The Ontario Securities Commission

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

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Notices

1.1 Notices

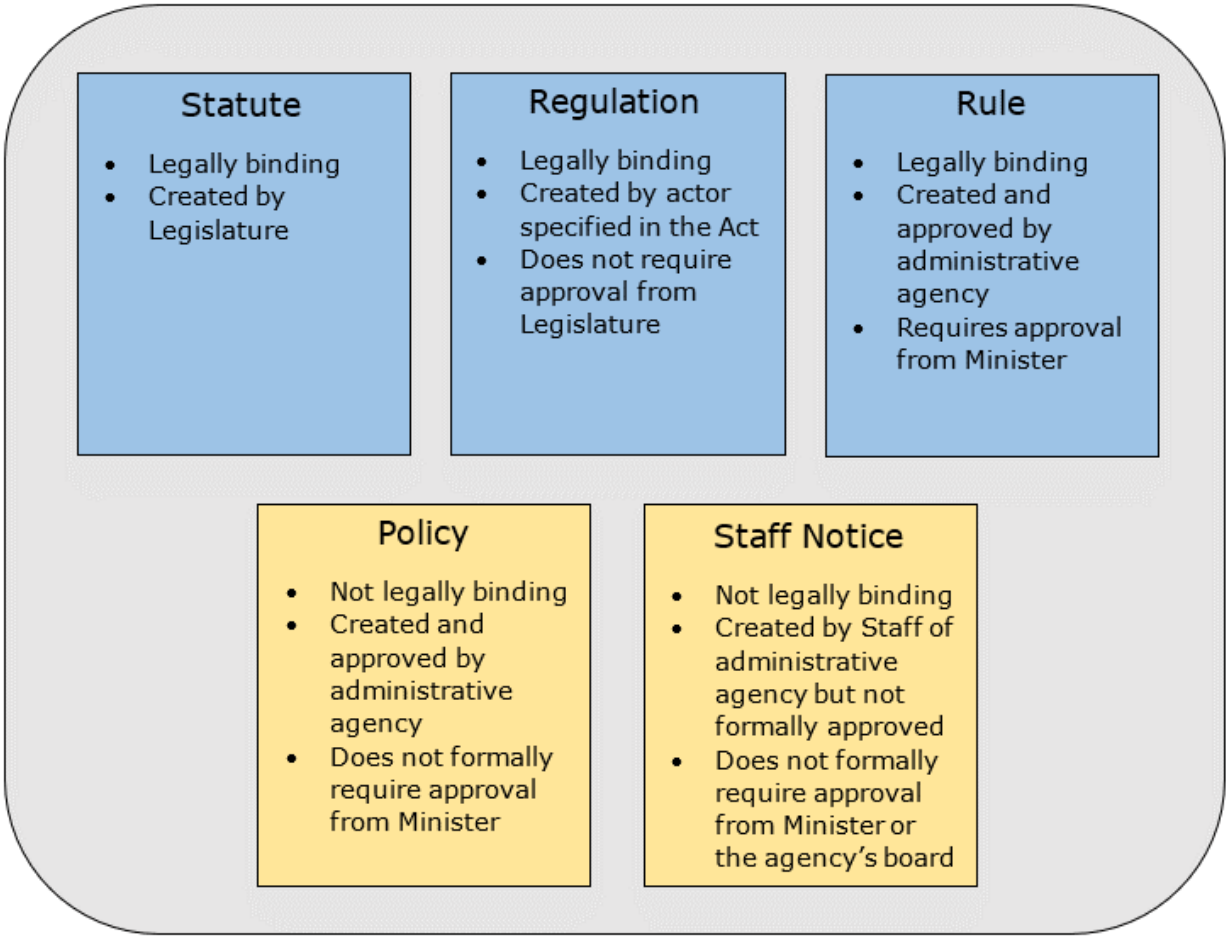
1.1.1 OSC Staff Notice 11-793 Hierarchy of Regulatory Instruments in Securities Law

OSC STAFF NOTICE 11-793
HIERARCHY OF REGULATORY INSTRUMENTS IN SECURITIES LAW

In November 2018 the Ontario Securities Commission (the **Commission**) created a burden reduction task force to refocus our efforts on reducing unnecessary regulatory burden. Consultations were launched on January 14, 2019, with the publication of OSC Staff Notice 11-784 Burden Reduction.

During the public consultations, several market participants expressed a concern that the difference between rules, or legal requirements, and guidance is not always clear. This staff notice clarifies the differences between each regulatory instrument and serves as an informational resource for Commission regulatory staff and market participants.

Securities regulators deploy several different types of instruments to govern the conduct of regulated persons and entities. However, not all regulatory instruments have the same legal authority. As illustrated in the diagram below, statutes, regulations, and rules are all legally binding. The requirements set out in these instruments are mandatory and failure to comply may result in enforcement action. Conversely, guidance published by the Commission or staff of the Commission (**Staff**) is instructive in nature and is not legally binding.



Statutes & Regulations

The Commission administers the *Securities Act* (Ontario) and its *General Regulation*, as well as the *Commodity Futures Act* (Ontario) and its *General Regulation*. These provincial statutes and regulations are legally binding.

Statute

A statute or "Act" is a law passed by the provincial Legislature. The legislative process in Ontario generally requires:

- a first reading where a bill is introduced, and its purpose is explained;
- a second reading where members of the Legislature debate and vote on the bill;
- a committee examination of the bill clause-by-clause;
- a report to the House and order for a third reading;
- a third reading where members vote on whether the bill will be passed; and
- royal assent where the Lieutenant Governor signs the bill.

A bill's provisions can come into force on royal assent, on a specified date, or on proclamation. Some bills are never proclaimed and therefore never become law.

Regulation

A regulation is a law that is made by a person or body whose authority to make such law is set out in a statute. The authority to make regulations is typically provided to the Lieutenant Governor in Council. However, in some statutes, this authority is given to a Minister or to another government official or body.

Regulations are created by the Ontario government ministry that is responsible for administering the parent statute, and are passed by Order in Council. Approval from the Legislature is not required for the creation of a new regulation.

Rules

The Legislature has given the Commission explicit authority to make rules in subject areas enumerated in the *Securities Act*.[1] Rules are drafted by the Commission, are often required to be published for public comment, and require Ministerial approval.[2]

Because securities regulation is provincial, rules are made under each province or territory's *Securities Act* or equivalent. In the rare instance where only the Commission makes a rule, this is called a local rule.

More commonly, Canadian securities regulators harmonize rules. As a result, most rules appear as national instruments, which apply to all Canadian jurisdictions uniformly, subject to local carveouts. There are also multilateral instruments, which apply only in the subscribing jurisdictions. National instruments and multilateral instruments are essentially consolidations of local rules.

Before the Commission publishes for comment a new rule (or an amendment to an existing rule) dealing with a novel or complex issue, it may publish a consultation paper and request comments. This initial consultation enables the Commission to better understand the need for the new rule or amendment and the potential market impacts.

Following the consultation period, Staff drafts the proposed rule or amendment and the Commission publishes it for comment, unless an exception to the publication requirement applies.[3] In Ontario, the publication must include:

- the proposed rule;
- a statement of the substance and purpose of the proposed rule;
- a summary of the rule;
- a discussion of all alternatives to the proposed rule that were considered and reasons for not proposing their adoption;

1 *Securities Act*, RSO 1990, c S.5, s 143(1) [*Securities Act*]. Note, the *Commodity Futures Act* provides the Commission with similar rule-making authority and process requirements.
2 *Securities Act,* ss 143.2-143.6.
3 *Securities Act*, s 143.2(5).

- a qualitative and quantitative analysis of the anticipated costs and benefits of the rule; and
- a reference to the authority under which the rule is to be made.[4]

The public is provided at least 90 days to consider a proposed rule and to submit comments to the Commission. If the Commission makes material amendments to a proposed rule after the initial comment period, the Commission must republish the proposed rule for a second comment period.[5]

For a rule to come into force, the Commission must approve the rule in its final form and deliver it to the Minister of Finance for review.[6] Within 60 days after a rule is delivered to the Minister, the Minister may approve or reject the rule, or return it to the Commission for further consideration.[7] If the Minister does not approve, reject or return the rule, it becomes effective 15 days following the conclusion of the 60-day period unless there is a later effective date specified in the rule.[8] The Commission must publish every rule that comes into force in The Ontario Gazette and in its Bulletin.

Guidance

The Commission produces two types of non-binding guidance: policies and staff notices. These are intended to be instructive and to provide regulated persons and entities with insight into how the requirements are applied.

Like rules, policies and staff notices may apply at the national or local level. National policies and companion policies to a national instrument apply to all Canadian jurisdictions. The Commission can issue local policies that apply only within Ontario.

Regulated persons and entities may also be guided by decisions of the OSC Tribunal, although these decisions are not formally binding on persons or entities who were not parties to the proceeding before the Tribunal.

Policies

The *Securities Act* authorizes the Commission to adopt policies of a non-binding nature, including the Commission's interpretations of rules.[9] A policy is generally used to address issues that occur frequently or have a broad impact on market participants.

Unlike staff notices, policies must be approved by the Commission and must be published for comment. Publication is not required if the proposed policy would make no material substantive change to an existing policy.[10] Following the notice and comment process, if applicable, the Commission may adopt a proposed policy. While policies do not formally require Ministerial approval, the Commission may consult the Minister when a new policy is proposed.

Unlike rules, policies cannot be prohibitive or mandatory in character. Policies inform market participants of: (a) how the Commission may exercise its discretionary authority, (b) how the Commission interprets Ontario securities law, (c) the practices followed by the Commission in performing its duties under Ontario securities law, and (d) other matters that are not legislative in nature.[11] Policies are also used to communicate the Commission's views of what may be in the public interest regarding a given issue.[12]

Staff Notices

Staff notices are documents issued by the Commission that communicate Staff's views and expectations of operational reviews, emerging issues and trends, and market participant conduct. Staff views are subject to change as Staff are confronted with different factual circumstances. Accordingly, views expressed in a staff notice do not necessarily represent the views of the Commission.

Staff notices are not approved by the Commission and need not be published for public comment. However, Staff notices are often discussed with the Commission and may incorporate feedback from Commissioners. Like policies, staff notices do not require Ministerial approval.

Staff notices generally describe: (a) factors relevant to the exercise of a discretion by Staff, (b) the manner in which statutes, regulations, rules or policies are interpreted by Staff, or (c) the practices generally followed by Staff in the performance of their responsibilities.

4 *Securities Act*, s 143.2(2).
5 *Securities Act*, s 143.2(7).
6 *Securities Act*, s 143.3(1).
7 *Securities Act*, s 143.3(3).
8 *Securities Act*, s 143.4.
9 *Securities Act*, s 143.8.
10 *Securities Act*, s 143.8(6).
11 *Securities Act*, s 143.8(1). Ontario Securities Commission Policy 11-601 is an example of a policy that addresses matters that are not legislative in nature. This local policy outlines organizational and procedural practices of the Securities Advisory Committee (a group of practicing securities lawyers who provide advice to the Commission and Staff).
12 National Policy 62-202 is an example of how securities regulators communicate public interest considerations. This policy recognizes that, during a take-over bid, the interests of management may differ from those of shareholders of the target company and provides guidance on when defensive tactics may be subject to scrutiny by securities regulators.

The annual Corporate Finance Branch Report is an example of a staff notice that provides issuers with guidance on trends and issues identified during compliance reviews. Branch reports also articulate Staff's expectations and interpretation of regulatory requirements and outline the Branch's operational and policy work.

Contact Information

If you have questions about this notice, please contact:

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Acting Associate General Counsel
General Counsel's Office
rgalea@osc.gov.on.ca

Tegan Raco
Legal Counsel
General Counsel's Office
traco@osc.gov.on.ca

1.1.2 Notice of Correction – Macquarie Capital Markets Canada Ltd.

The incorrect file number was included in *Macquarie Capital Markets Canada Ltd.* published in the September 23, 2021 issue of the Bulletin at (2021), 44 OSCB 7885. The correct file number is: **OSC File #: 2021/0312**.

1.4 Notices from the Office of the Secretary

1.4.1 The Mutual Fund Dealers Association and Omar Enrique Rojas Diaz (also known as Omar Rojas)

FOR IMMEDIATE RELEASE
October 6, 2021

THE MUTUAL FUND DEALERS ASSOCIATION AND OMAR ENRIQUE ROJAS DIAZ (ALSO KNOWN AS OMAR ROJAS), File No. 2021-7

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

A copy of the Reasons and Decision dated October 5, 2021 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.2 An Application by Wilks Brothers, LLC for the Review of a Decision by TSX Inc. relating to Calfrac Well Services Ltd.

FOR IMMEDIATE RELEASE
October 7, 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 its Reasons for Decision in the above named matter.

A copy of the Reasons for Decision dated October 6, 2021 is available at www.osc.ca.

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GRACE KNAKOWSKI
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1.4.3 Daniel Sheehan

FOR IMMEDIATE RELEASE
October 7, 2021

DANIEL SHEEHAN,
File No. 2020-38

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Daniel Sheehan.

Take notice that the hearing on the merits scheduled to be commence on October 8, 2021 at 10:00 a.m. will not proceed as scheduled.

A copy of the Order dated October 7, 2021 and Settlement Agreement dated October 4, 2021 are available at www.osc.ca.

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inquiries@osc.gov.on.ca

1.4.4 Trevor Rosborough

FOR IMMEDIATE RELEASE
October 8, 2021

TREVOR ROSBOROUGH,
File No. 2021-30

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

A copy of the Order dated October 8, 2021 is 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

1.4.5 Daniel Sheehan

FOR IMMEDIATE RELEASE
October 12, 2021

DANIEL SHEEHAN,
File No. 2020-38

TORONTO – The Commission issued its Reasons for Approval of a Settlement in the above named matter.

A copy of the Reasons for Approval of a Settlement dated October 12, 2021 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 GLMX Technologies, LLC – s. 15.1 of NI 21-101, s. 12.1 of NI 23-101, s. 10 of NI 23-103

Headnote

Application for relief under s. 15.1 of National Instrument 21-101 Marketplace Operation, s. 12.1 of National Instrument 23-101 Trading Rules, and s. 10 of National Instrument 23-103 Electronic Trading and Direct Access to Marketplaces – relief from the application of all provisions of the Marketplace Rules that apply to a person or company carrying on business as an alternative trading system in the Jurisdictions – relief granted subject to terms and conditions.

October 6, 2021

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA,
ALBERTA,
NOVA SCOTIA,
ONTARIO AND
QUEBEC
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
GLMX TECHNOLOGIES, LLC
(the Filer)

DECISION
(Section 15.1 of NI 21-101 and section 12.1 of NI 23-101 and section 10 of NI 23-103)

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be:

(a) exempt pursuant to subsection 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from NI 21-101 in whole;

(b) exempt pursuant to subsection 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**) from NI 23-101 in whole;

(c) exempt pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) from NI 23-103 in whole

(the relief mentioned in paragraphs (a) to (c) being collectively referred to herein as the **Exemptive Relief Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a coordinated review application):

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and Multilateral Instrument 11-102 *Passport System* 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 which is sometimes referred to herein as "**GLMX**":

1. The Filer is a private limited liability company incorporated under the laws of Delaware whose registered and head office is at 330 Seventh Avenue, Floor 17, New York, New York, United States of America.

2. The Filer is an (in)direct wholly owned subsidiary of Global Liquid Markets, LLC (**GLM**). GLM is a holding company for various GLMX entities. GLM has three subsidiaries: GLMX, LLC, the Filer and GLMX Europe Limited. GLMX, LLC licenses an electronic trading platform (**Platform**) to GLMX and GLMX operates and maintains it. The Platform facilitates the negotiation of securities financing transactions including repurchase and reverse purchase transactions and securities lending arrangements, sale/buy back agreements and margin lending (collectively, **SFTs**) between institutional counterparties that have pre-existing contractual relationships with each other.

3. The Filer was formed in June 2017. It is registered as an alternative trading system (**ATS**) and a broker-dealer registered with the Securities and Exchange Commission (**SEC**) pursuant to section 15 of the *Securities Exchange Act of 1934*, as amended, (**Exchange Act)**. The Filer is also a member of the Financial Industry Regulatory Authority (**FINRA**) and the Securities Investor Protection Corporation. The Filer operates one ATS that is registered with the SEC.

4. The Filer is subject to a comprehensive regulatory regime in the US. The Filer operates as an ATS and a broker-dealer registered with the SEC. The Filer is regulated by the SEC and FINRA as a broker-dealer and an ATS. The SEC and FINRA fulfil their regulatory responsibilities within the framework established by the Exchange Act and FINRA member rules.

5. SFTs are transactions where securities are used to borrow cash, or vice versa. The principal participants in these markets are broker-dealers acting as intermediaries and their diverse institutional clients. In these transactions, securities are exchanged for collateral which can be in the form of cash or different securities. Transactions are driven by a need to lend/borrow specific securities or to lend/borrow cash.

6. Cash lenders use SFTs as a way to securely invest cash. Typical cash lenders include money market funds, central banks, bank investment portfolio and others. Securities lenders enter into SFTs to finance their securities positions or obtain leverage. Typical cash borrowers/securities lenders are hedge funds, mortgage REITs, pension funds, asset managers, insurance companies and sovereign wealth funds.

7. The securities exchanged in SFTs negotiated on the Platform are as follows: major sovereign debt including US Treasuries, UK Government Debts, Euro Government Debt, Japan, Singapore, Australia and New Zealand, debt issued by agency; sub-sovereign and supranational institutions including U.S. agency debentures (FNMA, Freddie, FHLC), provincials, International Finance Corporation (IFC), World Bank, Länder, US Municipal Debt; Mortgage-Backed Securities including Agency Mortgage-Backed Securities Pools, Agency Collateralized Mortgage Obligations (CMOs), CMO Private Label (Investment-Grade And Non-Investment-Grade), Crown; non-Canadian issued corporate debt including Investment Grade, Non-investment grade, asset-backed securities; and re-securitizations including consumer (credit cards, auto loans), collateralized debt obligations, collateralized loan obligations, covered bonds; loans including bank loans, whole loans; money market instruments including term deposits, certificates of deposit, commercial paper; and non-Canadian issued equities including common, preferred, convertible and ETF.

8. In addition, GLMX currently offers and intends in the future to offer SFTs on its platform using Canadian Government Securities, defined as all debt instruments denominated in Canadian dollars and issued domestically by the Government of Canada or provincial governments or municipalities, as an incidental part of its business which will constitute less than 10% measured by total GLMX volume for the last 12 months.

9. The Filer does not have any offices or maintain other physical installations in Alberta, British Columbia, Nova Scotia, Ontario, Québec or any other Canadian province or territory.

10. Prior to getting access to the Platform, a subscriber (customer) must sign an agreement (**Subscription Online Services Agreement**) with GLMX that covers, among other things, obligations of the subscriber, and termination events.

11. The subscriber identifies to GLMX by name each employee or contractor of subscriber that is authorized to use the Platform. These "named users" are the only individuals within the subscriber licensed to access and use the service (**Online Service**).

12. GLMX will provide the subscriber access to the online service through a web based interface that can only be accessed when GLMX white lists subscriber's IP addresses. GLMX will provide each named user a unique username and password to enable such named user to access the Online Service.

13. Once a trade is mutually agreed and completed by the counterparties, the GLMX platform will send trade details to the parties of the transaction via a pre-approved method (e.g. email). Subscribers, independently and in advance, notify GLMX that they are properly documented with and able to trade with specific counterparties prior to engaging in transactions with that counterparty. GLMX is not a party to the SFT transaction and is not involved in the direct execution or clearing and settlement.

14. GLMX proposes to offer direct access to its Platform to prospective subscribers in the Jurisdictions (**Canadian Subscribers**) to facilitate trades. Access to the Platform will be limited to Canadian Subscribers who meet GLMX's eligibility criteria. Subscribers generally fall into the following categories: large multi-national bank; insurance company; US registered investment company; derivatives dealer; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least $50 million which can include pension funds and hedge funds.

15. Before being provided direct access to the Platform, GLMX will confirm that each Canadian Subscriber is a "permitted client" as that term is defined in National Instrument 31 103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31 103**). Retail customers will not be provided with access to the Platform.

16. Once a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must execute a Subscription Online Services Agreement in which the prospective Canadian Subscriber agrees to use the online service and the related user documentation only in the ordinary course of its own business for its own internal use and be and remain at all times a "permitted client" as defined in NI 31-103.

17. Under the Subscription Online Services Agreement, a Canadian Subscriber and its affiliates constitute a "Subscriber Group" and the Subscriber Group will authorize named users (**Named Users**) who are the only persons authorized to use the online service. The Subscriber Group's right to use the Online Service is conditioned upon Subscriber Group obtaining and maintaining all government, legal and regulatory approvals, consents, authorizations, registrations, permits and licenses required for the conduct of its activities and its use of the Online Services and using the Online Service only in compliance with applicable law.

18. GLMX has determined that it may be subject to dealer registration under applicable Canadian securities legislation and so it proposes to rely on the "international dealer exemption" under section 8.18 of NI 31-103 in the Jurisdictions and, subject to observing the revenue/volume ceiling just mentioned, on the specified debt exemption under section 8.21 of NI 31-103.

19. The Filer will ensure that all applicants who become Canadian Subscribers satisfy the Filer's eligibility criteria, including, among other things, that each Canadian Subscriber is a "permitted client" as that term is defined in NI 31-103.

20. The Filer is not in default of securities legislation in any Jurisdiction.

Decision

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

The decision of the Decision Maker under the Legislation is that the Exemptive Relief Sought is granted provided that the Filer complies with the terms and conditions attached hereto as Schedule A.

"Tracey Stern"
Manager, Market Regulation
Ontario Securities Commission

SCHEDULE A

Terms and Conditions

Regulation and Oversight of the Marketplace

1. The Filer will continue to be subject to the regulatory oversight of the regulator in its home jurisdiction;

2. The Filer will either be registered in an appropriate category or rely on an exemption from registration under Canadian securities laws;

3. The Filer will promptly notify the Decision Makers if its status in its home jurisdiction has been revoked, suspended, or amended, or the basis on which its status has significantly changed;

Access

4. The Filer will not provide direct access to a Canadian Subscriber unless the Canadian Subscriber is a "permitted client" as that term is defined in NI 31-103;

5. The Filer will require Canadian Subscribers to provide prompt notification to the Filer if they no longer qualify as "permitted clients";

6. The Filer must make available to Canadian Subscribers appropriate training for each person who has access to trade on the Platform;

Trading by Canadian Subscribers

7. The Filer will only offer SFTs to Canadian Subscribers and in that context use only the collateral listed in accordance with representation numbers 7 and 8 of this Decision;

8. Trades on the Platform by Canadian Subscribers will be cleared and settled through clearing arrangements used outside the Platform by subscribers;

9. The Filer will only permit Canadian Subscribers to trade those securities which are permitted to be traded in the United States under applicable securities laws and regulations;

Reporting

10. The Filer will promptly notify staff of the Decision Makers of any of the following:

    (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:

        (i) changes to its regulatory oversight;

        (ii) the access model, including eligibility criteria, for Canadian Subscribers;

        (iii) systems and technology; and

        (iv) its clearing and settlement arrangements;

    (b) any change in its regulations or the laws, rules, and regulations in the home jurisdiction relevant to the products traded;

    (c) any known investigations of, or regulatory action against, the Filer by the regulator in the home jurisdiction or any other regulatory authority to which it is subject;

    (d) any matter known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and

    (e) any default, insolvency, or bankruptcy of any subscriber known to the Filer or its representatives that may have a material, adverse impact upon the Platform, the Filer or any Canadian Subscriber;

11. The Filer will maintain the following updated information and submit such information in a manner and form acceptable to staff of the Decision Makers on a semi-annual basis (within 30 days of the end of each six-month period), and at any time promptly upon the request of staff of the Decision Makers:

(a) a current list of all Canadian Subscribers on a per provincial basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to the Filer that it could be provided with direct access;

(b) a list of all Canadian applicants for status as a Canadian Subscriber on a per provincial basis who were denied such status or access or who had such status or access revoked during the period;

(i) for those Canadian applicants for status as a Canadian Subscriber that were denied access, an explanation as to why access was denied;

(ii) for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;

(c) for each product:

(i) the total trading volume and value originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis;

(ii) the proportion of worldwide trading volume and value on the Platform conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers;

(iii) the trading volume and value of Canadian Government Securities (as defined in representation 8 of this Decision) used in SFTs and proportion of trading volume in Canadian Government Securities relative to the total volume traded on GLMX for the six month period, calculated in a manner acceptable to the Decision Makers; and

(d) a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the Platform which were reported to the regulator in the home jurisdiction;

Disclosure

12. The Filer will provide to its Canadian Subscribers disclosure that states that:

(a) rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;

(b) the rules applicable to trading on the Platform may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and

(c) the Filer is regulated by the regulator in the home jurisdiction, rather than the Decision Makers;

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Decision Makers, staff of the Decision Makers or another applicable securities regulatory authority in Canada arising out of, related to, concerning or in any other manner connected with such regulatory authority's regulation and oversight of the activities of the Filer in Canada, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Canada, and (ii) an administrative proceeding in Canada;

14. The Filer will file with the Decision Makers a valid and binding appointment of McCarthy Tetrault LLP, or any subsequent agent, as the agent for service in Canada upon which the Decision Makers or other applicable regulatory authority in Canada may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal, or other proceeding arising out of or relating to or concerning the regulation and oversight of the Platform or the Filer's activities in Canada; and

Information Sharing

15. The Filer must, and must cause its affiliated entities, if any, to promptly provide to the Decision Makers, on request, any and all data, information, and analyses in the custody or control of the Filer or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(a) data, information, and analyses relating to all of its or their businesses; and

(b) data, information, and analyses of third parties in its or their custody or control; and

16. The Filer must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, investor protection funds and other appropriate legal and regulatory bodies.

