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1.1 Notices

1.1.1 CSA Notice of Publication – Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and Changes to Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA NOTICE OF PUBLICATION

AMENDMENTS TO
NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

AND

CHANGES TO
COMPANION POLICY 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

January 27, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting:

- amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **National Instrument)**, and
- changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **CP**).

Collectively, the amendments to the National Instrument (the **Rule Amendments**) and the changes to the CP are referred to as the **Amendments**.

In some jurisdictions, government ministerial approvals are required for the implementation of the Rule Amendments. Provided all necessary approvals are obtained, the Amendments will come into force on **September 1, 2022**.

The CSA is of the view that the Amendments are necessary to address issues raised by market participants following the CSA's publications for comment of proposed amendments and changes to the National Instrument and the CP on October 12, 2017 (the **2017 Proposed Amendments**) and on September 3, 2020 (the **2020 Proposed Amendments**). The issues relate largely to the scope of market participants that are required to clear an over-the-counter (**OTC**) derivative prescribed in Appendix A to the National Instrument through a central clearing counterparty (the **Clearing Requirement**).

Background

The Amendments are a response to feedback received from various market participants and are intended to more effectively and efficiently promote the underlying policy aims of the National Instrument.

The National Instrument was published on January 19, 2017 and came into force on April 4, 2017 (except in Saskatchewan where it came into force on April 5, 2017). The purpose of the National Instrument is to reduce counterparty risk in the OTC derivatives market by requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty.

The Clearing Requirement became effective for certain counterparties specified in paragraph 3(1)(a) of the National Instrument (*i.e.*, a local counterparty that is a participant of a regulated clearing agency that subscribes for clearing services for the applicable class of derivatives) on the coming-into-force date of the National Instrument, and was initially scheduled to become effective for certain other counterparties specified in paragraphs 3(1)(b) and 3(1)(c) on October 4, 2017.

However, in order to facilitate the rule-making process in respect of the 2017 Proposed Amendments published for comment on October 12, 2017 and to refine the scope of market participants that are subject to the Clearing Requirement, the CSA jurisdictions (except Ontario) exempted counterparties specified in paragraphs 3(1)(b) and (c) of the National Instrument from the Clearing Requirement.[1]

The Ontario Securities Commission (the **OSC**) similarly amended the National Instrument to extend the effective date of the Clearing Requirement for those counterparties until August 20, 2018.[2]

While the Clearing Requirement took effect in Ontario on August 20, 2018 for all categories of counterparties specified in subsection 3(1) of the National Instrument, OSC staff expressed the view that only counterparties specified under paragraph 3(1)(a) are expected to comply with the Clearing Requirement until the CSA finalizes the amendments to the National Instrument to narrow the scope of market participants that would be subject to the Clearing Requirement[3].

On September 3, 2020 the CSA published for comment the 2020 Proposed Amendments that reflect both the comments received on the 2017 Proposed Amendments and further amendments to the National Instrument.

We are monitoring changes to benchmark reference rates, including recent updates relating to GBP LIBOR and EONIA, which are currently subject to the Clearing Requirement. We will continue to monitor these developments as they affect trading liquidity and availability of products for clearing, and will assess whether other products are suitable as mandatory clearable derivatives, necessitating resulting changes to the Clearing Requirement.

Summary of changes to the 2020 Proposed Amendments

Further to the comments received on the 2020 Proposed Amendments, the CSA is adopting the Amendments. The Amendments reflect our consideration of the comments received, as well as our ongoing review of the National Instrument's impact on market participants. Minor non-material changes are also being adopted.

(a) Transition period

The Amendments will come into force on September 1, 2022. The transition period will allow participants to amend the relevant documentation relating to the Clearing Requirement and aligns with the commencement of the reference period with respect to the $1 billion threshold under paragraphs 3(1)(b) and (c).

(b) Removal of the requirement to agree to rely on the intragroup exemption

Because the condition in paragraph 7(1)(b) to have both affiliated entities agree to rely on the intragroup exemption could represent an unnecessary burden for participants, the CSA has taken the view that it is reasonable to consider that reliance on this exemption will be the default position for participants.

(c) Multilateral portfolio compression

The CSA added guidance in the CP to clarify our expectations regarding the multilateral portfolio compression exemption in the National Instrument.

(d) Appendix B Laws, regulations or instruments of foreign jurisdiction applicable for substituted compliance

Appendix B includes the relevant laws and regulations of the United Kingdom to ensure the substituted compliance provision reflects the regulatory changes that have followed the Brexit.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A Amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*

Annex B Blackline of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* showing the amendments

Annex C Changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*

1 Blanket Order 94-501, available on the website of the securities regulatory authority in each local jurisdiction.
2 See, in Ontario, Amendment to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, published July 6, 2017.
3 As explained further in CSA Staff Notice 94-303, on May 31st 2018 the CSA jurisdictions (except Ontario) extended the blanket order relief under Blanket Order 94-501 until the earlier of its revocation or the coming into force of amendments to the National Instrument with respect to the scope of counterparties subject to the Clearing Requirement. Since blanket orders were not authorized under Ontario securities law, the OSC was unable to follow the approach of the other CSA jurisdictions.

Annex D Blackline of Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* showing the changes

Annex E Summary of comments and CSA responses

Annex F Local Matters, where applicable

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ANNEX A

AMENDMENTS TO
NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

1. National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives is amended by this Instrument.

2. Section 1 is amended

(a) in subsection (1), by adding the following definitions:

"investment fund" has the meaning ascribed to it in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"prudentially regulated entity" means a person or company that is subject to the laws of Canada, a jurisdiction of Canada or a foreign jurisdiction where the head office or principal place of business of an authorized foreign bank named in Schedule III of the *Bank Act* (Canada) is located, and a political subdivision of that foreign jurisdiction, relating to minimum capital requirements, financial soundness and risk management, or the guidelines of a regulatory authority of Canada or a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

"reference period" means the period beginning on September 1 in a given year and ending on August 31 of the following year;**,**

(b) by replacing subsection (2) with the following:

(2) In this Instrument, a person or company (the first party) is an affiliated entity of another person or company (the second party) if any of the following apply:

(a) the first party and the second party are consolidated in consolidated financial statements prepared in accordance with one of the following:

(i) IFRS;

(ii) generally accepted accounting principles in the United States of America;

(b) all of the following apply:

(i) the first party and the second party would have been, at the relevant time, required to be consolidated in consolidated financial statements prepared by the first party, the second party or another person or company, if the consolidated financial statements were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

(ii) neither the first party's nor the second party's financial statements, nor the financial statements of the other person or company, were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

(c) except in British Columbia, the first party and the second party are both prudentially regulated entities and are consolidated for that purpose;

(d) in British Columbia, the first party and the second party are prudentially regulated entities that are required to report, on a consolidated basis, information relating to minimum capital requirements, financial soundness and risk management.***, and***

(c) by repealing subsection (3).

3. Section 3 is amended

(a) by adding the following subsections:

(0.1) Despite subsection 1(2), an investment fund is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section.

