contains provisions that apply in respect of benchmark contributors to a designated benchmark. There are also specific requirements that apply to:

- benchmark contributors to a designated critical benchmark (see sections 30 and 33 of the Instrument), and

- benchmark contributors to a designated interest rate benchmark (see sections 37, 38 and 39 of the Instrument).

Securities legislation defines "benchmark contributor" as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

In Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario and Saskatchewan, securities legislation provides that the securities regulatory authority may, in response to an application by the regulator or, in Alberta or British Columbia, on its own

initiative, require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. For example, a person or company may be required to provide information to a designated benchmark administrator for the purpose of determining a designated critical benchmark. In such a case, the person or company would be a benchmark contributor, and would therefore be subject to the provisions of the Instrument applicable to benchmark contributors generally and the provisions applicable to benchmark contributors to a designated critical benchmark. However, certain of those provisions only apply if input data is considered to have been contributed within the meaning of subsection 1(3) of the Instrument.

Certain provisions in the Instrument relating to benchmark contributors have not been adopted in Québec as amendments to the *Securities Act* (Québec) are required to adopt these provisions.

Subsection 23(1) – Code of conduct for benchmark contributors

The requirement in subsection 23(1) of the Instrument for a designated benchmark administrator to establish, document, maintain and apply a code of conduct that specifies the responsibilities of benchmark contributors with respect to the contribution of input data for the designated benchmark only applies if a designated benchmark is determined using input data from benchmark contributors. Subsection 1(3) of the Instrument sets out when input data is considered to have been contributed and Part 1 of this Policy provides further guidance on subsection 1(3) of the Instrument and when input data is considered to have been contributed.

Subparagraph 23(2)(f)(v) – Validation of input data before contribution

In considering any requirement for procedures, systems and controls under subparagraph 23(2)(f)(v), we expect a designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy and completeness of input data. For example, depending on the specific nature of the designated benchmark, it may be appropriate to require an individual with appropriate knowledge holding a position senior to that of the contributing individual to sign-off on input data before it is contributed to the designated benchmark administrator.

Subparagraph 23(2)(f)(vii) – Input data that is inaccurate, unreliable or incomplete

Subparagraph 23(2)(f)(vii) of the Instrument requires that a code of conduct for a benchmark contributor include a reporting requirement for any instance when a reasonable person would consider that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate, unreliable or incomplete. In establishing these requirements, we expect the designated benchmark administrator to consider providing indicators that could be used to identify input data that is inaccurate, unreliable or incomplete, based on past experience. The indicators should reasonably reflect the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Subparagraph 23(2)(f)(x) – Access to board of directors

Subparagraph 23(2)(f)(x) of the Instrument requires that a code of conduct for a benchmark contributor include a requirement that the benchmark contributor's designated officer referred to in subparagraph 23(2)(f)(ix) and the benchmark contributor's chief compliance officer not be prevented or restricted from directly accessing the benchmark contributor's board of directors. In some instances, the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance officer will be the same person. However, if they are different persons, each must be provided with direct access to the benchmark contributor's board of directors. However, we realize that there may be situations where the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance officer may jointly or separately report to the benchmark contributor's board of directors on a matter.

Subsection 23(3) – Assessment of compliance with code of conduct

In establishing the policies and procedures required under subsection 23(3) of the Instrument, we expect the designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark. For example, the policies and procedures may include the use of verification certificates signed by an officer of the benchmark contributor and on-site inspections by internal compliance staff that are independent from the business unit whose activities are subject to the code of conduct.

Paragraph 24(1)(a) – Conflict of interest requirements for benchmark contributors

Except in Québec, paragraph 24(1)(a) of the Instrument provides that a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure input data contributed by the benchmark contributor is not affected by any conflict of interest or potential conflict of interest involving the benchmark contributor and its employees, officers, directors or agents, if a reasonable person would consider that the input data might be inaccurate, unreliable or incomplete.

We expect that, when establishing these policies and procedures, a benchmark contributor would consider the following:

- benchmark contributors of input data to benchmarks can often exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation, and
- consequently, conflicts of interest must be managed or mitigated to ensure they do not affect input data.

For example, if the benchmark contributor does identify such a conflict of interest involving other business activity, the contributor should ensure that persons responsible for the contribution of input data to a designated benchmark administrator for the purpose of determining a designated benchmark:

- are located in a secure area apart from persons that carry out the other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to the other business activity.

Subsection 24(2) – Accuracy, reliability and completeness of input data

In establishing the policies, procedures and controls required under subsection 24(2) of the Instrument, subject to any requirements set out in the code of conduct established under section 23 of the Instrument, we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy, reliability and completeness of input data. For example, depending on the specific nature of the designated benchmark, it may be appropriate to require an individual with appropriate knowledge holding a position senior to that of the contributing individual to sign-off on input data before it is contributed to the designated benchmark administrator.

In addition, as contemplated by subparagraph 24(2)(d)(i) of the Instrument, the extent of organizational separation of contributing individuals from employees whose responsibilities include transacting in a contract, derivative, instrument or security that uses the designated benchmark for reference should be appropriate to avoid the conflicts of interest or mitigate the risks resulting from conflicts of interest. Depending on the specific nature of the designated benchmark and the related conflicts of interest and risks, this may involve restricting access to certain information or restricting access to certain areas of the organization.

Subsection 24(3) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 24(3)(a), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and the nature of its input data.

As described in Part 1 of this Policy, expert judgment may involve various activities. Except in Québec, paragraph 24(3)(b) of the Instrument requires that, if expert judgment is exercised in relation to input data, the benchmark contributor must retain records that record the rationale for any decision made to exercise that expert judgment, the rationale applied in the exercise of the expert judgment and the manner of the exercise of the expert judgment. The records should take into consideration the benchmark contributor's policies and procedures for the exercise of expert judgment.

Subsection 24(4) – Record keeping by benchmark contributor

The reference to "communications" in paragraph 24(4)(a) of the Instrument includes telephone conversations, email and other electronic communications. We consider this to require a benchmark contributor to a designated benchmark to keep audio recordings of all phone conversations and voicemail messages in relation to the contribution of input data. Furthermore, a benchmark contributor to a designated benchmark should retain records of call logs and notes of phone conversations or voicemail messages in relation to the contribution of input data.

The records kept by a benchmark contributor under subsection 24(4) of the Instrument may be required to be made available to the designated benchmark administrator under subsection 24(5). Given that the records may contain confidential, sensitive or proprietary information, we expect that a designated benchmark administrator will only request such records in connection with the review and supervision of the provision of the designated benchmark and will take appropriate steps to ensure the confidential treatment of such information.

Section 25 – Compliance officer for benchmark contributors

Except in Québec, subsection 25(1) of the Instrument provides that a benchmark contributor that contributes input data for a designated benchmark must designate an officer to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section 23, the Instrument and securities legislation relating to benchmarks. The officer can conduct these activities on a part-time basis but should be independent from persons involved in determining or contributing input data.

Except in Québec, subsection 25(2) of the Instrument requires a benchmark contributor to not prevent or restrict the designated officer referred to in subsection 25(1) and the benchmark contributor's chief compliance officer from directly accessing to the

benchmark contributor's board of directors. In some instances, the designated officer under subparagraph 25(1) and the chief compliance officer will be the same person. However, if they are different persons, each must be provided with direct access to the benchmark contributor's board of directors. However, we realize that there may be situations where the designated officer under subparagraph 25(1) and the chief compliance officer may jointly or separately report to the benchmark contributor's board of directors on a matter.

PART 7
RECORD KEEPING

Section 26 – Record keeping by designated benchmark administrator

The reference to "communications" in paragraph 26(2)(h) of the Instrument includes telephone conversations, email and other electronic communications. We consider this to require a designated benchmark administrator to keep audio recordings of all phone conversations and voicemail messages with benchmark contributors in relation to the contribution of input data. Furthermore, a designated benchmark administrator should retain records of call logs and notes of phone conversations or voicemail messages with benchmark contributors in relation to the contribution of input data.

In addition to the record keeping requirements in the Instrument, securities legislation generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with securities law of the jurisdiction.

PART 8
DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Section 30 – Ceasing to contribute input data to a designated critical benchmark

Except in Québec, section 30 of the Instrument provides the process for a benchmark contributor to cease to contribute input data to a designated critical benchmark. After the benchmark contributor has provided notice to the designated benchmark administrator that it will cease to contribute input data, subsection 30(2) of the Instrument requires the benchmark contributor to continue contributing input data for a period not exceeding 6 months. This is to provide a transition to protect the accuracy and integrity of the designated critical benchmark.

Subparagraph 30(3)(b)(ii) of the Instrument permits the designated benchmark administrator to notify the benchmark contributor that it must continue contributing input data for a period of less than 6 months. We expect that a designated benchmark administrator will determine the date of expiry of this period by considering the assessment, submitted to the regulator or securities regulatory authority under subparagraph 30(3)(b)(i) of the Instrument, of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent. We also expect that the period for which a benchmark contributor must continue contributing input data will be as short as practical while ensuring that the designated benchmark still accurately represents that part of the market or economy the designated benchmark is intended to represent.

Securities legislation in certain jurisdictions also provides the securities regulatory authority with the ability to require a benchmark contributor to provide information to a designated benchmark administrator in relation to a designated benchmark if it would be in the public interest or not prejudicial to the public interest to do so.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Section 34 – Order of priority of input data

Section 34 of the Instrument requires that, if a designated interest rate benchmark is based on a contribution of input data from a benchmark contributor, input data for the determination of the designated interest rate benchmark must be used by the designated benchmark administrator in accordance with the order of priority specified in the methodology of the designated interest rate benchmark. We would generally expect that the methodology of such a designated interest rate benchmark would use the following types of input data, as applicable, in the order of priority set out below:

(a) a benchmark contributor's transaction data in the underlying market that the designated interest rate benchmark intends to represent;

(b) if the input data referred to in paragraph (a) is not available, executable quotes in the market described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available, indicative quotes in the market described in paragraph (a);

(d) if the input data referred to in paragraphs (a), (b) and (c) is not available, a benchmark contributor's observations of third-party transactions in markets related to the market described in paragraph (a);

(e) in any other case, expert judgments.

We consider an "executable quote" (also known as a "committed quote") to be a quote that is actionable for the other party to the potential transaction. The party that provides that quote announces their willingness to enter into transactions at the relevant bid and ask prices and agree that if they do transact, they will do so at the quoted price up to the maximum quantity specified in the quote.

We consider "indicative quote" to be a quote that is not immediately actionable by the other party to the potential transaction. Indicative quotes are usually provided before the parties negotiate the price or quantity at which the potential transaction will occur.

A designated interest rate benchmark may be based on contributions of input data from benchmark contributors that represent the interest rate at which the benchmark contributor is willing to lend funds to its customers.

In the context of section 34 of the Instrument, for the purposes of subsections 14(1) and (3) of the Instrument, input data for a designated interest rate benchmark may be adjusted, if contemplated by the methodology for the designated interest rate benchmark, to more accurately represent that part of the market or economy that the designated interest rate benchmark is intended to represent, including, but not limited to, where:

(a) the time of the transactions that are the basis for the input data is not sufficiently proximate to the time of contribution of the input data;

(b) a market event occurs between the time of the transactions and the time of contribution of the input data and the market event might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark;

(c) there have been changes in the credit risk of the benchmark contributors and other market participants that might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark.

Subsection 36(1) – Assurance report for designated interest rate benchmark

Subsection 36(1) of the Instrument provides that a designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, regarding the designated benchmark administrator's compliance with certain sections of the Instrument and following of the methodology of each designated interest rate benchmark it administers.

We note that the report required by subsection 36(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph 6(3)(b) of the Instrument. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph 6(3)(b) and with the requirement in subsection 36(1).

Subsection 39(4) – Record keeping by benchmark contributor

The reference to "communications" in paragraph 39(4)(d) of the Instrument includes telephone conversations, email and other electronic communications. We consider this to require a benchmark contributor to a designated benchmark to keep audio recordings of all phone conversations and voicemail messages in relation to the contribution of input data. Furthermore, a benchmark contributor to a designated benchmark should retain records of call logs and notes of phone conversations or voicemail messages in relation to the contribution of input data.

5.1.3 Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators

ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1.(1) In this Rule,

"benchmark individual" means any DBA individual who participates in the provision of, or overseeing the provision of, a designated benchmark;

"board of directors" includes, in the case of a person or company that does not have a board of directors, a group that acts in a capacity similar to a board of directors;

"contributing individual" means an individual who contributes input data, as an employee or agent, on behalf of a benchmark contributor;

"CSAE 3000" means Canadian Standard on Assurance Engagements 3000 *Attestation Engagements Other than Audits or Reviews of Historical Financial Information*, as amended from time to time;

"CSAE 3001" means Canadian Standard on Assurance Engagements 3001 *Direct Engagements*, as amended from time to time;

"CSAE 3530" means Canadian Standard on Assurance Engagements 3530 *Attestation Engagements to Report on Compliance*, as amended from time to time;

"CSAE 3531" means Canadian Standard on Assurance Engagements 3531 *Direct Engagements to Report on Compliance*, as amended from time to time;

"DBA individual" means an individual who is

(a) a director, officer or employee of a designated benchmark administrator, or

(b) an agent of a designated benchmark administrator who performs services on behalf of the designated benchmark administrator;

"designated benchmark" means a benchmark that is designated for the purposes of this Rule by a decision of the Commission;

"designated benchmark administrator" means a benchmark administrator that is designated for the purposes of this Rule by a decision of the Commission;

"designated critical benchmark" means a benchmark that is designated for the purposes of this Rule as a "critical benchmark" by a decision of the Commission;

"designated interest rate benchmark" means a benchmark that is designated for the purposes of this Rule as an "interest rate benchmark" by a decision of the Commission;

"designated regulated-data benchmark" means a benchmark that is designated for the purposes of this Rule as a "regulated-data benchmark" by a decision of the Commission;

"expert judgment" means the discretion exercised by

(a) a designated benchmark administrator with respect to the use of input data in determining a benchmark, and

(b) a benchmark contributor with respect to input data;

"input data" means data in respect of any measurement of one or more assets, interests or elements, including, but not limited to, the value or price of the asset, interest or element, if that data is contributed, or otherwise obtained, by a designated benchmark administrator for the purpose of determining a designated benchmark;

"ISAE 3000" means International Standard on Assurance Engagements 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, as amended from time to time;

"limited assurance report on compliance" means

(a) a public accountant's limited assurance report, on management's statement that a person or company complied with the applicable subject requirements, if the report is prepared in accordance with CSAE 3000 and CSAE 3530 or ISAE 3000, or

(b) a public accountant's limited assurance report, on the compliance of a person or company with the applicable subject requirements, if the report is prepared in accordance with CSAE 3001 and CSAE 3531 or ISAE 3000;

"management's statement" means a statement of management of a designated benchmark administrator or a benchmark contributor, as applicable;

"methodology" means a document describing how a designated benchmark administrator determines a designated benchmark;

"Ontario commodity futures law" has the same meaning ascribed to it in subsection 1(1) of the *Commodity Futures Act* (Ontario);

"reasonable assurance report on compliance" means

(a) a public accountant's reasonable assurance report, on management's statement that a person or company complied with the applicable subject requirements, if the report is prepared in accordance with CSAE 3000 and CSAE 3530 or ISAE 3000, or

(b) a public accountant's reasonable assurance report, on the compliance of a person or company with the applicable subject requirements, if the report is prepared in accordance with CSAE 3001 and CSAE 3531 or ISAE 3000;

"subject requirements" means

(a) paragraphs 32(1)(a) and (b),

(b) paragraphs 33(1)(a) and (b),

(c) paragraphs 36(1)(a) and (b),

(d) paragraphs 37(1)(a) and (b), and

(e) paragraphs 38(1)(a), (b) and (c);

"transaction data" means the data in respect of a price, rate, index or value representing transactions

(a) between persons or companies each of which is not an affiliated entity of one another, and

(b) occurring in an active market subject to competitive supply and demand forces.

(2) Terms defined under Ontario commodity futures law, OSC Rule 14-501 *Definitions*, National Instrument 14-101 *Definitions*, and National Instrument 21-101 *Marketplace Operation*, and used in this Rule, have the respective meanings ascribed to those terms thereunder.

(3) For the purposes of this Rule, input data is considered to have been contributed to a designated benchmark administrator if

(a) it is not reasonably available to

(i) the designated benchmark administrator, or

(ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and

(b) it is provided to the designated benchmark administrator or the other person or company referred to in subparagraph (a)(ii) for the purpose of determining a benchmark.

(4) For the purposes of this Rule, a designated benchmark administrator is considered to have provided a designated benchmark if any of the following apply:

(a) the administrator collects, analyzes, processes or otherwise uses the input data for the purposes of determining the benchmark;

(b) the administrator determines the benchmark through the application of the methodology applicable to the benchmark;

(c) the administrator administers any other arrangements for determining the benchmark.

(5) In this Rule, a person or company is an affiliated entity of another person or company if either of the following applies:

(a) one is the subsidiary of the other;

(b) each is a subsidiary of, or controlled by, the same person or company.

(6) For the purposes of paragraph (5)(b), a person or company (first person) controls another person or company (second person) if any of the following apply:

(a) the first person beneficially owns, or controls or directs, directly or indirectly, securities of the second person carrying votes that, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than a 50% interest in the partnership;

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person;

(d) the second person is a trust and the first person is a trustee of the trust.

PART 2
DELIVERY REQUIREMENTS

Information on a designated benchmark administrator

2.(1) In this section, the following terms have the same meaning as in section 1.1 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*:

(a) “accounting principles”;

(b) “auditing standards”;

(c) “U.S. GAAP”;

(d) “U.S. PCAOB GAAS”.

(2) In this section, “parent issuer” means an issuer in respect of which a designated benchmark administrator is a subsidiary.