2.1.2 The Calgary Airport Authority

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the prospectus requirement in connection with the distribution of non-convertible debentures, subject to conditions – non-reporting, not-for-profit issuer unable to rely on the exemption in section 2.4 of NI 45-106.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 74.

Citation: *Re The Calgary Airport Authority*, 2021 ABASC 156

October 7, 2021

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

AND

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

AND

IN THE MATTER OF
THE CALGARY AIRPORT AUTHORITY
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each, a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the prospectus requirement in connection with the distribution (an **Offering**) of non-convertible debt securities of the Filer (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each province of Canada, other than Ontario and Alberta, and

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

Interpretation

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 private, not-for-profit corporation, formed on 26 July 1990 by way of order in council O.C. 398/90 issued by the Lieutenant Governor in Council of Alberta.

2. The head office of the Filer is located in Alberta.

3. The Filer is governed by articles of incorporation dated 7 October 1998 (the **Articles**) as well as the *Regional Airports Authorities Act* (the **RAA Act**) and the *Regional Airports Authorities Regulation* (the **RAA Regulation**).

4. The Filer is not a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation in any jurisdiction of Canada.

5. The Articles provide that there are no restrictions on:

   (a) the number of securities or any particular form of securities that the Filer is permitted to issue; or

   (b) the right to transfer any of the securities issued by the Filer; however, the Articles do not provide for specific classes of shares or other equity securities issuable by the Filer.

6. There is a strict prohibition on the Filer's ability to issue shares under section 36(2) of the RAA Act, which is not an optional prohibition and cannot be overridden by provisions of the Articles and the Filer is therefore unable to issue share capital. Accordingly, the Filer does not have any shares or other equity securities outstanding and has never issued such equity securities.

7. The outstanding securities of the Filer consist of approximately $2.915 billion in non-convertible debentures (the **Prior Offering**). Debentures of the Filer were distributed solely to the Government of Alberta in the name of the Alberta Capital Finance Authority. By subsequent assignment, all such debentures under the Prior Offering have been transferred directly to the Province of Alberta.

8. While the RAA Act contemplates the issuance of securities by authorities such as the Filer, section 36(2) of the RAA Act restricts the issuance of share capital by providing that "unless otherwise prescribed, an authority shall not issue any shares". The RAA Regulation does not prescribe anything to the contrary.

9. In order to complete a distribution or trade of securities, the Filer would be required to file a prospectus or rely on an exemption from the prospectus requirements under National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

10. The Filer cannot rely on the exemption in section 2.4 of NI 45-106 (the **Private Issuer Exemption**) with respect to the Offering because it does not technically satisfy subparagraph (b)(i) of the definition of "private issuer" contained in the Private Issuer Exemption, as there are no restrictions on the transfer of the relevant securities of the Filer contained in the Filer's constating documents or security holders' agreement.

Decision

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

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

(a) at the time of an Offering,

   (i) the Filer satisfies paragraphs (a) and (c) of the definition of "private issuer" contained in the Private Issuer Exemption,

   (ii) there has been no amendment to section 36(2) of the RAA Act,

   (iii) the RAA Regulation prescribes no exception to section 36(2) of the RAA Act, and

(b) the first trade of any non-convertible debt securities of the Filer issued in reliance on the Exemption Sought will be subject to section 2.6 of National Instrument 45-102 *Resale of Securities*.

For the Commission:

“Tom Cotter”
Vice-Chair

“Kari Horn”
Vice-Chair

2.1.3 Brookfield Business Partners L.P. and Brookfield Business Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – partnership creates corporation to provide investors with alternative way to hold its units – corporation issues exchangeable shares whose terms are structured so that each exchangeable share is functionally and economically equivalent to a partnership unit – each exchangeable share provides an equivalent economic return as a partnership unit – both the partnership and the corporation are reporting issuers – related party transactions between the partnership and the corporation are exempt from the related party transaction requirements, subject to conditions – partnership may include corporation's exchangeable shares when calculating market capitalization for the purposes of using the 25% market capitalization exemption for certain related party transactions, subject to conditions.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Part 5, ss. 5.5(a), 5.7(1)(a) and 9.1.

October 8, 2021

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD BUSINESS PARTNERS L.P.,
AND
BROOKFIELD BUSINESS CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Business Partners L.P. (**BBU**) and Brookfield Business Corporation (**BBUC**, and together with BBU, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) BBU be exempt from the requirements of Part 5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**, and such requirements, the **Related Party Transaction Requirements**) in connection with any related party transaction of BBU with BBUC or any of BBUC's subsidiary entities (the **BBU Related Party Relief**);

(b) BBUC be exempt from the Related Party Transaction Requirements in connection with any related party transaction of BBUC with BBU or any of BBU's subsidiary entities (the **BBUC Related Party Relief**); and

(c) BBU be exempt from the requirements of sections 5.4 and 5.6 of MI 61-101 (the **Valuation and Minority Approval Requirements**) in connection with any related party transaction of BBU entered into indirectly through Holding LP (as defined below) or any subsidiary entity of Holding LP, if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the class A exchangeable subordinate voting shares of BBUC (the **Exchangeable Shares**) were included in the calculation of BBU's market capitalization (the **Transaction Size Relief**, collectively with the BBU Related Party Relief and the BBUC Related Party Relief, 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 Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Quebec, and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Relevant Entities

BBU

1. BBU is an exempted limited partnership established, registered and in good standing under the laws of Bermuda. BBU's registered and head office is located at 73 Front Street, 5th Floor, Hamilton HM 12, Bermuda.

2. BBU is a reporting issuer in all of the provinces and territories of Canada and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and satisfies its continuous disclosure obligations by complying with U.S. federal securities laws as permitted under NI 71-102. BBU is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized capital of BBU consists of: (a) non-voting limited partnership units (the **BBU Units**); and (b) general partnership units.

4. The BBU Units are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (**TSX**) under the symbols "BBU" and "BBU.UN", respectively.

5. BBU's only substantial asset is its limited partnership interest in Brookfield Business L.P. (**Holding LP**), a Bermuda exempted limited partnership established, registered and in good standing under the laws of Bermuda.

6. Brookfield Business Partners Limited, a wholly-owned subsidiary of Brookfield Asset Management Inc. (**Brookfield**), holds the general partner **units** in BBU.

Brookfield

7. Brookfield is a corporation existing and in good standing under the *Business Corporations Act* (Ontario). Brookfield's registered and head office is located at Suite 300, Brookfield Place, 181 Bay Street, Toronto, Ontario, M5J 2T3.

8. Brookfield is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

9. The Class A Limited Voting Shares of Brookfield are listed on the NYSE and the TSX under the symbols "BAM" and "BAM.A", respectively.

10. Brookfield holds an approximate 64% economic interest in BBU on a fully-exchanged basis through its indirect ownership of redeemable partnership units of Holding LP (the **Redeemable Partnership Units**).

11. Brookfield indirectly holds 100% of the voting interests in BBU through its ownership of the general partner unit**s** of BBU.

12. BBU, Holding LP and certain of their subsidiaries have retained Brookfield and its related entities to provide management, administrative and advisory services under a master services agreement.

BBUC

13. BBUC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia), and was incorporated on June 21, 2021. BBUC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. BBUC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

14. The authorized share capital of BBUC consists of an unlimited number of common shares (the **BBUC Common Shares**).

15. All of the BBUC Common Shares are held by Brookfield BBP Canada Holdings Inc. (**CanHoldCo**), a wholly-owned subsidiary of BBU.

16. BBUC's initial operations will consist of business services and industrial operations primarily located in Australia, the United Kingdom, the United States and Brazil.

17. BBUC is not a reporting issuer in any jurisdiction and is not in default of any applicable requirement of securities legislation.

The Special Distribution

18. BBU believes that certain investors in certain jurisdictions may be dissuaded from investing in BBU because of the tax reporting framework that results from investing in units of a Bermuda exempted limited partnership.

19. BBUC was created, in part, to provide investors that would not otherwise invest in BBU with an opportunity to gain access to BBU's portfolio of services and industrial operations and their associated returns, and to provide investors with the flexibility to own, through the ownership of an Exchangeable Share, the economic equivalent of a BBU Unit.

20. BBU will be distributing Exchangeable Shares to holders of BBU Units (the **Special Distribution**). The Special Distribution is, in effect, a stock split of the BBU Units.

21. On July 30, 2021, (i) BBUC filed a preliminary long form prospectus to qualify the distribution of the Exchangeable Shares to be distributed pursuant to the Special Distribution, and (ii) BBU filed a preliminary short form prospectus to qualify the BBU Units issuable or deliverable upon the exchange, redemption or purchase of Exchangeable Shares pursuant to their terms.

22. Upon obtaining a receipt for the final prospectus, BBUC will become a reporting issuer in each of the provinces and territories of Canada.

23. BBUC has applied to have the Exchangeable Shares listed on the NYSE and TSX.

24. BBUC filed a registration statement on Form F-1 with the U.S. Securities and Exchange Commission (the **SEC**), to register the Exchangeable Shares that will be distributed pursuant to the Special Distribution, and BBU will file a registration statement of Form F-3 with the SEC, as amended, to register the BBU Units issuable or deliverable upon the exchange, redemption or purchase of Exchangeable Shares pursuant to their terms.

25. Prior to the closing of the Special Distribution:

    (a) BBUC will reclassify its share structure such that, following the reclassification, BBUC's authorized share capital will consist of: (i) an unlimited number of Exchangeable Shares; (ii) an unlimited number of class B multiple voting shares (the **Class B Shares**); (iii) an unlimited number of class C non-voting shares (the **Class C Shares**); (iv) an unlimited number of class A senior preferred shares (issuable in series); and (v) an unlimited number of class B junior preferred shares (issuable in series);

    (b) the following assets and ownership interests will be contributed or transferred by BBU, or subsidiaries thereof, to BBUC:

        (i) an approximate 28% economic interest in Healthscope Pty Limited;

        (ii) an approximate 26% economic interest in BRK Ambiental Participações S.A.;

        (iii) an approximate 27% economic interest in Westinghouse Electric Company;

        (iv) a 100% economic interest in Multiplex Global Limited; and

        (v) approximately $212 million in cash (the **Cash Proceeds**);

    (c) BBUC will loan the Cash Proceeds to CanHoldCo; and

    (d) BBU will receive Exchangeable Shares through a distribution by Holding LP of Exchangeable Shares, on a proportionate basis, to all the holders of equity units of Holding LP, including Brookfield through its indirect ownership of Redeemable Partnership Units and special limited partnership units in Holding LP.

26. The distribution ratio of one (1) Exchangeable Share for every two (2) BBU Units was based on the fair market value of the businesses to be transferred by BBU to BBUC, the number of BBU Units outstanding at the time of the Special Distribution (assuming exchange of the Redeemable Partnership Units), and the market capitalization of BBU.

27. Each Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BBU Unit and the rights, privileges, restrictions and conditions attached to each Exchangeable Share (the **Exchangeable**

Share Provisions) are such that each Exchangeable Share is as nearly as practicable, functionally and economically, equivalent to a BBU Unit. In particular:

(a) each Exchangeable Share will be exchangeable at the option of a holder for one (1) BBU Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BBUC) (an **Exchange**);

(b) the Exchangeable Shares are redeemable by BBUC at any time (including following a notice requiring redemption having been given by BBU) for BBU Units (or its cash equivalent, at BBUC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **Redemption**);

(c) upon a liquidation, dissolution or winding up of BBUC, holders of Exchangeable Shares will be entitled to receive BBU Units (or its cash equivalent, at BBUC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of BBUC following such payment (a **BBUC Liquidation**);

(d) upon a liquidation, dissolution or winding up of BBU, including where substantially concurrent with a BBUC Liquidation, all of the Exchangeable Shares will be automatically redeemed for BBU Units (or its cash equivalent, at BBUC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **BBU Liquidation**); and

(e) subject to applicable law and in accordance with the Exchangeable Share Provisions, each Exchangeable Share will entitle the holder to dividends from BBUC payable at the same time as, and equivalent to, each distribution on a BBU Unit. The Exchangeable Share Provisions also provide that if a distribution is declared on the BBU Units and an equivalent dividend is not declared and paid concurrently on the Exchangeable Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

28. Upon being notified by BBUC that BBUC has received a request for an Exchange, BBU has an overriding call right to purchase (or have one of its affiliates purchase) all of the Exchangeable Shares that are the subject of the Exchange notice from the holder of Exchangeable Shares for BBU Units (or its cash equivalent, at BBU's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

29. Upon being notified by BBUC that it intends to conduct a Redemption, BBU has an overriding call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding Exchangeable Shares for BBU Units (or its cash equivalent, at BBU's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

30. Upon the occurrence of a BBU Liquidation or BBUC Liquidation, BBU will have an overriding liquidation call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding Exchangeable Shares on the day prior to the effective date of such BBU Liquidation or BBUC Liquidation for BBU Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

31. Prior to the Special Distribution, Brookfield will enter into a rights agreement (the **Rights Agreement**) pursuant to which it will agree that, for the five-year period beginning on the date of the Special Distribution, Brookfield will guarantee BBUC's obligation to deliver BBU Units or its cash equivalent in connection with an Exchange.

32. An investment in Exchangeable Shares will be as nearly as practicable, functionally and economically, equivalent to an investment in BBU Units. BBU expects that:

(a) investors of Exchangeable Shares will purchase Exchangeable Shares as an alternative way of owning BBU Units rather than a separate and distinct investment; and

(b) the market price of the Exchangeable Shares will be significantly impacted by (i) the combined business performance of BBUC and BBU as a single economic unit, and (ii) the market price of the BBU Units, in a manner that should result in the market price of the Exchangeable Shares tracking the market price of the BBU Units.

33. BBUC is intended to be an entity through which persons who do not wish to hold BBU Units directly, may hold their interests in BBU, and BBU is the entity through which holders of Exchangeable Shares and BBU Units hold their interests in the collective operations of BBU and its subsidiaries, including BBUC and its subsidiaries.

Ownership and Control of BBUC

34. The Related Party Transaction Requirements do not apply to an issuer carrying out a related party transaction if:

    (a) as provided under paragraph 5.1(d) of MI 61-101, the parties to the transaction consist solely of (i) an issuer and one or more of its wholly-owned subsidiary entities, or (ii) wholly-owned subsidiary entities of the same issuer. A person is considered to be a "wholly-owned subsidiary entity" of an issuer if the issuer owns, directly or indirectly, all of the voting and equity securities and securities convertible into voting and equity securities of the person; and/or

    (b) as provided under paragraph 5.1(g) of MI 61-101 (the **Downstream Transaction Carve-Out**), the transaction is a downstream transaction for the issuer. A "downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to, (i) the issuer is a control person of the related party, and (ii) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction.

35. Section 1.3 of MI 61-101 provides that, for the purposes of MI 61-101, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be a transaction of the issuer.

36. Related party transactions among BBU and BBUC will be required for the operation of the Exchangeable Share Provisions and in connection with ordinary course financial support arrangements which may be entered into from time to time.

37. The only voting securities of BBUC are the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares are entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares.

38. Neither the Exchangeable Shares nor the Class B Shares carry a residual right to participate in the assets of BBUC upon liquidation or winding-up of BBUC, and accordingly, are not equity securities under the Legislation. The Class C Shares are the only equity securities of BBUC.

39. All of the Class B Shares and the Class C Shares will be indirectly owned by BBU and none of them will be transferable except to an affiliate of BBU. Accordingly, all of the equity securities of BBUC are held indirectly by BBU.

40. BBUC is not a wholly-owned subsidiary of BBU; BBU will not own, directly or indirectly, all of the voting securities of BBUC because Brookfield and members of the public will hold Exchangeable Shares. However, by virtue of the terms of the Class B Shares, BBU holds a 75% voting interest in BBUC, will control BBUC and the appointment and removal of directors of BBUC; the voting rights attached to the Exchangeable Shares do not allow holders of Exchangeable Shares to affect the control of BBUC. The voting right attached to each Exchangeable Share is expected to assist with index inclusion.

41. BBU is not able to rely on the Downstream Transaction Carve-Out because, upon completion of the Special Distribution, Brookfield will beneficially own or exercise control or direction over, more than five per cent of the Exchangeable Shares, as it will hold, directly or indirectly, approximately 64% of the Exchangeable Shares. Brookfield will accordingly have an approximate 16% voting interest in BBUC.

42. BBUC is a controlled subsidiary of BBU and BBU will consolidate BBUC and its businesses in BBU's financial statements.

43. By virtue of the Exchangeable Share Provisions, the economic rights of the holders of the Exchangeable Shares will not be affected by transactions between BBU and BBUC. BBU, as the sole holder of equity securities of BBUC, will receive any benefit and/or bear any detriment from related party transactions between BBU and BBUC.

44. Minority approval is required of every class of affected securities, being equity securities of the issuer. For BBUC, minority approval of a related party transaction of BBUC with BBU would be sought from the holders of its Class C Shares, all of which are held by BBU. BBU, as the counterparty to such a related party transaction, does not require the protections of MI 61-101.

Market Capitalization Calculation

45. It is anticipated that BBU will, from time to time, enter into transactions with certain related parties, including Brookfield and its affiliates (other than BBU and its related entities, including BBUC) indirectly through Holding LP and its subsidiaries (including BBUC and its subsidiaries).

46. The Valuation and Minority Approval Requirements require, subject to the availability of an exemption, that an issuer obtain: (a) a formal valuation of the transaction in a form satisfying the requirements of MI 61-101 by an independent valuator; and (b) approval of the transaction by disinterested holders of the affected securities of the issuer.

47. A related party transaction that is subject to MI 61-101 may be exempt from the Valuation and Minority Approval Requirements if, at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the **Market Cap Exemption**).

48. It is unclear whether BBU would be entitled to rely on the Market Cap Exemption available under the Legislation because the definition of market capitalization in the Legislation does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.

49. The Exchangeable Shares represent part of the equity value of BBU and are functionally and economically equivalent to the BBU Units. As a result of the Exchangeable Share Provisions, holders of Exchangeable Shares have the ability to receive a BBU Unit or its cash equivalent (the form of payment to be determined at the election of BBUC) and will receive identical distributions to the BBU Units, as and when declared by the board of directors of BBUC. Moreover, the economic interests that underlie the Exchangeable Shares are identical to those underlying the BBU Units; namely, the assets and operations held directly or indirectly by BBU.

50. Any costs related to a transaction occurring within the BBUC group would be borne by BBU as the sole holder of the equity securities of BBUC. BBU will consolidate BBU and its businesses in its financial statements and the business of BBU (including BBUC and its subsidiaries) will be the same as it was before the creation of BBUC and the transactions conducted in connection with, and to facilitate, the Special Distribution.

51. If the Exchangeable Shares are not included in the market capitalization of BBU, the equity value of BBU will be understated initially by the value of the Exchangeable Shares, being approximately 33% (assuming a one-for-two distribution ratio). As a result, related party transactions of BBU that are entered into through a subsidiary entity of BBUC may be subject to the Valuation and Minority Approval Requirements in circumstances where the fair market value of the transactions are effectively less than 25% of the fully diluted market capitalization of BBU.

52. BBU has already received relief similar to the Transaction Size Relief in respect of the Redeemable Partnership Units. On June 20, 2016, the Ontario Securities Commission granted BBU an exemption from the Valuation and Minority Approval Requirements in connection with any related party transaction of BBU entered into indirectly through Holding LP or a subsidiary of Holding LP if that transaction would qualify for the Market Cap Exemption if the Redeemable Partnership Units were included in the calculation of BBU's market capitalization.

Decision

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

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

1. in respect of the BBU Related Party Relief and BBUC Related Party Relief:

   (a) all of the equity securities of BBUC are owned, directly or indirectly, by BBU;

   (b) all of the voting securities of BBUC (other than the Exchangeable Shares) are owned, directly or indirectly, by BBU;

   (c) there are no material changes to the Exchangeable Share Provisions, as described above; and

   (d) BBU consolidates BBUC and its businesses in BBU's financial statements;

2. in respect of the Transaction Size Relief:

   (a) the transaction would qualify for the Market Cap Exemption if the Exchangeable Shares were considered an outstanding class of equity securities of BBU that were convertible into BBU Units;

   (b) there are no material changes to the Exchangeable Share Provisions, as described above; and

(c) any annual information form or equivalent of BBU that is required to be filed in accordance with applicable securities laws contain the following disclosure, with any immaterial modifications as the context may require:

> Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") provides a number of circumstances in which a transaction between an issuer and a related party may be subject to valuation and minority approval requirements. An exemption from such requirements is available when the fair market value of the transaction is not more than 25% of the market capitalization of the issuer. Brookfield Business Partners L.P. ("**BBU**") has been granted exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, permits it to be exempt from the minority approval and valuation requirements for transactions that would have a value of less than 25% of BBU's market capitalization, if Brookfield Asset Management Inc.'s ("**Brookfield**") indirect equity interest in BBU, and the class A exchangeable subordinate voting shares of Brookfield Business Corporation ("**BBUC**") are included in the calculation of BBU's market capitalization. As a result, the 25% threshold, above which the minority approval and valuation requirements apply, is increased to include the approximately 47% indirect interest in BBU in the form of redeemable partnership units of Brookfield Business L.P. (assuming exchange of such redeemable partnership units) held by Brookfield and the approximately 33% indirect interest in BBU in the form of class A exchangeable subordinate voting shares of BBUC held by Brookfield and the public.

"David Mendicino"
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission

2.1.4 MEMBERS Capital Advisors, Inc.

Headnote

Application to the Ontario Securities Commission for a ruling pursuant to subsection 74(1) of the Securities Act (Ontario) (the Act) for a ruling that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act. The Applicant will provide advice to its Canadian affiliate in Ontario only for so long as such affiliate remains an affiliate of the Applicant.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
MEMBERS CAPITAL ADVISORS, INC.

DECISION

UPON the application (the **Application**) of MEMBERS Capital Advisors, Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for a ruling pursuant to subsection 74(1) of the Act that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act;

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Applicant having represented to the Commission as follows:

Background

1. The Applicant is a corporation existing under the laws of the State of Iowa, with its principal office located in Madison, Wisconsin. The Applicant does not have an office or employees in Canada.

2. The Applicant is part of a group of companies owned by CUNA Mutual Holding Company, a mutual insurance holding company that is a provider of insurance and financial services to credit unions and their members, headquartered in Madison, Wisconsin and collectively known as "CUNA Mutual Group". The Applicant is a wholly-owned investment adviser subsidiary of CUNA Mutual Group.

3. The Applicant is registered as an adviser with the United States Securities and Exchange Commission under the United States *Investment Advisers Act of 1940*. The Applicant has assets under management of over US$28 billion for CUNA Mutual Group entities.

4. The Applicant is in compliance in all material respects with securities laws of the United States of America. The Applicant is not in default of any requirements of securities legislation of any jurisdiction in Canada.

5. The Applicant is an affiliate of Assurant Life of Canada (the **Ontario Affiliate**). The Ontario Affiliate is incorporated under the laws of Ontario and is indirectly wholly-owned by CUNA Mutual Holding Company. The Ontario Affiliate is licensed to carry on the business of an insurance company in all provinces and territories in Canada, and provides funeral insurance, final expense insurance and executor insurance. The head office of the Ontario Affiliate is located in Toronto, Ontario.