(0.2) Despite subsection 1(2), a person or company is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section if the following apply:

(a) the person or company has, as its primary purpose, one of the following:

(i) financing a specific pool or pools of assets;

(ii) providing investors with exposure to a specific set of risks;

(iii) acquiring or investing in real estate or other physical assets;

(b) all the indebtedness incurred by the person or company whose primary purpose is one set out in subparagraph (a)(i) or (ii), including obligations owing to its counterparty to a derivative, are secured solely by the assets of that person or company.**,**

(b) by replacing subparagraph (1)(b)(ii) with the following:

(ii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives referred to in paragraph 7(1)(a);**,**

(c) by replacing paragraph (1)(c) with the following:

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada,

(ii) had, during the previous 12-month period, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is a local counterparty in any jurisdiction of Canada, exceeding $500 000 000 000 excluding derivatives referred to in paragraph 7(1)(a), and

(iii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives referred to in paragraph 7(1)(a).***, and***

(d) in subsection (2), by deleting "(1)(b) or***", "***(b)(ii) or (1)***" and "***, as applicable***".***

4. Section 6 is amended by replacing "the following counterparties***" with "***a counterparty in respect of a mandatory clearable derivative if any counterparty to the mandatory clearable derivative is any of the following**".**

5. Section 7 is amended

(a) in subsection (1), by deleting "the application of***",***

(b) in paragraph (1)(a), by deleting "if each of the counterparty and the affiliated entity are consolidated as part of the same audited consolidated financial statements prepared in accordance with "accounting principles" as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards****",***

(c) by repealing paragraph (1)(b), and

(d) by repealing subsections (2) and (3).

6. Section 8 is amended

(a) by deleting "the application of***",***

(b) by replacing paragraph (d) with the following:

(d) the multilateral portfolio compression exercise involved both counterparties to the mandatory clearable derivative;***, and***

(c) in paragraph (e), by replacing "is***" with "***was***".***

7. Part 4 is repealed.

8. Appendix A and Appendix B are replaced with the following:

APPENDIX A
TO
NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

MANDATORY CLEARABLE DERIVATIVES
(Subsection 1(1))

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant

APPENDIX B
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE FOR SUBSTITUTED COMPLIANCE
(Subsection 3(5))

Foreign jurisdiction	Laws, regulations or instruments
European Union	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 2019/2099
United Kingdom	Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No 2) Regulations 2019 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 2) Instrument 2019 The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 3) Instrument 2019
United States of America	Clearing Requirement and Related Rules, 17 CFR Part 50

9. Form 94-101F1 Intragroup Exemption and Form 94-101F2 Derivatives Clearing Services are repealed.

10. (1) Section 8 of this Instrument comes into force on April 12, 2022 and the remaining sections come into force on September 1, 2022.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after:

(a) April 12, 2022, but before September 1, 2022, then Section 8 of this Instrument comes into force on the day on which it is filed with the Registrar of Regulations; or

(b) September 1, 2022, then this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX B

This Annex sets out a blackline showing the amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, as set out in Annex A.

NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. **(1)** In this Instrument

"investment fund" has the meaning ascribed to it in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"local counterparty" means a counterparty to a derivative if, at the time of execution of the transaction, either of the following applies:

(a) the counterparty is a person or company, other than an individual, to which one or more of the following apply:

(i) the person or company is organized under the laws of the local jurisdiction;

(ii) the head office of the person or company is in the local jurisdiction;

(iii) the principal place of business of the person or company is in the local jurisdiction;

(b) the counterparty is an affiliated entity of a person or company referred to in paragraph (a) and the person or company is liable for all or substantially all the liabilities of the counterparty;

"mandatory clearable derivative" means a derivative within a class of derivatives listed in Appendix A;

"participant" means a person or company that has entered into an agreement with a regulated clearing agency to access the services of the regulated clearing agency and is bound by the regulated clearing agency's rules and procedures;

"prudentially regulated entity" means a person or company that is subject to the laws of Canada, a jurisdiction of Canada or a foreign jurisdiction where the head office or principal place of business of an authorized foreign bank named in Schedule III of the *Bank Act* (Canada) is located, and a political subdivision of that foreign jurisdiction, relating to minimum capital requirements, financial soundness and risk management, or the guidelines of a regulatory authority of Canada or a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

"reference period" means the period beginning on September 1 in a given year and ending on August 31 of the following year;

"regulated clearing agency" means,

(a) in Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, a person or company recognized or exempted from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada,

(b) in British Columbia, Manitoba and Ontario, a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction, and

(c) in Québec, a person recognized or exempted from recognition as a clearing house;

"transaction" means any of the following:

(a) entering into a derivative or making a material amendment to, assigning, selling or otherwise acquiring or disposing of a derivative;

(b) the novation of a derivative, other than a novation with a clearing agency or clearing house.

(2) In this Instrument, a person or company (the first party) is an affiliated entity of another person or company ~~if one of them controls the other or each of them is controlled by the same person or company.~~

~~(3) In this Instrument, a person or company (the first party) is considered to control another person or company~~ (the second party) if any of the following apply:

(a) the first party and the second party are consolidated in consolidated financial statements prepared in accordance with one of the following:

(i) IFRS;

(ii) generally accepted accounting principles in the United States of America;

(b) all of the following apply:

(i) the first party ~~beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party unless the first party holds the voting securities only to secure an obligation;~~and the second party would have been, at the relevant time, required to be consolidated in consolidated financial statements prepared by the first party, the second party or another person or company, if the consolidated financial statements were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

~~(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;~~

(ii) neither the first party's nor the second party's financial statements, nor the financial statements of the other person or company, were prepared in accordance with the principles or standards referred to in subparagraph (a)(i) or (ii);

(c) except in British Columbia, the ~~second party is a trust and a trustee of the trust is the first party.~~first party and the second party are both prudentially regulated entities and are consolidated for that purpose;

(d) in British Columbia, the first party and the second party are prudentially regulated entities that are required to report, on a consolidated basis, information relating to minimum capital requirements, financial soundness and risk management.

(3) (*Repealed***).**

(4) In this Instrument, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application

2. This Instrument applies to,

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of Regulation 91-506 respecting derivatives determination, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

3. (0.1) Despite subsection 1(2), an investment fund is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section.

(0.2) Despite subsection 1(2), a person or company is not an affiliated entity of another person or company for the purposes of paragraphs (1)(b) and (c) of this section if the following apply:

(a) the person or company has, as its primary purpose, one of the following:

(i) financing a specific pool or pools of assets;

(ii) providing investors with exposure to a specific set of risks;

(iii) acquiring or investing in real estate or other physical assets;

(b) all the indebtedness incurred by the person or company whose primary purpose is one set out in subparagraph (a)(i) or (ii), including obligations owing to its counterparty to a derivative, are secured solely by the assets of that person or company.

(1) A local counterparty to a transaction in a mandatory clearable derivative must submit, or cause to be submitted, the mandatory clearable derivative for clearing to a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, if one or more of the following applies to each counterparty:

(a) the counterparty

(i) is a participant of a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, and

(ii) subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;

(b) the counterparty

(i) is an affiliated entity of a participant referred to in paragraph (a), and

(ii) ~~has~~ had, ~~at any time after the date on which this Instrument comes into force, a~~for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives ~~to which~~ referred to in paragraph 7(1)(a) ~~applies~~;

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada, ~~other than a counterparty to which paragraph (b) applies, and~~

(ii) ~~has had, at any time after the date on which this Instrument comes into force~~had, during the previous 12-month period, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is a local counterparty in any jurisdiction of Canada, exceeding $500 000 000 000 excluding derivatives ~~to which~~ referred to in paragraph 7(1)(a) ~~applies~~, and

(iii) had, for the months of March, April and May preceding the reference period in which the transaction was executed, an average month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives referred to in paragraph 7(1)(a).