(3) A designated benchmark administrator must deliver to the Director

(a) information that a reasonable person would consider describes the designated benchmark administrator’s organization, structure and administration of benchmarks, including, for greater certainty, a description of its policies and procedures required under this Rule, conflicts of interest and potential conflicts of interest, any person or company referred to in section 13 to which a designated benchmark administrator has outsourced a function, service or activity in the provision of a designated benchmark, benchmark individuals, the officer referred to in section 6 and sources of revenue, and

(b) annual financial statements for the designated benchmark administrator’s most recently completed financial year that include all of the following:

(i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

(A) the most recently completed financial year, and

(B) the financial year, if any, immediately preceding the most recently completed financial year;

(ii) a statement of financial position at the end of each of the periods referred to in subparagraph (i);

(iii) notes to the annual financial statements.

(4) For the purposes of paragraph (3)(b), if a designated benchmark administrator is a subsidiary of a parent issuer, the designated benchmark administrator may instead deliver consolidated annual financial statements, for the most recently completed financial year of the parent issuer, that include all of the following:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

(i) the most recently completed financial year, and

(ii) the financial year, if any, immediately preceding the most recently completed financial year;

(b) a statement of financial position at the end of each of the periods referred to in paragraph (a);

(c) notes to the annual financial statements.

(5) The annual financial statements delivered under paragraph (3)(b) or subsection (4) must be audited.

(6) The notes to the annual financial statements delivered under paragraph (3)(b) or subsection (4) must identify the accounting principles used to prepare the annual financial statements.

(7) The annual financial statements delivered under paragraph (3)(b) or subsection (4) must

(a) be prepared in accordance with one of the following accounting principles:

(i) Canadian GAAP applicable to publicly accountable enterprises;

(ii) Canadian GAAP applicable to private enterprises, if

(A) the financial statements consolidate any subsidiaries and account for significantly influenced investees and joint ventures using the equity method, and

(B) the designated benchmark administrator or parent issuer, as applicable, is a "private enterprise" as defined in the Handbook;

(iii) IFRS;

(iv) U.S. GAAP,

(b) be audited in accordance with one of the following auditing standards:

(i) Canadian GAAS;

(ii) International Standards on Auditing;

(iii) U.S. PCAOB GAAS, and

(c) be accompanied by an auditor's report that,

(i) if subparagraph (b)(i) or (ii) applies, expresses an unmodified opinion,

(ii) if subparagraph (b)(iii) applies, expresses an unqualified opinion, and

(iii) identifies the auditing standards used to conduct the audit.

(8) The information required under subsection (3) must be provided for the periods set out in, and be prepared in accordance with, Form 25-501F1 *Designated Benchmark Administrator Annual Form* and must be delivered

(a) on or before the 30th day after the designated benchmark administrator is designated, and

(b) no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(9) If any of the information delivered by a designated benchmark administrator under paragraph (3)(a) becomes inaccurate, and a reasonable person would consider the inaccuracy to be significant, the designated benchmark administrator must promptly deliver a completed amended Form 25-501F1 *Designated Benchmark Administrator Annual Form* that includes the accurate information.

Information on a designated benchmark

3.(1) A designated benchmark administrator must, for each designated benchmark that it administers, deliver to the Director

(a) information about the provision and distribution of the designated benchmark, including, for greater certainty, its procedures, methodologies and distribution model, and

(b) the code of conduct, if any, for the benchmark contributors.

(2) The information required under subsection (1) must be provided for the periods set out in, and be prepared in accordance with, Form 25-501F2 *Designated Benchmark Annual Form* and must be delivered

(a) on or before the 30th day after the designated benchmark is designated, and

(b) no later than 90 days after the end of each completed financial year of the designated benchmark administrator.

(3) If any of the information delivered by a designated benchmark administrator under paragraph (1)(a) in respect of a designated benchmark it administers becomes inaccurate, and a reasonable person would consider the inaccuracy to be significant, the designated benchmark administrator must promptly deliver a completed amended Form 25-501F2 *Designated Benchmark Annual Form* that includes the accurate information.

Submission to jurisdiction and appointment of agent for service of process

4.(1) A designated benchmark administrator must, if the designated benchmark administrator is incorporated or organized under the laws of a foreign jurisdiction, submit to the non-exclusive jurisdiction of the judiciary and quasi-judicial and other administrative bodies of the local jurisdiction and appoint an agent for service of process in Canada in a jurisdiction in which the designated benchmark administrator is designated**.**

(2) The submission to jurisdiction and appointment required under subsection (1) must be prepared in accordance with Form 25-501F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and must be delivered on or before the 30th day after the designated benchmark administrator is designated.

(3) A designated benchmark administrator, or a benchmark administrator referred to in subsection (4), must deliver an amended Form 25-501F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* containing updated information at least 30 days before the effective date of any change that would result in a change to the information provided in the Form.

(4) Subsection (3) applies to a benchmark administrator until the date that is 6 years after the date on which the benchmark administrator ceases to be a designated benchmark administrator.

PART 3
GOVERNANCE

Accountability framework requirements

5.(1) A designated benchmark administrator must establish, document, maintain and apply an accountability framework of policies and procedures that are reasonably designed to

(a) ensure and evidence compliance with Ontario commodity futures law relating to benchmarks, and

(b) for each designated benchmark it administers, ensure and evidence that the designated benchmark administrator follows the methodology applicable to the designated benchmark.

(2) An accountability framework referred to in subsection (1) must specify how the designated benchmark administrator complies with each of the following:

(a) Part 7;

(b) subsection 2(5), paragraph 18(1)(c), sections 32 and 36 and subsection 39(7) as they relate to internal review or audit, a public accountant's limited assurance report on compliance or a reasonable assurance report on compliance;

(c) the policies and procedures referred to in section 12.

Compliance officer

6.(1) A designated benchmark administrator must designate an officer to be responsible for monitoring and assessing compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks.

(2) A designated benchmark administrator must not prevent or restrict the officer referred to in subsection (1) from directly accessing the designated benchmark administrator's board of directors or a member of the board of directors.

(3) An officer referred to in subsection (1) must do all of the following:

(a) monitor and assess compliance by the designated benchmark administrator and its DBA individuals with the accountability framework referred to in section 5, the control framework referred to in section 8 and Ontario commodity futures law relating to benchmarks;

(b) at least once every 12 months, submit a report to the designated benchmark administrator's board of directors that describes

(i) the officer's activities referred to in paragraph (a),

(ii) compliance by the designated benchmark administrator and its DBA individuals with the accountability framework referred to in section 5, the control framework referred to in section 8 and Ontario commodity futures law relating to benchmarks , and

(iii) whether the designated benchmark administrator has followed the methodology applicable to each designated benchmark it administers;

(c) submit a report to the designated benchmark administrator's board of directors as soon as reasonably possible if the officer becomes aware of any circumstances indicating that the designated benchmark administrator or its DBA individuals might not be in compliance with Ontario commodity futures law relating to benchmarks and any of the following apply:

(i) a reasonable person would consider that the suspected non-compliance, if actual, poses a significant risk of financial loss to a benchmark user or to any other person or company;

(ii) a reasonable person would consider that the suspected non-compliance, if actual, poses a significant risk of harm to the integrity of capital markets;

(iii) a reasonable person would consider that the suspected non-compliance, if actual, is part of a pattern of non-compliance.

(4) An officer referred to in subsection (1) must not participate in any of the following:

(a) the provision of a designated benchmark;

(b) the determination of compensation for any DBA individuals, other than for a DBA individual who reports directly to the officer.

(5) An officer referred to in subsection (1) must certify that a report submitted under paragraph (3)(b) is accurate and complete.

(6) A designated benchmark administrator must not provide a payment or other financial incentive to an officer referred to in subsection (1), or any DBA individual who reports directly to the officer, if the payment or other financial incentive would create a conflict of interest.

(7) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure compliance with subsection (6).

(8) A designated benchmark administrator must deliver to Director, promptly after it is submitted to the board of directors, a report referred to in paragraph (3)(b) or (c).

Oversight committee

7.(1) In this section, "oversight committee" means the committee referred to in subsection (2).

(2) A designated benchmark administrator must establish and maintain a committee to oversee the provision of a designated benchmark.

(3) The oversight committee must not include any individual who is a member of the board of directors of the designated benchmark administrator.

(4) The oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator.

(5) A designated benchmark administrator must establish, document, maintain and apply policies and procedures regarding the structure and mandate of the oversight committee.

(6) The board of directors of a designated benchmark administrator must appoint the members of the oversight committee.

(7) A designated benchmark administrator must not distribute information relating to a designated benchmark unless its board of directors has

(a) approved the policies and procedures referred to in subsection (5), and

(b) approved the procedures referred to in paragraph (8)(d).

(8) The oversight committee must, for each designated benchmark that the designated benchmark administrator administers, do all of the following:

(a) review the methodology of the designated benchmark at least once every 12 months and consider if any changes to the methodology are required;

(b) oversee any changes to the methodology of the designated benchmark, including requesting that the designated benchmark administrator consult with benchmark contributors or benchmark users on any significant changes to the methodology of the designated benchmark;

(c) oversee the management and operation of the designated benchmark, including the designated benchmark administrator's control framework referred to in section 8;

(d) review and approve procedures for any cessation of the designated benchmark, including procedures governing consultations about a cessation of the designated benchmark;

(e) oversee any person or company referred to in section 13 to which a designated benchmark administrator has outsourced a function, service or activity in the provision of the designated benchmark, including calculation agents and dissemination agents;

(f) assess any report resulting from an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(g) monitor the implementation of any remedial actions relating to an internal review or audit, or any public accountant's limited assurance report on compliance or reasonable assurance report on compliance;

(h) keep minutes of its meetings;

(i) if the designated benchmark is based on input data from a benchmark contributor,

(i) oversee the designated benchmark administrator's establishment, documentation, maintenance and application of the code of conduct referred to in section 23,

(ii) monitor each of the following:

(A) the input data;

(B) the contribution of input data by the benchmark contributor;

(C) the actions of the designated benchmark administrator in challenging or validating contributions of input data,

(iii) take reasonable measures regarding any breach of the code of conduct referred to in section 23 to mitigate the impact of the breach and prevent additional breaches in the future, if a reasonable person would consider that the breach is significant, and

(iv) promptly notify the board of directors of the designated benchmark administrator of any breach of the code of conduct referred to in section 23, if a reasonable person would consider that the breach is significant.

(9) If the oversight committee becomes aware that the board of directors of the designated benchmark administrator has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting.

(10) If the oversight committee becomes aware of any of the following, the oversight committee must promptly report it to the Director:

(a) any misconduct by the designated benchmark administrator in relation to the provision of a designated benchmark, if a reasonable person would consider that the misconduct is significant;

(b) any misconduct by a benchmark contributor in respect of a designated benchmark that is based on input data from the benchmark contributor, if a reasonable person would consider that the misconduct is significant;

(c) any input data that

(i) a reasonable person would consider is anomalous or suspicious, and

(ii) is used in determining the benchmark or is contributed by a benchmark contributor.

(11) The oversight committee, and each of its members, must carry out its, and their, actions and duties under this Rule with integrity.

(12) A member of the oversight committee must disclose in writing to the committee the nature and extent of any conflict of interest the member has in respect of the designated benchmark or the designated benchmark administrator.

Control framework

8.(1) In this section, "control framework" means the policies, procedures and controls referred to in subsections (2), (3) and (4).

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated benchmark is provided in accordance with this Rule.

(3) Without limiting the generality of subsection (2), a designated benchmark administrator must ensure that its control framework includes controls relating to all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingency procedures in the event of a disruption to the provision of the designated benchmark or the process applied to provide the designated benchmark.

(4) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls reasonably designed to

(a) ensure that benchmark contributors comply with the code of conduct referred to in section 23 and the standards for input data in the methodology of the designated benchmark,

(b) monitor input data before any publication relating to the designated benchmark, and

(c) validate input data after publication to identify errors and anomalies.

(5) A designated benchmark administrator must promptly provide written notice to the Director describing any security incident or any systems issue relating to a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant.

(6) A designated benchmark administrator must review and update its control framework on a reasonably frequent basis and at least once every 12 months.

(7) A designated benchmark administrator must make its control framework available, on request and free of charge, to any benchmark user.

Governance requirements

9.(1) A designated benchmark administrator must establish and document its organizational structure.

(2) The organizational structure referred to in subsection (1) must establish well-defined roles and responsibilities for each person or company involved in the provision of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that each of its benchmark individuals

(a) has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual, and

(b) is subject to adequate management and supervision.

(4) A designated benchmark administrator must ensure that any information published by the benchmark administrator relating to a designated benchmark is approved by a manager of the designated benchmark administrator.

Conflicts of interest

10.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that the exercise of expert judgment by the benchmark administrator or DBA individuals is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated benchmark,

(d) ensure that an officer referred to in section 6, or any DBA individual who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affect the integrity of the benchmark determination, and

(e) ensure that each of its benchmark individuals is not subject to undue influence, undue pressure or conflicts of interest, including, for greater certainty, ensuring that each of the benchmark individuals

(i) is not subject to compensation or performance evaluations from which conflicts of interest arise or that otherwise adversely affect the integrity of the benchmark determination,

(ii) does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator,

(iii) does not contribute to a determination of a designated benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator, and

(iv) is subject to policies and procedures to prevent the exchange of information that might affect a designated benchmark with the following, except as permitted under the policies and procedures of the designated benchmark administrator:

(A) any other DBA individual if that individual is involved in an activity that results in a conflict of interest or a potential conflict of interest,

(B) a benchmark contributor or any other person or company.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of a designated benchmark administrator relating to the designated benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated benchmark.

(3) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated benchmark

(a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and

(b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.

(4) A designated benchmark administrator must ensure that the policies and procedures referred to in subsection (1)

(a) take into account the nature and categories of the designated benchmarks it administers and the risks that each designated benchmark poses to capital markets and benchmark users,

(b) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under Part 5, and

(c) identify and eliminate or manage conflicts of interest, including, for greater certainty, those that arise as a result of

(i) expert judgment or other discretion exercised in the benchmark determination process,

(ii) the ownership or control of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, and

(iii) any other person or company exercising control or direction over the designated benchmark administrator in relation to determining the designated benchmark.

(5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in subsection (4), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the Director.

Reporting of contraventions

11.(1) A designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed to detect and promptly report to the Director any conduct by a DBA individual or a benchmark contributor that might involve the following:

(a) manipulation or attempted manipulation of a designated benchmark;

(b) provision or attempted provision of false or misleading information in respect of a designated benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures for its DBA individuals to report any contravention of Ontario commodity futures law relating to benchmarks to the officer referred to in section 6.

(3) A designated benchmark administrator must promptly provide written notice to the Director describing any conduct that it, or any of its DBA individuals, becomes aware of that might involve the following:

(a) manipulation or attempted manipulation of a designated benchmark;

(b) provision or attempted provision of false or misleading information in respect of a designated benchmark.

Complaint procedures

12.(1) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures reasonably designed to ensure that the designated benchmark administrator receives, investigates and resolves complaints relating to a designated benchmark, including, for greater certainty, complaints in respect of each of the following:

(a) whether a determination of a designated benchmark accurately and reliably represents that part of the market or economy the benchmark is intended to represent;

(b) whether a determination of a designated benchmark was made in accordance with the methodology of the designated benchmark;

(c) the methodology of a designated benchmark or any proposed change to the methodology.

(2) A designated benchmark administrator must do all of the following:

(a) provide a written copy of the complaint procedures at no cost to any person or company on request;

(b) investigate a complaint in a timely and fair manner;

(c) communicate the outcome of the investigation of a complaint to the complainant within a reasonable period;

(d) conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint.

Outsourcing

13.(1) A designated benchmark administrator must not outsource a function, service or activity relating to the administration of a designated benchmark in such a way as to significantly impair any of the following:

(a) the designated benchmark administrator's control over the provision of the designated benchmark;

(b) the ability of the designated benchmark administrator to comply with Ontario commodity futures law relating to benchmarks.

(2) A designated benchmark administrator that outsources a function, service or activity in the provision of a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure that

(a) the person or company performing the function or activity or providing the service has the ability, capacity, and any authorization required by law, to perform the outsourced function or activity, or provide the service, reliably and effectively,

(b) the designated benchmark administrator maintains records documenting the identity and the tasks of the person or company performing the function or activity or providing the service and that those records are available in a manner that permits them to be provided to the Director in a reasonable period,

(c) the designated benchmark administrator and the person or company to which a function, service or activity is outsourced enter into a written agreement that

(i) imposes service level requirements on the person or company,

(ii) allows the designated benchmark administrator to terminate the agreement when appropriate,

(iii) requires the person or company to disclose to the designated benchmark administrator any development that may have a significant impact on the person or company's ability to perform the outsourced function or activity, or provide the outsourced service, in compliance with applicable law,

(iv) requires the person or company to cooperate with the Director regarding a compliance review or investigation involving the outsourced function, service or activity,

(v) allows the designated benchmark administrator to directly access

(i) the books, records and other documents related to the outsourced function, service or activity, and

(ii) the business premises of the person or company, and

(vi) requires the person or company to keep sufficient books, records and other documents to record its activities relating to the designated benchmark and to provide the designated benchmark administrator with copies of those books, records and other documents on request,

(d) the designated benchmark administrator takes reasonable measures if the administrator becomes aware of any circumstances indicating that the person or company to which a function, service or activity is outsourced might not be performing the outsourced function or activity, or providing the outsourced service, in compliance with this Rule or with the agreement referred to in paragraph (c),

(e) the designated benchmark administrator conducts reasonable supervision of the outsourced function, service or activity and manages any risks to the designated benchmark administrator or to the accuracy or reliability of the designated benchmark resulting from the outsourcing,

(f) the designated benchmark administrator retains the expertise that a reasonable person would consider necessary to conduct reasonable supervision of the outsourced function, service or activity and to manage any risks to the designated benchmark administrator or to the accuracy or reliability of the designated benchmark resulting from the outsourcing, and

(g) the designated benchmark administrator takes steps, including developing contingency plans, that a reasonable person would consider necessary to avoid or mitigate operational risk related to the person or company performing the function or activity or providing the service.

(3) A designated benchmark administrator that outsources a function, service or activity in the provision of a designated benchmark must ensure that the Director has reasonable access to

(a) the applicable books, records and other documents of the person or company performing the function or activity or providing the service, and

(b) the applicable business premises of the person or company performing the function or activity or providing the service.