6. The Applicant proposes to provide investment advice and portfolio management services to the Ontario Affiliate and any other affiliates in Ontario which may be formed or acquired in the future that (i) are licensed or otherwise duly permitted or authorized to carry on the business of an insurance company in Canada or a branch of a foreign insurance company in Canada, or (ii) are holding companies that have as their principal business activity to hold securities of one or more affiliates that are each licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada. The investment advice and portfolio management services will be with respect to the portfolio assets of the Ontario Affiliate or any future affiliate. It is expected that the Applicant will provide investment advice and portfolio management services on approximately US$1.9 billion of assets of the Ontario Affiliate.

7. The Applicant is not registered as an adviser in any jurisdiction of Canada and cannot rely on the international adviser registration exemption set out in section 8.26 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) because the Applicant may provide advice on securities that are not a "foreign security" (as defined in Section 8.26(2) of NI 31-103) and that is not incidental to advice on a foreign security.

8. The Ontario Affiliate is a "permitted client" as defined in section 1.1 of NI 31-103.

9. There is no requirement for employees of a corporation to be registered as advisers under the Act if such employees provide investment advice to their employer with respect to the portfolio assets held by such employer. The Ontario Affiliate currently employs an individual who provides investment advice and direction with respect to its Canadian portfolio assets, but the Ontario Affiliate intends to outsource the adviser function to the Applicant, an affiliate of the Ontario Affiliate. Outsourcing the investment function is permitted under the *Insurance Act* (Ontario).

10. The Canadian portfolio assets held by the Ontario Affiliate and expected to be managed by the Applicant are owned by the Ontario Affiliate. There are no external stakeholders (such as, for example, holders of variable annuity contracts or segregated funds/separate accounts for policyholders) that have any direct interest in the performance of such portfolios. Accordingly, there is no stakeholder in Ontario or elsewhere other than the Ontario Affiliate that would be directly affected by the investment advice provided by the Applicant.

11. Subsection 74(1) of the Act provides that a ruling may be made by the Commission that a person or company is not subject to section 25 of the Act, subject to such terms and conditions as the Commission considers necessary, where the Commission is satisfied that to do so would not be prejudicial to the public interest.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the Applicant is exempt from the adviser registration requirements of subsection 25(3) of the Act in respect of it acting as an adviser to its affiliates in Ontario, provided that:

1. the Applicant provides investment advice and portfolio management services in Ontario only to its affiliates that:

   (a) are licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada or a branch of a foreign insurance company in Canada; or

   (b) are holding companies that have as their principal business activity to hold securities of one or more affiliates that are each licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada; and

2. with respect to any particular affiliate, the investment advice and portfolio management services provided in Ontario are provided only as long as that affiliate remains:

   (a) an “affiliate” of the Applicant as defined in the Act, and

   (b) a “permitted client” as defined in NI 31-103.

DATED at Toronto, Ontario, this **12th** day of **October, 2021**.

“Frances Kordyback”
Commissioner
Ontario Securities Commission

“Cecilia Williams”
Commissioner
Ontario Securities Commission

OSC File #: 2021/0494

2.1.5 Brookfield Property Partners L.P. and Brookfield Property Preferred L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filers want to put in place a credit support issuer structure, but are unable to rely on the exemption for credit support issuers in applicable securities legislation – Relief granted from continuous disclosure requirements, certification requirements, insider reporting requirements, audit committee requirements and corporate governance requirements – Relief also granted from incorporation by reference requirements, earnings coverage requirements and subsidiary credit supporter requirements – Filers unable to rely on exemption for credit support issuers in applicable securities legislation since the Holding LP and Brookfield Property Partners are partnerships, as well as the fact that Brookfield Property Partners satisfies its continuous disclosure obligations by complying with U.S. federal securities law as is permitted under NI 71-102 – Relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, ss. 107 and 121(2)(a)(ii).
National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.4 and 8.1(2).
Form 44-101F1 Short Form Prospectus, ss. 6.1, 11.1(1), 12.1 and 13.3.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1 and 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 8.5 and 8.6.
National Instrument 52-110 Audit Committees, ss. 1.2(g) and 8.1.
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), s. 6.1.
National Instrument 58-101 Disclosure of Corporate Governance Practices, ss. 1.3(c) and 3.1(2).

July 2, 2021

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD PROPERTY PARTNERS L.P.
(BROOKFIELD PROPERTY PARTNERS)
AND
BROOKFIELD PROPERTY PREFERRED L.P.
(the Issuer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from Brookfield Property Partners and the Issuer (collectively, the **Filers**) for a decision under the securities legislation of the principal regulator (the **Legislation**) granting exemptive relief for the Issuer and, in respect of (c), the insiders of the Issuer, from certain requirements including:

(a) the continuous disclosure requirements contained in the Legislation, including requirements under National Instrument 51-102 — *Continuous Disclosure Obligations* (**NI 51-102**), as amended from time to time (the **Continuous Disclosure Requirements**);

(b) the certification requirements contained in National Instrument 52-109 — *Certification of Disclosure in Issuers' Annual and Interim Filings*, as amended from time to time (the **Certification Requirements**);

(c) the insider reporting requirements contained in the Legislation under section 107 of the *Securities Act* (Ontario) (the **Act**) as well as the requirement to file an insider profile and insider reports under National Instrument 55-102 — *System for Electronic Disclosure by Insiders*, as amended from time to time, in respect of insiders of the Issuer (the **Insider Reporting Requirements**);

(d) the requirements of the Legislation relating to audit committees, including, without limitation, National Instrument 52-110 — *Audit Committees*, as amended from time to time (the **Audit Committee Requirements**);

(e) the corporate governance disclosure requirements contained in National Instrument 58-101 — *Disclosure of Corporate Governance Practices*, as amended from time to time (the **Corporate Governance Requirements** and together with the Continuous Disclosure Requirements, Certification Requirements, Insider Reporting Requirements and Audit Committee Requirements, the **Reporting Issuer Requirements**);

(f) the disclosure requirements contained in paragraphs 1 to 4 and 6 to 8 of item 11 of Form 44-101F1 — *Short Form Prospectus* (**Form 44-101F1**) (the **Incorporation by Reference Requirements**);

(g) the disclosure requirements contained in item 6 of Form 44-101F1 (the **Earnings Coverage Requirements**); and

(h) the disclosure requirements contained in item 12 of Form 44-101F1 (the **Subsidiary Credit Supporter Requirements** and together with the Incorporation by Reference Requirements and the Earnings Coverage Requirements, the **Prospectus Disclosure Requirements**),

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

in each case to accommodate the issuance by the Issuer of Class A Cumulative Redeemable Preferred Units (the **New LP Preferred Units**). The first series of New LP Preferred Units will be issued in connection with the Arrangement (as defined below). The New LP Preferred Units will be guaranteed by Brookfield Property Partners as well as Brookfield Property L.P. (the **Holding LP**), and each of the Holding Entities (as defined below).

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

(a) the Ontario Securities Commission is the principal regulator for this Application; and

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut (collectively with the Jurisdiction, the **Reporting 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. In this decision, "**Brookfield Property Partners Related Entities**" means, collectively, the Holding LP and subsidiary entities (as this term is defined in Multilateral Instrument 61-101 – *Take-Over Bids and Special Transactions*) of the Holding LP.

Representations

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

Brookfield Property Partners

1. Brookfield Property Partners is a Bermuda exempted limited partnership that was established on January 3, 2013.

2. The limited partnership units of Brookfield Property Partners (the **BPY Units**) are listed on the Nasdaq Stock Market (**Nasdaq**) and the Toronto Stock Exchange (**TSX**) under the symbols "BPY" and "BPY.UN", respectively. As of June 8, 2021, there were 440,808,732 BPY Units issued and outstanding, and approximately 236,285,505 BPY Units, representing approximately 54% of the total issued and outstanding BPY Units, were beneficially and directly held by Canadian residents. In addition, the Class A Cumulative Redeemable Perpetual Preferred Units of Brookfield Property Partners (the **BPY Preferred Units**), Series 1, 2 and 3 trade on Nasdaq under the symbols "BPYPP", "BPYPO" and "BPYPN", respectively.

3. Brookfield Property Partners is a reporting issuer in the Reporting Jurisdictions and is not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in the Reporting Jurisdictions.

4. Brookfield Property Partners is a SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 — *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and satisfies its continuous disclosure obligations by complying with U.S. federal securities laws as is permitted under NI 71-102.

5. The general partner of Brookfield Property Partners is Brookfield Property Partners Limited (**BPY General Partner**), a Bermuda company and also a wholly-owned subsidiary of Brookfield Asset Management Inc. (**BAM**). BPY General

Partner holds a 0.02% general partnership interest in Brookfield Property Partners. The mind and management of BPY General Partner is located in Bermuda.

6. BAM, a Canadian company, is Brookfield Property Partners' largest holder of BPY Units. As of June 8, 2021, BAM owned, directly or indirectly, 139,699,123 BPY Units and 451,365,017 Redemption-Exchange Units (defined below), collectively representing approximately 66% of the BPY Units (assuming the exchange of the Redemption-Exchange Units) or 61% on a fully-exchanged basis assuming the exchange of the Redemption-Exchange Units, the issued and outstanding class A preferred limited partnership units of the Holding LP (the **Class A Preferred Units**), series 1, 2 and 3 and the issued and outstanding exchangeable limited partnership units (the **Exchange LP Units**) of Brookfield Office Properties Exchange LP not held by subsidiaries of Brookfield Property Partners. As of June 8, 2021, BAM also owned, directly or indirectly, 138,875 general partner units of Brookfield Property Partners and 4,759,997 special limited partnership interests in the Holding LP.

7. Brookfield Property Partners' assets consist of a 100% managing general partnership interest in the Holding LP, a Bermuda exempted limited partnership that was established on January 4, 2013 and an interest in BP US REIT LLC.

8. Brookfield Property Partners is the managing general partner of the Holding LP. The Holding LP owns, directly or indirectly, all of the common shares of Brookfield BPY Holdings Inc., an Ontario corporation (**CanHoldco**), Brookfield BPY Retail Holdings II Inc., an Ontario corporation (**CanHoldco 2**), BPY Bermuda Holdings Limited, a Bermuda company (**Bermuda Holdco**), BPY Bermuda Holdings II Limited, a Bermuda company (**Bermuda Holdco 2**), BPY Bermuda Holdings IV Limited, a Bermuda company (**Bermuda Holdco 4**), BPY Bermuda Holdings V Limited, a Bermuda company (**Bermuda Holdco 5**) and BPY Bermuda Holdings VI Limited (**Bermuda Holdco 6** and, collectively with CanHoldco, CanHoldco 2, Bermuda Holdco, Bermuda Holdco 2, Bermuda Holdco 4 and Bermuda Holdco 5, the **Holding Entities**).

9. Brookfield Property Partners, the Holding LP and related entities have retained BAM (together with its subsidiaries other than Brookfield Property Partners and its subsidiaries, **Brookfield**) and its related entities to provide management, administrative and advisory services under a second amended and restated master services agreement dated as of August 27, 2018, as may be amended from time to time.

10. Brookfield Property Partners indirectly owns 100% of CanHoldco's issued and outstanding securities except for all of issued and outstanding (i) Class A Senior Preference Shares, Series 1, which are held by Brookfield and (ii) Class B Junior Preference Shares, Series 1, which are held by Brookfield (collectively the **Current Preference Shares**). The Current Preference Shares have an aggregate voting entitlement of 2% of the aggregate votes entitled to be cast at a meeting of the shareholders. Brookfield Property Partners therefore indirectly controls 98% of the voting securities of CanHoldco.

The Issuer

11. The Issuer is an exempted limited partnership that was formed under the laws of Bermuda on April 13, 2021. The Issuer's registered office is 73 Front Street, 5th Floor, Hamilton, HM 12, Bermuda and its sole general partner is the Holding LP.

12. The Issuer is intending to participate in a plan of arrangement (the **Arrangement**) of BPY Arrangement Corporation intended to, among other things, allow Brookfield to acquire, directly or indirectly, all of the issued and outstanding BPY Units, Exchange LP Units and shares of class A stock in the capital of Brookfield Property REIT Inc. (together, the **Acquired Securities**).

13. The Issuer was formed for the purposes of being an issuer of New LP Preferred Units and to provide the first series of such New LP Preferred Units as part of the consideration for the acquisition by Brookfield of the Acquired Securities in connection with the Arrangement. Following the issuance of New LP Preferred Units, the New LP Preferred Units will be listed on the TSX and the Nasdaq and the Issuer will become a reporting issuer in the jurisdictions of Canada in which Brookfield Property Partners is currently a reporting issuer.

14. The Issuer has not carried on any active business since formation other than activities related to the Arrangement.

15. The authorized capital of the Issuer currently consists of: (i) limited partnership units, (ii) general partnership units and (iii) New LP Preferred Units.

16. As of the date hereof, CanHoldco owns all of the issued and outstanding limited partnership units of the Issuer, the Holding LP owns 100% of the issued and outstanding general partnership units and there are no issued and outstanding New LP Preferred Units.

17. The New LP Preferred Units will have rights, restrictions and privileges determined by the Holding LP as the sole general partner of the Issuer.

18. In connection with the Arrangement, the Issuer will agree to issue the first series of New LP Preferred Units to holders of Acquired Securities, who so elect or are deemed to have elected pursuant to the terms of the plan of arrangement governing the Arrangement.

19. In connection with the issuance of the New LP Preferred Units, Brookfield Property Partners, the Holding LP, and each of the Holding Entities (collectively, the **Guarantors**) will each provide full and unconditional joint and several guarantees (collectively, the **Guarantees**) of the payments to be made by the Issuer in respect of the New LP Preferred Units as stipulated in agreements governing the rights of holders of the New LP Preferred Units, that will result in the holders of such securities being entitled to receive payment from the Guarantors within 15 days of any failure by the Issuer to make a payment, as contemplated by paragraph (d) of the definition of "designated credit support security" in NI 51-102. The Guarantees in respect of the New LP Preferred Units will rank *pari passu* with certain senior preferred limited partnership units or preference shares of the Guarantors and junior to certain other obligations of the Guarantors. The Guarantees are expected to be in place by the time of the issuance of New LP Preferred Units at the completion of the Arrangement.

BAM

20. BAM is currently a reporting issuer under applicable Canadian securities laws, and will continue to be a reporting issuer upon completion of the Arrangement. BAM's Class A limited voting shares are currently co-listed on the New York Stock Exchange (**NYSE**) under the symbol "BAM" and the TSX under the symbol "BAM.A.".

21. After the completion of the Arrangement, Brookfield will directly and indirectly own all of the issued and outstanding BPY Units, and the BPY Units will be delisted from the TSX and the Nasdaq. The BPY Preferred Units will remain outstanding and listed on Nasdaq.

The Filers and the Holding LP and the Holding Entities

22. The Holding LP owns, directly or indirectly, all of the issued and outstanding common shares of all the Holding Entities and Brookfield owns all of the Current Preference Shares. The Current Preference Shares are redeemable for cash at the option of CanHoldco, subject to certain limitations. The Current Preference Shares are entitled to vote with the common shares of CanHoldco. The Current Preference Shares are not equity securities as such term is defined in the Act. The voting rights attached to the Current Preference Shares represent 2% of the votes to be cast by shareholders of CanHoldco; therefore they should be disregarded when considering the overall relationship between Brookfield Property Partners, the Issuer, the Holding LP and the Holding Entities.

23. The definitions of "subsidiary" and "beneficial ownership of securities" that apply under the Act only refer to the ownership or control of companies, as opposed to partnerships, and do not clearly capture the relationship that exists among the Filers and the Holding LP. However, Brookfield Property Partners acts as the managing general partner of the Holding LP, holding a 100% managing general partnership interest in the Holding LP, and therefore controls the Holding LP directly. As a result, Brookfield Property Partners consolidates the Holding LP (and all of the Holding LP's assets, including the Holding Entities) in its financial statements.

24. Brookfield Property Special L.P. (**Property Special LP**), a Brookfield subsidiary, holds a 0.53% special limited partnership interest (the **Special Limited Partnership Units**) in the Holding LP. An institutional investor holds Class A Preferred Units, series 1, 2 and 3. Brookfield Property Partners holds Class A Preferred Units, series 5, 6 and 7. The remaining limited partnership interests (the **Redemption-Exchange Units**) in the Holding LP are held by Brookfield. Property Special LP is the sole holder of the Special Limited Partnership Units. Brookfield is the sole holder of the Redemption-Exchange Units.

25. The Special Limited Partnership Units are non-voting interests in the Holding LP and are not redeemable or exchangeable. The Class A Preferred Units are non-voting interests in the Holding LP and series 1, 2 and 3 are exchangeable into BPY Units upon exchange, redemption or maturity. The Redemption-Exchange Units are subject to a redemption-exchange mechanism pursuant to which Brookfield has the right to require that the Holding LP redeem all or a portion of its Redemption-Exchange Units for a cash amount equal to the fair market value of one BPY Unit multiplied by the number of Redemption-Exchange Units to be redeemed. In connection with the redemption, Brookfield Property Partners has the right to purchase all the Redemption-Exchange Units to be redeemed in exchange for BPY Units on a one for one basis. The characteristics of the redemption-exchange mechanism associated with Brookfield's Redemption-Exchange Units are such that the economic interest of Brookfield is an economic interest in Brookfield Property Partners rather than the Holding LP.

26. BPY General Partner holds a 0.02% general partnership interest in Brookfield Property Partners and acts as the general partner of Brookfield Property Partners. BPY General Partner is wholly-owned by Brookfield.

27. The Guarantors will be "credit supporters" of the Issuer and the Issuer will be a "credit support issuer" when it issues New LP Preferred Units (as such terms are defined in NI 51-102).

28. The Issuer, and the relationship between the Issuer and Brookfield Property Partners, satisfies the requirements of section 13.4(2.1) of NI 51-102 in all respects, other than: (i) the fact that the Issuer, the Holding LP and Brookfield Property Partners are partnerships and (ii) the fact that Brookfield Property Partners satisfies its continuous disclosure obligations by complying with U.S. federal securities law as is permitted under NI 71-102.

29. Brookfield Property Partners will not directly satisfy the definition of "parent credit supporter" (as defined in NI 51-102) when the Issuer issues New LP Preferred Units as a result of the indirect ownership of the Issuer through the Holding LP. Therefore, the New LP Preferred Units will not be "designated credit support securities" (as defined in Part 13.4 of NI 51-102). If the Requested Relief is granted, the Filers will (i) treat Brookfield Property Partners as a "parent credit supporter" and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to parent credit supporters and (ii) treat the New LP Preferred Units as "designated credit support securities" and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to designated credit support securities, in accordance with the terms and conditions of the decision document.

30. The New LP Preferred Units will satisfy the definition of "designated credit support securities" (as defined in Part 13.4 of NI 51-102), but for the fact that Brookfield Property Partners will not directly satisfy the definition of "parent credit supporter" (as defined in Part 13.4 of NI 51-102).

31. Brookfield Property Partners does not meet the test set forth in section 13.4(2)(a) of NI 51-102 as it does not directly satisfy the definition of "parent credit supporter" (as defined in Part 13.4 of NI 51-102) and, by virtue of section 13.4(4) of NI 51-102, will be unable to meet the test set forth in section 13.4(2)(b)(ii) of NI 51-102 as it satisfies its continuous disclosure obligations by complying with U.S. federal securities law as is permitted under NI 71-102. Therefore, the Requested Relief is required in order for the provisions of section 13.4 of NI 51-102 to apply to the Issuer, and the relationship between the Issuer and Brookfield Property Partners.

Decision

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

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

1. in respect of the Continuous Disclosure Requirements, the Issuer and Brookfield Property Partners continue to satisfy the conditions set out in subsection 13.4(2.1) of NI 51-102, except as modified as follows:

    (a) any reference to parent credit supporter in section 13.4 shall be deemed to include Brookfield Property Partners notwithstanding its indirect ownership of the Issuer through the Holding LP,

    (b) any reference to subsidiary credit supporter in section 13.4 of NI 51-102 shall be deemed to include the Holding Entities and their affiliates, including the Brookfield Property Partners Related Entities, notwithstanding Brookfield Property Partners' indirect ownership of such entities through the Holding LP,

    (c) Brookfield Property Partners does not have to comply with the conditions in section 13.4(2)(a) and section 13.4(2.1)(b) of NI 51-102 if:

        (i) no party other than Brookfield Property Partners and Brookfield will have any direct or indirect ownership of, or control or direction over, voting securities of the Holding LP,

        (ii) no party other than Brookfield Property Partners, Brookfield and the Brookfield Property Partners Related Entities will have any direct or indirect ownership of, control or direction over, voting securities of the Holding Entities,

        (iii) no party other than Brookfield Property Partners, Brookfield and the Brookfield Property Partners Related Entities, will have any direct or indirect ownership of, or control or direction over, voting securities of the Issuer,

        (iv) Brookfield Property Partners consolidates in its financial statements the Holding LP, the Holding Entities and the Issuer as well as any entities consolidated by any of the foregoing and, if the Issuer has issued New LP Preferred Units that remain outstanding, files its financial statements pursuant to Part 4 of NI 51-102, except that Brookfield Property Partners does not have to comply with the conditions in section 4.2 of NI 51-102 if it files such financial statements on or before the date that it is required to file its Form 20-F with the U.S. Securities and Exchange Commission (**SEC**), and

(v) other than the Current Preference Shares owned by Brookfield, the issued and outstanding voting securities of the Holding Entities and the Issuer are 100% owned, directly or indirectly, by their respective parent companies or entities,

(d) section 13.4(4) of NI 51-102 does not apply to Brookfield Property Partners (the **SEC Foreign Issuer Relief**) if:

(i) Brookfield Property Partners continues to be a reporting issuer,

(ii) Brookfield Property Partners continues to be a SEC foreign issuer (as defined in section 1.1 of NI 71-102) and only relies on the exemptions in Part 4 of NI 71-102,

(iii) to the extent that Brookfield Property Partners complies with the foreign private issuer disclosure regime under U.S. securities law, it does not rely on any exemption from that regime,

(iv) if the Issuer has issued New LP Preferred Units that remain outstanding, the summary financial information referred to in section 13.4(2.1)(c) of NI 51-102 will be reconciled to the consolidated financial statements of Brookfield Property Partners, including any minority interest adjustments,

(v) Brookfield Property Partners continues to file a material change report as set out in Part 7 of NI 51-102 in respect of any material change in the affairs of Brookfield Property Partners that is not reported or filed by Brookfield Property Partners on SEC Form 6-K,

(vi) Brookfield Property Partners continues to file an interim financial report as set out in Part 4 of NI 51-102 and the Management Discussion and Analysis as set out in Part 5 of NI 51-102 for each period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year, and

(vii) Brookfield Property Partners includes in any prospectus of the Issuer financial statements or other information about any acquisition that would have been or would be a significant acquisition for the purposes of Part 8 of NI 51-102 that Brookfield Property Partners has completed or has progressed to a state where a reasonable person would believe that the likelihood of Brookfield Property Partners completing the acquisition is high if the inclusion of the financial statements is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. The requirement to include financial statements or other information must be satisfied by including or incorporating by reference (a) the financial statements or other information as set out in Part 8 of NI 51-102, or (b) satisfactory alternative financial statements or other information, unless at least 9 months of the operations of the acquired business or related businesses are incorporated into Brookfield Property Partners' current annual financial statements included or incorporated by reference in the prospectus of the Issuer,

(e) the Issuer does not have to comply with the conditions in section 13.4(2)(c) of NI 51-102 if the Issuer does not issue any securities and does not have any securities outstanding other than:

(i) designated credit support securities,

(ii) securities issued to and held by Brookfield Property Partners or the Brookfield Property Partners Related Entities,

(iii) non-voting securities held by Brookfield,

(iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, saving or credit unions, financial services cooperatives, insurance companies or other financial institutions,

(v) securities issued under exemptions from the prospectus requirements in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions*, and

(vi) New LP Preferred Units, provided that the Guarantors have provided Guarantees in respect of such securities.

2. in respect of the Certification Requirements, the Audit Committee Requirements and the Corporate Governance Requirements, Brookfield Property Partners and the Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above.

3. in respect of the Insider Reporting Requirements, an insider of the Issuer can only rely on the Exemption Sought so long as:

   (a) the insider complies with the conditions in sections 13.4(3)(b) and (c) of NI 51-102, and

   (b) Brookfield Property Partners and the Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above.