(2) Unless paragraph (1)(a) applies, a local counterparty to which paragraph ~~(1)(b) or~~ (1)(c) applies is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency if the transaction in the mandatory clearable derivative was executed before the 90th day after the end of the month in which the month-end gross notional amount first exceeded the amount specified in subparagraph (1)(~~b)(ii) or (1)(~~c)(ii)~~, as applicable~~.

(3) Unless subsection (2) applies, a local counterparty to which subsection (1) applies must submit a mandatory clearable derivative for clearing no later than

(a) the end of the day of execution if the transaction is executed during the business hours of the regulated clearing agency, or

(b) the end of the next business day if the transaction is executed after the business hours of the regulated clearing agency.

(4) A local counterparty to which subsection (1) applies must submit the mandatory clearable derivative for clearing in accordance with the rules of the regulated clearing agency, as amended from time to time.

(5) A counterparty that is a local counterparty solely pursuant to paragraph (b) of the definition of "local counterparty" in section 1 is exempt from this section if the mandatory clearable derivative is submitted for clearing in accordance with the law of a foreign jurisdiction to which the counterparty is subject, set out in Appendix B.

Notice of rejection

4. If a regulated clearing agency rejects a mandatory clearable derivative submitted for clearing, the regulated clearing agency must immediately notify each local counterparty to the mandatory clearable derivative.

Public disclosure of clearable and mandatory clearable derivatives

5. A regulated clearing agency must do all of the following:

(a) publish a list of each derivative or class of derivatives for which the regulated clearing agency offers clearing services and state whether each derivative or class of derivatives is a mandatory clearable derivative;

(b) make the list accessible to the public at no cost on its website.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Non-application

6. This Instrument does not apply to a counterparty in respect of a mandatory clearable derivative if any counterparty to the mandatory clearable derivative is any of the following~~the following counterparties~~:

(a) the government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;

(b) a crown corporation for which the government of the jurisdiction where the crown corporation was constituted is liable for all or substantially all the liabilities;

(c) a person or company wholly owned by one or more governments referred to in paragraph (a) if the government or governments are liable for all or substantially all the liabilities of the person or company;

(d) the Bank of Canada or a central bank of a foreign jurisdiction;

(e) the Bank for International Settlements;

(f) the International Monetary Fund.

Intragroup exemption

7. **(1)** A local counterparty is exempt from ~~the application of~~ section 3, with respect to a mandatory clearable derivative, if all of the following apply:

(a) the mandatory clearable derivative is between a counterparty and an affiliated entity of the counterparty ~~if each of the counterparty and the affiliated entity are consolidated as part of the same audited consolidated financial~~

~~statements prepared in accordance with "accounting principles" as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*~~;

(b) (*Repealed*) ~~both counterparties to the mandatory clearable derivative agree to rely on this exemption~~;

(c) the mandatory clearable derivative is subject to a centralized risk management program reasonably designed to assist in monitoring and managing the risks associated with the derivative between the counterparties through evaluation, measurement and control procedures;

(d) there is a written agreement between the counterparties setting out the terms of the mandatory clearable derivative between the counterparties.

~~(2) No later than the 30th day after a local counterparty first relies on subsection (1) in respect of a mandatory clearable derivative with a counterparty, the local counterparty must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption*.~~

~~(3) No later than the 10th day after a local counterparty becomes aware that the information in a previously delivered Form 94-101F1 *Intragroup Exemption* is no longer accurate, the local counterparty must deliver or cause to be delivered electronically to the regulator or securities regulatory authority an amended Form 94-101F1 *Intragroup Exemption*.~~

(2) (*Repealed*).

(3) (*Repealed*).

Multilateral portfolio compression exemption

8. A local counterparty is exempt from ~~the application of~~ section 3, with respect to a mandatory clearable derivative resulting from a multilateral portfolio compression exercise, if all of the following apply:

(a) the mandatory clearable derivative is entered into as a result of more than 2 counterparties changing or terminating and replacing existing derivatives;

(b) the existing derivatives do not include a mandatory clearable derivative entered into after the effective date on which the class of derivatives became a mandatory clearable derivative;

(c) the existing derivatives were not cleared by a clearing agency or clearing house;

(d) the multilateral portfolio compression exercise involved both counterparties to the mandatory clearable derivative ~~is entered into by the same counterparties as the existing derivatives~~;

(e) the multilateral portfolio compression exercise ~~is~~was conducted by an independent third-party.

Recordkeeping

9. **(1)** A local counterparty to a mandatory clearable derivative that relied on section 7 or 8 with respect to a mandatory clearable derivative must keep records demonstrating that the conditions referred to in those sections, as applicable, were satisfied.

(2) The records required to be maintained under subsection (1) must be kept in a safe location and in a durable form for a period of

(a) except in Manitoba, 7 years following the date on which the mandatory clearable derivative expires or is terminated, and

(b) in Manitoba, 8 years following the date on which the mandatory clearable derivative expires or is terminated.

PART 4
MANDATORY CLEARABLE DERIVATIVES

~~**Submission of information on derivatives clearing services provided by a regulated clearing agency**~~

~~**10.** No later than the 10th day after a regulated clearing agency first offers clearing services for a derivative or class of derivatives, the regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying the derivative or class of derivatives.~~

(*Repealed*)

PART 5
EXEMPTION

Exemption

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

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

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

PART 6
TRANSITION AND EFFECTIVE DATE

Transition – regulated clearing agency filing requirement

12. No later than May 4, 2017, a regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying all derivatives or classes of derivatives for which it offers clearing services on April 4, 2017.

Transition – certain counterparties' submission for clearing

13. A counterparty specified in paragraphs 3(1)(b) or (c) to which paragraph (3)(1)(a) does not apply is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency until October 4, 2017.

Effective date

14. (1) This Instrument comes into force on April 4, 2017.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after April 4, 2017, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

APPENDIX A
TO
NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

MANDATORY CLEARABLE DERIVATIVES
(Subsection 1(1))

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant ~~or variable~~
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant ~~or variable~~
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant ~~or variable~~
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant ~~or variable~~

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant ~~or variable~~
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant ~~or variable~~
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant ~~or variable~~

APPENDIX B
TO
NATIONAL INSTRUMENT 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS
APPLICABLE FOR SUBSTITUTED COMPLIANCE
(Subsection 3(5))

Foreign jurisdiction	Laws, regulations or instruments
European Union	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 2019/2099
United Kingdom	Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No 2) Regulations 2019 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 2) Instrument 2019 The Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 3) Instrument 2019
United States of America	Clearing Requirement and Related Rules, 17~~C.F.R. pt.~~CFR Part 50

FORM 94-101F1
INTRAGROUP EXEMPTION

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Information on the entity delivering this Form

1. Provide the following information with respect to the entity delivering this Form:

Full legal name:
Name under which it conducts business, if different:

Head office
Address:
Mailing address (if different):
Telephone:
Website:

Contact employee
Name and title:
Telephone:
Email:

Other offices
Address:
Telephone:
Email:

Canadian counsel (if applicable)
Firm name:
Contact name:
Telephone:
Email:

2. In addition to providing the information required in item 1, if this Form is delivered for the purpose of reporting a name change on behalf of the entity referred to in item 1, provide the following information:

Previous full legal name:
Previous name under which the entity conducted business:

Section 2 – Combined notification on behalf of counterparties within the group to which the entity delivering this Form belongs

1. For the mandatory clearable derivatives to which this Form relates, provide all of the following information in the table below:

(a) the legal entity identifier of each counterparty in the same manner as required under the following instruments:

(i) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,

(ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting,*

(iii) in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and

(iv) in Québec, Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting;

(b) whether each counterparty is a local counterparty in a jurisdiction of Canada.