PART 4
INPUT DATA AND METHODOLOGY

Input data

14.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure that all of the following are satisfied in respect of input data used in the provision of a designated benchmark:

(a) the input data, in aggregate, is sufficient to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) the input data will continue to be reliably available;

(c) if appropriate transaction data is available to satisfy paragraphs (a) and (b), the input data is transaction data;

(d) if appropriate transaction data is not available to satisfy paragraphs (a) and (b), the designated benchmark administrator uses, in accordance with the methodology of the designated benchmark, relevant and appropriate estimated prices, quotes or other values as input data;

(e) the input data is capable of being verified as being accurate, reliable and complete.

(2) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that input data for a designated benchmark is accurate, reliable and complete and that include all of the following:

(a) criteria for determining who may act as benchmark contributors and contributing individuals;

(b) a process for determining benchmark contributors and contributing individuals;

(c) a process for assessing a benchmark contributor's compliance with the code of conduct referred to in section 23;

(d) a process for applying measures that a reasonable person would consider appropriate in the event of a benchmark contributor failing to comply with the code of conduct referred to in section 23;

(e) if appropriate, a process for stopping a benchmark contributor from contributing further input data;

(f) a process for verifying input data to ensure its accuracy, reliability and completeness.

(3) If a reasonable person would consider that the input data results in a designated benchmark that does not accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent, the designated benchmark administrator must do either of the following:

(a) within a reasonable time, change the input data, the benchmark contributors or the methodology of the designated benchmark in order to ensure that the designated benchmark accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) cease to provide the designated benchmark.

(4) A designated benchmark administrator must promptly provide written notice to the Director if the designated benchmark administrator is required to take an action under paragraph (3)(a) or (b).

(5) A designated benchmark administrator must publish both of the following:

(a) the policies and procedures referred to in subsection (1) regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgment in the determination of a designated benchmark;

(b) the methodology of the designated benchmark.

Contribution of input data

15.(1) For the purpose of paragraph 14(1)(a) in respect of a designated benchmark that is based on input data from benchmark contributors, the designated benchmark administrator must obtain, if a reasonable person would consider it to be appropriate, input data from a representative sample of benchmark contributors.

(2) A designated benchmark administrator must not use input data from a benchmark contributor if

(a) a reasonable person would consider that the benchmark contributor has breached the code of conduct referred to in section 23, and

(b) a reasonable person would consider that the breach is significant.

(3) If the circumstances referred to in subsection (2) occur, and if a reasonable person would consider it to be appropriate, a designated benchmark administrator must obtain alternative representative data in accordance with the policies and procedures referred to in subsection 16(3).

(4) If input data is contributed from any front office of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any activities that relate to or might affect the input data, the designated benchmark administrator must

(a) obtain information from other sources, if reasonably available, that confirms the accuracy, reliability and completeness of the input data in accordance with its policies and procedures, and

(b) ensure that the benchmark contributor has in place internal oversight and verification procedures that a reasonable person would consider adequate.

(5) In this section, “front office” means any department, division or other internal grouping of a benchmark contributor, or any employee or agent of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the benchmark contributor.

Methodology

16.(1) A designated benchmark administrator must not follow a methodology for determining a designated benchmark unless all of the following apply:

(a) the methodology is sufficient to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) the methodology identifies how and when expert judgment may be exercised in the determination of the designated benchmark;

(c) the accuracy and reliability of the methodology, with respect to determinations made under it, is capable of being verified, including, if appropriate, by back-testing;

(d) the methodology is reasonably designed to ensure that a determination under the methodology can be made in all reasonable circumstances, without compromising the accuracy and reliability of the methodology;

(e) a determination under the methodology is capable of being verified as being accurate, reliable and complete.

(2) A designated benchmark administrator must not implement a methodology for a designated benchmark unless the methodology,

(a) when it is prepared, takes into account all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to represent,

(b) if applicable, determines what constitutes an active market for the purposes of the designated benchmark, and

(c) establishes the priority to be given to different types of input data.

(3) A designated benchmark administrator must establish, document, maintain, apply and publish policies and procedures that

(a) identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to provide a designated benchmark that accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent, and

(b) indicate whether and how the designated benchmark is to be determined in those circumstances.

Proposed significant changes to methodology

17.(1) In this section, "significant change" means a change that a reasonable person would consider to be significant.

(2) A designated benchmark administrator must not implement a significant change to a methodology for determining a designated benchmark, unless all of the following apply:

(a) the designated benchmark administrator has published notice of the proposed significant change to the methodology of a designated benchmark;

(b) the designated benchmark administrator has provided a means for benchmark users and other members of the public to comment on the proposed significant change and its effect on the designated benchmark;

(c) the designated benchmark administrator has published

(i) any comments received, unless the commenter has requested that its comments be held in confidence,

(ii) the name of each commenter, unless a commenter has requested that its name be held in confidence, and

(iii) the designated benchmark administrator's response to the comments that are published;

(d) the designated benchmark administrator has published notice of implementation of any significant change to the methodology of the designated benchmark.

(3) For the purposes of subsection (2),

(a) the notice under paragraph (2)(a) must be published on a date that provides benchmark users and other members of the public with reasonable time to consider and comment on the proposed change,

(b) the publication of comments under paragraph (2)(c) may permit a part of a written comment to be excluded from publication if both of the following apply:

(i) the designated benchmark administrator considers that disclosure of that part of the comment would be seriously prejudicial to the interests of the designated benchmark administrator or would contravene privacy laws;

(ii) the designated benchmark administrator includes, with the publication, a description of the nature of the comment, and

(c) the notice under paragraph (2)(d) must be published sufficiently before the effective date of the change to provide benchmark users and other members of the public with reasonable time to consider the implementation of the significant change.

PART 5
DISCLOSURE

Disclosure of methodology

18.(1) A designated benchmark administrator must publish all of the following in respect of the methodology of a designated benchmark:

(a) the information that

(i) a reasonable benchmark contributor might need in order to carry out its responsibilities as a benchmark contributor, and

(ii) a reasonable benchmark user might need in order to evaluate whether the designated benchmark accurately and reliably represents that part of the market or economy the designated benchmark is intended to represent;

(b) an explanation of all of the elements of the methodology, including, for greater certainty, the following:

(i) a description of the designated benchmark and of that part of the market or economy the designated benchmark is intended to represent;

(ii) the currency or other unit of measurement of the designated benchmark;

(iii) the criteria used by the designated benchmark administrator to select the sources of input data used to determine the designated benchmark;

(iv) the types of input data used to determine the designated benchmark and the priority given to each type;

(v) a description of the benchmark contributors and the criteria used to determine the eligibility of a benchmark contributor;

(vi) a description of the constituents of the designated benchmark and the criteria used to select and give weight to them;

(vii) any minimum liquidity requirements for the constituents of the designated benchmark;

(viii) any minimum requirements for the quantity of input data, and any minimum standards for the quality of input data, used to determine the designated benchmark;

(ix) provisions that identify how and when expert judgment may be exercised in the determination of the designated benchmark;

(x) whether the designated benchmark takes into account any reinvestment of dividends paid on securities that are included in the designated benchmark;

(xi) if the methodology may be changed periodically to ensure the designated benchmark continues to accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent, all of the following:

(A) any criteria to be used to determine when such a change is necessary;

(B) any criteria to be used to determine the frequency of such a change;

(C) any criteria to be used to rebalance the constituents of the designated benchmark as part of making such a change;

(xii) the potential limitations of the methodology and details of any methodology to be used in exceptional circumstances, including in the case of an illiquid market or in periods of stress or if transaction data may be inaccurate, unreliable or incomplete;

(xiii) a description of the roles of any third parties involved in data collection for, or in the calculation or dissemination of, the designated benchmark;

(xiv) the model or method used for the extrapolation and any interpolation of input data;

(c) the process for the internal review and approval of the methodology and the frequency of such reviews and approvals;

(d) the process referred to in section 17 for making significant changes to the methodology;

(e) examples of the types of changes that may constitute a significant change to the methodology.

(2) A designated benchmark administrator must provide written notice to the Director of a proposed significant change to the methodology of a designated benchmark referred to in section 17 at least 45 days before the significant change is implemented.

(3) Subsection (2) does not apply with respect to a proposal to make a significant change to a methodology of a designated benchmark referred to in section 17 if

(a) the proposal is intended to be implemented within 45 days of the decision to make the change,

(b) the proposal is intended to preserve the integrity, accuracy or reliability of the designated benchmark or the independence of the designated benchmark administrator, and

(c) the designated benchmark administrator promptly, after making the decision to make the significant change, provides written notice to the Director of the proposed significant change.

Benchmark statement

19.(1) In this section, "benchmark statement" means a written statement that includes all of the following:

(a) a description of that part of the market or economy the designated benchmark is intended to represent, including, for greater certainty, the following:

(i) the geographical area, if any, of that part of the market or economy the designated benchmark is intended to represent;

(ii) any other information that a reasonable person would consider to be useful to help existing or potential benchmark users to understand the relevant features of that part of the market or economy the designated benchmark is intended to represent, including both of the following, to the extent that accurate and reliable information is available:

(A) information on existing or potential participants in that part of the market or economy the designated benchmark is intended to represent;

(B) an indication of the dollar value of that part of the market or economy the designated benchmark is intended to represent;

(b) an explanation of the circumstances in which the designated benchmark might, in the opinion of a reasonable person, not accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent;

(c) information that sets out all of the following:

(i) the elements of the methodology of the designated benchmark in relation to which expert judgment may be exercised by the designated benchmark administrator or any benchmark contributor;

(ii) the circumstances in which expert judgment would be exercised by the designated benchmark administrator or any benchmark contributor;

(iii) the job title of the individuals who are authorized to exercise expert judgment;

(d) whether the expert judgment referred to in paragraph (c) will be evaluated by the designated benchmark administrator or the benchmark contributor and the parameters that will be used to conduct the evaluation;

(e) notice that factors, including external factors beyond the control of the designated benchmark administrator, could necessitate changes to, or the cessation of, the designated benchmark;

(f) notice that changes to, or the cessation of, the designated benchmark could have an impact on contracts and instruments that reference the designated benchmark or on the measurement of the performance of an investment fund that references the designated benchmark;

(g) an explanation of all key terms used in the statement that relate to the designated benchmark and its methodology;

(h) the rationale for adopting the methodology for determining the designated benchmark;

(i) the procedures for the review and approval of the methodology of the designated benchmark;

(j) a summary of the methodology of the designated benchmark, including, for greater certainty, the following, if applicable:

(i) a description of the types of input data to be used;

(ii) the priority given to different types of input data;

(iii) the minimum data needed to determine the designated benchmark;

(iv) the use of any models or methods of extrapolation of input data;

(v) any criteria for rebalancing the constituents of the designated benchmark;

(vi) any other restrictions or limitations on the exercise of expert judgment;

(k) the procedures that govern the provision of the designated benchmark in periods of market stress or when transaction data might be inaccurate, unreliable or incomplete, and the potential limitations of the designated benchmark during those periods;

(l) the procedures for dealing with errors in input data or in the determination of the designated benchmark, including when a re-determination of the designated benchmark is required;

(m) potential limitations of the designated benchmark, including its operation in illiquid or fragmented markets and the possible concentration of input data.

(2) No later than 15 days after the designation of a designated benchmark, the designated benchmark administrator of the designated benchmark must publish a benchmark statement.

(3) A designated benchmark administrator must, with respect to each designated benchmark it administers, review the applicable benchmark statement at least every 2 years.

(4) If there is a change to the information required under this section in a benchmark statement, and if a reasonable person would consider the change to be significant, the designated benchmark administrator must promptly update the benchmark statement to reflect the change.

(5) If the benchmark statement is updated under subsection (4), the designated benchmark administrator must promptly publish the updated benchmark statement.

Changes to and cessation of a designated benchmark

20.(1) A designated benchmark administrator must not cease to provide a designated benchmark, unless the designated benchmark administrator has provided notice of the cessation on a date that provides benchmark users and other members of the public with reasonable time to consider the impact of the cessation.

(2) A designated benchmark administrator must publish, simultaneously with the benchmark statement referred to in subsection 19(2), the procedures it will follow in the event of a significant change to the methodology or provision of the designated benchmark it administers, or the cessation of the designated benchmark, including procedures for advance notice of the implementation of a significant change or a cessation.

(3) If a designated benchmark administrator makes a significant change to the procedures referred to in subsection (2), the designated benchmark administrator must promptly publish the changed procedures.

Registrants, registered entities and recognized entities

21.(1) If a person or company uses a designated benchmark, and if a significant change to the methodology or provision of the benchmark, or the cessation of the benchmark, could have a significant impact on the person or company, a security issued by the person or company or a derivative to which the person or company is a party, the person or company must establish and maintain a written plan setting out the actions that the person or company will take in the event of any of the following:

(a) a significant change to the methodology or provision of the designated benchmark;

(b) a cessation of the designated benchmark.

(2) Subsection (1) does not apply unless the person or company is any of the following:

(a) a registrant;

(b) a recognized commodity futures exchange;

(c) a registered commodity futures exchange;

(d) a recognized clearing house.

(3) Subsection (1) does not apply with respect to a security issued or a derivative entered into before the date this Rule comes into force.

(4) If a reasonable person would consider it appropriate, a person or company referred to in subsection (1) must

(a) identify, in the plan referred to in subsection (1), one or more benchmarks suitable as substitutes for the designated benchmark, and

(b) indicate why the substitution would be suitable.

(5) If a reasonable person would consider it appropriate, a person or company referred to in subsection (1) must refer to the plan referred in subsection (1) in any security issued by the person or company, or any derivative to which the person or company is a party, that references the designated benchmark.

Publishing and disclosing

22. If, under this Rule, a designated benchmark administrator is required to publish a document or information, or disclose a document or information to a benchmark user or benchmark contributor, the designated benchmark administrator must publicly include the document or information on the designated benchmark administrator's website in a prominent manner and, for greater certainty, free of charge.

PART 6
BENCHMARK CONTRIBUTORS

Code of conduct for benchmark contributors

23.(1) If a designated benchmark is determined using input data from a benchmark contributor, the designated benchmark administrator of the designated benchmark must establish, document, maintain and apply a code of conduct that specifies the responsibilities of the benchmark contributor with respect to the contribution of input data.

(2) A designated benchmark administrator must include in the code of conduct referred to in subsection (1) all of the following:

(a) a description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with sections 14 and 15;

(b) the method by which a benchmark contributor will confirm the identity of each contributing individual who might contribute input data;

(c) the method by which the designated benchmark administrator will confirm the identity of a benchmark contributor and any contributing individual;

(d) the procedures that a benchmark contributor will use to determine who is suitable to be authorized as a contributing individual;

(e) the procedures that a benchmark contributor will use to ensure that the benchmark contributor contributes all relevant input data;

(f) a description of the procedures, systems and controls that a benchmark contributor will establish, document, maintain and apply, including the following:

(i) procedures for contributing input data;

(ii) specifying whether input data is transaction data;

(iii) confirming whether input data conforms to the designated benchmark administrator's requirements;

(iv) procedures for the exercise of expert judgment in contributing input data;

(v) if the designated benchmark administrator requires the validation of input data before it is contributed, the requirement;

(vi) a requirement to maintain records relating to its activities as a benchmark contributor;

(vii) a requirement that the benchmark contributor report to the designated benchmark administrator any instance when a reasonable person would consider that a contributing individual, acting on a behalf of

the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate, unreliable or incomplete;

(viii) a requirement to identify and eliminate or manage conflicts of interest and potential conflicts of interest that may affect the integrity, accuracy or reliability of the designated benchmark;

(ix) a procedure for the designation of an officer of the benchmark contributor who is to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct and Ontario commodity futures law relating to benchmarks;

(x) a requirement that the benchmark contributor's officer referred to in subparagraph (ix) and the benchmark contributor's chief compliance officer not be prevented or restricted from directly accessing the benchmark contributor's board of directors.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to, at least once every 12 months and promptly after any change to the code of conduct referred to in subsection (1), assess whether each benchmark contributor to a designated benchmark that it administers is complying with the code of conduct.

Governance and control requirements for benchmark contributors

24.(1) A benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure all of the following:

(a) input data contributed by the benchmark contributor is not affected by any conflict of interest or potential conflict of interest involving the benchmark contributor or its employees, officers, directors or agents, if a reasonable person would consider that the input data might be inaccurate, unreliable or incomplete;

(b) if expert judgment is exercised by the benchmark contributor in contributing input data, the benchmark contributor exercises the expert judgment independently, in good faith and in compliance with the code of conduct referred to in section 23.

(2) A benchmark contributor to a designated benchmark must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the accuracy, reliability and completeness of each contribution of input data, including policies, procedures and controls governing all of the following:

(a) the manner in which the input data is contributed in compliance with this Rule and the code of conduct referred to in section 23;

(b) who may contribute input data, including, as applicable, a process for approval by an individual holding a position senior to that of a contributing individual;

(c) training for contributing individuals with respect to compliance with this Rule;

(d) the identification and elimination or management of conflicts of interest and potential conflicts of interest, including, for greater certainty,

(i) policies, procedures and controls that are reasonably designed to keep separate, operationally or otherwise, contributing individuals from employees or agents whose responsibilities include transacting in a contract, derivative, instrument or security that uses the designated benchmark for reference;

(ii) policies, procedures and controls that are reasonably designed to prevent contributing individuals from receiving compensation or other financial incentive from which conflicts of interest arise, including for greater certainty, conflicts of interest that adversely affect the accuracy, reliability and completeness of each contribution of input data.

(3) Before a benchmark contributor contributes input data for a designated benchmark, the benchmark contributor must

(a) establish, document, maintain and apply policies and procedures reasonably designed to establish criteria, including any restrictions or limitations, for the exercise of expert judgment, and

(b) if expert judgment is exercised in relation to input data, retain records that record the rationale for any decision made to exercise that expert judgment, the rationale applied in the exercise of the expert judgment and the manner of the exercise of the expert judgment.