4. in respect of the Prospectus Disclosure Requirements so long as:

   (a) any preliminary short form prospectus of the Issuer is in respect of an offering of New LP Preferred Units,

   (b) the Issuer becomes, on or before the issuance of New LP Preferred Units to the public, and thereafter remains so long as any of the New LP Preferred Units issued to the public remain outstanding, an electronic filer under National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval* (**SEDAR**),

   (c) the Issuer creates a profile on SEDAR prior to the issuance of New LP Preferred Units to the public,

   (d) the Issuer and Brookfield Property Partners satisfy the conditions set out in section 13.3 of Form 44-101F1, except as modified as follows:

      (i) any reference to parent credit supporter in section 13.3 of Form 44-101F1 shall be deemed to include Brookfield Property Partners notwithstanding its indirect ownership of the Issuer through the Holding LP,

      (ii) any reference to subsidiary credit supporter in section 13.3 of Form 44-101F1 shall be deemed to include the Holding Entities and their affiliates, including the Brookfield Property Partners Related Entities, notwithstanding Brookfield Property Partners' indirect ownership of such entities through the Holding LP,

      (iii) Brookfield Property Partners does not have to comply with the conditions in sections 13.3(1)(e) and 13.3(1)(f) of Form 44-101F1 if it meets the conditions in paragraph 1(c) of this decision above, and

      (iv) the summary financial information referred to in section 13.3(1)(g) of Form 44-101F1 will be reconciled to the consolidated financial statements of Brookfield Property Partners, including any minority interest adjustments,

   (e) any preliminary short form prospectus and final short form prospectus of the Issuer contains (or incorporates by reference a document containing) a corporate organizational chart showing the ownership and control relationships among Brookfield, Brookfield Property Partners, the BPY General Partner, the Holding LP, the Holding Entities and the Issuer,

   (f) Brookfield Property Partners and the Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above,

   (g) all of the outstanding voting securities of the Issuer are held directly or indirectly by the Holding LP, and

   (h) the Issuer will issue a news release and file a material change report as set out in Part 7 of NI 51-102 in respect of any material change in the affairs of the Issuer that is not also a material change in the affairs of Brookfield Property Partners.

As to the Exemption Sought (other than from the Insider Reporting Requirements in the Securities Act (Ontario)).

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

As to the Exemption Sought from the Insider Reporting Requirements in the Securities Act (Ontario).

"Cecilia Williams"
Commissioner
Ontario Securities Commission

"Craig Hayman"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Trevor Rosborough – s. 144

IN THE MATTER OF
TREVOR ROSBOROUGH

M. Cecilia Williams, Commissioner and Chair of the Panel

October 8, 2021

ORDER
(Section 144 of the *Securities Act*, RSO 1990, c S.5)

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing in writing to consider an Application made by Trevor Rosborough (**Rosborough**), dated October 4, 2021 to vary the terms of an order issued by the Commission on August 25, 2021 (the **Order of August 25, 2021**) relating to a settlement agreement between Rosborough and Staff of the Commission (**Staff**) dated July 28, 2021;

ON READING the Application Record, including the Affidavit of Rosborough affirmed October 4, 2021, and Rosborough's Undertaking to the Commission dated October 4, 2021, attached as Schedule "A" to this Order, and on being advised that Staff consents to the making of this order;

IT IS ORDERED THAT:

1. pursuant to s. 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 23 of the Commission's *Rules of Procedure and Forms*, (2019) 42 OSCB 9714 this Application is heard in writing; and

2. pursuant to s. 144(1) of the *Securities Act*, RSO 1990, c S.5, notwithstanding any of the provisions contained in the Order of August 25, 2021, within 30 days from the date of this Order, Rosborough is permitted to initiate and complete the transfer of the securities presently being held in his TD Direct Investing Trading account (USD and CAD), as listed on Schedule "A" to the Undertaking, to his wife Kayla Paige Baines, and Rosborough may provide any necessary direction to complete these transfers.

"M. Cecilia Williams"

Schedule "A"

UNDERTAKING OF TREVOR ROSBOROUGH TO

THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with my Application, dated October 4, 2021, to vary the terms of an order issued by the Ontario Securities Commission (**Commission**) on August 25, 2021 relating to a settlement agreement between Staff of the Commission and I dated July 28, 2021.

2. In the event the Commission grants the variance sought in my Application, I undertake to the Commission that:

   (a) the securities presently being held in my TD Direct Investing Trading account (USD and CAD), as listed on Schedule "A" to this Undertaking (the **Securities**), will be transferred to an account opened only in the name of my wife, Kayla Paige Baines, over which she exercises sole authority and control; and

   (b) after the transfers are complete, I will not trade or engage in any acts in furtherance of trading the Securities, including but not limited to indirectly trading the Securities through my wife.

DATED at Strathroy, Ontario this 4th day of October, 2021.

"Valerie Linker-Arruda" "Trevor Rosborough"
Witness

Schedule "A" to the Undertaking

Symbol	Security Name	Quantity
GLXY	GALAXY DIGITAL HLDGS LTD	7,078
GLDN	GOLDEN RIDGE RES LTD	9,900
ID	IDENTILLECT TECHNOLOGIES	948,000
JWCA.H	JAMES E. WAGNER CULTIVATIN	14,500
SAYFF	3 SIXTY RISK SOLUTIONS LT	282,085
TTT	TRUTRACE TECHNOLOGIES INC	43,947
MARA	MARATHON DIGITAL HLDG INC	550
SOS	SOS LTD SPON/ADR	810

2.2.2 Inner Spirit Holdings Ltd.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – issuer has outstanding warrants exercisable into securities of the acquirer – warrant holders no longer require public disclosure in respect of the issuer – relief granted.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c. S-4, s. 153.

Citation: *Re Inner Spirit Holdings Ltd.*, 2021 ABASC 160

October 7, 2021

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

AND

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

AND

IN THE MATTER OF
INNER SPIRIT HOLDINGS LTD.
(the Filer)

ORDER

Background

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

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

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

(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 the Provinces of British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and

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

Interpretation

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 incorporated under the *Business Corporations Act* (Alberta) with its head office located in Calgary, Alberta.

2. Pursuant to a plan of arrangement under section 193 of the *Business Corporations Act* (Alberta) approved by the Filer's shareholders on July 14, 2021, and completed on July 20, 2021 (the **Arrangement**), all of the issued and outstanding common shares of the Filer (the **Filer Shares**) were acquired by Sundial Growers Inc. (**Sundial**) for consideration per

Filer Share consisting of (i) $0.30 in cash and (ii) 0.0835 of a common share of Sundial (the **Arrangement Consideration**) and, as a result of the Arrangement, the Filer became a wholly owned subsidiary of Sundial.

3. Sundial is a corporation existing under the *Business Corporations Act* (Alberta). The authorized share capital of Sundial consists of an unlimited number of common shares (the **Sundial Shares**). The Sundial Shares are listed on the NASDAQ under the symbol "SNDL". Sundial is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut and is not in default of securities legislation in any of such jurisdictions.

4. Pursuant to the Arrangement, the common share purchase warrants (other than broker warrants) (the **Inner Spirit Indenture Warrants**) of the Filer issued under the warrant indenture dated March 31, 2021, as supplemented by a supplemental indenture dated September 2, 2021 (the **Warrant Indenture**), or issued under warrant certificates (collectively with the Inner Spirit Indenture Warrants, the **Inner Spirit Non-Broker Warrants**) will remain outstanding in accordance with the terms set out in the respective warrant certificates or the Warrant Indenture and, following the Arrangement, will entitle the holder thereof to receive, upon the exercise or conversion of such Inner Spirit Non-Broker Warrant, the Arrangement Consideration, in lieu of each Filer Share to which such holder was theretofore entitled. Any fractional Sundial Shares that Sundial may be required to issue to a holder of Inner Spirit Non-Broker Warrants upon exercise of such warrant shall be rounded down to the nearest whole number and such holder will be entitled to receive a cash payment (rounded up to the nearest whole cent) equal to the product of (x) $1.0827, and (y) the fraction of a Sundial Share otherwise issuable.

5. All outstanding broker warrants of the Filer (the **Inner Spirit Broker Warrants**) will remain outstanding and entitle the holder thereof to receive, upon the exercise or conversion of such Inner Spirit Broker Warrant, in accordance with its terms (a) in lieu of each Filer Share to which such holder was theretofore entitled upon such exercise or conversion but for the same aggregate consideration payable therefor, the Arrangement Consideration, and (b) one-half of one Inner Spirit Indenture Warrant. Any fractional Sundial Shares that Sundial may be required to issue to a holder of Inner Spirit Broker Warrants upon exercise of such warrant shall be rounded down to the nearest whole number and such holder will be entitled to receive a cash payment (rounded up to the nearest whole cent) equal to the product of (x) $1.0827, and (y) the fraction of a Sundial Share otherwise issuable.

6. To the best of the Filer's knowledge and belief and based on the distribution certificate provided by the co-lead underwriter of the offering pursuant to which the Inner Spirit Indenture Warrants were distributed, there are 63 holders of Inner Spirit Indenture Warrants, 15 of which are in British Columbia (139,250 Inner Spirit Indenture Warrants representing 0.68% of the total aggregate Inner Spirit Indenture Warrants), 10 of which are in Alberta (1,011,000 Inner Spirit Indenture Warrants representing 4.92% of the total aggregate Inner Spirit Indenture Warrants), 30 of which are in Ontario (7,972,300 Inner Spirit Indenture Warrants representing 38.82% of the total aggregate Inner Spirit Indenture Warrants), one of which is in Nova Scotia (67,500 Inner Spirit Indenture Warrants representing 0.33% of the total aggregate Inner Spirit Indenture Warrants), one of which is in the United States of America (2,750,000 Inner Spirit Indenture Warrants representing 13.39% of the total aggregate Inner Spirit Indenture Warrants) and six of which are in other foreign jurisdictions (8,598,950 Inner Spirit Indenture Warrants representing 41.87% of the total aggregate Inner Spirit Indenture Warrants).

7. To the best of the Filer's knowledge and belief, there is one holder of Inner Spirit Non-Broker Warrants issued pursuant to a warrant certificate, which is in Alberta (712,553 Inner Spirit Non-Broker Warrants).

8. To the best of the Filer's knowledge and belief, there are three holders of Inner Spirit Broker Warrants, of which one is in Alberta (287,546 Inner Spirit Broker Warrants representing 10% of the total aggregate Inner Spirit Broker Warrants) and two are in Ontario (2,587,914 Inner Spirit Broker Warrants representing 90% of the total aggregate Inner Spirit Broker Warrants).

9. Following the effective time of the Arrangement, Sundial is obligated to meet the Filer’s obligations upon exercise or conversion of the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants and, in connection with the Arrangement, Sundial Shares were authorized for issuance upon the exercise of the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants.

10. The outstanding securities of the Filer, including debt securities, other than the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants, 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.

11. The Filer does not have any securities outstanding other than the Filer Shares, the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants.

12. The Filer distributed the meeting materials (which included the information circular, notice of meeting, notice of application, and the interim order) to the holders of the Filer Shares, in connection with the special meeting of holders of Filer Shares that took place on July 14, 2021 to consider the Arrangement, in accordance with the interim order of the Court of Queen’s Bench of Alberta dated June 10, 2021.

13. The Filer Shares, the Filer's previously outstanding 12% senior secured convertible debentures due June 30, 2022 and the Inner Spirit Non-Broker Warrants were delisted from the Canadian Securities Exchange (**CSE**) on July 20, 2021 and the Filer Shares were withdrawn from the OTCQB Venture Market before market open on July 22, 2021. The Inner Spirit Broker Warrants were at no time listed on any securities exchange.

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

15. 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.

16. 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.

17. The Filer is not required to remain a reporting issuer pursuant to the terms of the Warrant Indenture, the Inner Spirit Broker Warrants or the warrant certificates representing Inner Spirit Non-Broker Warrants. The terms of such instruments contain provisions addressing, amongst others, a corporate merger, amalgamation, arrangement, or business combination, including the Arrangement, and provide for the payment of the Arrangement Consideration in lieu of the Filer Shares subsequent to such an event. As a result, no consents or approvals were required from the holders of the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants.

18. Upon granting of the Order Sought, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

19. The Filer has no intention to seek financing by way of any offering of its securities.

20. The Filer is not in default of securities legislation in any jurisdiction in which it is a reporting issuer, other than the obligation to file by August 30, 2021 its interim financial statements, management's discussion and analysis and certification of interim filings for the interim period ended June 30, 2021.

21. The Filer is not eligible to surrender its status as a reporting issuer pursuant to the simplified procedure under subsection 19(d) in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because the Filer is in default of securities legislation as described above and the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants are not 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.

Decision

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

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

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

2.2.3 Luminex Corporation

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order than the issuer is not a reporting issuer under applicable securities laws – issuer in default of securities legislation – relief granted.

Applicable Legislative Provisions

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

September 7, 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
LUMINEX CORPORATION
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order (the **Order Sought**) 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 **Jurisdictions**).

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 and Quebec.

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 was incorporated under the laws of the State of Texas in May 1995 and reincorporated in the State of Delaware on June 19, 1998. The head office of the Filer is located at 12212 Technology Blvd., Austin, Texas, 78727. The Filer is a Delaware corporation

2. The Filer is a "reporting issuer" for the purposes of securities legislation in the Jurisdictions.

3. On March 1, 2007, the TM Bioscience Corporation ("**TBC**"), a then reporting issuer, completed a plan of arrangement (the "**Plan of Arrangement**") whereby the Filer acquired all of the outstanding common shares of TBC. The Plan of Arrangement also effected the exchange of all outstanding options and warrants to acquire common shares of TBC into options and warrants to acquire shares of the Filer. In accordance with the Plan of Arrangement and related transactions, the Filer became a "reporting issuer" for the purposes of securities legislation in the Jurisdictions.

4. Prior to the completion of the Acquisition (as defined below), the Filer's common shares were listed for trading on the NASDAQ Market LLC (the "**NASDAQ**") under the symbol "LMNX" and the Filer was subject to the reporting obligations of the Securities and Exchange Commission of the United States ("**SEC**"). None of the Filer's securities, including debt securities, were listed, quoted or traded on a marketplace or exchange in Canada and there was no market for the Filer's securities in Canada.

5. On April 11, 2021, the Filer entered into an agreement and plan of merger with DiaSorin S.p.A. ("**DiaSorin**"), a società per azioni organized under the laws of the Republic of Italy, and Diagonal Subsidiary Inc. ("**Merger Subsidiary**"), a Delaware corporation and wholly owned indirect subsidiary of DiaSorin, pursuant to which DiaSorin acquired the Filer by way of a merger (the "**Merger**") of the Merger Subsidiary with and into the Filer in an all-cash deal valued at approximately US$1.8 billion (the "**Acquisition**").

6. The Acquisition was completed on July 14, 2021, at which time the Filer, as the surviving corporation of the Merger, (i) became a wholly owned indirect subsidiary of DiaSorin and (ii) ceased to be a publicly traded company. The former securityholders of the Filer ceased to hold any shares of capital stock or other securities of the Filer, and did not receive any shares of capital stock or other securities of DiaSorin in connection with the Acquisition.

7. In connection with the completion of the Acquisition, the Filer's securities were delisted from NASDAQ on July 24, 2021. On July 26, 2021 the Filer filed a Certification and Notice of Termination of Registration under Section 12(g) of the *Securities Exchange Act of 1934* (as amended) (the "**Exchange Act**") with the SEC at which time the Filer's reporting obligations were immediately suspended under Section 13(a) of the Exchange Act, and the Filer's securities will be fully deregistered under the Exchange Act on October 25, 2021.

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

9. The Filer does have not have any securities outstanding other than the common stock held by DiaSorin. 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.

10. The Filer's outstanding securities, including debt securities, are not traded in Canada, the United States 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.

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

12. The Filer is not in default of any of the requirements of securities legislation in the Jurisdictions, the requirements of the SEC or the NASDAQ, or any other securities or corporate legislation to which it is subject, except as described in (12)(i) and (12)(ii) below (the "**Defaults**"):

    i. the failure to file its proxy statements/management information circulars, as amended, and related shareholder meeting materials on the Filer's SEDAR profile at www.sedar.com in respect of the meetings held on each of May 21, 2009, May 19, 2011, May 17, 2012, May 16, 2013, May 15, 2014, May 14, 2015, May 19, 2016, May 18, 2017, May 17, 2018, May 16, 2019, May 21, 2020, May 20, 2021 and June 21, 2021 (collectively, the "**Proxy Materials**") and the results thereof; and

    ii. the failure to file any material change reports or, alternatively, current reports filed with or furnished to the SEC in satisfaction of such requirement pursuant to section 4.2 of National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

13. All Proxy Materials of the Filer and other materials required to be filed by the Filer under U.S. securities laws, including those not filed on SEDAR in respect of the Defaults, are available on the Filer's EDGAR profile under the filings section of the SEC website (www.sec.gov).

14. The Filer is not eligible to use the simplified procedure set out in National Policy 11-206 - *Process for Cease to be a Reporting Issuer Applications* because of the Defaults.

15. The Filer, upon granting of the Order Sought, will no longer be a reporting issuer in any of the Jurisdictions.

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.

"Lawrence Haber"
Commissioner
Ontario Securities Commission

"Craig Hayman"
Commissioner
Ontario Securities Commission

OSC File #: 2021/0391

2.3 Orders with Related Settlement Agreements

2.3.1 Daniel Sheehan – ss. 127, 127.1

File No. 2020-38

IN THE MATTER OF
DANIEL SHEEHAN

Wendy Berman, Vice-Chair and Chair of the Panel

October 7, 2021

ORDER
(Sections 127 and 127.1 of the *Securities Act,* RSO 1990, c S.5)

WHEREAS on October 7, 2021, the Ontario Securities Commission (the **Commission**) held a hearing by videoconference to consider the request made jointly by Daniel Sheehan (**Sheehan**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated October 4, 2021 (the **Settlement Agreement**);

ON READING the Joint Application for Settlement Hearing, including the Statement of Allegations dated November 3, 2020 and the Settlement Agreement, and the written submissions of Staff, and on hearing the submissions of Staff and the representative for Sheehan, and on considering Sheehan having made payment of each of $1,600,000 and $100,000 to the Commission in accordance with the terms of the Settlement Agreement and on considering the undertaking of Sheehan dated August 27, 2021 and attached as Schedule “A” to this Order;

IT IS ORDERED, with reasons to follow, that:

1. the Settlement Agreement is approved;

2. The voluntary payment of $1,600,000 made by Sheehan to the Commission is designated for allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

3. Sheehan shall pay costs of the Commissions investigation in the amount of $100,000, pursuant to section 127.1 of the Act.

“Wendy Berman”

SCHEDULE "A"

IN THE MATTER OF
DANIEL SHEEHAN

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated October 4, 2021 (the **Settlement Agreement**) between Daniel Sheehan **(Sheehan**) and staff (**Staff**) of the Ontario Securities Commission (the **Commission**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. Sheehan undertakes to the Commission to:

   (a) not apply for registration for a period of one year following the date of the Order approving the Settlement Agreement.

Dated at Mississauga, Ontario this 27th day of August, 2021.

"Daniel Sheehan"

File No: 2020-38

IN THE MATTER OF
DANIEL SHEEHAN

SETTLEMENT AGREEMENT

PART I – INTRODUCTION AND STAFF'S REGULATORY MESSAGE

1. During the 10-year period from September 28, 2009 to April 30, 2019 (the **Material Time**), Daniel Sheehan (**Sheehan**) raised approximately $25 million from about 50 investors, invested that money in public equities and fixed income securities and received approximately $21 million in compensation for these investment services. Sheehan carried on this activity through Sheehan Associates Limited Partnership (**SALP**), an Ontario limited partnership formed on September 1, 1999 with its registered office in Mississauga, Ontario.

2. During the Material Time, Sheehan was the general partner of SALP and had full power and authority to operate and make all decisions regarding the business of the limited partnership, including all investment decisions. At no time was Sheehan registered under the *Securities Act*, RSO 1990, c. S.5 (the **Act**) to engage in the business of trading or advising in securities or to act as an investment fund manager.

3. Registration is a cornerstone of Ontario securities law. The registration requirement serves an important gate-keeping function to protect investors by ensuring that only a suitable and qualified person acts as an investment fund manager or engages in the business of trading or advising in securities. Additionally, registrants under the Act are subject to a robust regulatory regime that requires applicants to submit to a detailed application process for registration as well as to ongoing oversight by the Commission and other important safeguards designed to protect investors.

4. The parties will jointly file a request that the Ontario Securities Commission (the **Commission**) issue a Notice of Hearing to announce that it will hold a hearing (the **Settlement Hearing**) to consider whether, pursuant to sections 127 and 127.1 of the Act, it is in the public interest for the Commission to make certain orders against the Respondent.

PART II – JOINT SETTLEMENT RECOMMENDATION

5. Staff agree to recommend settlement of the proceeding commenced by the Notice of Hearing (the **Proceeding**) against Sheehan according to the terms and conditions set out in Part VI of this Settlement Agreement (the **Settlement Agreement**). Sheehan agrees to the making of an order in the form attached as Schedule "A" (the **Order**) to this Settlement Agreement, based on the facts set out herein.

6. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Sheehan agrees with the facts set out in Part III and the conclusions set out in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

SALP's Structure

7. SALP's terms and structure were governed in part by a partnership agreement (the **Partnership Agreement**) and subsequent amendments. Under the terms of the partnership set out in the Partnership Agreement, SALP's investors became limited partners of SALP by acquiring an interest in the partnership in the form of a partnership unit (**Unit**) in exchange for the investment capital they contributed to the fund.

8. Under the terms of the Partnership Agreement, units granted investors the right to participate in any returns earned from SALP's portfolio of securities and were redeemable at the limited partner's written request.

9. The Partnership Agreement designated Sheehan as the general partner and all other investors as limited partners.

10. The Partnership Agreement stated the partnership was to "buy, purchase, invest in, acquire, hold, trade, sell, transfer and otherwise deal in and with, directly or indirectly, Securities".

11. The Partnership Agreement granted Sheehan the "full, complete and exclusive right, power and authority to manage, control, administer and operate the business and affairs" of SALP and to make all decisions regarding the partnership.

Legal Advice

12. Sheehan formed SALP based upon legal advice he received in August 1999 from an experienced securities lawyer (the **Securities Lawyer**). The Securities Lawyer drafted and advised on the Partnership Agreement.

13. The Securities Lawyer advised Sheehan that SALP was a private investment club and therefore registration was not required. However, in order to qualify as a private investment club, Sheehan would not have been able to take compensation beyond normal brokerage fees for his services, which Sheehan was not advised of by the Securities Lawyer.

Investor Contributions to SALP

14. During the Material Time, Sheehan remained the General Partner of SALP which comprised approximately 35 to 50 Ontario investors at any given point in time, 3 of which were immediate family members of Sheehan.

15. During the Material Time, SALP's limited partners made contributions to SALP totalling $25,300,864.

SALP's Prior Interest in Private Businesses

16. Between 2001 and 2004, SALP bought 90% of a private business. SALP sold its interest in the private business in 2008. After the sale of the private business in 2008 and throughout the Material Time, SALP did not invest any capital in private companies, but continued to look for opportunities to do so.

SALP's Business During the Material Time

17. During the Material Time, Sheehan invested SALP's investor capital primarily in publicly traded equities and also invested in fixed income assets and exchange-traded derivatives.

18. During the Material Time, SALP's only active investments were a portfolio of publicly-traded securities, which Sheehan managed exclusively, and for which he received compensation.

Sheehan's Compensation

19. The Partnership Agreement stated that Sheehan be paid an annual performance fee equal to 25% of all returns on partnership capital over 6%, subject to certain terms and conditions including a claw back of the performance fee so as to ensure a 6% return to the limited partners.

20. In March 2001, Sheehan proposed that if over any five-year period the value of the partnership capital had not increased by 6% compounded annually, he would return the amount of any performance-based compensation on terms that would provide limited partners with a net 6% compounded return. This proposal was approved by the limited partners. After the amendment, all gains were assigned pro-rata on the first 6% compounded annually. Any gains above 6% compounded annually were attributed 75% pro-rata and 25% to Sheehan as his compensation

21. During the Material Time, SALP always earned in excess of the minimum 6% compounded annual return over any given five-year period and therefore, Sheehan was never required to repay any of his performance-based compensation to SALP's limited partners.