Pairs	LEI of counterparty 1	Jurisdiction(s) of Canada in which counterparty 1 is a local counterparty	LEI of counterparty 2	Jurisdiction(s) of Canada in which counterparty 2 is a local counterparty
1				

2. Describe the ownership and control structure of the counterparties identified in item 1.

Section 3 – Certification

I certify that I am authorized to deliver this Form on behalf of the entity delivering this Form and on behalf of the counterparties identified in Section 2 of this Form and that the information in this Form is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Print name of authorized person)

_____
(Print title of authorized person)

_____
(Signature of authorized person)

_____
(Email)

_____
(Phone number)

(Repealed)

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Regulated clearing agency information

1. Full name of regulated clearing agency:

2. Contact information of person authorized to deliver this form

Name and title:
Telephone:
Email:

Section 2 – Description of derivatives

1. Identify each derivative or class of derivatives for which the regulated clearing agency offers clearing services in respect of which a Form 94-101F2 has not previously been delivered.

2. For each derivative or class of derivatives referred to in item 1, describe all significant attributes of the derivative or class of derivatives including

(a) the standard practices for managing life-cycle events associated with the derivative or class of derivatives, as defined in the following instruments:

(i) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*;

(ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting;*

(iii) in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

(iv) in Québec, Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting,

(b) the extent to which the transaction is confirmable electronically,

(c) the degree of standardization of the contractual terms and operational processes,

(d) the market for the derivative or class of derivatives, including its participants, and

(e) the availability of pricing and liquidity of the derivative or class of derivatives within Canada and internationally.

3. Describe the impact of providing clearing services for each derivative or class of derivatives referred to in item 1 on the regulated clearing agency's risk management framework and financial resources, including the protection of the regulated clearing agency on the default of a participant and the effect of the default on the other participants.

4. Describe the impact, if any, on the regulated clearing agency's ability to comply with its regulatory obligations should the regulator or securities regulatory authority determine a derivative or class of derivatives referred to in item 1 to be a mandatory clearable derivative.

5. Describe the clearing services offered for each derivative or class of derivatives referred to in item 1.

6. If applicable, attach a copy of every notice the regulated clearing agency provided to its participants for consultation on the launch of the clearing service for a derivative or class of derivatives referred to in item 1 and a summary of concerns received in response to the notice.

Section 3 – Certification

CERTIFICATE OF REGULATED CLEARING AGENCY

I certify that I am authorized to deliver this form on behalf of the regulated clearing agency named below and that the information in this form is true and correct.

~~DATED at _____ this _____ day of _____, 20____~~

~~_____~~
~~(Print name of regulated clearing agency)~~

~~_____~~
~~(Print name of authorized person)~~

~~_____~~
~~(Print title of authorized person)~~

~~_____~~
~~(Signature of authorized person)~~

(*Repealed*)

ANNEX C

PROPOSED CHANGES TO
COMPANION POLICY 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

1. Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives is changed by this document.

2. Part 1 is changed by adding the following subsection:

Subsection 1(2) – Interpretation of "affiliated entity"

To determine whether two entities are affiliates, the Instrument uses an approach based on the concept of consolidated financial statements under IFRS or U.S. Generally Accepted Accounting Principles (U.S. GAAP). Consequently, two entities whose financial statements are consolidated, or would be consolidated if any financial statements were required, would be considered affiliated entities under the Instrument. We expect corporate groups that do not prepare financial statements in accordance with IFRS or U.S. GAAP to apply the consolidation test under either IFRS or U.S. GAAP to determine whether entities within the corporate group meet the "affiliated entity" interpretation.

3. Part 2 is replaced with the following:

PART 2 MANDATORY CENTRAL COUNTERPARTY CLEARING

Subsections 3(0.1) and (0.2) – Exclusion of investment funds and certain entities

An investment fund whose financial statements are consolidated with those of another entity should not be considered an affiliated entity of the other entity for the application of paragraphs 3(1)(b) and (c). Accordingly, the month-end exposure of an investment fund should not be considered when calculating the month-end gross notional amount in accordance with those paragraphs.

However, an investment fund will be subject to the clearing requirements if it, on its own, exceeds the $500 000 000 000 month-end gross notional amount for all outstanding derivatives.

Similarly, certain structured entities (commonly known as special purpose entities) should not be considered as affiliates for the purpose of paragraphs 3(1)(b) and (c) if they meet the conditions stated in subsection 3(0.2). An entity, including an entity such as a credit card securitization vehicle or an entity created to guarantee interest and principal payments under a covered bond program, that meets the conditions in subsection 3(0.2) would not be an affiliated entity. All obligations of such entities are required to be exclusively secured by their own assets to meet the condition in paragraph 3(0.2)(b). Also, a vehicle created to invest in real estate or an infrastructure that meets the conditions in subparagraph 3(0.2)(a)(iii) would not be an affiliated entity of another entity even if its financial statements are consolidated with the other entity.

Subsection 3(1) – Duty to submit for clearing

The duty to submit a mandatory clearable derivative for clearing to a regulated clearing agency only applies at the time the transaction is executed. If a derivative or class of derivatives is determined to be a mandatory clearable derivative after the date of execution of a transaction in that derivative or class of derivatives, we would not expect a local counterparty to submit the mandatory clearable derivative for clearing. Therefore, we would not expect a local counterparty to clear a mandatory clearable derivative entered into as a result of a counterparty exercising a swaption that was entered into before the date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty or the date on which the derivative became a mandatory clearable derivative. Similarly, we would not expect a local counterparty to clear an extendible swap that was entered into before the date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty or the date on which the derivative became a mandatory clearable derivative and extended in accordance with the terms of the contract after such date.

However, if after a derivative or class of derivatives is determined to be a mandatory clearable derivative, there is another transaction in that same derivative, including a material amendment to a previous transaction (as discussed in subsection 1(1) above), that derivative will be subject to the mandatory central counterparty clearing requirement.

Where a derivative is not subject to the mandatory central counterparty clearing requirement but the derivative is clearable through a regulated clearing agency, the counterparties have the option to submit the derivative for clearing at any time. For a complex swap with non-standard terms that regulated clearing agencies cannot accept for clearing, adherence to the Instrument would not require market participants to structure such derivative in a particular manner or disentangle the derivative in order to clear the component which is a mandatory clearable derivative if it serves legitimate business

purposes. However, considering that it would not require disentangling, we would expect the component of a packaged transaction that is a mandatory clearable derivative to be cleared.