(4) A benchmark contributor that contributes input data for a designated benchmark must keep, for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later, records relating to all of the following:

(a) communications, including, for greater certainty, telephone conversations, in relation to the contribution of input data;

(b) all information used or considered by the benchmark contributor in making each contribution, including details of contributions made and the names of contributing individuals;

(c) the records relating to expert judgment referred to in paragraph 3(b);

(d) all documentation relating to the identification and elimination or management of conflicts of interest and potential conflicts of interest;

(e) a description of the potential for financial loss or gain of the benchmark contributor and each contributing individual to financial instruments that reference the designated benchmark for which it acts as a benchmark contributor;

(f) any internal or external review of the benchmark contributor, including, for greater certainty, each limited assurance report on compliance or reasonable assurance report on compliance required under this Rule.

(5) A benchmark contributor that contributes input data for a designated benchmark must

(a) cooperate with the designated benchmark administrator in the review and supervision of the provision of the designated benchmark, including, for greater certainty, cooperation in connection with any limited assurance report on compliance or reasonable assurance report on compliance required under this Rule, and

(b) make available the records kept in accordance with subsection (4) to all of the following:

(i) the designated benchmark administrator;

(ii) a public accountant involved with the preparation of a limited assurance report on compliance or reasonable assurance report on compliance required under this Rule.

Compliance officer for benchmark contributors

25.(1) A benchmark contributor that contributes input data for a designated benchmark must designate an officer of the benchmark contributor who is to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section 23, this Rule and Ontario commodity futures law relating to benchmarks.

(2) A benchmark contributor must not prevent or restrict the officer referred to in subsection (1) and its chief compliance officer from directly accessing the benchmark contributor's board of directors or a member of the board of directors.

PART 7
RECORD KEEPING

Books, records and other documents

26.(1) A designated benchmark administrator must keep the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated benchmarks.

(2) A designated benchmark administrator must keep books, records and other documents of the following:

(a) all input data, including how the data was used;

(b) if data is rejected as input data for a designated benchmark despite the data conforming to the methodology of the designated benchmark, the rationale for rejecting the input data;

(c) the methodology of each designated benchmark administered by the designated benchmark administrator;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of a designated benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls or methodologies;

(f) the identities of contributing individuals and of benchmark individuals;

(g) all documents relating to a complaint;

(h) communications, including, for greater certainty, telephone conversations, between any benchmark individual and benchmark contributors or contributing individuals in respect of a designated benchmark administered by the designated benchmark administrator.

(3) A designated benchmark administrator must keep the records referred to in subsection (2) in a form that

(a) identifies the manner in which the determination of a designated benchmark was made, and

(b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance.

(4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and other documents to be provided promptly on request to the Director.

PART 8
DESIGNATED CRITICAL BENCHMARKS, DESIGNATED INTEREST RATE BENCHMARKS AND DESIGNATED REGULATED-DATA BENCHMARKS

DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Administration of a designated critical benchmark

27.(1) If a designated benchmark administrator decides to cease providing a designated critical benchmark, the designated benchmark administrator must

(a) promptly notify the Director, and

(b) not more than 4 weeks after notifying the Director, submit a plan to the Director for how the designated critical benchmark can be transitioned to another designated benchmark administrator or cease to be provided.

(2) Following the submission of the plan referred to paragraph (1)(b), a designated benchmark administrator must continue to provide the designated critical benchmark until one or more of the following have occurred:

(a) the provision of the designated critical benchmark has been transitioned to another designated benchmark administrator;

(b) the designated benchmark administrator receives notice from the Director authorizing the cessation;

(c) the designation of the designated benchmark has been revoked or varied to reflect that the designated benchmark is no longer a designated critical benchmark;

(d) 12 months have elapsed from the submission of the plan referred to in paragraph (1)(b), unless, before the expiration of the period, the Director has provided written notice that the written notice has been extended.

Access

28. A designated benchmark administrator of a designated critical benchmark must take reasonable steps to ensure that benchmark users and potential benchmarks users have direct access to the designated critical benchmark on a fair, reasonable, transparent and non-discriminatory basis.

Assessment

29. A designated benchmark administrator of a designated critical benchmark must, at least once every 2 years, submit to the Director an assessment of the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated critical benchmark is intended to represent.

Benchmark contributor to a designated critical benchmark

30.(1) If a benchmark contributor to a designated critical benchmark decides it will cease contributing input data, it must promptly notify in writing the designated benchmark administrator that administers the designated critical benchmark.

(2) A benchmark contributor that is required to give notice under subsection (1) must continue contributing input data until the earlier of

(a) the date referred to in subparagraph (3)(b)(ii), and

(b) 6 months after the notice referred to in subsection (1) is received by the designated benchmark administrator that administers the designated critical benchmark.

(3) If a designated benchmark administrator receives a notice referred to in subsection (1), the designated benchmark administrator must

(a) promptly notify the Director of the decision referred to in subsection (1), and

(b) no later than 14 days after receipt of the notice,

(i) submit to the Director an assessment of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent, and

(ii) notify in writing the benchmark contributor of the date after which the designated benchmark administrator no longer requires the benchmark contributor to contribute input data, if that date is less than 6 months after the date the designated benchmark administrator received the notice referred to in subsection (1).

Oversight committee

31.(1) For a designated critical benchmark, at least half of the members of the oversight committee referred to in section 7 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be expected to interfere with the exercise of the member's independent judgment.

(3) The oversight committee referred to in section 7 must

(a) publish details of its membership, declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold at least one meeting every 4 months.

Assurance report on designated benchmark administrator

32.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, either a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated critical benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with sections 5, 8 to 16 and 26, and

(b) following of the methodology applicable to the designated critical benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once every 12 months.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report referred to in subsection (1), publish the report and deliver a copy of the report to the Director.

Assurance report on benchmark contributor

33.(1) If required by the oversight committee referred to in section 7 as a result of a concern with the conduct of a benchmark contributor to a designated critical benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, either a limited assurance report on compliance or a reasonable assurance report on compliance regarding the conduct of the benchmark contributor and its

(a) compliance with section 24, and

(b) following of the methodology applicable to the designated critical benchmark.

(2) A benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

(b) the board of directors of the designated benchmark administrator, and

(c) the Director.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Order of priority of input data

34. For the purposes of subsection 14(1) and paragraph 14(5)(a), if a designated interest rate benchmark is based on a contribution of input data from a benchmark contributor, input data for the determination of the designated interest rate benchmark must be used by the designated benchmark administrator in accordance with the order of priority specified in the methodology of the designated interest rate benchmark.

Oversight committee

35.(1) For a designated interest rate benchmark, at least half of the members of the oversight committee referred to in section 7 must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

(2) For the purposes of subsection (1), a member of the oversight committee is not independent if any of the following apply:

(a) other than as compensation for acting as a member of the oversight committee, the member accepts any consulting, advisory or other compensatory fee from the designated benchmark administrator or any affiliated entity of the designated benchmark administrator;

(b) the member is a DBA individual or an employee or agent of any affiliated entity of the designated benchmark administrator;

(c) the member has a relationship with the designated benchmark administrator that may, in the opinion of the board of directors of the designated benchmark administrator, be expected to interfere with the exercise of the member's judgment.

(3) The oversight committee referred to in section 7 must

(a) publish details of its membership, any declarations of any conflicts of interest of its members, and the processes for election or nomination of its members, and

(b) hold at least one meeting every 4 months.

Assurance report on designated benchmark administrator

36.(1) A designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, in respect of each designated interest rate benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with sections 5, 8 to 16, 26 and 34, and

(b) following of the methodology of the designated interest rate benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 23 and subsequently once every 2 years.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report referred to in subsection (1), publish the report and deliver a copy of the report to the Director.

Assurance report on benchmark contributor required by oversight committee

37.(1) If required by the oversight committee referred to in section 7 as a result of a concern with the conduct of a benchmark contributor to a designated interest rate benchmark, the benchmark contributor must engage a public accountant to provide, as specified by the oversight committee, either a limited assurance report on compliance or a reasonable assurance report on compliance, regarding the conduct of the benchmark contributor and its

(a) compliance with sections 24 and 39, and

(b) following of the methodology of the designated interest rate benchmark.

(2) The benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

(b) the board of directors of the designated benchmark administrator, and

(c) the Director.

Assurance report on benchmark contributor required at certain times

38.(1) A benchmark contributor to a designated interest rate benchmark must engage a public accountant to provide, as specified by the oversight committee referred to in section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, regarding the conduct and input data of the benchmark contributor and its

(a) compliance with sections 24 and 39,

(b) following of the methodology of the designated interest rate benchmark, and

(c) following of the code of conduct referred to in section 23.

(2) A benchmark contributor must ensure an engagement referred to in subsection (1) occurs for the first time 6 months after the introduction of a code of conduct for benchmark contributors referred to in section 23 and subsequently once every 2 years.

(3) The benchmark contributor must, within 10 days of the receipt of a report referred to in subsection (1), deliver a copy of the report to

(a) the oversight committee referred to in section 7,

(b) the board of directors of the designated benchmark administrator, and

(c) the Director.

Benchmark contributor policies and procedures

39.(1) Subsections (2) to (7) do not apply to a person or company except in respect of a designated interest rate benchmark.

(2) A contributing individual of the benchmark contributor and a manager of that contributing individual must provide a written statement to the benchmark contributor and the designated benchmark administrator that the contributing individual and the manager will comply with the code of conduct referred to in section 23.

(3) A benchmark contributor must establish, document, maintain and apply policies, procedures and controls reasonably designed to ensure the following:

(a) that there is an outline of responsibilities within the benchmark contributor's organization, including internal reporting lines and accountabilities;

(b) the maintenance of a current list of the names and locations of contributing individuals and managers and their alternates;

(c) that there are internal procedures governing contributions of input data and the approval of contributions of input data, including keeping a record for each daily or other contribution of input data that shows:

(i) how the procedures were applied, and

(ii) all qualitative and quantitative factors, including market data and expert judgment, used for each contribution of input data;

(d) that there are disciplinary procedures to address the following conduct of a person or company, including, for greater certainty, a person or company that is external to the process governing contributions of input data:

(i) the manipulation or attempted manipulation of a designated benchmark, or the failure to report the manipulation or attempted manipulation of a designated benchmark, to which the person or company is a benchmark contributor;

(ii) the provision or attempted provision of false or misleading information in respect of a designated benchmark, or the failure to report the provision or attempted provision of false or misleading information in respect of a designated benchmark, to which the person or company is a benchmark contributor;

(e) that there are conflict of interest identification and management procedures and communication controls, both within the benchmark contributor's organization and among benchmark contributors and other third parties, reasonably designed to avoid any external influence over those responsible for contributing input data, if a reasonable person would consider that the external influence might adversely affect the accuracy, reliability or completeness of the input data;

(f) that there is a requirement that contributing individuals employed by the benchmark contributor work in locations physically separated from interest rate derivatives traders;

(g) the prevention or control of the exchange of information between persons or companies engaged in activities involving a conflict of interest or a potential conflict of interest, if a reasonable person would consider that the exchange of that information might adversely affect the accuracy, reliability or completeness of the input data contributed by a benchmark contributor;

(h) that there are requirements to avoid collusion

(i) among benchmark contributors, and

(ii) among benchmark contributors and the designated benchmark administrator;

(i) that there are measures to prevent, or limit, any person from exercising influence over the way a contributing individual contributes input data, if a reasonable person would consider that the influence might adversely affect the accuracy, reliability or completeness of the input data;

(j) the removal of any direct connection between the remuneration of an employee involved in the contribution of input data and the remuneration of, or revenues generated by, a person or company engaged in another activity, if a conflict of interest exists or might arise in relation to the other activity;

(k) that there are controls to identify a reverse transaction subsequent to the contribution of input data.

(4) A benchmark contributor must keep, for a period of 7 years from the date the record was made or received by the benchmark contributor, whichever is later, records of all of the following:

(a) all details of contributions of input data that a reasonable person would consider relevant to demonstrate the accuracy, reliability and completeness of the input data;

(b) the process governing input data determination and the approval of contributions of input data, including the records referred to in paragraph (3)(c);

(c) the name of each contributing individual and the individual's responsibilities;

(d) any communications, including, for greater certainty, telephone conversations, between the contributing individuals and other persons or companies, including internal and external traders and brokers, in relation to the determination or contribution of input data;

(e) any interaction of contributing individuals with the designated benchmark administrator or any calculation agent;

(f) any queries regarding the input data and the outcome of those queries;

(g) sensitivity analysis for interest rate swap trading books and any other derivative trading books with an exposure to interest rate fixings in respect of input data, if a reasonable person would consider that the exposure is significant;

(h) the written statements referred to in subsection (2);

(i) the policies, procedures and controls referred to in subsection (3).

(5) A benchmark contributor and a designated benchmark administrator must keep their records in a medium that allows records to be accessible and with a documented audit trail.

(6) The benchmark contributor's officer referred to in section 25 or the benchmark contributor's chief compliance officer must report all the following to the benchmark contributor's board of directors on a reasonably frequent basis:

(a) breaches of the code of conduct referred to in section 23;

(b) the failure to follow or apply the policies, procedures and controls referred to in subsection (3);

(c) reverse transactions subsequent to the contribution of input data.

(7) A benchmark contributor that contributes input data to a designated interest rate benchmark must conduct, on a reasonably frequent basis, internal reviews of the benchmark contributor's input data and procedures.

(8) A benchmark contributor to a designated interest rate benchmark must make available the information and records kept in accordance with subsection (4) to each of the following:

(a) the designated benchmark administrator in connection with the assessment under subsection 23(3) or for the purposes of paragraph 24(5)(a);

(b) a public accountant involved with the preparation of a limited assurance report on compliance or reasonable assurance report on compliance required under this Rule.

DIVISION 3 – DESIGNATED REGULATED-DATA BENCHMARKS

Non-application to designated regulated-data benchmarks

40. A designated regulated-data benchmark is exempt from the following:

(a) subsections 11(1) and (2);

(b) subsection 14(2);

(c) subsections 15(1), (2) and (3);

(d) sections 23, 24 and 25;

(e) paragraph 26(2)(a).

PART 9
DISCRETIONARY EXEMPTIONS

Exemptions

41. The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 10
EFFECTIVE DATE

Effective date

42. This Rule comes into force on July 13, 2021.

FORM 25-501F1
DESIGNATED BENCHMARK ADMINISTRATOR ANNUAL FORM

Instructions

(1) Terms used but not defined in this form have the meaning given to them in the Rule.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under Ontario commodity futures law to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Organization and Structure of Designated Benchmark Administrator

Describe the organizational structure of the designated benchmark administrator, including, as applicable, an organizational chart that identifies the ultimate and intermediate parent companies, subsidiaries, and material affiliated entities of the designated benchmark administrator (if any); an organizational chart showing the divisions, departments, and business units of the designated benchmark administrator; and an organizational chart showing the managerial structure of the designated benchmark administrator, including the officer referred to in section 6 of the Rule and the oversight committee referred to in section 7 of the Rule. Provide detailed information regarding the designated benchmark administrator's legal structure and ownership.

Item 3. Designated Benchmark

Provide the name of the designated benchmark.

Item 4. Policies and Procedures re Confidential Information

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained by the designated benchmark administrator to prevent the misuse of confidential information.

Item 5. Policies and Procedures re Conflicts of Interest

Unless previously provided, attach a copy of the most recent written policies and procedures established and maintained with respect to conflicts of interest and potential conflicts of interest.

Item 6. Conflicts of Interest Arising from the Control or Ownership Structure of the Applicant

(a) Describe any conflict of interest or potential conflict of interest that arises from the control or ownership structure of the designated benchmark administrator, or from any other activities of the designated benchmark administrator or any affiliated entity of the designated benchmark administrator, in relation to a designated benchmark administered by the designated benchmark administrator.

(b) Describe the designated benchmark administrator's policies and procedures to identify and eliminate or manage each conflict of interest or potential conflict of interest described in paragraph (a).

Item 7. Policies and Procedures re Control Framework

Describe the designated benchmark administrator's control framework referred to in section 8 of the Rule and policies and procedures designed to ensure the quality of the designated benchmark.

Item 8. Policies and Procedures re Complaints

Describe the designated benchmark administrator's policies and procedures regarding complaints.

Item 9. Policies and Procedures re Books, Records and Other Documents

Describe the designated benchmark administrator's policies and procedures regarding record keeping.

Item 10. Outsourcing

Describe the designated benchmark administrator's policies and procedures regarding outsourcing and disclose the following information about any person or company referred to in section 13 of the Rule to which a designated benchmark administrator has outsourced a function, service or activity in the provision of a designated benchmark (the "provider") and the individuals who supervise the provider:

- the identity of the provider and each of its key individual contacts;
- the total number of individuals who supervise the provider;
- a general description of the minimum qualifications required of the provider for any outsourcing;
- a general description of the minimum qualifications required of individuals who supervise the provider for any outsourcing, including education level and work experience.

Item 11. Benchmark Individuals

Disclose the following information about the benchmark individuals of the designated benchmark administrator and the individuals who supervise the benchmark individuals:

- the total number of benchmark individuals;
- the total number of supervisors of benchmark individuals;
- a general description of the minimum qualifications required of the benchmark individuals, including education level and work experience (if applicable, distinguish between junior, mid, and senior level benchmark individuals);
- a general description of the minimum qualifications required of the supervisors of benchmark individuals, including education level and work experience.

Item 12. Compliance Officer

Disclose the following information about the officer of the designated benchmark administrator referred to in section 6 of the Rule:

- name;
- employment history;
- post-secondary education;
- whether employed full-time or part-time by the designated benchmark administrator.

Item 13. Specified Revenue

Disclose the following information, as applicable, regarding the designated benchmark administrator's aggregate revenue for the most recently completed financial year:

- revenue from determining the designated benchmark;
- revenue from determining any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator);
- revenue from granting licences or rights to publish information about the designated benchmark;
- revenue from granting licences or rights to publish information about any other benchmarks administered by the designated benchmark administrator (which may be provided as an aggregate number for all other benchmarks administered by the designated benchmark administrator).

Include financial information on the revenue of the designated benchmark administrator divided into fees from benchmark and non-benchmark activities, including a comprehensive description of each.

This information is not required to be audited, but any disaggregation of revenue must be determined using the same accounting principles as the annual financial statements required by section 2 of the Rule.