22. In 2016, Sheehan introduced a further amendment to his compensation formula, reducing his compensation to 12.5% of the partnerships' returns above 6% on the first $300,000 of the limited partners' invested capital; it remained 25% on returns above 6% on invested capital in excess of $300,000. In 2018, Sheehan raised the capital threshold to the first $450,000 of the limited partners' invested capital.

23. During the Material Time, Sheehan's compensation was approximately $21 million including $3,448,954 in compensation received from his immediate family.

24. The limited partners' percentage return and Sheehan's compensation in each year during the Material Time were as follows:

Year	Limited Partner's Percentage return	Sheehan's Compensation
2009	28.3%	$517,810
2010	11.3%	$400,373
2011	6.8%	$67,342
2012	15 %	$834,883
2013	46.8%	$6,016,923
2014	24%	$4,017,805
2015	15.8%	$2,756,081
2016	10.5%	$1,409,660
2017	21.2%	$5,104,262
2018	3.3%	$0
2019	13.0%	$0[1]
TOTAL		$21,125,139

SALP's Operating Expenses

25. According to the Partnership Agreement, all expenses were payable out of the assets of the limited partnership. During the Material Time, SALP's operating expenses were as follows:

2019:	$48,920
2018:	$83,981
2017:	$86,165
2016:	$63,870
2015:	$69,995
2014:	$42,860
2013:	$37,292
2012:	$35,341
2011:	$29,014
2010:	$23,048
2009:	$20,556

Distribution of SALP's Proceeds and Wind-Up

26. SALP has been permanently wound up. On or about April 30, 2019, Sheehan paid each of SALP's limited partners the full amount of their invested capital plus the limited partners' proportional share of investment returns, net of Sheehan's performance-based compensation.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW

27. Sheehan admits and acknowledges that he contravened Ontario securities law by engaging in the business of trading and advising in securities and by acting as an investment fund manager, without registration and where no exemptions were available. Such acts contravened subsections 25(1), 25(3), and 25(4) of the Act.

[1] In permanently winding up SALP, Sheehan waived his 2019 performance based compensation of $2,364,577.72.

PART V – RESPONDENT'S POSITION

28. The Respondent intends to request, and Staff do not object, that the panel at the Settlement Hearing consider the following mitigating circumstances:

    a. Sheehan reasonably relied on the legal advice he received in 1999.

    b. Sheehan acknowledges that he did not seek or obtain further legal advice again at any point after 1999, including in 2009 when significant amendments were made to the Act. While the Act required registration for engaging in the business of trading in and advising in securities in 1999, amendments to the Act that came into force on September 28, 2009 also required, for the first time, registration in order to act as an investment fund manager.

    c. Sheehan did not intend to, or knowingly, act, contrary to the Act.

    d. Sheehan did not solicit investors to SALP.

    e. As of the date of this Settlement Agreement, Staff is not aware of any complaints from any investor in SALP.

    f. Sheehan has provided Staff with a signed undertaking, in the form attached as Annex I to Schedule "A" to this Settlement Agreement, to not apply for registration under Ontario securities law for a period of one year following the date of the Order.

PART VI – TERMS OF SETTLEMENT

29. The Respondent agrees to the terms of settlement listed below and consents to the order in substantially the form attached hereto as Schedule "A" (the **Order**), the terms of which include that:

    a. the Settlement Agreement is approved;

    b. Sheehan shall make a voluntary payment of $1,600,000 to the Commission by wire transfer to the Commission before the commencement of the Settlement Hearing, which amount is designated (i) for allocation to or for the benefit of third parties or (ii) for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and

    c. pursuant to paragraph 1 of subsection 127.1 of the Act, Sheehan shall pay costs of the Commission's investigation in the amount of $100,000, by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.

30. Sheehan agrees to attend at the hearing before the Commission to consider the proposed settlement by video conference.

31. Sheehan acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VII – FURTHER PROCEEDINGS

32. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

33. Sheehan acknowledges that, if the Commission approves this Settlement Agreement and Sheehan fails to comply with any term in it, Staff or the Commission are entitled to bring any proceedings necessary to enforce compliance with the terms of the Settlement Agreement.

34. Sheehan waives any defences to a proceeding referred to in paragraph 32 or 33 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

35. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

36. Staff and Sheehan agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the Settlement Hearing in relation to Sheehan's conduct, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

37. If the Commission approves this Settlement Agreement:

    a. Sheehan irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

    b. No party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

38. If the Commission does not approve this Settlement Agreement at the Settlement Hearing, Staff shall return to Sheehan all funds paid by them to the Commission prior to the Settlement hearing within seven (7) days of the Settlement Hearing or the Commission's decision not to approve this Settlement Agreement, whichever is later.

39. Whether or not the Commission approves this Settlement Agreement, Sheehan will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

40. If the Commission does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

    a. this Settlement Agreement and all discussions and negotiations between Staff and Sheehan before the Settlement Hearing takes place will be without prejudice to Staff and Sheehan; and

    b. Staff and Sheehan will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations dated May 5, 2020. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

41. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless Staff and the Respondent otherwise agree in writing or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

42. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

43. An electronic copy of any signature will be as effective as an original signature.

DATED at this 30th day of September, 2021.

"Kristy Sheehan"
Witness

"Daniel Sheehan"

DATED at Toronto, Ontario, this 4th day of October, 2021.

ONTARIO SECURITIES COMMISSION

"Jeff Kehoe"
Director, Enforcement Branch

Schedule "A"

File No. 2020-38

IN THE MATTER OF
DANIEL SHEEHAN

Wendy Berman, Vice-Chair and Chair of the Panel

[Date]

ORDER
(Sections 127 and 127.1 of the *Securities Act,* RSO 1990, c S.5)

WHEREAS on September X, 2021, the Ontario Securities Commission (the **Commission**) held a hearing by video conference to consider the request made jointly by Daniel Sheehan (**Sheehan**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated September X, 2021 (the **Settlement Agreement**);

ON READING the Joint Application for Settlement Hearing, including the Statement of Allegations dated November 3, 2020 and the Settlement Agreement, and the written submissions of Staff, and on hearing the submissions of Staff and the representative for Sheehan, and on considering Sheehan having made payment of each of $1,600,000 and $100,000 to the Commission in accordance with the terms of the Settlement Agreement and on considering the undertaking of Sheehan dated September X, 2021 and attached as Schedule "A" to this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

2. The voluntary payment of $1,600,000 made by Sheehan to the Commission is designated for allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

3. Sheehan shall pay costs of the Commissions investigation in the amount of $100,000, pursuant to section 127.1 of the Act.

Wendy Berman

ANNEX I

IN THE MATTER OF
DANIEL SHEEHAN

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated September X, 2021 (the **Settlement Agreement**) between Daniel Sheehan **(Sheehan**) and staff (**Staff**) of the Ontario Securities Commission (the **Commission**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. Sheehan undertakes to the Commission to:

   (a) not apply for registration for a period of one year following the date of the Order approving the Settlement Agreement.

Dated at Mississauga, Ontario this 27th day of August, 2021.

"Daniel Sheehan"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 The Mutual Fund Dealers Association and Omar Enrique Rojas Diaz (also known as Omar Rojas) – ss. 21.7, 8

Citation: *MFDA (Rojas Diaz) (Re)*, 2021 ONSEC 24
October 5, 2021
File No. 2021-7

IN THE MATTER OF
THE MUTUAL FUND DEALERS ASSOCIATION
AND
OMAR ENRIQUE ROJAS DIAZ
(ALSO KNOWN AS OMAR ROJAS)

REASONS AND DECISION
(Sections 21.7 and 8 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	August 12, 2021	
Decision:	October 5, 2021	
Panel:	Lawrence P. Haber	Commissioner and Chair of the Panel
Appearances:	Omar Enrique Rojas Diaz	For himself
	Shelly M. Feld Alan Melamud	For Staff of the Mutual Fund Dealers Association of Canada
	Jacob Millar	For Staff of the Commission

REASONS AND DECISION

I. OVERVIEW

[1] Omar Enrique Rojas Diaz (the **Respondent**) was a dealing representative with Royal Mutual Funds Inc. and regulated by the Mutual Fund Dealers Association of Canada (**MFDA**).

[2] On December 8, 2020, the Respondent entered into an Agreed Statement of Facts with MFDA Staff, in which the Respondent admitted that between September 8, 2017 and June 29, 2018, he misappropriated approximately $39,270 from one client, contrary to MFDA Rule 2.1.1.

[3] In a decision issued on January 29, 2021 (the **Decision**),[1] the MFDA panel ordered that the Respondent:

a. be permanently prohibited from conducting securities related business while in the employ of or affiliated with a Member of the MFDA; and

b. pay costs of $2,500.

[4] On March 2, 2021, MFDA Staff applied to the Ontario Securities Commission (the **Commission** or the **OSC**) for a hearing and review of the Decision.

[5] MFDA Staff seeks an order varying the Decision by imposing a fine on the Respondent in the amount of $52,270, or in the alternative, an order returning the matter to the MFDA panel for a penalty hearing.

[1] *Rojas (Re),* 2021 CanLII 15682 (CA MFDAC), MFDA File No. 202002

[6] The Respondent asks that MFDA Staff's application be dismissed. Staff of the Commission (**OSC Staff**) asks that MFDA Staff's application be granted and that some financial sanctions be ordered against the Respondent but takes no position on the quantum of those sanctions.

[7] For the reasons set out below, I find that that the Decision is varied to include a fine payable by the Respondent in the amount of $52,270.

II. BACKGROUND

[8] From December 9, 2013 to July 17, 2018, the Respondent was an Approved Person registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the **Member**), a Member of the MFDA. The Respondent was also an employee of the Member's bank affiliate (the **Bank**).

[9] In 2017, the Respondent advised client MC that she had been pre-approved for a line of credit in the amount of $10,000. Client MC was not interested in opening a line of credit; however, the Respondent continued encouraging client MC to do so, and on or about February 23, 2017, client MC opened the line of credit.

[10] The Respondent subsequently changed the contact details (address, telephone number, and email) on client MC's client profile to fictitious details without client MC's knowledge or authorization. On or about October 3, 2017, the Respondent opened a new bank account in the name of client MC in order to pay the minimum interest on client MC's line of credit from the new account, without client MC's knowledge or authorization. The Respondent falsified client MC's signature on a letter of direction to facilitate these changes.

[11] Between September 8, 2017 and June 29, 2018, without the knowledge or authorization of client MC, the Respondent processed approximately:

a. 30 increases to the credit limit on client MC's line of credit;

b. 30 withdrawals from client MC's line of credit; and

c. 15 deposits to pay monthly interest charges so that the line of credit would not go into default. By means of these unauthorized transactions, the Respondent misappropriated approximately $39,270 from client MC's line of credit and used the monies for his personal benefit.

[12] Following the discovery of the Respondent's conduct by the Bank, the Bank compensated client MC by reimbursing the misappropriated amounts. The Respondent's employment was subsequently terminated by the Member on July 17, 2018.

[13] In November 2018, the Respondent entered into a consumer proposal (the **Proposal**), which his creditors accepted. Pursuant to the Proposal, the Respondent was required to make monthly payments of $350 to the administrator of the Proposal, to a required total of $21,000 after 60 months. The Respondent has been making the required payments, however, as of November 3, 2020, the Respondent was behind by two payments.

[14] The Member conducted an investigation and no evidence of additional misconduct affecting other clients of the Member or the Bank was identified. There have been no other client complaints to the Member or to the MFDA.

[15] On August 5, 2020, the MFDA commenced a disciplinary proceeding against the Respondent by issuing a Notice of Hearing. On December 8, 2020, the MFDA and the Respondent entered into an Agreed Statement of Facts, wherein the Respondent admitted he misappropriated approximately $39,270 from one client, contrary to MFDA Rule 2.1.1.

[16] The merits and penalty hearing was conducted on December 14, 2020. The Respondent was self-represented throughout the MFDA proceeding. On January 29, 2021, the MFDA Panel issued its Decision accepting the admission of the Respondent that he had misappropriated $39,270 from a client, contrary to MFDA Rule 2.1.1, and imposing the following sanctions against the Respondent:

a. a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of, or associated with any Member of the MFDA; and

b. an order that the Respondent pay costs to the MFDA in the amount of $2,500.

[17] The MFDA panel declined to order a fine against the Respondent. The MFDA panel determined that in light of the circumstances, to impose a financial penalty on the Respondent in addition to a permanent ban on the Respondent's ability to conduct securities related business with a member of the MFDA would be to punish the Respondent for his past conduct.[2]

[2] Decision at para 76

III. ANALYSIS

A. Introduction

[18] Before turning to the substantive issue raised by this application, I set out the legal framework and standard of review for this proceeding.

[19] MFDA Staff brings this application under s. 21.7 of the *Securities Act*[3] (the **Act**) which provides that a person directly affected by a decision of a recognized self-regulatory organization, such as the MFDA, may apply to the Commission for a review of that decision.

[20] On an application such as this, the Commission may confirm the MFDA decision or make such other decision as the Commission considers proper.[4] The Commission's review of an MFDA decision is a hearing *de novo* rather than an appeal. In other words, the Commission exercises original jurisdiction rather than a more limited appellate jurisdiction.[5]

[21] The Commission has chosen as a matter of practice to limit the circumstances under which it will substitute its own decision for that of a self-regulatory organization such as the MFDA.[6] This choice is consistent with the requirement in the Act that the Commission have regard to the fundamental principle that the Commission should "use the enforcement capability and regulatory expertise of recognized self-regulatory organizations."[7]

[22] The Commission will interfere with a decision of a self-regulatory organization only if one of the following five grounds has been established:

a. the hearing panel proceeded on an incorrect principle;

b. the hearing panel erred in law;

c. the hearing panel overlooked material evidence;

d. new and compelling evidence is presented to the Commission that was not presented to the hearing panel; or

e. the hearing panel's perception of the public interest conflicts with that of the Commission.[8]

[23] MFDA Staff submits that the first, second and fifth grounds are met in this case.

B. Has MFDA Staff established that the Commission should interfere with the MFDA Decision?

[24] MFDA Staff submits that the MFDA panel erred in the following ways, each of which I will consider in turn:

a. imposed a penalty that permitted the Respondent to retain the benefit from his misconduct;

b. relied on irrelevant factors; and

c. placed undue emphasis on the Respondent's inability to pay a financial penalty and concluded that a financial sanction would be punitive in the circumstances.

1. Did the MFDA panel err in law and in principle by imposing a penalty that permitted the Respondent to retain the benefit from his misconduct?

[25] The MFDA panel concluded that removing the Respondent from the mutual fund industry alone, without a financial penalty, was sufficient to protect investors, deter the Respondent from engaging in this type of misconduct and send a strong message to the industry that abusing the client trust relationship will not be tolerated.[9]

[26] MFDA Staff submits that the MFDA panel erred in law, proceeded on an incorrect principle, and adopted and applied a perception of the public interest that is inconsistent with that of the Commission by deciding not to order disgorgement or any financial penalty against the Respondent, thereby permitting him to retain the benefit from his misconduct. In particular, MFDA Staff submits that the MFDA panel failed to consider the importance of disgorgement to achieve the protective and preventative objectives of securities regulation and failed to explain how specific and general deterrence could be achieved while permitting the Respondent to keep the financial benefit that he derived from his wrongdoing.

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3 RSO 1990, c S.5
4 Act, s 8(3) and 21.7(2)
5 *Boulieris (Re),* 2004 ONSEC 1, (2004) 27 OSCB 1597 (***Boulieris***) at paras 29-30; *Ziaian (Re),* 2021 ONSEC 9, (2021) 44 OSCB 2584 (***Ziaian***) at para 26
6 *Northern Securities Inc. (Re),* 2013 ONSEC 48, (2014) 37 OSCB 161 at para 57
7 Act, s 2.1, para 4
8 *Canada Malting (Re),* (1986) 9 OSCB 3565 at para 24; *Ziaian* at para 28
9 Decision at para 55

[27] The Respondent submits that he has not retained the benefit from his misconduct because since 2018, he has been making yearly payments to the Bank for the monies he misappropriated as part of the Proposal.

[28] I find that the MFDA panel erred in law, proceeded on an incorrect principle, and adopted and applied a perception of the public interest that is inconsistent with that of the Commission by deciding not to order disgorgement or any financial penalty against the Respondent.

[29] The primary goal of securities regulation is the protection of investors and fostering public confidence in the capital markets and the securities industry.[10] To this end, disciplinary penalties imposed in a securities regulatory context are intended to be protective and preventative by restraining future conduct that is harmful to the capital markets.[11]

[30] Disgorgement is an important tool to advance the remedial and protective aims of securities regulation and to ensure that specific and general deterrence of misconduct is achieved. The disgorgement remedy is intended to deprive a wrongdoer of gains obtained through misconduct and thereby remove the incentive to engage in similar future non-compliance with securities regulation.[12]

[31] In addition, disgorgement serves the important public interest of maintaining public confidence in the capital markets and securities regulation, by making it clear that contravening securities regulations does not pay.[13]

[32] By permitting the Respondent to retain the benefit of his misconduct, the MFDA panel ordered a penalty that failed to satisfy the protective and preventative objectives of securities regulation and that failed to achieve the desired level of specific and general deterrence that is required when applying sanctions.

[33] The Respondent did not file any evidence with respect to the yearly payments being made to the Bank. In any event, the MFDA panel did not base its decision on these payments and its decision must be reviewed based on the evidence before it at the time.

2. Did the MFDA panel err in law and in principle by relying on irrelevant factors?

[34] MFDA Staff submits that the MFDA panel erred in law and proceeded on an incorrect principle by relying on the following irrelevant factors in its decision:

a. the Bank's reimbursement of the amounts taken from the client's line of credit and the fact that the client never suffered a loss; and

b. the Respondent's motivation or reason for misappropriating the money.

(a) The Bank's reimbursement of the money taken and the fact that the client never suffered a loss

[35] In its assessment of the seriousness of the Respondent's misconduct, the MFDA Panel concluded that "[w]hile the client's trust was breached, the financial loss was that of the Bank."[14] Further, in its discussion of mitigating factors, the MFDA panel noted that the Bank forgave the amounts withdrawn from the client's line of credit and as a result the client was never out of pocket any money, only the Bank was.[15]

[36] MFDA Staff submits that the MFDA panel erred in law and proceeded on an incorrect principle by treating the following as mitigating factors: (i) the Bank's reimbursement of the amounts taken by the Respondent from the client's line of credit, and (ii) the fact that the Bank, not the client, ultimately suffered the loss. MFDA Staff submits that the determination of which party was victimized by the Respondent's misconduct and which party ultimately suffered the loss is irrelevant to the question of the appropriate penalty to impose.

[37] MFDA Staff submits that regardless of whether the client or the Bank suffered the loss, the seriousness of the Respondent's dishonesty, the amount of financial harm suffered, and the corresponding financial benefit obtained are all unaffected. MFDA Staff submits that schemes that involve taking advantage of client trust to misappropriate monies are incompatible with investor protection and maintaining confidence in the capital markets. MFDA Staff submits that the sanctions imposed on a wrongdoer ought not to be affected by the good faith intervention of a third party who took steps to redress the harm caused by the wrongdoer.

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10 *Pezim v British Columbia (Superintendent of Brokers),* [1994] 2 SCR 557 at para 59
11 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission),* [2001] 2 SCR 132 at para 42
12 *Northern Securities Inc. (Re),* 2014 ONSEC 27, (2014) 37 OSCB 8535 at paras 210-211; *Limelight Entertainment Inc. (Re)*, 2008 ONSEC 28, (2008) 31 OSCB 12030 (***Limelight***) at paras 47-48
13 *Limelight* at para 54; *Fauth (Re),* 2019 ABASC 102 at para 56
14 Decision at para 47
15 Decision at para 64

[38] OSC Staff submits that the MFDA panel erred in law by treating the fact that the Bank reimbursed the amounts misappropriated by the Respondent as a mitigating factor. OSC Staff submits that the fact that a third party later compensated the original victim does nothing to mitigate the seriousness of the Respondent's conduct.

[39] I find that the MFDA panel erred in law and proceeded on an incorrect principle by treating the Bank's reimbursement to the client and the fact that the Bank, not the client, ultimately suffered the loss, as mitigating factors.

[40] The Commission has previously held, in the context of considering disgorgement as a sanction, the party which ultimately suffered the loss is irrelevant to the question of whether the amounts obtained by a wrongdoer ought to be disgorged. In *Pro-Financial Asset Management Inc. (Re),*[16] the respondents argued that disgorgement ought not to be ordered in respect of the amounts that had been obtained from banks as opposed to investors themselves. The Commission rejected the argument and made clear that when ordering disgorgement, the Commission should consider the loss suffered by third parties, not just "investors".[17] Whether the loss was suffered by the client who was targeted or the Bank that compensated that client, the seriousness of the Respondent's dishonesty, the amount of financial harm suffered and the corresponding financial benefit obtained are all unaffected. The MFDA panel erred by considering the steps taken by a third party to redress the harm to investors as a mitigating factor.

(b) The Respondent's motivation for misappropriation

[41] The MFDA panel noted that there was no evidence that the Respondent had used the misappropriated funds to support a lavish lifestyle, but instead had needed the money owing to financial difficulties.[18]

[42] MFDA Staff submits that the MFDA panel proceeded on an incorrect principle by treating the Respondent's motivation for misappropriating money taken from a client's account as a mitigating factor that diminished the seriousness of his misconduct. MFDA Staff submits that while the seriousness of the misconduct is a relevant factor to consider when determining the appropriateness of disgorgement, the Respondent's reason for misappropriating money does not diminish the seriousness of the misconduct or the justification for requiring disgorgement of the money that he took.

[43] I find that the MFDA panel proceeded on an incorrect principle by treating the Respondent's motivation for misappropriating money taken from a client's account as a mitigating factor that diminished the seriousness of his misconduct.

[44] Misappropriation is among the most serious forms of misconduct that securities regulators encounter.[19] Regardless of the motivation for the misappropriation, in order to maintain public trust in the securities industry it is essential that those entrusted with investor money strictly adhere to sound practices that reflect the importance of that trust.[20] Otherwise, an Approved Person facing financial difficulties may be motivated to misappropriate funds knowing that they may be able to retain the monies misappropriated in the end. Such an approach runs counter to the principles that inform sanctions and would send the wrong message to those individuals and the public. The fact that in this case the Respondent was motivated to misappropriate funds due to personal financial need, as opposed to outright greed, does not impact the seriousness of the Respondent's misconduct and the justification for requiring disgorgement of the funds taken from the client's account.

[45] Accordingly, the MFDA panel erred by considering the Respondent's motivation or reason for misappropriation as a mitigating factor. The Decision must be varied to uphold the principles of specific and general deterrence.

3. Did the MFDA panel err in law and in principle by placing undue emphasis on the Respondent's inability to pay a financial penalty and by concluding that a financial sanction would be punitive?

[46] In its discussion of the Respondent's inability to pay, the MFDA panel noted that while the Respondent's misconduct would ordinarily warrant a financial penalty, it would be neither fair nor appropriate to impose a financial penalty in the circumstances.[21] The MFDA panel ultimately concluded that "to impose a financial penalty on the Respondent in addition to a permanent prohibition on the Respondent's authority to conduct securities related business while in the employ of or affiliated with a Member of the MFDA, would be to punish past conduct".[22]

[47] MFDA Staff submits that the MFDA panel erred in law and proceeded on an incorrect principle by (i) overemphasizing the Respondent's inability to pay a financial penalty given the seriousness of his misconduct, and (ii) concluding that an order requiring disgorgement of the misappropriated funds would be punitive. MFDA Staff submits that the MFDA panel placed undue weight on the significance of the Respondent's inability to pay, and insufficient weight on other applicable

16 2018 ONSEC 18, (2018) 41 OSCB 3512 (***Pro-Financial***)
17 *Pro-Financial* at paras 53-55
18 Decision at para 44
19 *Ng (Re),* 2016 LNCMFDA 81 at paras 106-107; *Ogalino (Re),* 2014 LNCMFDA 7 at para 15; *Cox (Re),* 2016 LNCMFDA 24 at para 84; *Davies (Re),* 2020 LNCMFDA 88 at para 25
20 *Pro-Financial* at para 72
21 Decision at para 65
22 Decision at para 76

factors such as the need for general deterrence and the damage that could be caused to confidence in the capital markets if wrongdoers are permitted to retain their ill-gotten gains.