For a local counterparty that is not a participant of a regulated clearing agency, we have used the phrase "cause to be submitted" to refer to the local counterparty's obligation. In order to comply with subsection (1), a local counterparty would need to have arrangements in place with a participant for clearing services in advance of entering into a mandatory clearable derivative.

A transaction in a mandatory clearable derivative is required to be cleared when at least one of the counterparties is a local counterparty and one or more of paragraphs (a), (b) or (c) apply to both counterparties. For example, a local counterparty under any of paragraphs (a), (b) or (c) must clear a mandatory clearable derivative entered into with another local counterparty under any of paragraphs (a), (b) or (c). As a further example, a local counterparty under any of paragraphs (a), (b) or (c) must also clear a mandatory clearable derivative with a foreign counterparty under paragraphs (a) or (b). For instance, a local counterparty that is an affiliated entity of a foreign participant would be subject to mandatory central counterparty clearing for a mandatory clearable derivative with a foreign counterparty that is an affiliated entity of another foreign participant considering that there is one local counterparty to the transaction and both counterparties meet the criteria under paragraph (b).

Pursuant to paragraph (c) a local counterparty that had a month-end gross notional amount of outstanding derivatives exceeding the $500 000 000 000 threshold in subparagraph (c)(ii) must clear a mandatory clearable derivative entered into with another counterparty that meets the criteria under paragraph (a), (b) or (c). In order to determine whether the $500 000 000 000 threshold in subparagraph (c)(ii) is exceeded, a local counterparty must add the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own. However, investments funds and consolidated structured entities that meet the criteria under subsections 3(0.1) and (0.2) are not included in the calculation.

Where a local counterparty is a member of a group of affiliated entities that exceeds the $500 000 000 000 threshold but is not itself a counterparty to derivatives that have an average month-end gross notional amount exceeding the $1 000 000 000 threshold, calculated in accordance with subparagraph (c)(iii), it is not required to clear a mandatory clearable derivative.

A person or company that exceeds the $1 000 000 000 notional exposure, calculated according to paragraphs (b) and (c), is required to fulfill the mandatory clearing requirement from September 1 of a given year until August 31 of the next year. This is referred to as the "reference period" in the Instrument.

For example, local counterparty XYZ had an average month-end gross notional amount under all outstanding derivatives of $75 000 000 000 for the months of March, April and May of 2022. Counterparty XYZ also had, combined with each of its affiliated entities that are local counterparties, a month-end gross notional amount for all derivatives of $525 000 000 000 at the end of November 2021. Considering that (i) the aggregated month-end gross notional amount outstanding of $525 000 000 000 exceeds the $500 000 000 000 threshold, (ii) it occurred during the previous 12 months, and (iii) the average month-end gross notional amount of $75 000 000 000 for March, April and May of 2022 exceeds the $1 000 000 000 threshold, counterparty XYZ will need to comply with the Instrument in respect of mandatory clearable derivatives entered into during the reference period starting September 1, 2022. Conversely, if local counterparty XYZ does not exceed, on its own, the $1 000 000 000 threshold, it is not subject to clearance even if the aggregated month-end gross notional amount outstanding with all of its affiliated entities exceeds the $500 000 000 000 threshold.

Furthermore, in the example, even if local counterparty XYZ is subject to mandatory clearing from September 1, 2022 until August 31, 2023, but no longer exceeds the $1 000 000 000 threshold for the months of March, April and May of 2023, it will no longer be required to comply with section 3 for the next reference period starting September 1, 2023. However, the local counterparty will have to evaluate its application every year. Consequently, if local counterparty XYZ exceeds the $1 000 000 000 threshold again in a future year, it will become subject to the requirements of the Instrument until the following year.

The calculation of the gross notional amount outstanding under paragraphs (b) and (c) excludes derivatives with affiliated entities, which would be exempted under section 7 if they were mandatory clearable derivatives.

In addition, a local counterparty determines whether it exceeds the threshold in subparagraph (c)(ii) by adding the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own.

A local counterparty that is a participant at a regulated clearing agency, but does not subscribe to clearing services for the class of derivatives to which the mandatory clearable derivative belongs, would still be required to clear if it is subject to paragraph (c).

A local counterparty subject to mandatory central counterparty clearing that engages in a mandatory clearable derivative is responsible for determining whether the other counterparty is also subject to mandatory central counterparty clearing.

To do so, the local counterparty may rely on the factual statements made by the other counterparty, provided that it does not have reasonable grounds to believe that such statements are false.

We would not expect that all the counterparties of a local counterparty provide their status as most counterparties would not be subject to the Instrument. However, a local counterparty cannot rely on the absence of a declaration from a counterparty to avoid the requirement to clear. Instead, when no information is provided by a counterparty, the local counterparty may use factual statements or available information to assess whether the mandatory clearable derivative is required to be cleared in accordance with the Instrument.

We would expect counterparties subject to the Instrument to exercise reasonable judgement in determining whether a person or company may be near or above the thresholds set out in paragraphs (b) and (c). We would expect a counterparty subject to the Instrument to solicit confirmation from its counterparty where there is reasonable basis to believe that the counterparty may be near or above any of the thresholds.

The status of a counterparty under this subsection should be determined before entering into a mandatory clearable derivative. We would not expect a local counterparty to clear a mandatory clearable derivative entered into after the date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty, but before one of the counterparties was captured under one of paragraphs (a), (b) or (c), unless there is a material amendment to the derivative after the date that both counterparties are so captured.

Subsection 3(2) – 90-day transition

This subsection provides that only transactions in mandatory clearable derivatives executed on or after the 90th day after the end of the month in which the local counterparty first exceeded the threshold set out in subparagraph 3(1)(c)(ii) are subject to subsection 3(1). We do not intend that transactions executed between the 1st day on which the local counterparty became subject to subsection 3(1) and the 90th day be back-loaded after the 90th day.

Subsection 3(3) – Submission to a regulated clearing agency

We would expect that a transaction subject to mandatory central counterparty clearing be submitted to a regulated clearing agency as soon as practicable, but no later than the end of the day on which the transaction was executed or if the transaction occurs after business hours of the regulated clearing agency, the next business day.

Subsection 3(5) – Substituted compliance

Substituted compliance is only available to a local counterparty that is a foreign affiliated entity of a counterparty organized under the laws of the local jurisdiction or with a head office or principal place of business in the local jurisdiction and that is responsible for all or substantially all the liabilities of the affiliated entity. The local counterparty would still be subject to the Instrument, but its mandatory clearable derivatives, as per the definition under the Instrument, may be cleared at a clearing agency pursuant to a foreign law listed in Appendix B if the counterparty is subject to and compliant with that foreign law.

Despite the ability to clear pursuant to a foreign law listed in Appendix B, the local counterparty is still required to fulfill the other requirements in the Instrument, as applicable. This includes the retention period for the record keeping requirement.