Item 14. Financial Statements

Attach a copy of the annual financial statements required under section 2 of the Rule.

Item 15. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-501F1 *Designated Benchmark Administrator Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are incorporated into and form part of this Form, are true and correct.

_____ _____

(Date) (Name of the Designated Benchmark Administrator)

By: _____

(Print Name and Title)

_____

(Signature)

FORM 25-501F2
Designated Benchmark Annual Form

Instructions

(1) Terms used but not defined in this form have the meaning given to them in the Rule.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the designated benchmark administrator's most recently completed financial year. If necessary, the designated benchmark administrator must update the information provided so it is not misleading when it is delivered. For information presented as at any date other than the last day of the designated benchmark administrator's most recently completed financial year, specify the relevant date in the form.

(3) Designated benchmark administrators are reminded that it is an offence under Ontario commodity futures law to give false or misleading information on this form.

Item 1. Name of Designated Benchmark Administrator

State the name of the designated benchmark administrator.

Item 2. Designated Benchmark

Provide the name of the designated benchmark and whether it is also any of the following:

- interest rate benchmark;
- critical benchmark;
- regulated-data benchmark.

Item 3. Benchmark Distribution Model

Describe how the designated benchmark administrator makes the designated benchmark readily accessible for free or for a fee. If a person must pay a fee to obtain information about the designated benchmark made readily accessible by the designated benchmark administrator, provide a fee schedule or describe the prices charged.

Item 4. Procedures and Methodologies

Describe the procedures and methodologies used by the designated benchmark administrator to determine the designated benchmark. The description must be sufficiently detailed to provide an understanding of the processes employed by the designated benchmark administrator in determining the designated benchmark, including the following, as applicable:

- the public and non-public sources of information used in determining the designated benchmark, including information provided by benchmark contributors;
- procedures for monitoring, reviewing, and updating the designated benchmark,
- the methodologies, policies and procedures described in the Rule.

A designated benchmark administrator may provide the location on its website where additional information about the methodologies, policies and procedures is located.

Item 5. Code of Conduct for Benchmark Contributors

Unless previously provided, attach a copy of any code of conduct for benchmark contributors.

Item 6. Verification Certificate

Include a certificate of the designated benchmark administrator in the following form:

> The undersigned has executed this Form 25-501F2 *Designated Benchmark Annual Form* on behalf of, and on the authority of, [the designated benchmark administrator]. The undersigned, on behalf of [the designated benchmark administrator], represents that the information and statements contained in this Form, including appendices and attachments, all of which are incorporated into and form part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Designated Benchmark Administrator)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-501F3
Submission to Jurisdiction and Appointment of Agent for Service of Process

1. Name of the designated benchmark administrator (the "DBA"):

2. Jurisdiction of incorporation, or equivalent, of the DBA:

3. Address of principal place of business of the DBA:

4. Name, email address, phone number and fax number of contact person at principal place of business of the DBA:

5. Name of agent for service of process (the "Agent"):

6. Agent's address in Canada for service of process:

7. Name, email address, phone number and fax number of contact person of the Agent:

8. The DBA designates and appoints the Agent at the address of the Agent stated in Item 6 as its agent on whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (a "proceeding") arising out of, relating to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator, and irrevocably waives any right to raise as a defence in any proceeding any alleged lack of jurisdiction to bring a proceeding.

9. The DBA irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judiciary and quasi-judicial and other administrative bodies of each of the provinces and territories of Canada in which it is a designated benchmark administrator, and

   (b) any judicial, quasi-judicial and other administrative proceeding in any such province or territory,

   in any proceeding arising out of or related to or concerning the determination of a designated benchmark administered by the DBA or the obligations of the DBA as a designated benchmark administrator.

10. This submission to jurisdiction and appointment of agent for service of process is governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

_____ _____
Signature of Designated Benchmark Administrator Date

_____
Print name and title of signing officer
of Designated Benchmark Administrator

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of DBA] under the terms and conditions of the appointment of agent for service of process set out in this document.

_____ _____

Signature of Agent Date

_____

Print name of person signing and, if Agent is not an individual, the title of the person

5.1.4 Companion Policy 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators

COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

PART 1
GENERAL COMMENTS

Introduction

This companion policy (the "Policy") provides guidance on how the Ontario Securities Commission (the "Commission" or "we") interpret various matters in Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (the "Rule").

Except for Parts 1 and 8, the numbering and headings of Parts, sections and subsections in this Policy generally correspond to the numbering and headings in the Rule. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy will skip to the next provision that does have guidance.

Introduction to the Rule

Designation of Benchmarks and Benchmark Administrators

Ontario commodity futures law provides for the designation of a benchmark and a benchmark administrator. A benchmark administrator or the Director may apply to the Commission to request the designation of a benchmark or a benchmark administrator.

We expect that the Director may apply to the Commission to request the designation of a benchmark or benchmark administrator on public interest grounds, including where:

- a benchmark is sufficiently important to financial markets in Canada, or
- we become aware of activities of a benchmark administrator, benchmark contributor or benchmark user that raise public interest concerns and conclude that the administrator and benchmark in question should be designated.

Where the Director intends to apply for the designation of a benchmark or benchmark administrator, we generally expect to give the affected benchmark administrator reasonable notice of our intention and the reasons for it. In addition, Ontario commodity futures law provides the benchmark administrator with an opportunity to be heard and, where necessary, to provide documents before the Commission makes its decision. Furthermore, we would generally not expect that a designation would be made without the Commission publishing an advance notice to the public.

Categories of Designation

The Rule contains requirements that apply to designated benchmark administrators, benchmark contributors and certain benchmark users in respect of a designated benchmark. In addition to requirements in the Rule that generally apply in respect of any designated benchmark, there are additional requirements in the Rule that apply to designated critical benchmarks and designated interest rate benchmarks.

The Rule also includes a number of exemptions from certain provisions for designated benchmarks administrators and benchmark contributors in respect of designated regulated-data benchmarks. In addition to these specific exemptions, given the interpretation provided by subsection 1(3) of the Rule as to when input data is considered to have been "contributed", as described later in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed would not apply to a benchmark that is designated as a regulated-data benchmark.

When designating a benchmark, the Commission will issue a decision document designating the benchmark as a designated benchmark. If applicable, the decision document will indicate if the benchmark is also designated as a designated critical benchmark, a designated interest rate benchmark or a designated regulated-data benchmark. It is possible that a designated benchmark will receive more than one designation. For example,

- a designated interest rate benchmark may also be designated as a designated critical benchmark, and
- a designated regulated-data benchmark may also be designated as a designated critical benchmark.

As discussed below, we expect a benchmark administrator that applies for designation of a benchmark to provide written submissions on whether the administrator considers the benchmark to be a critical benchmark, an interest rate benchmark or a regulated-data benchmark.

When designating a benchmark or benchmark administrator, the Commission will issue a decision document that may designate the benchmark administrator as a designated benchmark administrator of one or more designated benchmarks.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of the administrator or a benchmark will provide written submissions that contain the same information as that required by Form 25-501F1 *Designated Benchmark Administrator Annual Form* and Form 25-501F2 *Designated Benchmark Annual Form* in a format that is consistent with those forms.

If we consider it would be in the public interest, or not be prejudicial to the public interest, to do so, the Director may also apply for a change in the designation of a designated benchmark. For example, if a designated benchmark is initially designated as a designated interest rate benchmark but over time it becomes more significant to Canadian financial markets, the Director may apply for it to also be designated as a critical benchmark. If this were to occur, Ontario commodity futures law would provide the designated benchmark administrator with an opportunity to be heard and, where necessary, to provide documents before a decision to make such a change is made. Accordingly, we would not expect that a change in the category of designation would be made without reasonable notice being provided to the affected benchmark administrator. Furthermore, we would generally not expect that a change in the category of designation would be made without the Commission publishing an advance notice to the public.

Cancelling a Designation or Imposing or Changing Terms and Conditions

Ontario commodity futures law also provides that the Commission may cancel the designation of a designated benchmark administrator or designated benchmark or may impose or change the terms and conditions relating to designation. However, before doing so, Ontario commodity futures law provides the benchmark administrator with an opportunity to be heard or a right to be heard and, where necessary, to provide documents. Accordingly, we would not expect a designation would be cancelled or that terms or conditions would be imposed or changed without reasonable notice being provided to the affected benchmark administrator. Additionally, where the Director applies to the Commission for the cancellation of a designation of a designated benchmark administrator or designated benchmark or the imposition or amendment of terms and conditions, we would not expect to make such an application unless it would be in the public interest. Furthermore, we would generally not expect that a cancellation of a designation would be made without the Commission publishing an advance notice to the public.

Definitions and Interpretation

Subsection 1(1) – Definition of designated critical benchmark

"Designated critical benchmark" is a benchmark that is designated for the purposes of the Rule as a "critical benchmark" by a decision of the Commission. In addition to general requirements in the Rule that apply in respect of any designated benchmark, there are specific requirements in Division 1 of Part 8 of the Rule that apply to designated critical benchmarks.

Staff of the Commission may recommend that the Commission designate a benchmark as a "critical benchmark" if the benchmark is critical to financial markets in Canada or a region of Canada. The following two factors are among those that will be considered:

(a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds, having a total value in Canada of at least $400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable; or

(b) the benchmark satisfies all of the following criteria:

    (i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable;

    (ii) the benchmark has no, or very few, appropriate market-led substitutes;

    (iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on

        (A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or

(B) a significant number of market participants in one or more jurisdictions of Canada.

For the purpose of paragraph (a) and subparagraph (b)(i), staff of the Commission will consider, among other things, the outstanding principal amount of any debt securities that reference the benchmark, the outstanding notional amount of any derivatives that reference the benchmark, and the outstanding net asset value of any investment funds that use the benchmark to measure performance.

We note that the above list is not a complete list of factors and the existence of one of these factors by itself will not necessarily determine whether a benchmark is a critical benchmark. Instead, staff intend to follow a holistic approach where all relevant factors are considered.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of a benchmark will provide, with its application, written submissions on whether the Commission should designate the benchmark as a critical benchmark.

Subsection 1(1) – Definition of designated interest rate benchmark

"Designated interest rate benchmark" is a benchmark that is designated for the purposes of the Rule as an "interest rate benchmark" by a decision of the Commission. In addition to general requirements in the Rule that apply in respect of any designated benchmark, there are specific requirements in Division 2 of Part 8 of the Rule that apply to designated interest rate benchmarks.

Staff of the Commission may recommend that the Commission designate a benchmark as an "interest rate benchmark" if the benchmark is used to set interest rates of debt securities or is otherwise used as a reference in derivatives or other instruments. Factors that will be considered include the following:

(a) the benchmark is determined on the basis of the rate at which financial institutions may lend to, or borrow from, other financial institutions, or market participants other than financial institutions, in the money market; or

(b) the benchmark is determined from a survey of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

We note that the above list is not exhaustive.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of a benchmark will provide, with its application, written submissions on whether the Commission should designate the benchmark as an interest rate benchmark.

Subsection 1(1) – Definition of designated regulated-data benchmark

"Designated regulated-data benchmark" is a benchmark that is designated for the purposes of the Rule as a "regulated-data benchmark" by a decision of the Commission. Benchmark administrators of regulated-data benchmarks are exempted from certain governance and control requirements relating to the contribution of input data (see Division 3 of Part 8 of the Rule).

Staff of the Commission may recommend that the Commission designate a benchmark as a "regulated-data benchmark" if the benchmark is determined by the application of a formula from any of the following:

(a) input data contributed entirely, or almost entirely, from

(i) any of the following, but only with reference to transaction data relating to securities or derivatives:

(A) a recognized exchange in a jurisdiction of Canada or an exchange that is subject to appropriate regulation in a foreign jurisdiction;

(B) a recognized quotation and trade reporting system in a jurisdiction of Canada or a quotation and trade reporting system that is subject to appropriate regulation in a foreign jurisdiction;

(C) an alternative trading system that is registered as a dealer in a jurisdiction of Canada and is a member of a self-regulatory entity or an alternative trading system that is subject to appropriate regulation in a foreign jurisdiction;

(D) an entity that is similar or analogous to the entities referred to in clause (A), (B) or (C) and that is subject to appropriate regulation in a jurisdiction of Canada or a foreign jurisdiction;

(ii) a service provider to which the designated benchmark administrator of the designated benchmark has outsourced the data collection in accordance with section 13 of the Rule, if the service provider receives the data entirely and directly from an entity referred to in subparagraph (i);

(b) net asset values of investment funds that are reporting issuers in a jurisdiction of Canada or subject to appropriate regulation in a foreign jurisdiction.

We expect that a benchmark administrator that applies under Ontario commodity futures law for the designation of a benchmark will provide, with its application, written submissions on whether the Commission should designate the benchmark as a regulated-data benchmark.

Subsection 1(1) – Definition of expert judgment

"Expert judgment" is the discretion exercised by:

- a designated benchmark administrator with respect to the use of input data in determining a benchmark, and
- a benchmark contributor with respect to input data.

Expert judgment may involve various activities, including:

- extrapolating values from prior or related transactions,
- adjusting values for factors that might influence the quality of data such as market data, economic factors, market events or impairment of a buyer or seller's credit quality, or
- assigning a greater weight to data relating to bids or offers than the weight assigned to a relevant concluded transaction.

Subsection 1(1) – Definition of input data

"Input data" is the data in respect of any measurement of one or more assets, interests or elements that is contributed, or otherwise obtained, by a designated benchmark administrator for the purpose of determining a designated benchmark. For example, input data may include estimated prices, quotes, committed quotes or other values.

The reference to "or otherwise obtained" would include the following scenarios where data is "reasonably available" (within the meaning of s. 1(3) of the Rule) on a source's website (free of charge or behind a paywall):

- "Active" scenario – the source takes deliberate action to provide the data to a benchmark administrator.
- "Passive" scenario – the source simply publishes the data and is not aware that the benchmark administrator is using it as input data.

Subsection 1(1) – Definitions of limited assurance report on compliance and reasonable assurance report on compliance

A "limited assurance report on compliance" and a "reasonable assurance report on compliance" must be prepared in accordance with the applicable Canadian Standard on Assurance Engagements (CSAE) or the applicable International Standard on Assurance Engagements (IASE). The CSAE and ISAE require that any public accountant that prepares such a report be independent.

Subsection 1(1) – Definition of transaction data

"Transaction data" means the data in respect of a price, rate, index or value representing transactions between unaffiliated parties in an active market subject to competitive supply and demand forces.

We consider that:

- transaction data would include published or onscreen data available to the public generally or by subscription, and
- the reference to "active market subject to competitive supply and demand forces" would include a market in which transactions take place, or are reported, between arm's length parties with sufficient frequency and volume to provide pricing information on an ongoing basis. This reference is separate and different from any definition for accounting purposes.

Subsection 1(1) – Interpretation of certain definitions

Definitions of each of the following terms are considered to apply only in respect of the designated benchmark to which they pertain:

- "benchmark administrator";
- "benchmark contributor";
- "benchmark individual";
- "benchmark user";
- "contributing individual";
- "DBA individual";
- "designated benchmark administrator";
- "input data";
- "transaction data".

Subsection 1(3) – Interpretation of contribution of input data

There are provisions in the Rule that apply to (i) all input data or (ii) only input data that is contributed.

Subsection 1(3) of the Rule provides that input data is considered to have been "contributed" if

(a) it is not reasonably available to

(i) the designated benchmark administrator, or

(ii) another person or company, other than the benchmark contributor, for the purpose of providing the input data to the designated benchmark administrator, and

(b) it is provided to the designated benchmark administrator or the other person or company referred to in subparagraph (a)(ii) above for the purpose of determining a benchmark.

We consider that the reference to "not reasonably available" would include situations where input data is not published or otherwise available to a designated benchmark administrator or another person or company, other than the benchmark contributor, using reasonable effort, on reasonable terms or a reasonable cost and the designated benchmark administrator therefore needs to obtain the input data from a benchmark contributor who has access to that data. For example, an interest rate benchmark may be based on a survey by a benchmark administrator of bid-side rates contributed by benchmark contributors that are financial institutions which routinely accept bankers' acceptances issued by borrowers and are market makers in bankers' acceptances either directly or through an affiliate.

Where a benchmark administrator engages the services of an agent to aggregate input data from multiple sources, we would not consider this input data to be contributed by the data aggregator, as an agent of the benchmark administrator, provided that the input data is collected from one or more reasonably available sources.

Input data for regulated-data benchmarks would generally not be considered to be contributed because the nature of this data is that it is reasonably available and not created for the purpose of determining the benchmark.

Public authorities

Where public authorities (for example, national statistics agencies, universities or research centres) contribute data to, or provide or have control over the provision of, a benchmark for public policy purposes, we would generally not designate such a benchmark as a "designated benchmark" or its administrator as a "designed benchmark administrator". In this regard, we would generally consider a "public authority" to include a government, a government agency or an entity performing public functions, having public responsibilities or providing public services under the control of a government or a government agency.

Use of "reasonable person"

Certain provisions of the Rule use the concept of a "reasonable person" to introduce an objective test, rather than a subjective test. In these provisions, the test will turn on what a "reasonable person" would believe, consider, conclude or determine or what the opinion of a "reasonable person" would be, in the circumstances.

PART 2
DELIVERY REQUIREMENTS

Section 2 – References to Canadian GAAP, Canadian GAAS, Handbook, IFRS and International Standards on Auditing

There are references in section 2 of the Rule to "Canadian GAAP", "Canadian GAAS", "Handbook", "IFRS" and "International Standards on Auditing", which are defined in National Instrument 14-101 *Definitions*.

Subparagraph 2(7)(a)(ii) – Canadian GAAP applicable to private enterprises

Subject to certain conditions, subparagraph 2(7)(a)(ii) of the Rule permits audited annual financial statements of a designated benchmark administrator to be prepared using Canadian GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprise in Part II of the Handbook.

Subsection 2(8) – Information on designated benchmark administrator

Subsection 2(8) requires that certain information be provided on Form 25-501F1 *Designated Benchmark Administrator Annual Form* and delivered on or before the 30th day after the designated benchmark administrator is designated. A benchmark administrator that provided a completed Form 25-501F1 with their application for designation does not need to re-file the form within the 30 day period after designation.