[48] OSC Staff submits that the MFDA panel erred in law and proceeded on an incorrect principle by (i) placing too much emphasis on the Respondent's current inability to pay a financial penalty, and (ii) concluding that imposing a financial sanction on the Respondent would be punitive. OSC Staff submits that the MFDA panel overemphasized the Respondent's current financial circumstances and failed to adequately weigh other relevant principles, including deterrence, the seriousness of the Respondent's conduct, and the public interest in safeguarding the capital markets. OSC Staff further submits that financial sanctions do not become punitive or inappropriate simply because the wrongdoer does not have the ability to pay them, especially where the wrongdoer is not elderly and may yet again find gainful employment in the future. OSC Staff also submits that the MFDA panel's decision to not impose financial sanctions is inconsistent with prior MFDA and Commission decisions regarding the purpose of financial sanctions and the factors to be considered when imposing them.

[49] The Respondent submits that he has already been punished for his wrongdoing as a result of his ban from the industry and that he does not have the ability to pay a financial penalty if one were ordered against him. The Respondent also submits that the cases cited by MFDA Staff and OSC Staff are distinguishable from the present case because those cases involved investment securities and individuals taking advantage of the capital markets. In the present case, the Respondent submits that he took monies from a banking product, not an investment security, and never took advantage of the securities industry.

[50] I find that the MFDA panel erred in law and proceeded on an incorrect principle by overemphasizing the Respondent's inability to pay a financial penalty given the seriousness of his misconduct and concluding that an order requiring disgorgement of the misappropriated funds would be punitive.

[51] While I have some sympathy for the financial circumstances the Respondent finds himself in, previous MFDA decisions have repeatedly emphasized that an "inability to pay" takes on less significance when determining a penalty in instances where a respondent engages in egregious misconduct that harms a client.[23]

[52] In *Re Sabourin,* the Commission similarly ordered disgorgement notwithstanding a respondent's claims of impecuniosity.[24] The Commission recognized that "ability to pay" was a relevant factor, but was careful to make clear that it was not a predominant or determining factor.[25] This approach is in line with the applicable principles of specific and general deterrence discussed above.

[53] The MFDA Sanction Guidelines express the same principle, stating that "[ability to pay] is only one of the factors to be weighed in relation to all other applicable factors including general and specific deterrence and the need to ensure public confidence in the MFDA's disciplinary processes."[26] However, in this case, I find that the MFDA panel placed undue weight on the significance of the Respondent's inability to pay, and insufficient weight on other applicable factors such as the need for general deterrence and the damage that could be caused to confidence in the capital markets if wrongdoers are permitted to retain their ill-gotten gains.

[54] In light of its conclusion that the Respondent had a legitimate inability to pay, the MFDA panel concluded that ordering a financial penalty would constitute improper punishment of past conduct.[27] Disgorgement, however, is not a punishment, particularly in circumstances where the monies disgorged are amounts that the Respondent deliberately misappropriated from a client. As stated by the Divisional Court in *North American Financial Group*, the reason to focus on the amounts wrongly obtained as opposed to the amounts retained is precisely because the aim is deterrence and not punishment.[28]

[55] I do not accept the Respondent's submissions that his actions related to "banking products" as opposed to mutual funds and therefore the precedents relied upon by MFDA Staff are distinguishable. Firstly, there was no jurisdictional objection raised by the Respondent before the MFDA panel or on this application. Secondly, MFDA Staff identified case law where the MFDA imposed sanctions where funds were misappropriated from both mutual fund and non-mutual fund clients,[29] and where the vast majority of funds were misappropriated prior to the Respondent becoming registered.[30] The fact that in this case the Respondent misappropriated funds from a client's line of credit, as opposed to their invested funds, does not change the analysis regarding the appropriateness of the penalty.

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23 *Brauns (Re),* 2014 LNCMFDA 9 at para 16; *Davis (Re),* 2016 LNCMFDA 172 at para 59; *Frank (Re),* 2015 LNCMFDA 83 at paras 3 and 13-16; *Visneskie (Re),* 2018 LNCMFDA 119 at paras 20-21; *Zamrykut (Re),* 2020 LNCMFDA 184 at para 35

24 *Sabourin (Re),* 2010 ONSEC 10, (2010) 33 OSCB 5299 (***Sabourin***) at paras 24, 27 and 69

25 *Sabourin* at para 60

26 Mutual Fund Dealers Association of Canada, *Sanction Guidelines* (***Sanction Guidelines***) at 5

27 Decision at paras 65 and 74-76

28 *North American Financial Group Inc v Ontario Securities Commission,* 2018 ONSC 136 at para 218

29 *Hothi (Re),* 2020 LNCMFDA 187 at paras 23, 44 and 48

30 *Lam (Re),* 2019 LNCMFDA 23 at paras 13 and 32-33

[56] Accordingly, the MFDA panel erred when it declined to order disgorgement on the basis that it would constitute improper punishment.

C. If the MFDA panel did commit a reviewable error, what is the appropriate remedy?

[57] MFDA Staff submits that if the Commission decides to grant MFDA Staff's application, then the Commission ought to substitute its own decision for that of the MFDA panel. MFDA Staff submits that there is no further evidence nor argument to make in respect of the appropriate penalty, and as a result there is no reason to refer the matter back to the MFDA panel.

[58] MFDA Staff seeks an order imposing a fine of $52,270 against the Respondent. MFDA Staff submits that at a minimum, a fine of $32,270 should be ordered against the Respondent, reflecting disgorgement of the Respondent's profit from his misconduct less $7,000 that the Respondent has repaid to the Bank as part of the Proposal. However, MFDA Staff submits that an additional financial penalty of $20,000 above the amount taken from the client's line of credit without authorization should be imposed given the egregious nature of the Respondent's misconduct and the need for general deterrence as well as disgorgement in the circumstances. MFDA Staff submits that requiring the Respondent to merely disgorge the amount taken would be insufficient to deter similar misconduct. MFDA Staff submits that ordering the Respondent to disgorge the amounts misappropriated plus an additional fine of $20,000 for general deterrence would also be consistent with relevant MFDA precedents.

[59] OSC Staff submits that it would be appropriate for the Commission to substitute its own decision for that of the MFDA panel. OSC Staff submits that the facts before the MFDA panel were comprised entirely of an Agreed Statement of Facts and that as a result the Commission is in possession of all the necessary facts to substitute its decision. OSC Staff submits that imposing some financial sanctions against the Respondent is appropriate in the circumstances but takes no position on the quantum or allocation of the sanctions that should be ordered.

[60] On an application for a hearing and review of a MFDA decision, the Commission can substitute its own decision in instances where it finds that the MFDA panel has erred. I find that this is an appropriate situation to do so.

[61] In reaching a decision on the appropriate penalty, I weighed a number of factors that included:

- the seriousness of the allegations that have been proved;
- the Respondent's experience in the marketplace;
- the level of the Respondent's activity in the marketplace;
- whether or not there has been any recognition by the Respondent of the seriousness of the improprieties;
- whether the misconduct was isolated or recurrent and part of a pattern of misconduct;
- whether there are any mitigating factors that should be considered;
- whether or not the sanctions may deter the Respondent and other like-minded individuals from engaging in similar abuses of the capital markets in the future;
- the size of any profit (or loss avoided) from the illegal conduct; and
- the Respondent's ability to pay any monetary sanctions.

[62] I also consider the following principles applicable to sanctions:

- the protection of the investing public;
- the integrity of the securities market;
- specific and general deterrence;
- the protection of the governing body's membership; and
- the protection of the integrity of the governing body's enforcement processes.

[63] The only aspect of the Decision which I found appropriate to substitute was the MFDA panel's failure to impose a monetary penalty. Accordingly, the factors of the seriousness of the misconduct, the protection of the investing public, specific and general deterrence, and the Respondent's ability to pay were the primary factors in my decision.

[64] While I sympathise with the Respondent's apparent financial difficulties and accept that he was in my view, genuinely contrite and remorseful, to the extent that those factors are relevant, the other factors far outweigh them, and disgorgement must be ordered in order to achieve the goals of appropriate sanctions.

[65] Part II of the MFDA Sanction Guidelines lists types of sanctions that an MFDA hearing panel may impose and states the following with respect to fines:

> Fine
>
> A fine is a monetary sanction imposed on a Member or an Approved Person found to be in contravention of MFDA By-laws, Rules and Policies. Fines are frequently imposed in disciplinary proceedings, but are not required in all cases. Generally, the amount of a fine should, at a minimum, have the effect of disgorging the amount of the financial benefit received by the Respondent as a result of the misconduct.[31]

[66] I find that this is an appropriate case to impose such a fine. Accordingly, I order that a fine of $32,270 be imposed, representing disgorgement of the amounts obtained by the Respondent through his misconduct, which had not been repaid.

[67] MFDA Staff also requested that I impose an additional amount to the fine, in the amount of a minimum of $20,000, representing an administrative penalty.

[68] Section 24.1.1 of the MFDA By-Laws provides the forms of sanctions that can be awarded against an Approved Person.[32] Pursuant to that section, a MFDA panel can order a fine that is the greater of either $5 million or three times the amount of profit obtained or loss avoided by the wrongdoer's misconduct. OSC Staff submits that in instances where the wrongdoer has expressed genuine remorse for their actions, the maximum penalty may not be appropriate. MFDA Staff did not oppose this submission but added that remorse is not sufficient to bring the penalty below the minimum (in this case, disgorgement of the amounts obtained) and maintained that an additional penalty of $20,000 was appropriate in the circumstances.

[69] I agree that an additional fine to the disgorged amount is appropriate in this case. The seriousness of the misconduct and the principles of public protection and deterrence require a more onerous financial penalty than simply disgorgement. I substitute my decision for that of the MFDA panel in this regard and impose a fine of $20,000 in addition to the disgorgement.

IV. CONCLUSION

[70] For the above reasons, I find that the MFDA panel erred in failing to impose a financial penalty on the Respondent. I therefore impose a financial penalty of $52,270 in addition to the other sanctions set out in the decision, which will remain undisturbed.

Dated at Toronto this 5th day of October, 2021.

"Lawrence P. Haber"

[31] *Sanction Guidelines* at 6
[32] Mutual Fund Dealers Association of Canada, *By-Law No 1*

3.1.2 An Application by Wilks Brothers, LLC for the Review of a Decision by TSX Inc. relating to Calfrac Well Services Ltd. – s. 21.7

Citation: *Wilks Brothers, LLC (Re)*, 2021 ONSEC 25
October 6, 2021
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.

REASONS FOR DECISION
(Section 21.7 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	July 12, 2021	
Decision:	October 6, 2021	
Panel:	Timothy Moseley	Vice-Chair, and Chair of the Panel
	Lawrence P. Haber	Commissioner
	Frances Kordyback	Commissioner
Appearances:	Lara Jackson John M. Picone Stephanie Voudouris	For Wilks Brothers, LLC
	Robert Staley Chris Simard Brent Kraus Jason M. Berall	For Calfrac Well Services Ltd.
	David D. Conklin Robert J. Chadwick Bradley Wiffen	For the Noteholder Intervenors
	Eliot Kolers Alexander D. Rose Ben Muller	For TSX Inc.
	Yvonne Chisholm Jason Koskela David Mendicino Vivian Lee Ashley Hsu	For Staff of the Commission

REASONS FOR DECISION

OVERVIEW

[1] Wilks Brothers, LLC (**Wilks**) is a long-time and significant shareholder of TSX-listed Calfrac Well Services Ltd. (**Calfrac**). Wilks asks the Commission to review a decision by TSX Inc. (the **TSX**) to grant exemptive relief to Calfrac.

[2] That relief essentially allowed Calfrac to correct, retroactively, a shareholder vote related to Calfrac's recapitalization. At the time the vote was conducted, Calfrac inadvertently included votes from a shareholder whose votes should have been excluded. The shareholder was ineligible to vote because it had earlier subscribed for certain of Calfrac's debt securities that allowed for conversion to common shares at a discounted price. The error was not discovered until four months after the vote.

[3] The TSX's decision permitted the shareholder to rescind the subscription for the debt securities, thereby qualifying the shareholder's votes for inclusion in the recapitalization vote.

[4] Wilks submits that the TSX erred in granting relief and that we should intervene. Calfrac disagrees, and contends that Wilks does not have standing to bring this application. We issued an order[1] after the hearing of this application, by which we confirmed Wilks's standing to bring this application but dismissed the application, for reasons to follow. These are our reasons.

[5] As we explain below, we concluded that Wilks had standing because it was directly affected by the TSX's decision. However, we reject Wilks's contentions that the TSX erred by considering irrelevant grounds when reaching its decision, or by imposing an illegal condition, or by overlooking material evidence. We also disagree with Wilks's submission that the TSX's perception of the public interest conflicts with that of the Commission.

II. BACKGROUND FACTS

[6] Calfrac provides oilfield services in Canada and elsewhere. Its head office is in Calgary. In 2020, Calfrac sought to raise new capital and to reduce its outstanding indebtedness. It undertook a recapitalization transaction, effected pursuant to an arrangement under the *Canada Business Corporations Act*[2] (the **Arrangement**). The Arrangement had the following results, among others:

a. holders of certain of Calfrac's unsecured notes received, in aggregate, approximately 90% of Calfrac's common shares in exchange for their notes;

b. existing common shareholders could elect to have Calfrac repurchase any or all of their shares, following which any common shares retained were consolidated on a 50:1 basis; and

c. Calfrac completed a $60 million private placement of 10% 1.5 lien senior secured convertible notes (the **Lien Notes**).

[7] It is the last of the above three elements that gives rise to this proceeding. The shares that would be issued upon conversion of the Lien Notes were to be listed on the TSX. TSX regulations required that a majority of disinterested holders of common shares vote to approve that listing. Because only disinterested shareholders could vote, parties who had subscribed for the Lien Notes were to be excluded.

[8] One shareholder who subscribed for the Lien Notes was Alberta Investment Management Corporation (**AIMCo**), a large institutional investment manager. AIMCo manages significant investments of pension, endowment and government funds in Alberta.

[9] AIMCo is a long-time investor in Calfrac. In mid-2020, AIMCo held approximately 17% of Calfrac's shares and more than US$30 million of its unsecured notes. AIMCo subscribed for $1.05 million of the $60 million Lien Note private placement, an amount that was immaterial to AIMCo, Calfrac, and the private placement.

[10] However, because AIMCo had subscribed for Lien Notes, its shares ought to have been excluded from the October 2020 vote to approve the TSX listing. Instead, as we explain in more detail below, AIMCo's shares were erroneously included in the vote. This error was not discovered until four months later, after the Arrangement had been approved by the Court of Queen's Bench of Alberta.

[11] The erroneous inclusion of AIMCo's votes occurred despite:

a. Calfrac's issuance of an August 2020 management information circular about the Arrangement, which explicitly stated that common shares held by shareholders who subscribed for Lien Notes would be excluded from the vote;

b. September 2020 advice from Calfrac's proxy solicitation agent, in response to an inquiry from Calfrac's outside counsel, that the proxy solicitation agent's audit "identified no entities to suggest AIMCo" had subscribed for the Lien Notes; and

c. a further confirmation from the proxy solicitation agent, the day before the October 2020 vote, that AIMCo had not been identified as a participant in the offering of the Lien Notes.

1 (2021) 44 OSCB 6041
2 RSC 1985, c C-44

[12] Wilks, which had been a shareholder of Calfrac since 2014, held approximately 20% of Calfrac's common shares. Wilks opposed the recapitalization for several reasons, including that it would be dilutive, that it would not adequately address the challenges Calfrac was facing, and that it would confer significant benefits on certain parties, including Calfrac's founder and executive chair.

[13] The resolution to approve the listing passed, with support from 57% of the voting shareholders, including AIMCo. Had AIMCo's votes been excluded, as they should have been, the resolution would have failed.

[14] When the error was discovered in February 2021, it became clear that AIMCo had subscribed for the Lien Notes through a custodian that had a Toronto address and in the beneficial name of an entity that had no apparent connection to AIMCo. There is no evidence to suggest that this was done for any improper purpose. It was an immaterial transaction for AIMCo. AIMCo supported Calfrac's efforts and did not want to be excluded from the vote.

[15] After Calfrac discovered the error, it notified the TSX, the Alberta Securities Commission, and the Alberta court that had approved the Arrangement. Calfrac also issued a press release.

[16] In March 2021, Calfrac applied to the TSX for exemptive relief. Calfrac proposed to enter into an agreement with AIMCo (the **AIMCo Agreement**) that would fully rescind AIMCo's subscription for the Lien Notes. In essence, Calfrac asked the TSX to recognize AIMCo's desire to treat the vote as if AIMCo had not subscribed for the Lien Notes, thereby validating the inclusion of AIMCo's votes in support of the resolution, and confirming the previously announced approval of that resolution.

[17] Soon after Calfrac applied to the TSX for relief, Wilks's counsel sent a letter to the TSX, responding to and opposing Calfrac's application. Later in March, the TSX advised that it was granting the exemptive relief that Calfrac sought. For the purposes of this proceeding, that decision by the TSX (the **TSX Decision**) comprises two documents – a memo prepared by TSX staff (the **Staff Memo**), and minutes of a meeting of the TSX's Listings Committee (the **Committee Minutes**), at which that committee considered the Staff Memo.

III. LEGAL FRAMEWORK

[18] We turn now to the legal framework that applies to Wilks's request that we review the TSX Decision.

[19] Wilks brings this application under s. 21.7 of the *Securities Act*[3] (the **Act**). That section permits a company that is directly affected by a decision of various listed entities, including a recognized exchange (*e.g.*, the TSX), to bring such an application.

[20] On an application of this kind, the Commission conducts a hearing *de novo* rather than an appeal. In other words, the Commission exercises original jurisdiction rather than a more limited appellate jurisdiction.[4] The Commission may confirm the decision under review or make such other decision as it considers proper.[5]

[21] The Commission need not defer to decisions of entities listed in s. 21.7 of the Act.[6] However, the Commission has chosen as a matter of practice to limit the circumstances under which it will substitute its own decision.[7] We expand on this choice below in our analysis of the merits of the application.

IV. PRELIMINARY MATTERS

[22] Before we analyze the merits, we set out our reasons for concluding that Wilks has standing to bring this application, and we address the request by three entities for intervenor status in this proceeding.

A. Wilks's standing to bring this application

1. Introduction

[23] Calfrac contended that Wilks should not have standing, because Wilks was not "directly affected by" the TSX Decision and therefore fails to meet the test in s. 21.7 of the Act. The parties agreed that the question should be resolved by a motion brought by Calfrac (the **Standing Motion**).

[24] Calfrac submitted that the Standing Motion should be heard separately, before the hearing of the merits of Wilks's application. Wilks and Staff of the Commission disagreed.

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3 RSO 1990, c S.5
4 *HudBay Minerals Inc. (Re)*, 2009 ONSEC 15, (2009) 32 OSCB 3733 (***HudBay #2***) at paras 106-107
5 Act, s. 8(3)
6 *Johal v Funeral Services*, 2012 ONCA 785 at para 4
7 *Pariak-Lukic v Investment Industry Regulatory Organization of Canada*, 2016 ONSC 2564 (Div Ct) at para 14

[25] We issued an order on June 9, 2021,[8] by which we communicated our decision not to bifurcate the two hearings, for reasons to follow. We set out our reasons here, and then address the question of Wilks's standing.

2. Whether to bifurcate the hearings

(a) Factual background

[26] At the first attendance in this proceeding on May 18, 2021, Calfrac, Wilks and Staff agreed that the standing issue should be determined after all parties had filed both their evidence and their written submissions on the main application. In advance of those steps, the parties would file separate submissions on the question of whether to bifurcate the hearings.

[27] A few days after the first attendance, the parties advised that they had agreed on a schedule for the main application, should it proceed. Wilks and Calfrac would file all their evidence by June 22. No other party would file any evidence. The main application would be heard on July 12 and 13, at which time the parties could cross-examine those who had submitted affidavits.

[28] The agreed-upon schedule contemplated two alternatives:

a. if the hearing of the Standing Motion were to be bifurcated from the hearing of the main application, then all written submissions on the main application would be filed by July 2, and the Standing Motion would be heard on July 7 (three business days before the hearing of the main application); or

b. if the hearings were not to be bifurcated, then all written submissions on the main application would be filed by July 7 (three business days later than would have been the case under the first alternative), and the Standing Motion and main application would be heard together on July 12 and 13.

[29] Either way, the Standing Motion would be heard after all evidence and written submissions had already been filed. As we explain below, this fact was central to our decision not to bifurcate the hearings.

(b) Analysis

[30] Calfrac submitted that the hearings should be bifurcated for two reasons.

[31] First, there is no urgency to this proceeding that would require a compressed timetable. It was common ground that this was so. There was no live transaction or similar source of time pressure.

[32] However, we see no connection between that fact and the question of whether the hearings in this case should be bifurcated. The overall timetable was established by agreement of all parties. The main application was to be heard on July 12 and 13 (if at all), whether the hearings were bifurcated or not. In the unusual circumstances of this case, the lack of urgency was not relevant to the question of bifurcation.

[33] Second, Calfrac submitted that the issue of standing could be determined preliminarily, and that doing so would avoid the unnecessary effort that would be required to resolve most of the issues on the main application.

[34] For us, this was the core issue. There is no question that we have the discretion to bifurcate the hearings. In determining whether we should do so, we considered the anticipated evidence and identified the issues relating to standing and to the merits of the application itself. Having done that, the question was whether it would be impractical or inefficient to separate the hearings.[9]

[35] We began our analysis by considering the two issues presented by the Standing Motion:

a. Did the TSX Decision have an immediate effect on Wilks as opposed to a speculative effect?[10]

b. Were Wilks's rights or economic interests directly affected in a way that is more than incidental and that is distinct from a general interest in the outcome?[11]

[36] Our decision not to separate the hearings was based primarily on our conclusions that:

a. the two issues presented by the Standing Motion were intertwined with the issues that would arise at the hearing on the merits;

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8 (2021) 44 OSCB 5138

9 *Catalyst Capital Group Inc. (Re)*, 2016 ONSEC 14, (2016) 39 OSCB 4079 at para 45

10 *Reuters Information Services (Canada) Limited (Re)*, (1997) 20 OSCB 2277 at 2281; *Independent Financial Brokers of Canada*, 2009 ONSEC 42, (2009) 32 OSCB 9048 at para 36

11 *HudBay #2* at para 73; *Kasman (Re)*, 2008 ONSEC 26, (2008) 31 OSCB 11605 at paras 65-66

b. contrary to Calfrac's submission that the outcome of the Standing Motion should depend almost entirely on a single fact, *i.e.*, that Wilks was not a holder of Lien Notes, in our view the outcome might well depend on a more extensive factual matrix; and

c. therefore, it might well assist us to have all the evidence, including any cross-examination, and any such cross-examination would have to take place at the hearing of the Standing Motion.

[37] In addition, we were not persuaded that bifurcation would result in a more efficient process. If the Standing Motion were heard separately, the hearing of that motion would likely take most or all of a day. If we dismissed the motion and the merits hearing proceeded, the merits hearing would likely take at least a day. The total hearing time would therefore be approximately two days whether or not we ordered bifurcation. There would also be a risk of duplication of submissions between the two hearings.

[38] Further, bifurcation would not reduce preparation time by this panel. The materials were likely to be voluminous. If the hearings were separated, the Standing Motion would be heard only three business days before the merits hearing. Either way, we would have had to review all the materials before the hearing of the Standing Motion. Presumably, the same would go for all parties. No appreciable efficiency would be gained by bifurcation.

[39] For all these reasons, we ordered that the Standing Motion and the merits of the application be heard together.

[40] We turn now to our analysis of the Standing Motion itself.

3. Whether Wilks has standing

[41] Wilks has standing to bring this application if it can establish that it is "directly affected by" the TSX Decision. We agree with Wilks that it meets this test.

[42] As this Commission has previously held, one whose rights or economic interests have been affected by a decision of the TSX is directly affected by that decision.[12]

[43] The TSX Decision affected Wilks's rights and economic interests. It changed the parameters of a shareholder vote in which Wilks had participated. The TSX required that only disinterested shareholders approve the Lien Note private placement because the private placement would directly affect those disinterested shareholders.

[44] Wilks was a disinterested shareholder holding approximately 20% of Calfrac's common shares at the time of the Arrangement. Wilks opposed the dilutive effect of the transaction. Wilks and other disinterested shareholders were entitled to assume that only disinterested shareholders would vote. A correction to the determination of which shareholders were truly disinterested and therefore entitled to vote was fundamental to that vote, whether or not that correction would change the result.

[45] We reject Calfrac's attempt to characterize the TSX Decision as having had no impact on Wilks's right to vote. Of course, Wilks voted, and its votes were counted. But Wilks's interests do not stop there. Wilks had the right to know that the vote was open only to disinterested shareholders.