4. Part 3, subsection 7(1) is changed by

(a) deleting the third paragraph, and

(b) replacing the seventh paragraph with the following:

Paragraph (d) refers to the terms of the mandatory clearable derivative that is not cleared. A trade confirmation, for instance, would be acceptable**.**

5. Part 3, subsections 7(2) and (3) are deleted.

6. Part 3, section 8 is changed by

(a) adding, at the end of the second paragraph, the following:

We expect each amended derivative or replacement derivative generated by the multilateral portfolio compression exercise to be entered into for the sole purpose of reducing operational or counterparty credit risk and that such derivative(s) is (are) entered into between the same two counterparties as the original derivative(s). **, *and***

(b) replacing the fifth paragraph with the following:

We would expect that a mandatory clearable derivative resulting from the multilateral portfolio compression exercise would have the same material terms (including the floating index, the maximum maturity of the derivative and the weighted average maturity of the derivative) as the derivatives that were replaced with the exception of reducing the number or notional amount of outstanding derivatives..

7. The title "PART 4 MANDATORY CLEARABLE DERIVATIVES and PART 6 TRANSITION AND EFFECTIVE DATE" is deleted.

8. The heading "Section 10 – Submission of Form 94-101F2 & Section 12 – Transition for the submission of Form 94-101F2" is replaced with the heading APPENDIX A MANDATORY CLEARABLE DERIVATIVES, and the first two paragraphs are deleted.

9. Form 94-101F1 Intragroup Exemption and Form 94-101F2 Derivatives Clearing Services are deleted.

10. These changes become effective on September 1, 2022.

ANNEX D

This Annex sets out a blackline showing the changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, as set out in Annex C.

COMPANION POLICY 94-101 *MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES*

GENERAL COMMENTS

Introduction

This Companion Policy sets out how the Canadian Securities Administrators (the "CSA" or "we") interpret or apply the provisions of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* ("NI 94-101" or the "Instrument") and related securities legislation.

The numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 94-101. Any specific guidance on sections in NI 94-101 appears immediately after the section heading. If there is no guidance for a section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

SPECIFIC COMMENTS

Unless defined in NI 94-101 or explained in this Companion Policy, terms used in NI 94-101 and in this Companion Policy have the meaning given to them in the securities legislation of the jurisdiction including National Instrument 14-101 *Definitions*.

In this Companion Policy, "Product Determination Rule" means,

> in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 91-101 *Derivatives: Product Determination*,
>
> in Manitoba, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,
>
> in Ontario, Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, and
>
> in Québec, Regulation 91-506 respecting Derivatives Determination.

In this Companion Policy, "TR Instrument" means,

> in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,
>
> in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*,
>
> in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and
>
> in Québec, Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting.

PART 1
DEFINITIONS AND INTERPRETATION

Subsection 1(1) – Definition of "participant"

A "participant" of a regulated clearing agency is bound by the rules and procedures of the regulated clearing agency due to the contractual agreement with the regulated clearing agency.

Subsection 1(1) – Definition of "regulated clearing agency"

It is intended that only a "regulated clearing agency" that acts as a central counterparty for over-the-counter derivatives be subject to the Instrument. The purpose of paragraph (a) of this definition is to allow, for certain enumerated jurisdictions, a mandatory clearable derivative involving a local counterparty in one of the listed jurisdictions to be submitted to a clearing agency that is not yet recognized or exempted in the local jurisdiction, but that is recognized or exempted in another jurisdiction of Canada. Paragraph (a) does not supersede any provision of the securities legislation of a local jurisdiction with respect to any recognition requirements for a person or company that is carrying on the business of a clearing agency in the local jurisdiction.

Subsection 1(1) – Definition of "transaction"

The Instrument uses the term "transaction" rather than the term "trade" in part to reflect that "trade" is defined in the securities legislation of some jurisdictions as including the termination of a derivative. We do not think the termination of a derivative should trigger mandatory central counterparty clearing. Similarly, the definition of transaction in NI 94-101 excludes a novation resulting from the submission of a derivative to a clearing agency or clearing house as this is already a cleared transaction. Finally, the definition of "transaction" is not the same as the definition found in the TR Instrument as the latter does not include a material amendment since the TR Instrument expressly provides that an amendment must be reported.

In the definition of "transaction", the expression "material amendment" is used to determine whether there is a new transaction, considering that only new transactions will be subject to mandatory central counterparty clearing under NI 94-101. If a derivative that existed prior to the coming into force of NI 94-101 is materially amended after NI 94-101 is effective, that amendment will trigger the mandatory central counterparty clearing requirement, if applicable, as it would be considered a new transaction. A material amendment is one that changes information that would reasonably be expected to have a significant effect on the derivative's attributes, including its notional amount, the terms and conditions of the contract evidencing the derivative, the trading methods or the risks related to its use, but excluding information that is likely to have an effect on the market price or value of its underlying interest. We will consider several factors when determining whether a modification to an existing derivative is a material amendment. Examples of a modification to an existing derivative that would be a material amendment include any modification which would result in a significant change in the value of the derivative, differing cash flows, a change to the method of settlement or the creation of upfront payments.

Subsection 1(2) – Interpretation of "affiliated entity"

To determine whether two entities are affiliates, the Instrument uses an approach based on the concept of consolidated financial statements under IFRS or U.S. Generally Accepted Accounting Principles (U.S. GAAP). Consequently, two entities whose financial statements are consolidated, or would be consolidated if any financial statements were required, would be considered affiliated entities under the Instrument. We expect corporate groups that do not prepare financial statements in accordance with IFRS or U.S. GAAP to apply the consolidation test under either IFRS or U.S. GAAP to determine whether entities within the corporate group meet the "affiliated entity" interpretation.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Subsections 3(0.1) and (0.2) – Exclusion of investment funds and certain entities

An investment fund whose financial statements are consolidated with those of another entity should not be considered an affiliated entity of the other entity for the application of paragraphs 3(1)(b) and (c). Accordingly, the month-end exposure of an investment fund should not be considered when calculating the month-end gross notional amount in accordance with those paragraphs.

However, an investment fund will be subject to the clearing requirements if it, on its own, exceeds the $500 000 000 000 month-end gross notional amount for all outstanding derivatives.

Similarly, certain structured entities (commonly known as special purpose entities) should not be considered as affiliates for the purpose of paragraphs 3(1)(b) and (c) if they meet the conditions stated in subsection 3(0.2). An entity, including an entity such as a credit card securitization vehicle or an entity created to guarantee interest and principal payments under a covered bond program, that meets the conditions in subsection 3(0.2) would not be an affiliated entity. All obligations of such entities are required to be exclusively secured by their own assets to meet the condition in paragraph 3(0.2)(b). Also, a vehicle created to invest in real estate or an infrastructure that meets the conditions in subparagraph 3(0.2)(a)(iii) would not be an affiliated entity of another entity even if its financial statements are consolidated with the other entity.

Subsection 3(1) – Duty to submit for clearing

The duty to submit a mandatory clearable derivative for clearing to a regulated clearing agency only applies at the time the transaction is executed. If a derivative or class of derivatives is determined to be a mandatory clearable derivative after the date of execution of a transaction in that derivative or class of derivatives, we would not expect a local counterparty to submit the mandatory clearable derivative for clearing. Therefore, we would not expect a local counterparty to clear a mandatory clearable derivative entered into as a result of a counterparty exercising a swaption that was entered into before the ~~effective date of the Instrument~~date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty or the date on which the derivative became a mandatory clearable derivative. Similarly, we would not expect a local counterparty to clear an extendible swap that was entered into before the ~~effective date of the Instrument~~date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty or the date on which the derivative became a mandatory clearable derivative and extended in accordance with the terms of the contract after such date.