Subsection 3(2) – Information on designated benchmark

Subsection 3(2) requires that certain information be provided on Form 25-501F2 *Designated Benchmark Annual Form* and delivered on or before the 30th day after the designated benchmark is designated. A benchmark administrator that provided a completed Form 25-501F2 with their application for designation does not need to re-file the form within the 30 day period after designation.

Subsection 4(2) – Submission to jurisdiction and appointment of agent for service of process

Subsection 4(2) requires that certain information be provided on Form 25-501F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process* and delivered on or before the 30th day after the designated benchmark administrator is designated. A benchmark administrator that provided a completed Form 25-501F3 with their application for designation does not need to re-file the form after designation.

PART 3
GOVERNANCE

Board of directors

The Rule has various obligations for the board of directors of a designated benchmark administrator. The Rule does not include requirements as to the composition of the board of directors as this will be generally dictated by the corporate laws under which the benchmark administrator is organized. In addition to independence requirements under applicable corporate or other laws with respect to the composition of the board of directors of the benchmark administrator, there are several provisions of the Rule that foster independence in the oversight of a designated benchmark and the proper management of potential conflicts of interest, including:

- **subsection 6(6)** – a designated benchmark administrator must not provide a payment or other financial incentive to a compliance officer referred to in subsection 6(1), or any DBA individual that reports directly to the officer, if the payment or other financial incentive would create a conflict of interest. Such a payment would compromise the independence of the compliance officer or the DBA individual;

- **subsections 7(2) and (3)** – a designated benchmark administrator must establish an oversight committee, the members of which must not be members of the board of directors;

- **subsections 7(4) and (9)** – the oversight committee must provide a copy of its recommendations on benchmark oversight to the board of directors of the designated benchmark administrator and, if the oversight committee becomes aware that the board of directors has acted or intends to act contrary to any recommendations or decisions of the oversight committee, the oversight committee must record that fact in the minutes of its next meeting;

- **subsection 10(1)** – a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to, among other things, ensure that any expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised and protect the integrity and independence of the provision of a designated benchmark;

- **subsection 12(2)** – a benchmark administrator must conduct the investigation of a complaint independently of persons who might have been involved in the subject matter of the complaint; and

- **subsections 31(1) and 35(1)** – for a designated critical benchmark and a designated interest rate benchmark, respectively, at least half of the members of the oversight committee of the designated benchmark administrator must be independent of the designated benchmark administrator and any affiliated entity of the designated benchmark administrator.

Subsection 6(1) – Reference to Ontario commodity futures law relating to benchmarks

Subsection 6(1) of the Rule refers to "Ontario commodity futures law relating to benchmarks", which would include the Rule and benchmark provisions in Ontario commodity futures law. "Ontario commodity futures law" is defined in subsection 1(1) of the Rule.

Paragraph 6(4)(b) – Determining compensation for DBA individuals

Paragraph 6(4)(b) of the Rule prohibits the compliance officer of a designated benchmark administrator from participating in the determination of compensation for any DBA individuals, other than for a DBA individual who reports directly to the compliance officer. We expect that a designated benchmark administrator will consider compliance, including past compliance issues and how compensation policies may be used to manage conflicts of interest, when establishing compensation policies and determining compensation of any DBA individuals and we do not consider this to be prohibited by paragraph 6(4)(b) of the Rule, even if the compliance officer is providing input in relation to a DBA individual.

Subsection 7(3) – Oversight committee must not include members of board of directors

While subsection 7(3) of the Rule prohibits the oversight committee from including individuals that are members of the board of directors of the designated benchmark administrator, we do not consider this provision to prohibit a member of the board of directors from being invited, when appropriate, to an oversight committee meeting, provided that the member of the board of directors does not perform or influence the independent performance of the roles of the oversight committee set out in section 7 of the Rule.

Subsection 7(7) – Information relating to a designated benchmark

We consider that the reference to "information relating to a designated benchmark" in subsection 7(7) of the Rule would include a daily or periodic determination under the methodology of a designated benchmark and any other information.

Subsection 7(8) – Required actions for oversight committee of a designated benchmark administrator

Subsection 7(8) of the Rule requires the oversight committee of a designated benchmark administrator to carry out certain actions. We expect that the oversight committee will carry out these actions in a manner that reasonably reflects the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Paragraph 7(8)(e) – Calculation agents and dissemination agents

Paragraph 7(8)(e) of the Rule requires the oversight committee of a designated benchmark administrator to oversee any service provider involved in the provision of the designated benchmark, including calculation agents or dissemination agents. We consider that

- a "dissemination agent" is a person or company with delegated responsibility for disseminating a designated benchmark to benchmark users in accordance with the instructions provided by the designated benchmark administrator for the designated benchmark, including any review, adjustment and modification to the dissemination process, and

- a "calculation agent" is a person or company with delegated responsibility for determining a designated benchmark through the application of a formula or other method of calculating the information or expressions of opinions provided for that purpose, in accordance with the methodology set out by the designated benchmark administrator for the designated benchmark.

A dissemination agent would not include:

- a publisher that pays a licensing fee to publish a benchmark under a non-exclusive publishing license, or

- a publisher that pays a licensing fee to publish a benchmark under an exclusive publishing license if the benchmark administrator also makes the benchmark publicly available through other means.

We understand that a designated benchmark administrator may establish lines of supervision of service providers as contemplated by section 13 of the Rule, where supervision is performed by certain DBA individuals and the oversight committee receives and

reviews reports on this supervision. We would consider an oversight committee to satisfy its obligations under paragraph 7(8)(e) of the Rule if it oversees the supervision of the service providers referred to in the paragraph, for example, through the receipt and review of regular reporting from those responsible for the supervision contemplated by section 13 of the Rule.

Subparagraph 7(8)(i)(ii) – Monitoring of input data

Subparagraph 7(8)(i)(ii) of the Rule requires the oversight committee of a designated benchmark administrator to monitor the input data, the contribution of input data by the benchmark contributor, and the actions of the designated benchmark administrator in challenging or validating contributions of input data. We understand that a designated benchmark may have several lines of monitoring where real-time monitoring is performed by certain DBA individuals and the oversight committee receives and reviews reports on this monitoring. We would consider an oversight committee to satisfy its obligations under subparagraph 7(8)(i)(ii) of the Rule if it oversees the monitoring of items in the subparagraph, for example, through the receipt and review of regular reporting from those responsible for real-time monitoring.

Subparagraph 7(8)(i)(iii) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference in subparagraph 7(8)(i)(iii) of the Rule to a "breach" of a code of conduct that is "significant" would include non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark or the designated benchmark administrator.

Section 8 – Control framework

Section 8 of the Rule requires a designated benchmark administrator to establish a control framework to ensure that a designated benchmark is provided in accordance with the Rule. Similarly, subsection 24(2) of the Rule requires a benchmark contributor to a designated benchmark to establish controls reasonably designed to ensure the accuracy, reliability and completeness of each contribution of input data to the designated benchmark administrator, including controls that the input data is provided in accordance with the Rule.

We expect that the control framework provided for under subsection 8(2) of the Rule and the controls provided for under subsection 24(2) of the Rule will be proportionate to all of the following:

- the level of conflicts of interest identified in relation to the designated benchmark, the designated benchmark administrator or the benchmark contributor,
- the extent of expert judgment in the provision of the designated benchmark,
- the nature of the input data for the designated benchmark.

In establishing the control framework required under subsection 8(2) of the Rule, we would expect a designated benchmark administrator to consider what controls have been established by benchmark contributors under subsection 24(2) of the Rule.

The control framework and the controls used should be consistent with guidance published by a body or group that has developed the guidance through a process that includes the broad distribution of the proposed guidance for public comment.

Examples of suitable guidance that a designated benchmark administrator or a benchmark contributor could follow include:

(a) the *Risk Management and Governance: Guidance on Control* (COCO Framework) published by the Chartered Professional Accountants of Canada;

(b) the *Internal Control – Integrated Framework* (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and

(c) the *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* published by U.K. Financial Reporting Council.

These examples of suitable guidance include, in the definition or interpretation of "internal control", controls for compliance with applicable laws and regulations.

Subsection 8(5) – Reporting of significant security incident or systems issue

Subsection 8(5) of the Rule provides that a designated benchmark administrator must promptly provide written notice to the Director describing any security incident or any systems issue relating to a designated benchmark it administers, if a reasonable person would consider that the security incident or systems issue is significant. We consider a failure, malfunction, delay or other incident or issue to be a "significant security incident" or a "significant systems issue" if the designated benchmark administrator would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology.

Subsection 10(2) – Conflict of interest requirements for designated benchmark administrators

Subsection 10(2) of the Rule provides that a designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to keep separate, operationally, the business of the designated benchmark administrator relating to a designated benchmark, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated benchmark.

We expect that, when contemplating the nature and scope of such a conflict of interest, a designated benchmark administrator would consider a variety of matters, including the following:

- the provision of benchmarks often involves discretion in the determination of benchmarks and is inherently subject to certain types of conflicts of interest, which implies the existence of various opportunities and incentives to manipulate benchmarks, and
- in order to ensure the integrity of designated benchmarks, designated benchmark administrators should implement adequate governance arrangements to control such conflicts of interest and to safeguard confidence in the integrity of benchmarks.

For example, if the designated benchmark administrator does identify such a conflict of interest, the administrator should ensure that persons responsible for the administration of the designated benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities.

Subsection 11(1) – Reporting of contraventions

Subsection 11(1) of the Rule provides that a designated benchmark administrator must establish, document, maintain and apply systems and controls reasonably designed to detect and promptly report to the Director any conduct by a DBA individual or a benchmark contributor that might involve:

- manipulation or attempted manipulation of a designated benchmark, or
- provision or attempted provision of false or misleading information in respect of a designated benchmark.

As part of that reporting to the Director, we expect that the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the Director.

Paragraph 12(2)(c) – Complaint procedures

Paragraph 12(2)(c) of the Rule provides that a designated benchmark administrator must communicate the outcome of the investigation of a complaint to the complainant within a reasonable period.

We expect that, in establishing the policies and procedures for complaints relating to the designated benchmark required by subsection 12(1) of the Rule, the designated benchmark administrator would include a target timetable for investigating complaints.

A designated benchmark administrator may, on a case-by-case basis, apply for exemptive relief from paragraph 12(2)(c) of the Rule if such a communication to the complainant would be seriously prejudicial to the interests of the designated benchmark administrator or would violate confidentiality provisions.

Section 13 – Outsourcing

Section 13 of the Rule sets out requirements on outsourcing by a designated benchmark administrator. For purposes of Ontario commodity futures law, a designated benchmark administrator remains responsible for compliance with the Rule despite any outsourcing arrangement.

Section 13 does not apply to the oversight committees contemplated by the Rule.

Paragraph 13(2)(c) – Written agreement for outsourcing

Paragraph 13(2)(c) of the Rule provides that the policies and procedures of a designated benchmark administrator in relation to outsourcing must be reasonably designed to ensure that the designated benchmark administrator and the service provider enter into a written agreement that covers the matters set out in subparagraphs 13(2)(c)(i) to (vi). We consider the reference to "written agreement" to include one or more written agreements.

Where a benchmark administrator of a designated regulated-data benchmark uses the services of an agent to facilitate delivery of aggregate input data from multiple sources, we would not consider this to be outsourcing a function, service or activity in the provision of the designated benchmark. While such an arrangement would not be subject to section 13 of the Rule, the benchmark administrator would still be required to comply with other applicable provisions of the Rule, including the accountability framework in section 5 and the control framework in section 8, so it should have appropriate agreements in place with the agent.

PART 4
INPUT DATA AND METHODOLOGY

Subsection 15(2) – Significant breaches of code of conduct for a benchmark contributor

We consider that the reference in subsection 15(2) of the Rule to a "breach" of a code of conduct that is "significant" would include non-trivial breaches that could affect the designated benchmark, as determined, or the integrity or reputation of the designated benchmark or the designated benchmark administrator.

Subsection 15(3) – Requirement to obtain alternative representative data

Subsection 15(3) of the Rule provides that, in the event of a breach referred to in subsection 15(2), if a reasonable person would consider it to be appropriate, a designated benchmark administrator must obtain alternative representative data in accordance with the guidelines referred to in subsection 16(3) of the Rule. However, those guidelines may contemplate the circumstances in which the designated benchmark administrator may conclude that the other benchmark contributors from which it obtained input data are a sufficient representative sample of benchmark contributors for purposes of subsection 15(1) of the Rule.

Subsection 15(4) – Verification of input data from front office of a benchmark contributor

Paragraph 15(4)(a) of the Rule requires that, if input data is contributed from any front office of a benchmark contributor, or an affiliated entity that performs any activities that relate to or might affect the input data, the designated benchmark administrator must obtain information from other sources, if reasonably available, that confirms the accuracy and completeness of the input data in accordance with the benchmark administrator's policies and procedures.

There may be instances where there are no other sources of information reasonably available to the designated benchmark administrator to confirm the accuracy and completeness of the input data. We expect the designated benchmark administrator to consider the steps it would take to confirm the accuracy and completeness of such input data in such instances when establishing the policies, procedures and controls required under section 8 of the Rule.

Subsection 15(5) – Front office of a benchmark contributor

Subsection 15(5) of the Rule provides that "front office" of a benchmark contributor or an applicable affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.

Paragraph 16(1)(e) – Capability to verify determination under the methodology

Paragraph 16(1)(e) of the Rule provides that a determination under the methodology of a designated benchmark must be capable of being verified as being accurate, reliable and complete.

A determination under a methodology that is based on information such as input data would be verified as being accurate, reliable and complete if:

- it can be clearly linked to the original information, and
- it can be linked to complementary, but separate information.

For example, in the case of an interest rate benchmark that is determined daily and calculated as the arithmetic average of bid-side rates contributed by financial institutions that routinely accept bankers' acceptances and are market-makers in bankers' acceptances, the daily determination would be verified as being accurate, reliable and complete if:

- the calculation can be clearly linked to the rates contributed by the financial institutions and recorded by the benchmark administrator, and
- the benchmark administrator's record of the rates contributed by the financial institutions can be matched to the records of those rates maintained by the applicable financial institutions.

In the case of an interest rate benchmark, we recognize that any verification done by a designated benchmark administrator or a public accountant would require access to the records of benchmark contributors pursuant to subsection 39(8) of the Rule and may only be feasible if based on samples of rates on certain dates.

Paragraph 16(2)(a) – Applicable characteristics to be considered for the methodology

Paragraph 16(2)(a) of the Rule provides that a designated benchmark administrator must take into account, in the preparation of the methodology of a designated benchmark, all of the applicable characteristics of that part of the market or economy the designated benchmark is intended to represent.

In this context, we consider that "applicable characteristics" include:

- the size and reasonably expected liquidity of the market,
- the transparency of trading and the positions of participants in the market,
- market concentration,
- market dynamics, and
- the adequacy of any sample to reasonably represent that part of the market or economy the designated benchmark is intended to represent.

Subsection 17(2) – Proposed or implemented significant changes to methodology

Subsection 17(2) of the Rule provides that a designated benchmark administrator must provide for public notice of and comment on a proposed or implemented significant change to the methodology of a designated benchmark.

As part of the methodology disclosure required under section 18, paragraph 18(1)(e) of the Rule provides that a designated benchmark administrator must publish examples of the types of changes that may constitute a significant change to the methodology of the designated benchmark.

In general, we would consider a change to the methodology of a designated benchmark to be significant if, in the opinion of a reasonable person, it would have a significant effect on the provision of the designated benchmark (within the meaning of subsection 1(4) of the Rule).

We consider publication on the designated benchmark administrator's website of a proposed or implemented change to the methodology of a designated benchmark, accompanied by a news release advising of the publication of the proposed or implemented change, as sufficient notification in these contexts. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of such a publication by email.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the proposed or implemented change to the methodology of a designated benchmark on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subparagraph 18(1)(b)(v) – Methodology disclosure

As part of the methodology disclosure required under section 18, subparagraph 18(1)(b)(v) of the Rule provides that a designated benchmark administrator must publish a complete explanation of all elements of the methodology, including the benchmark contributors and the criteria used to determine eligibility of a benchmark contributor. This disclosure would include a list of existing benchmark contributors and may include a description of persons who may be benchmark contributors in the future.

Compliance with methodology

Several requirements in the Rule foster a designated benchmark administrator's compliance with its own benchmark methodology, including:

- paragraph 5(1)(b) – a designated benchmark administrator must establish, document, maintain and apply an accountability framework of policies and procedures that are reasonably designed to, for each designated benchmark it administers, ensure and evidence that it follows the methodology applicable to the designated benchmark;

- paragraph 6(3)(b) – at least once every 12 months, the compliance officer must submit a report to the designated benchmark administrator's board of directors that describes whether the designated administrator has followed the methodology applicable to each designated benchmark it administers;

- paragraph 8(4)(a) – a designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that benchmark contributors comply with the standards for input data in the methodology of the designated benchmark;

- paragraph 16(1)(c) – the accuracy and reliability of a methodology, with respect to determinations made under it, must be capable of being verified including, if appropriate, by back-testing; and

- paragraph 18(1)(c) – a designated benchmark administrator must publish the process for the internal review and approval of the methodology and the frequency of such reviews and approvals.

When complying with these requirements, a designated benchmark administrator should generally attempt to ensure that compliance with a benchmark methodology is monitored by staff that are independent of staff that determine and apply the methodology.

PART 5
DISCLOSURE

Subsection 19(1) – Benchmark statement

The elements of the benchmark statement, set out in paragraphs 19(1)(a) through (m) of the Rule, are designed to provide transparency to benchmark users to understand the purpose or intention of the benchmark, the limitations of the benchmark, and how the designated benchmark administrator will apply the methodology to provide the benchmark. In preparing the benchmark statement, a designated benchmark administrator should attempt to ensure that benchmark users have sufficient information to understand what the benchmark is intended to represent and to make a decision on whether to use, or continue to use, the benchmark.