[46] Calfrac further argues that Wilks failed to adduce sufficient evidence of the extent of its interest in Calfrac. We reject this submission as well. While it is true that we had no evidence of the extent of Wilks's interest when Wilks brought this application or when we heard the application, we heard no persuasive reason why that information would matter.

[47] Wilks's shareholdings of Calfrac at the time of the vote were clearly specified in the TSX Decision. It is those shareholdings that should be considered when deciding whether Wilks was directly affected by the TSX Decision. Wilks objects to the TSX Decision based on the record that was before the TSX, not based on any later developments.

[48] A subsequent change in Wilks's shareholdings might, under some circumstances, affect the outcome of this application. However, Calfrac identified no such circumstances in this case. In any event, the question of whether there might be an effect on the outcome of this application is unrelated to the question of whether Wilks has standing to bring the application in the first place.

[49] Finally, we decline Calfrac's invitation to apply the distinction, made by the Commission in *Re HudBay Minerals Inc.,* between a "general interest" and a "personal and individual interest",[13] for two reasons:

a. First, we reject Calfrac's assertion that Wilks is no differently situated than any other Calfrac shareholder. The extent of Wilks's shareholdings and the resulting leverage that Wilks might be able to apply in a shareholder vote distinguish Wilks from other shareholders.

[12] *HudBay #2* at para 73
[13] *HudBay #2* at para 73

b. Second, even if Wilks's shareholdings were less significant, it is unlikely that we would conclude that Wilks's interest was "general", in the way the Commission used that term in *HudBay*.

[50] Wilks was directly affected by the TSX Decision. It therefore has standing to bring this application.

B. Intervenors

[51] Before turning to the substantive issues on this application, we address the request for intervenor status in this proceeding by three entities:

a. Glendon Capital Management LP;

b. Signature Global Asset Management, a division of CI Investments Inc.; and

c. EdgePoint Investment Group, Inc.

[52] The three proposed intervenors are all investment management companies who were holders of Calfrac's unsecured notes prior to the recapitalization, and who supported Calfrac's intended recapitalization. Together, the three proposed intervenors subscribed for almost 30% of the Lien Notes.

[53] The three entities sought standing to make oral and written submissions in this proceeding, as contemplated by Rule 21(4) of the *Ontario Securities Commission Rules of Procedure and Forms*.[14]

[54] All parties to this proceeding consented to the proposed intervenors' request. In light of that consent, and in light of the fact that the proposed intervenors did not seek to adduce evidence, we concluded that they would bring a perspective different from that of the parties to the application, without appreciably lengthening the hearing or adding to its complexity. We therefore granted the request.

V. ANALYSIS

A. Introduction

[55] We turn now to the issues at the heart of this application. We begin by expanding on our earlier comments about the Commission's restraint with respect to decisions of self-regulatory organizations and exchanges. We then review each of Wilks's objections to the TSX Decision.

[56] We mentioned above that while the Commission need not defer to a self-regulatory organization or exchange, it has chosen to do so as a matter of practice. While a recognized exchange such as the TSX is not a self-regulatory organization as that term is used in the Act, the Commission's restraint regarding recognized exchanges aligns with the principle applicable to self-regulatory organizations, whose expertise the Commission is required by the Act to recognize.[15] With respect to the TSX in particular, the Commission's restrained approach is "based on the expertise of the exchange" and the care with which the TSX's listings committee "approaches its responsibilities".[16]

[57] The Commission has often stated[17] that it will interfere with a decision of a self-regulatory organization or recognized exchange only if:

a. the decision maker proceeded on an incorrect principle;

b. the decision maker erred in law;

c. the decision maker overlooked some material evidence;

d. new and compelling evidence is presented to the Commission that was not presented to the decision maker; or

e. the decision maker's perception of the public interest conflicts with that of the Commission.

[58] The TSX submits that this approach is a "reasonableness standard". While there are some similarities, there are also differences. We decline to adopt the suggested reformulation.

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14 (2019) 42 OSCB 9714
15 Act, s. 2.1 para 4
16 *Eco Oro Minerals Corp (Re)*, 2017 ONSEC 23, (2017) 40 OSCB 5321 (***Eco Oro***) at para 79
17 *HudBay #2* at para 105; *Canada Malting Co. (Re)*, (1986) 9 OSCB 3565 (***Canada Malting***) at para 24; *Marek (Re)*, 2017 ONSEC 41, (2017) 40 OSCB 9167 at para 24

[59] Wilks submits that the TSX erred in four ways:

a. it considered irrelevant grounds in exercising its discretion, and thereby proceeded on an incorrect principle and erred in law;

b. it imposed a condition that was contrary to law, and thereby proceeded on an incorrect principle and erred in law;

c. it overlooked material evidence; and

d. it adopted a flawed view of the public interest.

[60] We will now address these four alleged errors.

B. Did the TSX consider irrelevant grounds, and thereby proceed on an incorrect principle and err in law?

1. Introduction

[61] The first error that Wilks alleges is that the TSX considered irrelevant grounds. We disagree.

[62] The TSX granted the exemptive relief under section 603 of the *TSX Company Manual*, which makes "the quality of the marketplace" the central consideration. The manual states that when the TSX exercises its discretionary authority under that section, the TSX will assess the effect the transaction may have on the quality of the marketplace it provides.

[63] As the Commission has previously noted, "the 'quality of the marketplace' is a broad concept of market integrity that requires a careful consideration of all the relevant factors in the particular circumstances".[18] These considerations go beyond the issuer: "The interpretation and application of the provisions of the TSX Manual are not just matters affecting the relevant issuer and the TSX. Those provisions form part of the fabric of securities regulation and involve broader market integrity, investor protection and public interest considerations".[19]

[64] The manual says that the TSX will base its assessment of the quality of the marketplace on six enumerated factors, among others. Wilks submits that the TSX addressed the six factors only perfunctorily and instead focused on irrelevant considerations. Wilks says that in doing so, the TSX proceeded on an incorrect principle and erred in law.

[65] We disagree with Wilks's characterization. In our view, the TSX properly considered the enumerated factors and the impact of the relief sought on the quality of the marketplace.

[66] The six factors set out in the manual are as follows:

a. the involvement of insiders or other related parties of the issuer in the transaction;

b. the material effect on control of the issuer;

c. the issuer's corporate governance practices;

d. the issuer's disclosure practices;

e. the size of the transaction relative to the liquidity of the issuer; and

f. the existence of an order issued by a court or administrative regulatory body that has considered the security holders' interests.

[67] While Wilks asserts broadly that the TSX addressed these factors perfunctorily, Wilks does not point to any of the factors specifically and explain how a more thorough examination of that factor might have changed the outcome.

[68] The Staff Memo reviews in detail sections 607(e) and (g) of the TSX manual, which deal with discount from market price and the need for approval by disinterested security holders in private placements. The Staff Memo notes that "both insiders, specifically, and shareholders 'participating in the private placement', generally, were required to be excluded from the vote for TSX approval purposes."[20] It goes on to consider each of the six factors set out above, as well as two additional factors (*i.e.*, the need to unwind other transactions, and the unlikelihood that granting the discretionary relief would undermine the notion of predictability).

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18 *HudBay #2* at para 212
19 *HudBay Minerals Inc. (Re),* (2009) 32 OSCB 1089 (***HudBay #1***) at para 36
20 TSX Listings Committee Memo dated March 22, 2021, TSX Record, Tab 1A, pp. 11-12

[69] Instead of specifying how a different consideration of the six factors ought to have changed the outcome, Wilks makes two main objections to the TSX's approach:

a. First, the TSX Decision contemplated that if the Lien Note private placement were not permitted to stand, related transactions and a listing would need to be reversed. Wilks submits that this consideration is an extraneous and irrelevant factor.

b. Second, while the TSX cited the importance of predictability and enforcement of TSX rules, Wilks says that the TSX then ignored that factor in its decision. Wilks submits that the TSX improperly distinguished between purposeful and inadvertent breaches of its rules.

[70] We examine each of these two objections in turn.

2. Alleged need to reverse related transactions and listing

[71] As Wilks observes, the TSX referred to a need to reverse related transactions, including a listing, if the Lien Note private placement were not permitted to stand. TSX staff highlighted this point in the Staff Memo by noting that the Arrangement included the following aspects, relevant to this issue:

a. the Lien Note private placement was a condition of closing; and

b. it included three related transactions:

i. the issuance of publicly listed warrants;

ii. the consolidation of publicly traded shares; and

iii. the additional listing of publicly traded shares (the **Conversion Shares**) in exchange for debt.

[72] The Staff Memo contemplates that if the Lien Note private placement were not allowed to stand, all three of these related transactions would "presumably need to be reversed, meaning that all post-Arrangement trading in the [three securities mentioned]… would need to be unwound." TSX staff observed that doing so "would result in great uncertainty in the market."[21]

[73] Wilks submits that the concern with unwinding the transactions and any subsequent trades should have had no place in an evaluation of the quality of the marketplace.

[74] We do not accept that as a general proposition. We agree with the intervenors' submission that the quality of the marketplace is enhanced where stakeholders can be certain that court-approved arrangements, and in particular the attributes of securities issued in connection with such arrangements, will not be subject to retroactive modification.

[75] The passage of time between the listing of the Conversion Shares and Calfrac's application to the TSX did limit the TSX's ability to unwind the entire group of transactions. If any noteholder were to exercise the conversion option, the Conversion Shares issued as a result would join the pool of fungible common shares of Calfrac. There would be no way to trace the Conversion Shares after their issuance, and similarly, there would be no practical way to reverse the listing of those shares. The Committee Minutes acknowledge that the TSX had the jurisdiction to rescind its approval of the listing. However, the minutes also record the TSX's conclusion that the quality of the marketplace could be greatly harmed if the TSX were to do so.

[76] In response, Wilks submits that in this case, the above analysis by the TSX is based on a false premise. Wilks argues that nothing the TSX could have done would have taken the Lien Notes out of the hands of their holders. The TSX had no authority to unwind the private placement and related transactions. Had the TSX refused exemptive relief, there would have been no need to reverse related transactions, there would have been no impact on post-arrangement trading, and there would have been no need to unwind anything. All settled transactions and trades would have remained settled. In that regard, says Wilks, the analysis set out in the TSX Decision is simply wrong.

[77] We agree with Wilks that there may not have been a need to unwind related transactions if the Lien Note private placement had not been allowed to stand. However, we also agree with the intervenors that there would have been real consequences suffered by investors if the TSX had denied Calfrac's request for relief. In any event, we do not find that the TSX based its decision primarily on the need to unwind transactions. That consideration was but one of many.

[21] Staff Memo, p. 10

3. Importance of predictability and enforcement of TSX rules

(a) Introduction

[78] Wilks's second submission in support of its contention that the TSX focused on irrelevant factors relates to the importance of predictability and enforcement of TSX rules. We begin by considering that submission generally, following which we address Wilks's submission that the TSX impermissibly distinguished between deliberate and inadvertent breaches of rules.

(b) Enforcement of TSX rules generally

[79] The Staff Memo explicitly refers to the importance of the enforcement of TSX rules. It states that a "key factor in a quality marketplace is predictability i.e. participants should be able to rely on marketplace standards being adhered to".

[80] Wilks is more absolute in its submissions. It begins by making the uncontroversial assertion that the listing by a company of its securities on the TSX is a privilege, not a right. However, Wilks then goes on to state categorically that issuers that do not follow the rules should not be listed on the TSX.

[81] Wilks also submits that the quality of the market provided by the TSX is "wholly dependent" on the extent to which the TSX enforces compliance with its rules by listed companies, and that investors who trade in TSX-listed securities expect that listed companies will be held to "strict compliance" with the exchange's rules. Those quoted phrases from Wilks's written submissions are neither supported by authority nor helpful in this context.

[82] On the contrary, the TSX manual expressly provides that the TSX can exercise discretion when it applies its rules or waives its requirements, including the requirements of section 607 of the manual relating to the exclusion of shareholders from a vote. In our view, that discretion forms part of the framework of the TSX rules. In this case, it was open to the TSX to choose not to strictly apply section 607 of the manual in circumstances where AIMCo was clearly not motivated to vote by its "interest" in the Lien Note private placement, a fact clearly established by the existence of the AIMCo Agreement.

[83] Wilks submits that even though the Staff Memo describes predictability as a "key factor", the Listings Committee ignored that factor when making its decision. However, we note that the Committee Minutes explicitly state that:

a. the committee considered the factors set out in the Staff Memo; and

b. the committee concluded that "the likelihood of setting a bad precedent for issuer conduct appears to be limited."[22]

[84] This latter conclusion is consistent with the nuanced approach evident in the Staff Memo. That memo acknowledges that describing the vote as having been limited to disinterested shareholders would be outside the predictable interpretation of TSX policy, given AIMCo's participation. However, the memo notes that the risk of creating an "unfortunate marketplace precedent" by granting exemptive relief would be low, given the unusual circumstances.

[85] Given these references in the Staff Memo and the Committee Minutes, it cannot fairly be said that the TSX ignored predictability.

[86] Administrative decision makers need not provide perfect and complete detail when recording the reasons for their decisions. They need only provide a reasonable explanation for their decision.[23] The TSX benefits from that latitude in this case, especially given that the TSX did not conduct a hearing in the conventional sense. In our view, the Staff Memo and Committee Minutes, taken together, adequately consider the importance of predictability and enforcement.

(c) Distinction between purposeful and inadvertent breaches of TSX rules

[87] We now consider the TSX's conclusion that it would be prepared to delist an issuer in order to prevent it from "purposefully" breaching TSX rules, but not when an issuer does "not act with 'mala fides'". Wilks submits that this is highly problematic and contrary to the TSX's own acknowledgement that "participants should be able to rely on marketplace standards being adhered to".[24]

[88] As we have explained above, we do not accept Wilks's reformulation of the applicable test. It is true that participants should be able to rely on adherence to marketplace standards. That does not preclude the exercise of reasonable discretion, and nor should it. The public interest demands a nuanced approach, as opposed to strict enforcement without exception. The distinction between purposeful and inadvertent breaches of rules is an important element of the discretion associated with enforcement.

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22 TSX Listings Committee Meeting Summary dated March 24, 2021, TSX Record, Tab 1, p. 2

23 *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16 and 18; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 1

24 Staff Memo, p. 14

[89] In this case, the TSX had an adequate factual basis to apply that principle. The TSX was entitled to make its decision on that basis.[25] We reject the suggestion that because the TSX decision-making process does not include a thorough investigation, the TSX is precluded from relying on the facts before it. In this case, the facts before the TSX were detailed and were uncontested in every material respect.

[90] Those uncontested facts reveal that even though AIMCo's votes were erroneously included, the error was truly inadvertent and there was no hint of bad faith. It is true, as Wilks emphasizes, that the Committee Minutes describe the error as "a matter of significant non-compliance with TSX rules". However, that description is not inconsistent with the isolated and inadvertent nature of the error.

[91] It was not only appropriate for the TSX to take into account the true nature of the error – it was important for it to do so.

4. Conclusion that the TSX did not consider irrelevant grounds

[92] In our view, the TSX appropriately considered the six factors set out in section 603 of the manual, as well as the additional factors noted above, when it exercised its discretion to grant the exemptive relief. In particular:

a. the TSX appropriately defined the "quality of the marketplace" and applied the relevant factors, as set out in the manual, to the case before it;

b. the TSX Decision protects the quality of the marketplace by providing a remedy that respects the court-approved arrangement;

c. the TSX adequately addressed the importance of predictability and enforcement; and

d. the TSX appropriately noted that the rule breach in this case was neither purposeful nor accompanied by bad faith.

[93] We turn now to consider the second of Wilks's four alleged errors; namely, that the TSX imposed an illegal condition.

C. Did the TSX impose a condition that was contrary to law, and thereby proceed on an incorrect principle and err in law?

1. Introduction

[94] Wilks submits that we should intervene because the TSX imposed a condition that was contrary to law, and thereby proceeded on an incorrect principle and erred in law. The condition in question is the AIMCo Agreement, which Calfrac proposed to the TSX when Calfrac applied for exemptive relief.

[95] The TSX accepted Calfrac's proposal that exemptive relief be dependent upon the AIMCo Agreement, pursuant to which Calfrac would repurchase and cancel the Lien Notes issued to AIMCo, with a payment to AIMCo of $1.05 million less the interest payment made by Calfrac to AIMCo on March 15, 2021.

[96] Wilks submits that the AIMCo Agreement was in substance an issuer bid that did not comply with National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**). As a result, the condition was an impermissible violation of s. 21.6 of the Act, which provides that no "policy, procedure, interpretation or practice of a recognized exchange… shall contravene Ontario securities law".

[97] NI 62-104 is part of Ontario securities law, as that term is defined in s. 1(1) of the Act. It was common ground among the parties, and we agree, that if the AIMCo Agreement condition contravenes NI 62-104, the condition was impermissible.

[98] The parties answer Wilks's submission in two ways:

a. Calfrac observes that Wilks did not make this argument to the TSX, raising it for the first time in the hearing before us. Calfrac says that the TSX cannot be faulted for not addressing an issue that was not identified at the time.

b. Calfrac submits that the AIMCo Agreement is not an issuer bid. Staff adds that even if the AIMCo Agreement can be said to fall within a technical reading of NI 62-104, it does not engage the policy purpose of NI 62-104 and should therefore not be found to contravene that instrument.

[25] *HudBay #2* at para 139

[99] Our analysis of those submissions follows. Through that analysis, we conclude that:

a. Wilks was entitled to make this argument before us; and

b. the AIMCo Agreement is not an issuer bid, as that term is defined in NI 62-104.

2. Wilks was entitled to argue at this hearing, for the first time, that the AIMCo Agreement condition is illegal

[100] Calfrac submits that it is "inappropriate for an issue of this nature to be raised for the first time in an application for hearing and review."[26]

[101] Calfrac offers no authority for that submission. We reject it. We infer that Calfrac seeks to have us apply constraints that appellate courts sometimes impose when reviewing decisions of lower courts. In some circumstances, appellate courts will decline to hear arguments on an issue that was not raised in the court below.

[102] That kind of limitation does not suit the Commission's review of decisions of recognized exchanges such as the TSX, for three reasons. First, as we explained above, our review of a TSX decision under s. 21.7 of the Act is a hearing *de novo*, not an appeal. Second, unlike a court proceeding, the TSX's decision-making process features neither open preliminary discovery of opposing parties' positions nor a hearing at which those positions are aired and tested by the decision-maker. Third, imposing that kind of limitation in circumstances such as these would preclude an objection that the TSX did something it did not have the authority to do. The Commission must be able to consider an argument that the TSX imposed an illegal condition.

[103] For these reasons, there is no bar to Wilks raising this issue before us for the first time. We will therefore turn to review the parties' submissions on the issue.

3. The AIMCo Agreement is not an issuer bid, as that term is defined in NI 62-104

[104] An "issuer bid" is defined in NI 62-104 as "an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons."[27]

[105] Wilks submits that the AIMCo Agreement comes within this definition, in that the agreement provided for an acquisition or redemption of AIMCo's Lien Notes by Calfrac, the issuer of those notes.

[106] While that argument has superficial appeal, we disagree that NI 62-104, properly interpreted, applies to the AIMCo Agreement.

[107] Importantly, the AIMCo Agreement restored Calfrac and AIMCo to the positions they would have been in had AIMCo not subscribed for Lien Notes. The agreement effectively rendered AIMCo's contract to purchase the Lien Notes as void *ab initio* (from the beginning). The agreement netted interest that AIMCo had received on the notes. It was a true rescission.

[108] A rescission is not the same as an offer to acquire or redeem. A rescission acts to annul an earlier transaction. An offer to acquire or redeem is a subsequent and separate transaction.

[109] This conceptual distinction is exemplified in, among other places, s. 128(3) of the Act, which gives the Superior Court of Justice the power to make various orders where a person or company has not complied with Ontario securities law. Among the enumerated options are an "order rescinding any transaction entered into… including the issuance of securities"[28] and an "order requiring the… cancellation… or disposition of any securities."[29]

[110] The existence of those two separate options reinforces the distinction between a rescission and an offer to acquire or redeem.

[111] Furthermore, there is no sound reason to apply NI 62-104 to a situation that clearly falls outside the policy rationale underlying that instrument. That policy rationale is reflected in National Policy 62-203 *Take-Over Bids and Issuer Bids*, which refers to itself together with NI 62-104 as the "Bid Regime". Section 2.1 of the National Policy states that the Bid Regime is designed to establish a framework for the conduct of bids in a manner that achieves, among other things, "equal treatment of offeree issuer security holders".

[112] The AIMCo Agreement does not engage this policy consideration. There is no suggestion that holders of the Lien Notes, other than AIMCo, ought to have been offered the opportunity to rescind their subscription. Nor is there any evidence that Calfrac and AIMCo entered into the AIMCo Agreement with the intention of avoiding the issuer bid requirements.

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26 Calfrac's written submissions at para 132
27 NI 62-104, s. 1.1
28 Act, s. 128(3) para 4
29 Act, s. 128(3) para 5

[113] Accordingly, we conclude that the AIMCo Agreement is not an issuer bid. We therefore reject Wilks's contention that the TSX imposed an illegal condition.

D. Did the TSX overlook material evidence?

[114] We turn now to the third of Wilks's four grounds in support of its request that we interfere with the TSX Decision. Wilks submits that the TSX overlooked material evidence, although in particularizing that submission, Wilks identifies four concerns, none of which falls into the category. This branch of the test for the Commission's interference with a TSX decision contemplates that the TSX had before it evidence that was material to the issues that the TSX had to resolve, but the TSX missed considering that material evidence.

[115] The first of Wilks's four concerns is that the TSX misunderstood evidence relating to the possible need to reverse related transactions. However, misunderstanding evidence is not the same as overlooking evidence. We have already addressed the question of the need to reverse related transactions, and Wilks has pointed to no material evidence that was missed by the TSX in coming to its conclusion on this issue.

[116] Wilks's second concern is that the TSX overlooked the requirements of NI 62-104 relating to issuer bids. Those requirements are not evidence, and we earlier concluded that the AIMCo Agreement was not an issuer bid.

[117] Wilks's third concern arises from a reference in the Staff Memo to Calfrac's representation to the TSX that Calfrac had undertaken proper due diligence to ensure that only eligible shareholders were allowed to vote on the resolution relating to the Lien Notes. Wilks asserts that this representation was false, as is evidenced by the erroneous inclusion of AIMCo among eligible voting shareholders. Once again, Wilks fails to identify material evidence that the TSX overlooked. Wilks simply disagrees with the TSX's conclusion that Calfrac acted in good faith.

[118] Wilks's fourth concern is that the TSX, in making its decision, relied on the absence of shareholder complaints to Calfrac. Wilks submits that the TSX ought not to have relied on this fact, because shareholders were not properly informed.

[119] It does not appear to us that the absence of shareholder complaints was a determining factor in the TSX Decision. In any event, we would not consider the presence or absence of shareholder complaints in this case to have been material to the TSX. That makes the question of whether shareholders were properly informed an irrelevant one, although we note that at the TSX's request, Calfrac issued a press release on March 12, 2021, announcing that it had filed its request for relief with the TSX.

[120] Wilks did not persuade us that any of its four concerns amount to the TSX having overlooked material evidence in coming to its decision.

E. Should the Commission find that the TSX's perception of the public interest conflicts with that of the Commission?

[121] Finally, Wilks submits that the TSX incorrectly perceived the public interest in reaching its decision. We disagree.

[122] There is no question that the application of TSX rules invokes important public interest considerations,[30] and that an evaluation of those considerations requires an assessment of whether conduct "thwart[s] the justified expectations of shareholders trusting in a system that appropriately promotes shareholder democracy…".[31]

[123] However, we do not accept Wilks's characterization of the TSX Decision; namely, that it effectively provides that matters of significant non-compliance with TSX rules, if claimed by an issuer to be inadvertent, should essentially be excused. As we explained above, the TSX adopted a nuanced and proportionate approach to enforcement of its rules. It did so with appropriate reference to all the relevant circumstances, including:

a. the severity and inadvertent character of Calfrac's non-compliance;

b. the time that had elapsed since the non-compliance;

c. the interests of other involved parties, including the intervenors in this proceeding, who had advanced funding to Calfrac on the understanding that all common shares of Calfrac, including any shares obtained by conversion of the Lien Notes, would be listed on the TSX;

d. remedial measures, including the AIMCo Agreement and other conditions imposed on Calfrac;

[30] *HudBay #1* at para 36
[31] *Eco Oro* at para 125

e. the unlikelihood of a recurrence; and

f. the effect on the quality of the marketplace generally.