However, if after a derivative or class of derivatives is determined to be a mandatory clearable derivative, there is another transaction in that same derivative, including a material amendment to a previous transaction (as discussed in subsection 1(1) above), that derivative will be subject to the mandatory central counterparty clearing requirement.

Where a derivative is not subject to the mandatory central counterparty clearing requirement but the derivative is clearable through a regulated clearing agency, the counterparties have the option to submit the derivative for clearing at any time. For a complex swap with non-standard terms that regulated clearing agencies cannot accept for clearing, adherence to the Instrument would not require market participants to structure such derivative in a particular manner or disentangle the derivative in order to clear the component which is a mandatory clearable derivative if it serves legitimate business purposes. However, considering that it would not require disentangling, we would expect the component of a packaged transaction that is a mandatory clearable derivative to be cleared.

For a local counterparty that is not a participant of a regulated clearing agency, we have used the phrase “cause to be submitted” to refer to the local counterparty’s obligation. In order to comply with subsection (1), a local counterparty would need to have arrangements in place with a participant for clearing services in advance of entering into a mandatory clearable derivative.

A transaction in a mandatory clearable derivative is required to be cleared when at least one of the counterparties is a local counterparty and one or more of paragraphs (a), (b) or (c) apply to both counterparties. For example, a local counterparty under any of paragraphs (a), (b) or (c) must clear a mandatory clearable derivative entered into with another local counterparty under any of paragraphs (a), (b) or (c). As a further example, a local counterparty under any of paragraphs (a), (b) or (c) must also clear a mandatory clearable derivative with a foreign counterparty under paragraphs (a) or (b). For instance, a local counterparty that is an affiliated entity of a foreign participant would be subject to mandatory central counterparty clearing for a mandatory clearable derivative with a foreign counterparty that is an affiliated entity of another foreign participant considering that there is one local counterparty to the transaction and both counterparties ~~respect~~meet the criteria under paragraph (b).

~~A local counterparty that has had a month-end gross notional amount of outstanding derivatives exceeding the threshold in paragraphs (b) or (c), for any month following the entry into force of the Instrument, must clear all its subsequent transactions in a mandatory clearable derivative with another counterparty under one or more of paragraphs (a), (b), or (c).~~

Pursuant to paragraph (c) a local counterparty that had a month-end gross notional amount of outstanding derivatives exceeding the $500 000 000 000 threshold in subparagraph (c)(ii) must clear a mandatory clearable derivative entered into with another counterparty that meets the criteria under paragraph (a), (b) or (c). In order to determine whether the $500 000 000 000 threshold in subparagraph (c)(ii) is exceeded, a local counterparty must add the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own. However, investments funds and consolidated structured entities that meet the criteria under subsections 3(0.1) and (0.2) are not included in the calculation.

Where a local counterparty is a member of a group of affiliated entities that exceeds the $500 000 000 000 threshold but is not itself a counterparty to derivatives that have an average month-end gross notional amount exceeding the $1 000 000 000 threshold, calculated in accordance with subparagraph (c)(iii), it is not required to clear a mandatory clearable derivative.

A person or company that exceeds the $1 000 000 000 notional exposure, calculated according to paragraphs (b) and (c), is required to fulfill the mandatory clearing requirement from September 1 of a given year until August 31 of the next year. This is referred to as the “reference period” in the Instrument.

For example, local counterparty XYZ had an average month-end gross notional amount under all outstanding derivatives of $75 000 000 000 for the months of March, April and May of 2022. Counterparty XYZ also had, combined with each of its affiliated entities that are local counterparties, a month-end gross notional amount for all derivatives of $525 000 000 000 at the end of November 2021. Considering that (i) the aggregated month-end gross notional amount outstanding of $525 000 000 000 exceeds the $500 000 000 000 threshold, (ii) it occurred during the previous 12 months, and (iii) the average month-end gross notional amount of $75 000 000 000 for March, April and May of 2022 exceeds the $1 000 000 000 threshold, counterparty XYZ will need to comply with the Instrument in respect of mandatory clearable derivatives entered into during the reference period starting September 1, 2022. Conversely, if local counterparty XYZ does not exceed, on its own, the $1 000 000 000 threshold, it is not subject to clearance even if the aggregated month-end gross notional amount outstanding with all of its affiliated entities exceeds the $500 000 000 000 threshold.

Furthermore, in the example, even if local counterparty XYZ is subject to mandatory clearing from September 1, 2022 until August 31, 2023, but no longer exceeds the $1 000 000 000 threshold for the months of March, April and May of 2023, it will no longer be required to comply with section 3 for the next reference period starting September 1, 2023. However, the local counterparty will have to evaluate its application every year. Consequently, if local counterparty XYZ exceeds the $1 000 000 000 threshold again in a future year, it will become subject to the requirements of the Instrument until the following year.

The calculation of the gross notional amount outstanding under paragraphs (b) and (c) excludes derivatives with affiliated entities ~~whose financial statements are prepared on a consolidated basis~~, which would be exempted under section 7 if they were mandatory clearable derivatives.

In addition, a local counterparty determines whether it exceeds the threshold in ~~paragraph~~subparagraph (c)(ii) by adding the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own.

A local counterparty that is a participant at a regulated clearing agency, but does not subscribe to clearing services for the class of derivatives to which the mandatory clearable derivative belongs, would still be required to clear if it is subject to paragraph (c).

A local counterparty subject to mandatory central counterparty clearing that engages in a mandatory clearable derivative is responsible for determining whether the other counterparty is also subject to mandatory central counterparty clearing. To do so, the local counterparty may rely on the factual statements made by the other counterparty, provided that it does not have reasonable grounds to believe that such statements are false.

We would not expect that all the counterparties of a local counterparty provide their status as most counterparties would not be subject to the Instrument. However, a local counterparty cannot rely on the absence of a declaration from a counterparty to avoid the requirement to clear. Instead, when no information is provided by a counterparty, the local counterparty may use factual statements or available information to assess whether the mandatory clearable derivative is required to be cleared in accordance with the Instrument.

We would expect counterparties subject to the Instrument to exercise reasonable judgement in determining whether a person or company may be near or above the thresholds set out in paragraphs (b) and (c). We would expect a counterparty subject to the Instrument to solicit confirmation from its counterparty where there is reasonable basis to believe that the counterparty may be near or above any of the thresholds.

The status of a counterparty under this subsection should be determined before entering into a mandatory clearable derivative. We would not expect a local counterparty to clear a mandatory clearable derivative entered into after the ~~Instrument came into effect~~date on which the requirement to submit a mandatory clearable derivative for clearing is applicable to that counterparty, but before one of the counterparties was captured under one of paragraphs (a), (b) or (c) unless there is a material amendment to the derivative after the date that both counterparties are so captured.

Subsection 3(2) – 90-day transition

This subsection provides that only transactions in mandatory clearable derivatives executed on or after the 90th day after the end of the month in which the local counterparty first exceeded the threshold set out in subparagraph 3(1)(c)(ii) are subject to subsection 3(1). We do not intend that transactions executed between the 1st day on which the local counterparty became subject to subsection 3(1) and the 90th day be back-loaded after the 90th day.