Paragraph 19(1)(a) – Applicable part of the market or economy for purposes of the benchmark statement

Paragraph 19(1)(a) of the Rule provides that a required element of the benchmark statement for a designated benchmark is a description of that part of the market or economy the designated benchmark is intended to represent. This relates to the benchmark's purpose.

For example, an interest rate benchmark may be intended to represent the cost of unsecured interbank lending and may be intended to be used as a benchmark interest rate in interbank loan agreements. In this example, we consider it problematic if

- the type of prime bank lending rate the benchmark is intended to record is unclear, or

- the calculation method does not work well in periods of low liquidity.

Subsection 20(2) – Significant change to designated benchmark

Subsection 20(2) of the Rule provides that a designated benchmark administrator must publish the procedures it will follow in the event of a significant change to or the cessation of a designated benchmark it administers, including procedures for advance notice of the implementation of a significant change or a cessation. We would consider a change in the person or company acting as the benchmark administrator of a designated benchmark to be an example of a significant change. Consequently, we would expect the designated benchmark administrator's procedures to include procedures in the event of a change in the administrator of a designated benchmark it administers, including procedures for advance notice of the change in administrator.

PART 6
BENCHMARK CONTRIBUTORS

General

Part 6 of the Rule contains provisions that apply in respect of benchmark contributors to a designated benchmark. There are also specific requirements that apply to:

- benchmark contributors to a designated critical benchmark (see sections 30 and 33 of the Rule), and

- benchmark contributors to a designated interest rate benchmark (see sections 37, 38 and 39 of the Rule).

Ontario commodity futures law defines "benchmark contributor" as a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark. This definition includes

a person or company that provides information in respect of a designated benchmark, whether voluntarily, by way of contract or otherwise.

Ontario commodity futures law provides that the Commission may, in response to an application by the Director, require a person or company to provide information to a designated benchmark administrator in relation to a designated benchmark if it is in the public interest to do so. For example, a person or company may be required to provide information to a designated benchmark administrator for the purpose of determining a designated critical benchmark. In such a case, the person or company would be a benchmark contributor, and would therefore be subject to the provisions of the Rule applicable to benchmark contributors generally and the provisions applicable to benchmark contributors to a designated critical benchmark. However, certain of those provisions only apply if input data is considered to have been contributed within the meaning of subsection 1(3) of the Rule.

Subsection 23(1) – Code of conduct for benchmark contributors

The requirement in subsection 23(1) of the Rule for a designated benchmark administrator to establish, document, maintain and apply a code of conduct that specifies the responsibilities of benchmark contributors with respect to the contribution of input data for the designated benchmark only applies if a designated benchmark is determined using input data from benchmark contributors. Subsection 1(3) of the Rule sets out when input data is considered to have been contributed and Part 1 of this Policy provides further guidance on subsection 1(3) of the Rule and when input data is considered to have been contributed.

Subparagraph 23(2)(f)(v) – Validation of input data before contribution

In considering any requirement for procedures, systems and controls under subparagraph 23(2)(f)(v), we expect a designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy and completeness of input data. For example, depending on the specific nature of the designated benchmark, it may be appropriate to require an individual with appropriate knowledge holding a position senior to that of the contributing individual to sign-off on input data before it is contributed to the designated benchmark administrator.

Subparagraph 23(2)(f)(vii) – Input data that is inaccurate, unreliable or incomplete

Subparagraph 23(2)(f)(vii) of the Rule requires that a code of conduct for a benchmark contributor include a reporting requirement for any instance when a reasonable person would consider that a contributing individual, acting on behalf of the benchmark contributor or any other benchmark contributor, has contributed input data that is inaccurate, unreliable or incomplete. In establishing these requirements, we expect the designated benchmark administrator to consider providing indicators that could be used to identify input data that is inaccurate, unreliable or incomplete, based on past experience. The indicators should reasonably reflect the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark.

Subparagraph 23(2)(f)(x) – Access to board of directors

Subparagraph 23(2)(f)(x) of the Rule requires that a code of conduct for a benchmark contributor include a requirement that the benchmark contributor's designated officer referred to in subparagraph 23(2)(f)(ix) and the benchmark contributor's chief compliance officer not be prevented or restricted from directly accessing the benchmark contributor's board of directors. In some instances, the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance officer will be the same person. However, if they are different persons, each must be provided with direct access to the benchmark contributor's board of directors. However, we realize that there may be situations where the designated officer under subparagraph 23(2)(f)(ix) and the chief compliance officer may jointly or separately report to the benchmark contributor's board of directors on a matter.

Subsection 23(3) – Assessment of compliance with code of conduct

In establishing the policies and procedures required under subsection 23(3) of the Rule, we expect the designated benchmark administrator to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark. For example, the policies and procedures may include the use of verification certificates signed by an officer of the benchmark contributor and on-site inspections by internal compliance staff that are independent from the business unit whose activities are subject to the code of conduct.

Paragraph 24(1)(a) – Conflict of interest requirements for benchmark contributors

Paragraph 24(1)(a) of the Rule provides that a benchmark contributor to a designated benchmark must establish, document, maintain and apply policies and procedures reasonably designed to ensure input data contributed by the benchmark contributor is not affected by any conflict of interest or potential conflict of interest involving the benchmark contributor and its employees, officers, directors or agents, if a reasonable person would consider that the input data might be inaccurate, unreliable or incomplete.

We expect that, when establishing these policies and procedures, a benchmark contributor would consider the following:

- benchmark contributors of input data to benchmarks can often exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation, and
- consequently, conflicts of interest must be managed or mitigated to ensure they do not affect input data.

For example, if the benchmark contributor does identify such a conflict of interest involving other business activity, the contributor should ensure that persons responsible for the contribution of input data to a designated benchmark administrator for the purpose of determining a designated benchmark:

- are located in a secure area apart from persons that carry out the other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to the other business activity.

Subsection 24(2) – Accuracy, reliability and completeness of input data

In establishing the policies, procedures and controls required under subsection 24(2) of the Rule, subject to any requirements set out in the code of conduct established under section 23 of the Rule, we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and what systems and controls would ensure the accuracy, reliability and completeness of input data. For example, depending on the specific nature of the designated benchmark, it may be appropriate to require an individual with appropriate knowledge holding a position senior to that of the contributing individual to sign-off on input data before it is contributed to the designated benchmark administrator.

In addition, as contemplated by subparagraph 24(2)(d)(i) of the Rule, the extent of organizational separation of contributing individuals from employees whose responsibilities include transacting in a contract, derivative, instrument or security that uses the designated benchmark for reference should be appropriate to avoid the conflicts of interest or mitigate the risks resulting from conflicts of interest. Depending on the specific nature of the designated benchmark and the related conflicts of interest and risks, this may involve restricting access to certain information or restricting access to certain areas of the organization.

Subsection 24(3) – Exercise of expert judgment

In establishing the policies and procedures required under paragraph 24(3)(a), we expect a benchmark contributor to consider the specific nature of the designated benchmark, including the complexity, use and vulnerability of the designated benchmark and the nature of its input data.

As described in Part 1 of this Policy, expert judgment may involve various activities. Paragraph 24(3)(b) of the Rule requires that, if expert judgment is exercised in relation to input data, the benchmark contributor must retain records that record the rationale for any decision made to exercise that expert judgment, the rationale applied in the exercise of the expert judgment and the manner of the exercise of the expert judgment. The records should take into consideration the benchmark contributor's policies and procedures for the exercise of expert judgment.

Subsection 24(4) – Record keeping by benchmark contributor

The reference to "communications" in paragraph 24(4)(a) of the Rule includes telephone conversations, email and other electronic communications. We consider this to require a benchmark contributor to a designated benchmark to keep audio recordings of all phone conversations and voicemail messages in relation to the contribution of input data. Furthermore, a benchmark contributor to a designated benchmark should retain records of call logs and notes of phone conversations or voicemail messages in relation to the contribution of input data.

The records kept by a benchmark contributor under subsection 24(4) of the Rule may be required to be made available to the designated benchmark administrator under subsection 24(5). Given that the records may contain confidential, sensitive or proprietary information, we expect that a designated benchmark administrator will only request such records in connection with the review and supervision of the provision of the designated benchmark and will take appropriate steps to ensure the confidential treatment of such information.

Section 25 – Compliance officer for benchmark contributors

Subsection 25(1) of the Rule provides that a benchmark contributor that contributes input data for a designated benchmark must designate an officer to be responsible for monitoring and assessing compliance by the benchmark contributor and its employees with the code of conduct referred to in section 23, the Rule and Ontario commodity futures law relating to benchmarks. The officer can conduct these activities on a part-time basis but should be independent from persons involved in determining or contributing input data.

Subsection 25(2) of the Rule requires a benchmark contributor to not prevent or restrict the designated officer referred to in subsection 25(1) and the benchmark contributor's chief compliance officer from directly accessing to the benchmark contributor's board of directors. In some instances, the designated officer under subparagraph 25(1) and the chief compliance officer will be the same person. However, if they are different persons, each must be provided with direct access to the benchmark contributor's board of directors. However, we realize that there may be situations where the designated officer under subparagraph 25(1) and the chief compliance officer may jointly or separately report to the benchmark contributor's board of directors on a matter.

PART 7
RECORD KEEPING

Section 26 – Record keeping by designated benchmark administrator

The reference to "communications" in paragraph 26(2)(h) of the Rule includes telephone conversations, email and other electronic communications. We consider this to require a designated benchmark administrator to keep audio recordings of all phone conversations and voicemail messages with benchmark contributors in relation to the contribution of input data. Furthermore, a designated benchmark administrator should retain records of call logs and notes of phone conversations or voicemail messages with benchmark contributors in relation to the contribution of input data.

In addition to the record keeping requirements in the Rule, Ontario commodity futures law generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with Ontario commodity futures law.

PART 8
DIVISION 1 – DESIGNATED CRITICAL BENCHMARKS

Section 30 – Ceasing to contribute input data to a designated critical benchmark

Section 30 of the Rule provides the process for a benchmark contributor to cease to contribute input data to a designated critical benchmark. After the benchmark contributor has provided notice to the designated benchmark administrator that it will cease to contribute input data, subsection 30(2) of the Rule requires the benchmark contributor to continue contributing input data for a period not exceeding 6 months. This is to provide a transition to protect the accuracy and integrity of the designated critical benchmark.

Subparagraph 30(3)(b)(ii) of the Rule permits the designated benchmark administrator to notify the benchmark contributor that it must continue contributing input data for a period of less than 6 months. We expect that a designated benchmark administrator will determine the date of expiry of this period by considering the assessment, submitted to the Director under subparagraph 30(3)(b)(i) of the Rule, of the impact of the benchmark contributor ceasing to contribute input data on the capability of the designated critical benchmark to accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent. We also expect that the period for which a benchmark contributor must continue contributing input data will be as short as practical while ensuring that the designated benchmark still accurately represents that part of the market or economy the designated benchmark is intended to represent.

Ontario commodity futures law also provides the Commission with the ability to require a benchmark contributor to provide information to a designated benchmark administrator in relation to a designated benchmark if it would be in the public interest to do so.

DIVISION 2 – DESIGNATED INTEREST RATE BENCHMARKS

Section 34 – Order of priority of input data

Section 34 of the Rule requires that, if a designated interest rate benchmark is based on a contribution of input data from a benchmark contributor, input data for the determination of the designated interest rate benchmark must be used by the designated benchmark administrator in accordance with the order of priority specified in the methodology of the designated interest rate benchmark. We would generally expect that the methodology of such a designated interest rate benchmark would use the following types of input data, as applicable, in the order of priority set out below:

(a) a benchmark contributor's transaction data in the underlying market that the designated interest rate benchmark intends to represent;

(b) if the input data referred to in paragraph (a) is not available, executable quotes in the market described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available, indicative quotes in the market described in paragraph (a);

(d) if the input data referred to in paragraphs (a), (b) and (c) is not available, a benchmark contributor's observations of third-party transactions in markets related to the market described in paragraph (a);

(e) in any other case, expert judgments.

We consider an "executable quote" (also known as a "committed quote") to be a quote that is actionable for the other party to the potential transaction. The party that provides that quote announces their willingness to enter into transactions at the relevant bid and ask prices and agree that if they do transact, they will do so at the quoted price up to the maximum quantity specified in the quote.

We consider "indicative quote" to be a quote that is not immediately actionable by the other party to the potential transaction. Indicative quotes are usually provided before the parties negotiate the price or quantity at which the potential transaction will occur.

A designated interest rate benchmark may be based on contributions of input data from benchmark contributors that represent the interest rate at which the benchmark contributor is willing to lend funds to its customers.

In the context of section 34 of the Rule, for the purposes of subsections 14(1) and (3) of the Rule, input data for a designated interest rate benchmark may be adjusted, if contemplated by the methodology for the designated interest rate benchmark, to more accurately represent that part of the market or economy that the designated interest rate benchmark is intended to represent, including, but not limited to, where:

(a) the time of the transactions that are the basis for the input data is not sufficiently proximate to the time of contribution of the input data;

(b) a market event occurs between the time of the transactions and the time of contribution of the input data and the market event might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark;

(c) there have been changes in the credit risk of the benchmark contributors and other market participants that might, in the opinion of a reasonable person, have a significant impact on the designated interest rate benchmark.

Subsection 36(1) – Assurance report for designated interest rate benchmark

Subsection 36(1) of the Rule provides that a designated benchmark administrator must engage a public accountant to provide, as specified by the oversight committee referred to section 7, a limited assurance report on compliance, or a reasonable assurance report on compliance, regarding the designated benchmark administrator's compliance with certain sections of the Rule and following of the methodology of each designated interest rate benchmark it administers.

We note that the report required by subsection 36(1) is separate and different from the compliance report of the officer of the designated benchmark administrator required by paragraph 6(3)(b) of the Rule. A designated benchmark administrator for a designated interest rate benchmark must comply with the requirement in paragraph 6(3)(b) and with the requirement in subsection 36(1).

Subsection 39(4) – Record keeping by benchmark contributor

The reference to "communications" in paragraph 39(4)(d) of the Rule includes telephone conversations, email and other electronic communications. We consider this to require a benchmark contributor to a designated benchmark to keep audio recordings of all phone conversations and voicemail messages in relation to the contribution of input data. Furthermore, a benchmark contributor to a designated benchmark should retain records of call logs and notes of phone conversations or voicemail messages in relation to the contribution of input data.

5.1.5 Ontario Securities Commission Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission

CONSEQUENTIAL AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 11-501
ELECTRONIC DELIVERY OF DOCUMENTS TO THE ONTARIO SECURITIES COMMISSION

1. Ontario Securities Commission Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission is amended by this Instrument.

2. The following rows (except the first shaded row) are added, immediately after the row containing "*25-101F2*", to the table in Appendix A:

Document Reference	Description of Document
25-102F1	Form 25-102F1 *Designated Benchmark Administrator Annual Form*
25-102F2	Form 25-102F2 *Designated Benchmark Annual Form*
25-102F3	Form 25-102F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process*
25-501F1	Form 25-501F1 *Designated Benchmark Administrator Annual Form*
25-501F2	Form 25-501F2 *Designated Benchmark Annual Form*
25-501F3	Form 25-501F3 *Submission to Jurisdiction and Appointment of Agent for Service of Process*

3. This Instrument comes into force on July 13, 2021.

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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:
Canada Life Sustainable Balanced Portfolio
Canada Life Sustainable Conservative Portfolio
Canada Life Sustainable Global Bond Fund
Canada Life Sustainable Global Equity Fund
Canada Life Sustainable Growth Portfolio
Canada Life Sustainable U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jul 7, 2021
NP 11-202 Preliminary Receipt dated Jul 8, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3247848

Issuer Name:
PIMCO Diversified Multi-Asset Fund (Canada)
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jul 6, 2021
NP 11-202 Final Receipt dated Jul 7, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3235206

Issuer Name:
Hamilton Enhanced Canadian Bank ETF (formerly Hamilton Canadian Bank 1.25x Leverage ETF)
Hamilton Enhanced Multi-Sector Covered Call ETF
Hamilton U.S. Financials Dividend Index ETF
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Jul 8, 2021
NP 11-202 Final Receipt dated Jul 9, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3237491

Issuer Name:
CI Canadian Equity Index ETF
CI Emerging Markets Alpha ETF
CI Global Alpha Innovation ETF
CI Global Healthcare Leaders Index ETF
CI U.S. 1000 Index ETF
CI U.S. 500 Index ETF
CI U.S. Treasury Inflation-linked Bond Index ETF (CAD Hedged)
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Jul 7, 2021
NP 11-202 Preliminary Receipt dated Jul 7, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3247654

Issuer Name:
CI Global Climate Leaders Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jul 5, 2021
NP 11-202 Final Receipt dated Jul 6, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3220939

Issuer Name:
Picton Mahoney Fortified Active Extension Alternative Fund
Picton Mahoney Fortified Income Alternative Fund
Picton Mahoney Fortified Long Short Alternative Fund
Picton Mahoney Fortified Market Neutral Alternative Fund
Picton Mahoney Fortified Multi-Strategy Alternative Fund
Picton Mahoney Fortified Special Situations Alternative Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jul 8, 2021
NP 11-202 Final Receipt dated Jul 12, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3235184

Issuer Name:
Mackenzie - IG Equity Hedge Pool
Principal Regulator – Manitoba
Type and Date:
Preliminary Simplified Prospectus dated Jul 2, 2021
NP 11-202 Final Receipt dated Jul 9, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3225985

Issuer Name:
CI Alternative North American Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jul 5, 2021
NP 11-202 Final Receipt dated Jul 6, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3224269

Issuer Name:
Mackenzie CL Global Resource LP (formerly Mackenzie CL US All Cap Growth LP)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated July 2, 2021
NP 11-202 Final Receipt dated Jul 9, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3170378

NON-INVESTMENT FUNDS

Issuer Name:
Avant Brands Inc. (formerly GTEC Holdings Inc.)
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated July 12, 2021
NP 11-202 Preliminary Receipt dated July 12, 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 #3248720

Issuer Name:
Brookfield Infrastructure Partners L.P.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 7, 2021
NP 11-202 Preliminary Receipt dated July 7, 2021
Offering Price and Description:
US$4,000,000,000.00 - Limited Partnership Units, Class A Preferred Limited Partnership Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3247711