[124] Accordingly, we reject the suggestion that the TSX Decision thwarts the justified expectations of market participants. The TSX properly considered the public interest.

VI. CONCLUSION

[125] We found that none of the concerns raised by Wilks justified our interfering with the TSX Decision. In particular, we concluded that:

a. the TSX did not inappropriately consider or focus on irrelevant grounds in reaching its decision;

b. the AIMCo Agreement was a true rescission of AIMCo's earlier subscription for Lien Notes, was not an issuer bid by Calfrac, and therefore was not an illegal condition imposed by the TSX;

c. the TSX did not overlook material evidence; and

d. the TSX appropriately considered the public interest in reaching its decision.

[126] For these reasons, we dismissed Wilks's application.

Dated at Toronto this 6th day of October, 2021.

"Timothy Moseley"

"Lawrence P. Haber"

"Frances Kordyback"

3.1.3 Daniel Sheehan – ss. 127, 127.1

Citation: *Sheehan (Re)*, 2021 ONSEC 26
October 12, 2021
File No. 2020-38

IN THE MATTER OF
DANIEL SHEEHAN

REASONS FOR APPROVAL OF A SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	October 7, 2021	
Decision:	October 12, 2021	
Panel:	Wendy Berman	Vice-Chair and Chair of the Panel
Appearances:	Rikin Morzaria	For Staff of the Commission
	Caitlin Sainsbury	For Daniel Sheehan

REASONS FOR APPROVAL OF A SETTLEMENT

I. OVERVIEW

[1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**), and Daniel Sheehan have jointly submitted that it would be in the public interest to approve a settlement agreement entered into between Mr. Sheehan and Staff dated October 4, 2021 (the **Settlement Agreement**).

[2] This matter concerns allegations described in the Statement of Allegations dated November 3, 2020. Specifically, Staff allege that Mr. Sheehan contravened Ontario securities law by engaging in the business of trading and advising in securities and by acting as an investment fund manager without registration and where no exemptions were available.

[3] After considering the Settlement Agreement and the submissions of the parties, I have concluded that it would be in the public interest to approve the Settlement Agreement. These are my reasons.

II. SUMMARY OF THE FACTS

[4] The underlying facts and the specific breaches of Ontario securities laws are fully set out in the Settlement Agreement, which has been filed with the Commission and is publicly available. Accordingly, I need not repeat them in detail here.

[5] In summary, during a 10-year period from September 28, 2009 to April 30, 2019, Mr. Sheehan raised approximately $25 million from about 50 Ontario investors and invested these funds in publicly traded equities, fixed income securities and exchange-traded derivatives.

[6] Mr. Sheehan carried on this activity through an Ontario limited partnership, Sheehan Associates Limited Partnership (**SALP**), and had authority to make all decisions regarding the business of the partnership, including all investment decisions.

[7] Prior to commencing these investment management services, Mr. Sheehan sought and obtained legal advice from an experienced securities lawyer on the business structure and securities law requirements. The securities lawyer drafted and advised on the partnership agreement, including the performance-based compensation terms.

[8] Importantly, the securities lawyer advised Mr. Sheehan that SALP was a private investment club and registration was not required.

[9] The performance-based compensation terms in the partnership agreement provided that Mr. Sheehan would be paid an annual performance fee equal to 25% of the returns on partnership capital over 6%. The compensation terms were amended twice, with the last amendment reducing compensation to 12.5% on partnership returns above 6% on invested capital in excess of $450,000.

[10] Mr. Sheehan received significant performance-based compensation of $21 million during this period and investors received an annual compounded return of approximately 18.5%.

[11] To qualify as a private investment club, Mr. Sheehan would not have been able to receive compensation beyond normal brokerage fees for his services. The securities lawyer advised on the structure of the compensation as reflected in the partnership agreement and did not advise Mr. Sheehan of this requirement.

[12] Mr. Sheehan did not seek or obtain further legal advice, including when significant amendments were made to the registration requirements in the *Securities Act*[1] (the **Act**) which, among other things, added a new requirement of registration to act as an investment fund manager.

[13] SALP has been permanently wound up and Mr. Sheehan paid each investor the full amount of their invested capital plus their proportional share of investment returns net of his performance-based compensation. In the course of winding up SALP, Mr. Sheehan waived his 2019 performance-based compensation of $2,364,577.72.

[14] Mr. Sheehan has never been registered under the Act to engage in the business of trading or advising in securities or to act as an investment fund manager.

[15] Mr. Sheehan has admitted that he engaged in the business of trading and advising in securities and acting as an investment fund manager without registration or an exemption contrary to subsections 25(1), 25(3) and 25(4) of the Act.

[16] As part of the Settlement Agreement, the parties agreed to the following:

a. Mr. Sheehan will make a voluntary payment of $1,600,000 to the Commission; and

b. Mr. Sheehan will pay the costs of the Commission's investigation in the amount of $100,000.

[17] In addition, Mr. Sheehan has provided an undertaking to Staff that he will not apply for registration for a period of one year following the date of the Order approving the Settlement Agreement.

[18] Mr. Sheehan agreed to make the payments of $1,600,000 and $100,000 in advance of the hearing. Staff confirmed that he has done so.

III. LAW AND ANALYSIS

[19] The Commission's role at a settlement hearing is to determine whether the terms of the settlement fall within a range of reasonable outcomes in the circumstances and whether the approval of the settlement is in the public interest.[2]

[20] The Settlement Agreement is the result of extensive negotiations between Staff and Mr. Sheehan, both ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.[3]

[21] Settlements serve the public interest in resolving regulatory proceedings promptly, efficiently and with certainty. Settlements avoid the significant resources that would be incurred in a contested proceeding and promote timely statements regarding regulatory requirements and standards to all capital market participants.

[22] I have reviewed the Settlement Agreement in detail and considered the submissions of counsel for the parties. I also conducted a confidential settlement conference with counsel for the parties during which I reviewed the proposed Settlement Agreement, asked questions of counsel and heard their submissions.

[23] In assessing whether it is in the public interest to approve the settlement, I considered various aggravating and mitigating factors.

[24] The breaches of Ontario securities law in this matter are serious. Registration is a cornerstone of securities law designed to ensure that those who sell or promote securities are proficient, solvent and act with integrity.[4] Facilitation of unregistered trading and advising defeats some of these necessary legal protections and undermines investor protection and the integrity of the capital markets.

[25] The unregistered trading and advising activities by Mr. Sheehan occurred over a lengthy period and on a significant scale. Mr. Sheehan, through SALP, raised $25 million of invested funds from approximately 50 investors and received $21 million in compensation over a 10-year period.

[26] This matter also involves unique mitigating circumstances, which include that:

a. Mr. Sheehan sought and obtained legal advice from an experienced securities lawyer on structuring the business and any legal requirements including registration requirements prior to commencing these activities;

b. The securities lawyer advised Mr. Sheehan that SALP was a private investment club and registration was not required under Ontario securities laws;

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1 RSO 1990, c S.5
2 *Research in Motion Limited (Re),* 2009 ONSEC 19, (2009) 32 OSCB 4434 (***Research in Motion***) at paras 44-46
3 *Katanga Mining Limited (Re)*, 2018 ONSEC 59, (2018) 41 OSCB 9987 at para 18; *Research in Motion* at para 45
4 *MRS Sciences Incorporated (Re)*, 2014 ONSEC 14, (2014) 37 OSCB 5611 at para 88

c. The performance compensation paid to Mr. Sheehan was based on a structure established by the securities lawyer and terms drafted by the securities lawyer. The securities lawyer did not advise Mr. Sheehan that to qualify as a private investment club, Mr. Sheehan was not permitted to take compensation beyond normal brokerage fees;

d. Mr. Sheehan reasonably relied in good faith on the legal advice from the securities lawyer;

e. Mr. Sheehan did not engage in any dishonest or intentional misconduct; and

f. Mr. Sheehan did not intend to, nor knowingly, act contrary to the Act.

[27] The Commission has previously considered legal advice as a relevant factor in the determination of appropriate sanctions for a contravention of the Act.[5]

[28] In my view, Mr. Sheehan acted responsibly and exercised reasonable diligence by seeking and obtaining legal advice from an experienced securities lawyer on the structure of the partnership and any securities registration requirements prior to commencing any investment management services. He reasonably relied in good faith on the advice that the proposed investment activities through the SALP structure would not require registration under Ontario securities laws.

[29] This good faith reliance on specialized legal advice is a significant mitigating factor in my consideration of whether the terms of the Settlement Agreement fall within a range of reasonable outcomes.

[30] I also considered the following additional mitigating factors:

a. Mr. Sheehan did not solicit investors to SALP;

b. No investors suffered any harm arising from these investment activities and Staff is not aware of any complaints from any SALP investors. Upon the windup of SALP, Mr. Sheehan paid each investor the full amount of their invested capital and their proportional share of investment returns net of his performance-based compensation;

c. Mr. Sheehan waived his 2019 performance-based compensation of $2,364,577.72 during the windup of SALP; and

d. Mr. Sheehan has accepted responsibility for his actions through detailed admissions without the need for protracted proceedings and his agreement to settle the proceedings will avoid the use of the significant Staff and Commission resources for a full merits hearing.

[31] As outlined above, I have considered the totality of the circumstances, including the seriousness of the misconduct, the nature and duration of the misconduct, and the above mitigating factors in my assessment of the proposed settlement terms.

IV. CONCLUSION

[32] In my view, the terms of the Settlement Agreement fall within a range of reasonable dispositions in the circumstances and will have a significant deterrent effect on Mr. Sheehan and others.

[33] The terms of the Settlement Agreement, including the significant monetary payments and the undertaking, hold Mr. Sheehan accountable for his conduct and further the protective purposes of the Act.

[34] The settlement also demonstrates that compliance with registration requirements will be enforced even in circumstances where the individual or entity did not engage in any intentional misconduct or any dishonest or abusive conduct and exercised diligence in obtaining specialized legal advice.

[35] In my view, the settlement terms in the circumstances appropriately reflect the principles applicable to sanctions, including the importance of fostering investor protection and confidence in the market, recognition of the nature and circumstances of the misconduct, and recognition of and the need for specific and general deterrence of such misconduct.

[36] For these reasons, I conclude that the Settlement Agreement is in the public interest. I approve the Settlement Agreement on the terms proposed by the parties and will issue an order substantially in the form requested.

Dated at Toronto this 12th day of October, 2021.

"Wendy Berman"

[5] *Bloomberg Trading Facility Limited (Re),* 2020 ONSEC 31, (2020) 43 OSCB 9721 at para 15; *Energy Syndications Incorporated (Re),* 2013 ONSEC 24, (2013) 36 OSCB 6500 at para 83

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
GetSwift Technologies Limited	October 5, 2021	
New Wave Holdings Corp.	October 5, 2021	
iMining Technologies Inc.	October 5, 2021	
Koios Beverage Corp.	October 5, 2021	
Haltain Developments Corp.	October 6, 2021	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

4.2.2 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
Akumin Inc.	August 20, 2021	
Agrios Global Holdings Ltd.	September 17, 2020	
New Wave Holdings Corp.	August 3, 2021	
Reservoir Capital Corp.	May 5, 2021	
AION THERAPEUTIC INC.	September 1, 2021	
DGTL Holdings Inc.	September 30, 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:
EdgePoint Monthly Income Portfolio
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Oct 7, 2021
NP 11-202 Preliminary Receipt dated Oct 7, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3286466

Issuer Name:
MLD Core Fund
PK Core Fund
Purpose Biotech ETF
Purpose Floating Rate Income Fund
Purpose Gold Bullion Fund
StoneCastle Global Tactical Asset Allocation Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Oct 4, 2021
NP 11-202 Final Receipt dated Oct 6, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3267251

Issuer Name:
Lysander-18 Asset Management Canadian Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 4, 2021
NP 11-202 Final Receipt dated Oct 5, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3137162

Issuer Name:
AGFiQ US Market Neutral Anti-Beta CAD-Hedged ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 1, 2021
NP 11-202 Final Receipt dated Oct 5, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3115068

Issuer Name:
Franklin Brandywine Global Sustainable Income Optimiser Active ETF
Franklin ClearBridge Sustainable Global Infrastructure Income Active ETF
Franklin ClearBridge Sustainable International Growth Active ETF
Franklin Martin Currie Sustainable Emerging Markets Active ETF
Franklin Martin Currie Sustainable Global Equity Active ETF
Principal Regulator - Ontario
Type and Date:
Amended and Restated to Final Long Form Prospectus dated October 6, 2021
NP 11-202 Final Receipt dated Oct 7, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3218566

Issuer Name:
Franklin ClearBridge Sustainable Global Infrastructure Income Fund
Franklin Martin Currie Sustainable Emerging Markets Fund
Franklin ClearBridge U.S. Sustainability Leaders Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated to Final Simplified Prospectus dated October 6, 2021
NP 11-202 Final Receipt dated Oct 8, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3218448

Issuer Name:
Goodwood Capital Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 4, 2021
NP 11-202 Final Receipt dated Oct 6, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3208216

NON-INVESTMENT FUNDS

Issuer Name:
Arizona Sonoran Copper Company Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 5, 2021
NP 11-202 Preliminary Receipt dated October 6, 2021
Offering Price and Description:
$*
* Common Shares
$* per Offered Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #3285858

Issuer Name:
Aurania Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment dated October 5, 2021 to Preliminary Short Form Prospectus dated October 4, 2021
NP 11-202 Preliminary Receipt dated October 6, 2021
Offering Price and Description:
$6,003,000.00
3,335,000 Units
PRICE: $1.80 PER UNIT
Underwriter(s) or Distributor(s):
CANTOR FITZGERALD CANADA CORPORATION
CANACCORD GENUITY CORP.
ECHELON WEALTH PARTNERS INC.
Promoter(s):
Keith Barron
Project #3285199

Issuer Name:
Collective Mining Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 5, 2021
NP 11-202 Preliminary Receipt dated October 5, 2021
Offering Price and Description:
$100,000,000.00
Common Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
ARI SUSSMAN
Project #3285578

Issuer Name:
Mayo Lake Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated October 6, 2021 to Preliminary Long Form Prospectus dated July 7, 2021
NP 11-202 Preliminary Receipt dated October 7, 2021
Offering Price and Description:
Minimum Offering: $650,000.00
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:
PC 1 Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated October 1, 2021
NP 11-202 Preliminary Receipt dated October 5, 2021
Offering Price and Description:
Minimum Offering: $200,000.00 or 2,000,000 Common Shares
Maximum Offering: $500,000.00 or 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
-
Project #3285352

Issuer Name:
Q4 Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated October 7, 2021 to Preliminary Long Form Prospectus dated June 10, 2021
NP 11-202 Preliminary Receipt dated October 7, 2021
Offering Price and Description:
C$150,000,000.00
* Common Shares
Price: C$ * per common share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
RBC DOMINION SECURITIES INC.
STIFEL NICOLAUS CANADA INC.
TD SECURITIES INC.
INFOR FINANCIAL INC.
Promoter(s):
-
Project #3226772

Issuer Name:
Starlight U.S. Residential Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 4, 2021
NP 11-202 Preliminary Receipt dated October 5, 2021
Offering Price and Description:
Maximum: US$197,600,000.00 of Class A Units and/or Class C Units and/or Class D Units and/or Class E Units and/or Class F Units and/or Class G Units and/or Class U Units
Price: C$10.00 per Class A Unit
C$10.00 per Class C Unit
C$10.00 per Class D Unit
US$10.00 per Class E Unit
C$10.00 per Class F Unit
US$10.00 per Class G Unit
US$10.00 per Class U Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
Promoter(s):
STARLIGHT GROUP PROPERTY HOLDINGS INC.
Project #3285267

Issuer Name:
Cenovus Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated October 7, 2021
NP 11-202 Receipt dated October 7, 2021
Offering Price and Description:
US$5,000,000,000.00
Debt Securities
Common Shares
Preferred Shares
Subscription Receipts
Warrants
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3282590

Issuer Name:
Copperleaf Technologies Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated October 6, 2021
NP 11-202 Receipt dated October 6, 2021
Offering Price and Description:
* COMMON SHARES
$125,000,000.00
Price: $* per Offered Share
Underwriter(s) or Distributor(s):
MERRILL LYNCH CANADA INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
Promoter(s):
-
Project #3279315

Issuer Name:
Fairfax Financial Holdings Limited
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated October 8, 2021
NP 11-202 Receipt dated October 8, 2021
Offering Price and Description:
Cdn$8,000,000,000.00
Subordinate Voting Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3284764

Issuer Name:
Headwater Exploration Inc. (formerly Corridor Resources Inc.)
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 8, 2021
NP 11-202 Receipt dated October 8, 2021
Offering Price and Description:
$204,750,000.00
45,000,000 Common Shares
Price: $4.55 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3282691

Issuer Name:
Skylight Health Group Inc. (Formerly CB2 Insights Inc.)
Principal Regulator - Ontario
Type and Date:
Amendment dated October 4, 2021 to Final Shelf Prospectus dated May 6, 2021
NP 11-202 Receipt dated October 5, 2021
Offering Price and Description:
C$100,000,000.00
COMMON SHARES
PREFERRED SHARES
DEBT SECURITIES
WARRANTS
SUBSCRIPTION RECEIPTS
UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
Pradyum Sekar
Kashaf Qureshi
Project #3208155

Issuer Name:
Softchoice Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 8, 2021
NP 11-202 Receipt dated October 8, 2021
Offering Price and Description:
C$150,007,500.00
5,085,000 Common Shares
Price: C$29.50 per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
GOLDMAN SACHS CANADA INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES
NATIONAL BANK FINANCIAL
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
ATB CAPITAL MARKETS INC.
CORMARK SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #3282795

Issuer Name:
The Very Good Food Company Inc.
Principal Regulator - British Columbia
Type and Date:
Amendment dated October 5, 2021 to Final Shelf Prospectus dated September 30, 2021
NP 11-202 Receipt dated October 6, 2021
Offering Price and Description:
$100,000,000.00
Common Shares
Warrants
Debt Securities
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3261589

Issuer Name:
TransAlta Renewables Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated October 6, 2021
NP 11-202 Receipt dated October 6, 2021
Offering Price and Description:
1,000,000,000.00
Common Shares
Preferred Shares
Warrants
Subscription Receipts
Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3283201

Issuer Name:
Woodbridge Ventures II Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated October 4, 2021
NP 11-202 Receipt dated October 5, 2021
Offering Price and Description:
$500,000.00
5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #3258603

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: CBRE CALEDON CAPITAL MANAGEMENT INC. To: CBRE Investment Management Infrastructure Inc.	Portfolio Manager and Exempt Market Dealer	September 22, 2021
New Registration	Equifaira Private Securities Inc.	Exempt Market Dealer	October 8, 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 Rule Changes to the IIROC Rules – Notice of Commission Deemed Approval

NOTICE OF COMMISSION DEEMED APPROVAL

HOUSEKEEPING RULE CHANGES TO THE IIROC RULES

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

The Ontario Securities Commission did not object to the classification of IIROC's proposed housekeeping rule changes to the IIROC Rules (Amendments). As a result, the Amendments are deemed to be approved and will become effective 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 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 GLMX Technologies, LLC – Application for Exemptive Relief – Notice of Commission Order

GLMX TECHNOLOGIES, LLC (GLMX)

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On October 6, 2021, the Commission issued an order under s. 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), s. 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**), and s. 10 of National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces* (**NI 23-103** and, together with NI 21-101 and NI 23-101, the **Marketplace Rules**) exempting GLMX from the application of all provisions of the Marketplace Rules in British Columbia, Alberta, Nova Scotia, Ontario and Quebec, subject to terms and conditions as set out in the order (the **Order**).

The Order is consistent with CSA Staff Notice 21-328 *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities* (**CSA SN 21-328**)[1] that outlines an exemption approach that is based on a substituted compliance model of ATS oversight.

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

The Commission published GLMX's application and draft Order for comment on August 12, 2021 on the OSC website. A comment letter was received from TMX Group Limited which is also available on the OSC website. We summarize below the main comments and Staff's responses.

Comment

The commenter raised concerns about the equivalence of regulatory regimes in the home jurisdiction of a foreign marketplace as well as an absence of reciprocity between Canadian and foreign regulators. The commenter believes this creates an "unlevel playing field" among foreign and domestic marketplaces serving Canadian marketplace participants, as well as a competitive disadvantage for Canadian marketplaces, including TMX Group. The commenter submitted that it is the regulatory authorities who are best placed to assess such equivalence between their own regimes and those of foreign jurisdictions rather than requiring each applicant to establish, on a case-by-case basis, such equivalence. The commenter disagrees with current approaches taken with respect to non-Canadian marketplaces doing business in Ontario as compared to the approach applied to domestic non-Ontario based marketplaces, and that the Commission should apply a mutual reliance model to other Canadian provincial regulators as a result.

Response

As noted in CSA Staff Notice 21-328, *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities* (**21-328**), we are prepared to exempt a foreign ATS if it is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator, subject to any terms and conditions necessary to protect Canadian investors, and subject to terms and conditions allowing the Commission to have access to information on the operations of the foreign-based ATS and the trading activity of Canadian participants. While the foreign ATS is responsible for describing the regulatory requirements in its home jurisdiction and how it complies, the CSA reviews the foreign ATS's application and determines if it meets the criteria set out in 21-328. This is similar to the approach taken for foreign exchanges seeking exemption from recognition in Ontario and foreign ATSs seeking exemptions from regulatory requirements in Canadian jurisdictions, based on them being subject to a comparable regulatory regime in its home jurisdiction. The concept of reciprocity is not a factor in deciding whether to recognize or exempt a foreign exchange or exempt a foreign ATS from applicable regulatory requirements.

[1] Published on March 5, 2020 and available at https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20200305_21-328_foreign-marketplaces-trading-fixed-income-securities.htm.

Chapter 25

Other Information

25.1 Consents

25.1.1 RG One Corp. – 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 (Canada).

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).
Securities Act, R.S.O. 1990, c. S.5, as am.

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
RG ONE CORP.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of RG One Corp. (the "Applicant") to the Ontario Securities Commission (the "Commission") requesting the consent from the Commission to continue into the federal jurisdiction pursuant to subsection 4(b) of the Regulation;

AND UPON considering the application and the recommendation of the staff to the Commission;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an offering corporation under the OBCA.

2. The Applicant's authorized share capital consists of an unlimited number of common shares, of which 39,350,001 were issued and outstanding as of May 28, 2021. The common shares of the Applicant are not listed for trading on any stock exchange.

3. The Applicant intends to apply (the "**Application for Continuance**") to the Director of the OBCA for authorization to continue under the Canada Business Corporations Act, R.S.C. 1985, c. C-44 (the "**CBCA**") pursuant to section 181 of the OBCA (the "**Continuance**").

4. The principal reason for the Continuance is to leverage the increased flexibility provided under the provisions of the CBCA and is a condition the Applicant's business combination with Flow Water Inc.

5. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

6. The Applicant is an is an offering corporation under the OBCA and is a reporting issuer under the Securities Act, R.S.C. 1985, c. C-44 as amended (the "**Act**") and the securities legislation of British Columbia and Alberta (the "**Legislation**"). The Applicant intends to remain a reporting issuer in the provinces of Ontario, British Columbia and Alberta following the Continuance.

7. The Commission is currently the Applicant's principal regulator.

8. The Applicant is not in default under any provision of the OBCA, Act or Legislation, including the regulations made thereunder.

9. The Applicant is not subject to any proceeding under the OBCA, Act, or Legislation.

10. The Applicant's management information circular dated April 8, 2021 for its annual general and special meeting of holders of the Applicant's common shares (the "**Shareholders**"), held on May 7, 2021 (the "**Shareholders' Meeting**"), described the proposed Continuance and disclosed the reasons for it and its implications. It also disclosed full particulars of the dissent rights of the Shareholders under section 185 of the OBCA.

11. The Shareholders approved the proposed Continuance at the Shareholders' Meeting by a special resolution that was approved by 100% of the votes cast; no Shareholders exercised dissent rights pursuant to section 185 of the OBCA.

12. Subsection 4(b) of the Regulation requires the Application for Continuance to be accompanied by a consent from the Commission.

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 as a corporation under the CBCA.

DATED at Toronto on this 2nd day of July, 2021.

"Craig Hayman"
Commissioner
Ontario Securities Commission

"Cecilia William"
Commissioner
Ontario Securities Commission

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