Issuer Name:
Cardiol Therapeutics Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 7, 2021
NP 11-202 Preliminary Receipt dated July 8, 2021
Offering Price and Description:
$100,000,000.00 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
David Elsley
Project #3247731

Issuer Name:
Crescent Point Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated July 8, 2021
NP 11-202 Preliminary Receipt dated July 8, 2021
Offering Price and Description:
$350,000,000.00 - Common Shares Warrants Subscription Receipts Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3248008

Issuer Name:
Eat Beyond Global Holdings Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated July 9, 2021
NP 11-202 Preliminary Receipt dated July 9, 2021
Offering Price and Description:
$25,000,000.00 - Common Shares Warrants Subscription Receipts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3248438

Issuer Name:
Gatos Silver, Inc. (formerly Sunshine Silver Mining & Refining Corporation)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 12, 2021
NP 11-202 Preliminary Receipt dated July 12, 2021
Offering Price and Description:
US$500,000,000.00 - COMMON SHARES PREFERRED SHARES WARRANTS SUBSCRIPTION RECEIPTS DEBT SECURITIES CONVERTIBLE SECURITIES UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3248638

Issuer Name:
Intellabridge Technology Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated June 30, 2021
NP 11-202 Preliminary Receipt dated July 6, 2021
Offering Price and Description:
$50,000,000.00 - Common Shares Warrants Subscription Receipts Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3245606

Issuer Name:
Marwest Apartment Real Estate Investment Trust
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated July 6, 2021
NP 11-202 Preliminary Receipt dated July 7, 2021
Offering Price and Description:
$● (● Offered Units) (Minimum) $● (● Offered Units) (Maximum) Each Offered Unit comprised of one (1) Trust Unit and one (1) Warrant
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
iA PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
RICHARDSON WEALTH LIMITED
WELLINGTON-ALTUS PRIVATE WEALTH INC.
Promoter(s):
-
Project #3247418

Issuer Name:
Mayo Lake Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated July 7, 2021
NP 11-202 Preliminary Receipt dated July 8, 2021
Offering Price and Description:
Minimum Offering: $750,000.00
Maximum Offering: $1,500,000.00 Up to 7,000,000 FT Units Price per FT Unit: $0.15 Up to 12,500,000 Units Price per Unit: $0.12
Underwriter(s) or Distributor(s):
StephenAvenue Securities Inc.
Promoter(s):
Vernon Rampton
Project #3247793

Issuer Name:
Nexus Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 9, 2021
NP 11-202 Preliminary Receipt dated July 9, 2021
Offering Price and Description:
$300,000,000.00 - Trust Units Debt Securities Subscription Receipts Warrants Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3248384

Issuer Name:
Royal Wins Corporation (formerly 10557510 Canada Corp.)
Principal Regulator - Ontario
Type and Date:
Amendment dated July 9, 2021 to Preliminary Long Form Prospectus dated April 8, 2021
NP 11-202 Preliminary Receipt dated July 12, 2021
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Robert Fong
Lukie Ali
Peter Gan
Project #3203211

Issuer Name:
Traction Exploration Inc.
Principal Regulator - British Columbia
Type and Date:
Amendment dated July 7, 2021 to Preliminary Long Form Prospectus dated April 8, 2021
NP 11-202 Preliminary Receipt dated July 8, 2021
Offering Price and Description:
2,160,000 Common Shares and 2,160,000 Warrants on Exercise of 2,160,000 Outstanding Special Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
Michael Malana
Project #3203339

Issuer Name:
Converge Technology Solutions Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated July 12, 2021
NP 11-202 Receipt dated July 12, 2021
Offering Price and Description:
$1,000,000,000.00 - Common Shares Debt Securities Subscription Receipts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3243579

Issuer Name:
Enbridge Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated July 7, 2021
NP 11-202 Receipt dated July 7, 2021
Offering Price and Description:
$4,000,000,000.00 - MEDIUM TERM NOTES (UNSECURED)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3243576

Issuer Name:
Gatos Silver, Inc. (formerly Sunshine Silver Mining & Refining Corporation)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated July 12, 2021
NP 11-202 Receipt dated July 12, 2021
Offering Price and Description:
US$500,000,000.00 - COMMON SHARES PREFERRED SHARES WARRANTS SUBSCRIPTION RECEIPTS DEBT SECURITIES CONVERTIBLE SECURITIES UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3248638

Issuer Name:
Levitee Labs Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated July 9, 2021
NP 11-202 Receipt dated July 12, 2021
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Pouya Farmand
Project #3172670

Issuer Name:
Organto Foods Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated July 5, 2021
NP 11-202 Receipt dated July 6, 2021
Offering Price and Description:
C$50,000,000.00 - Common Shares Debt Securities Convertible Securities Warrants Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3238171

Issuer Name:
ProMIS Neurosciences Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated June 30, 2021
NP 11-202 Receipt dated July 7, 2021
Offering Price and Description:
US$50,000,000 Common Shares Warrants Units Debt Securities Subscription Receipts Convertible Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3234444

Issuer Name:
StorageVault Canada Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated July 12, 2021
NP 11-202 Receipt dated July 12, 2021
Offering Price and Description:
$50,000,000.00 - 5.50% Senior Unsecured Hybrid Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #3243353

Issuer Name:
Taura Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated July 6, 2021
NP 11-202 Receipt dated July 7, 2021
Offering Price and Description:
$750,000.00 - (5,000,000 COMMON SHARES)
Price: $0.15 per Offered Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Dominic Verdejo
Project #3222699

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Dealflow Solutions Ltd.	Restricted Dealer	July 7, 2021
Change in Registration Category	Hemisphere Capital Management Inc.	From: Investment Fund Manager and Portfolio Manager To: Portfolio Manager	July 8, 2021
Amalgamation	CI Investments Inc. and Lawrence Park Asset Management Ltd. The continuing entity: CI Investments Inc.	Commodity Trading Counsel, Commodity Trading Manager, Exempt Market Dealer, Investment Fund Manager and Portfolio Manager	July 1, 2021

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 Investment Industry Regulatory Organization of Canada (IIROC) – Housekeeping Amendments to Dealer Member Rules and IIROC Rules as Related to IIROC Notices 19-0071 and 19-0101 – Notice of Commission Deemed Approval

NOTICE OF COMMISSION DEEMED APPROVAL

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

HOUSEKEEPING AMENDMENTS TO
DEALER MEMBER RULES AND IIROC RULES AS RELATED TO
IIROC NOTICES 19-0071 AND 19-0101

The Ontario Securities Commission did not object to the classification of IIROC's proposed housekeeping amendments to Dealer Member Rules (DMR) and IIROC Rules as related to IIROC Notice 19-0071 – *Amendments Respecting Client Identifiers* and IIROC Notice 19-0101 – *Amendments to Provisions Respecting Order Execution Only Service Eligibility and Adviser Identifiers* (**Amendments**).

The Amendments consolidate previous amendments to certain DMR and IIROC Rules and make editorial changes, such as renumbering and updating cross-references.

Within the Amendments, the amendments to DMR will become effective on **July 26, 2021** and the amendments to the IIROC Rules will become effective later on **December 31, 2021**.

In addition, the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Financial and Consumer Services Commission of New Brunswick, the Manitoba Securities Commission, the Northwest Territories Office of the Superintendent of Securities, the Nova Scotia Securities Commission, the Nunavut Securities Office, the Office of the Superintendent of Securities, Service Newfoundland and Labrador, the Office of the Yukon Superintendent of Securities, and the Prince Edward Island Office of the Superintendent of Securities did not object to the housekeeping amendments.

A copy of the IIROC Notice of Approval/Implementation, including text of the approved amendments, can be found at www.osc.ca.

13.2 Marketplaces

13.2.1 Bloomberg Tradebook Canada Company – Notice of Completion of Staff Review of Initial Operation Report

BLOOMBERG TRADEBOOK CANADA COMPANY

NOTICE OF COMPLETION OF STAFF REVIEW OF INITIAL OPERATION REPORT

On May 13, 2021, Bloomberg Tradebook Canada Company (**Tradebook Canada**) announced its plans to begin operations as an Alternative Trading System and its Notice of Initial Operations was published for comment in accordance with OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes*. The public comment period ended on June 14, 2021. No comments were received.

OSC staff have completed the review of Tradebook Canada's Form 21-101F2 *Information Statement Alternative Trading System – Initial Operation Report* and have no further comments.

Tradebook Canada's investment dealer registration is subject to the following term and condition:

> [Tradebook Canada] must report trades in unlisted debt securities, as that term is defined in National Instrument 21-101 *Marketplace Operation*, and any debt securities denominated in Canadian dollars to IIROC (as information processor) only with respect to transactions in which neither participant to the trade is (i) a bank listed in Schedule I, II, or III of the *Bank Act* (Canada), or (ii) an IIROC Dealer Member firm.

13.2.2 Bloomberg Tradebook Canada Company – Description of Initial Operations

BLOOMBERG TRADEBOOK CANADA COMPANY

DESCRIPTION OF INITIAL OPERATIONS

Bloomberg Tradebook Canada Company ("**Tradebook Canada**") will operate an alternative trading system in Ontario, Québec and Nova Scotia (each a "**Canadian Jurisdiction**" and collectively referred to as the "**Canadian Jurisdictions**") to provide participants in those Canadian Jurisdictions with access to the multilateral trading facilities operated by its affiliated entities, Bloomberg Trading Facility Limited ("**BTFL**") and Bloomberg Trading Facility B.V. ("**BTF BV**"), and the organized market operated by its affiliated entity, Bloomberg Tradebook Singapore Pte Ltd. ("**BTSPL**") (each a "**System**" and collectively referred to as the "**Systems**"), to trade Canadian Debt Securities (as defined below).

Canadian Participants of Tradebook Canada

Tradebook Canada will provide access to Canadian Participants that may include a wide range of sophisticated entities, including commercial and investment banks, corporations, pension funds, money managers, proprietary trading firms, hedge funds and other institutional customers.

Tradebook Canada will provide access to the Systems to participants that (1) are located in a Canadian Jurisdiction, including participants with their headquarters or legal address in a Canadian Jurisdiction (as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Canadian Jurisdiction branches of Canadian Jurisdiction legal entities), as well as any trader physically located in a Canadian Jurisdiction who conducts transactions on behalf of any other entity ("**Canadian Participants**"), and (2) qualify as "institutional customers" as defined in Rule 1 of the Investment Industry Regulatory Organization of Canada ("**IIROC**") Rules.

Securities Traded Through Tradebook Canada

Tradebook Canada will support the trading of Canadian dollar denominated debt securities issued by (1) an issuer incorporated, formed or created under the laws of Canada or a jurisdiction of Canada, or (2) the Government of Canada or the government of a jurisdiction of Canada ("**Canadian Debt Securities**"), including:

(a) debt securities issued or guaranteed by the Government of Canada or the government of a jurisdiction of Canada (including agencies or instrumentalities thereof);

(b) debt securities issued or guaranteed by a municipal corporation in Canada;

(c) debt securities issued or guaranteed by Canadian corporate or other non-governmental issuers; and

(d) asset-backed securities (including mortgage backed securities) and collateralized mortgage obligations issued or guaranteed by a Canadian issuer, denominated in the Canadian dollar.

Access to the System Operated by BTSPL Through Tradebook Canada

BTFL, BTF BV and BTSPL have obtained or will seek exemptions from the exchange requirement in the Canadian Jurisdictions to provide Canadian Participants with direct access to their respective Systems to trade IRS, CDS, FX and Foreign Debt Securities (as defined below).

"**IRS**" are interest rate swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act.

"**CDS**" are credit default swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act.

"Foreign Debt Securities" are any debt security (as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**")) that is a foreign security (as defined in NI 31-103) or a debt security that is denominated in a currency other than the Canadian dollar, including:

(a) debt securities issued by the U.S. government (including agencies or instrumentalities thereof);

(b) debt securities issued by a foreign government;

(c) debt securities issued by corporate or other non-governmental issuers (U.S. and foreign); and

(d) asset-backed securities (including mortgage backed securities), denominated in either U.S. or foreign currencies.

"**FX**"[1] are:

(a) foreign exchange swaps, as defined in section 1a(47) of the U.S. Commodity Exchange Act (but without regard to any exclusions from the definition).

With respect to the System operated by BTSPL only, Tradebook Canada will also provide Canadian Participants located in Ontario ("**Ontario Participants**") with access to negotiate trades in IRS, CDS and Foreign Debt Securities starting on September 13, 2021 until the date that BTSPL has been granted an exemption order by the Ontario Securities Commission from the exchange recognition requirement in Ontario. Access to negotiate trades in FX (including precious metals swaps, deposits and foreign exchange spot) on the System operated by BTSPL is expected to be available by October 1, 2021.

Bloomberg Compliance will conduct post-trade monitoring of Ontario Participant and their counterparty trading activity for compliance with the applicable registration requirements under Ontario securities laws with respect to IRS, CDS, FX and Foreign Debt Securities.

Access to Tradebook Canada and the Systems

Canadian Participants may access Tradebook Canada and transact using the Systems via an approved service provider (Bloomberg Terminal access is provided this way), via application programming interface ("**API**"), a non-Bloomberg API or venue Direct Portal, as applicable.

For more information on the functionality of the Systems, please refer to Tradebook Canada's Notice of Initial Operations and Description of Operations published in the May 13, 2021 *OSC Bulletin* and available on the OSC website www.osc.ca.

[1] FX also includes precious metals swaps, deposits and foreign exchange swaps for BTSPL only under the arrangement described above.

Chapter 25

Other Information

25.1 Consents

25.1.1 Bullet Exploration Inc. – s. 4(b) of Ont. Reg. 289/00 under the OBCA

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (British Columbia).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
R.R.O 1990, REGULATION 289/00, AS AMENDED
(the REGULATION)
MADE UNDER THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c.B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
BULLET EXPLORATION INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Bullet Exploration Inc. (formerly CHC Student Housing Corp.) (the **Applicant**) to the Ontario Securities Commission (the **Commission**) requesting a consent from the Commission, as required under subsection 4(b) of the Regulation, for the Applicant to continue into the province of British Columbia pursuant to section 181 of the OBCA;

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is an offering corporation under the OBCA.

2. The Applicant was incorporated under the OBCA as CHC Realty Capital Corp. pursuant to a Certificate of Incorporation dated April 12, 2013. On February 19, 2015, the Applicant changed its name from CHC Realty Capital Corp. to CHC Student Housing Corp. On October 1, 2020, the Applicant was amalgamated with its subsidiaries and continued as CHC Student Housing Corp. In connection with the Transaction (as defined below), the Applicant's name was changed to Bullet Exploration Inc. on March 25, 2021.

3. The Applicant's registered office is located at 1 First Canadian Place, 100 King Street West, Suite 6000, Toronto, Ontario M5X 1E2.

4. The Applicant's common shares (the **Common Shares**) are listed and posted for trading on the TSX Venture Exchange (the **Exchange**) under the symbol "AMMO"

5. The authorized share capital of the Applicant consists of an unlimited number of Common Shares. As at March 26, 2021, the Applicant had 18,716,465 Common Shares issued and outstanding.

6. The Applicant intends to apply (the **Application for Continuance**) to the Director (as defined in the OBCA) for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia), S.B.C., 2002, c. 57, as amended (the **BCBCA**) pursuant to section 181 of the OBCA.

7. Pursuant to subsection 4(b) of the Regulation, where a corporation is an "offering corporation" (as defined in the OBCA), the Application for Continuance must be accompanied by a consent from the Commission.

8. The Applicant is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the **Act**), the *Securities Act*, R.S.B.C. 1996, c. 418 (the **BC Act**) and the *Securities Act*, R.S.A. 2000, C. S-4, as amended (the **Alberta Act** and together with the Act and the BC Act, the **Legislation**) and will remain a reporting issuer in these jurisdictions following the proposed Continuance.

9. The Applicant is not in default under any provision of the OBCA or the Legislation, including any of the regulations or rules made thereunder.

10. The Applicant is not a party to any proceeding or, to the best of its knowledge, information and belief, any pending proceeding under the OBCA or the Legislation.

11. The Application for Continuance is being made in connection with the reverse takeover transaction (the **Transaction**) completed on March 26, 2021 involving the Applicant, 2294253 Alberta Ltd., a corporation incorporated under the *Business Corporations Act* (Alberta) (**Target Company**) and the Target Company's shareholders, pursuant to which the Applicant acquired all of the issued and outstanding shares of the Target Company and the Target Company shareholders received shares of the Applicant.

12. The Applicant's management information circular dated December 8, 2020 for its annual general and special meeting of shareholders, held on January 6, 2021 (the **Shareholders Meeting**) described the proposed Continuance, disclosed the reasons for, and the implications of, the proposed Continuance. It also disclosed full particulars of the dissent rights of the Applicant's shareholders under section 185 of the OBCA and included a summary comparison of the differences between the OBCA and the BCBCA.

13. The Applicant's shareholders approved the Continuance at the Shareholders Meeting by a special resolution. The special resolution authorizing the Continuance was approved by 79.47% of the votes cast. No shareholder exercised dissent rights pursuant to section 185 of the OBCA.

14. The Commission is the principal regulator of the Applicant.

15. The Applicant's registered office is currently in Ontario and its head office is in Alberta. Following the proposed Continuance, the Applicant's registered office will be moved to British Columbia. The Applicant intends to have the Alberta Securities Commission be its principal regulator.

16. In connection with the Transaction, the Applicant is expected to complete the Continuance under the BCBCA. The Continuance is being proposed by the Applicant as it believes that the BCBCA provides additional flexibility compared to the OBCA, including with respect to the composition of the Applicant's board of directors going forward. This will allow the Applicant's board of directors to consider candidates for the Applicant's board of directors from a larger pool of candidates that includes candidates from outside of Canada in order to have the right composition, skills, expertise and diversity to drive long-term value.

17. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the Continuance of the Applicant under the BCBCA.

DATED at Toronto, Ontario this 21st day of April, 2021.

"Lawrence Haber"
Commissioner
Ontario Securities Commission

"Craig Hayman"
Commissioner
Ontario Securities Commission

OSC File #: 2021/01079

Index

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