Subsection 3(3) – Submission to a regulated clearing agency

We would expect that a transaction subject to mandatory central counterparty clearing be submitted to a regulated clearing agency as soon as practicable, but no later than the end of the day on which the transaction was executed or if the transaction occurs after business hours of the regulated clearing agency, the next business day.

Subsection 3(5) – Substituted compliance

Substituted compliance is only available to a local counterparty that is a foreign affiliated entity of a counterparty organized under the laws of the local jurisdiction or with a head office or principal place of business in the local jurisdiction and that is responsible for all or substantially all the liabilities of the affiliated entity. The local counterparty would still be subject to the Instrument, but its mandatory clearable derivatives, as per the definition under the Instrument, may be cleared at a clearing agency pursuant to a foreign law listed in Appendix B if the counterparty is subject to and compliant with that foreign law.

Despite the ability to clear pursuant to a foreign law listed in Appendix B, the local counterparty is still required to fulfill the other requirements in the Instrument, as applicable. This~~ese~~ includes the retention period for the record keeping requirement. ~~and the submission of a completed Form 94-101F1 *Intragroup Exemption* to the regulator or securities regulatory authority in a jurisdiction of Canada when relying on an exemption regarding mandatory clearable derivatives entered into with an affiliated entity.~~

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Section 6 – Non-application

A mandatory clearable derivative involving a counterparty that is an entity referred to in section 6 is not subject to the requirement under section 3 to submit a mandatory clearable derivative for clearing even if the other counterparty is otherwise subject to it.

The expression “government of a foreign jurisdiction” in paragraph (a) is interpreted as including sovereign and sub-sovereign governments.

Section 7 – Intragroup exemption

The Instrument does not require an outward-facing transaction in a mandatory clearable derivative entered into by a foreign counterparty that meets paragraph 3(1)(a) or (b) to be cleared in order for the foreign counterparty and its affiliated entity that is a local counterparty subject to the Instrument to rely on this exemption. However, we would expect a local counterparty to not abuse this exemption in order to evade mandatory central counterparty clearing. It would be considered evasion if the local counterparty uses a foreign affiliated entity or another member of its group to enter into a mandatory clearable derivative with a foreign counterparty that meets paragraph 3(1)(a) or (b) and then do a back-to-back transaction or enter into the same derivative relying on the intragroup exemption where the local counterparty would otherwise have been required to clear the mandatory clearable derivative if it had entered into it directly with the non-affiliated counterparty.

Subsection 7(1) – Requisite conditions for intragroup exemption

The intragroup exemption is based on the premise that the risk created by mandatory clearable derivatives entered into between counterparties in the same group is expected to be managed in a centralized manner to allow for the risk to be identified and managed appropriately.

This subsection sets out the conditions that must be met for the counterparties to use the intragroup exemption for a mandatory clearable derivative.

~~The expression "consolidated financial statements" in paragraph (a) is interpreted as financial statements in which the assets, liabilities, equity, income, expenses and cash flows of each of the counterparty and the affiliated entity are consolidated as part of a single economic entity.~~

Affiliated entities may rely on paragraph (a) for a mandatory clearable derivative as soon as they meet the criteria to consolidate their financial statements together. Indeed, we would not expect affiliated entities to wait until their next financial statements are produced to benefit from this exemption if they will be consolidated.

If the consolidated financial statements referred to in paragraph 7(1)(a) are not prepared in accordance with IFRS, Canadian GAAP or U.S. GAAP, we would expect that the consolidated financial statements be prepared in accordance with the generally accepted accounting principles of a foreign jurisdiction where one or more of the affiliated entities has a significant connection, such as where the head office or principal place of business of one or both of the affiliated entities, or their parent, is located.

Paragraph (c) refers to a system of risk management policies and procedures designed to monitor and manage the risks associated with a mandatory clearable derivative. We expect that such procedures would be regularly reviewed. We are of the view that counterparties relying on this exemption may structure their centralized risk management according to their unique needs, provided that the program reasonably monitors and manages risks associated with non-centrally cleared derivatives. We would expect that, for a risk management program to be considered centralized, the evaluation, measurement and control procedures would be applied by a counterparty to the mandatory clearable derivative or an affiliated entity of both counterparties to the derivative.

~~Paragraph (d) refers to the terms governing the trading relationship between the affiliated entities for the mandatory clearable derivative that is not cleared as a result of the intragroup exemption. We would expect that the written agreement be dated and signed by the affiliated entities. An ISDA master agreement, for instance, would be acceptable.~~ Paragraph (d) refers to the terms of the mandatory clearable derivative that is not cleared. A trade confirmation, for instance, would be acceptable.

~~**Subsection 7(2) – Submission of Form 94-101F1**~~

~~Within 30 days after two affiliated entities first rely on the intragroup exemption in respect of a mandatory clearable derivative, a local counterparty must deliver, or cause to be delivered, to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption* ("Form 94-101F1") to notify the regulator or securities regulatory authority that the exemption is being relied upon. The information provided in the Form 94-101F1 will aid the regulator or securities regulatory authority in better understanding the legal and operational structure allowing counterparties to benefit from the intragroup exemption. The parent or the entity responsible to perform the centralized risk management for the affiliated entities using the intragroup exemption may deliver the completed Form 94-101F1 on behalf of the affiliated entities. For greater clarity, a completed Form 94-101F1 could be delivered for the group by including each pairing of counterparties that seek to rely on the intragroup exemption. One completed Form 94-101F1 is valid for every mandatory clearable derivative between any pair of counterparties listed on the completed Form 94-101F1 provided that the requirements set out in subsection (1) are complied with.~~

~~**Subsection 7(3) – Amendments to Form 94-101F1**~~

~~Examples of changes to the information provided that would require an amended Form 94-101F1 include: (i) a change in the control structure of one or more of the counterparties listed in Form 94-101F1, and (ii) the addition of a new local jurisdiction for a counterparty. This form may also be delivered by an agent.~~

Section 8 – Multilateral portfolio compression exemption

A multilateral portfolio compression exercise involves more than two counterparties who wholly change or terminate some or all of their existing derivatives submitted for inclusion in the exercise and replace those derivatives with, depending on the methodology employed, other derivatives whose combined notional amount, or some other measure of risk, is less than the combined notional amount, or some other measure of risk, of the derivatives replaced by the exercise.

The purpose of a multilateral portfolio compression exercise is to reduce operational or counterparty credit risk by reducing the number or notional amounts of outstanding derivatives between counterparties and the aggregate gross number or notional amounts of outstanding derivatives. We expect each amended derivative or replacement derivative generated by the multilateral portfolio compression exercise to be entered into for the sole purpose of reducing operational or counterparty credit risk and that such derivative(s) is (are) entered into between the same two counterparties as the original derivative(s).

Under paragraph (c), the existing derivatives submitted for inclusion in the exercise were not cleared either because they did not include a mandatory clearable derivative or because they were entered into before the class of derivatives became a mandatory clearable derivative or because the counterparty was not subject to the Instrument.

We would expect a local counterparty involved in a multilateral portfolio compression exercise to comply with its credit risk tolerance levels. To do so, we expect a participant to the exercise to set its own counterparty, market and cash payment risk tolerance levels so that the exercise does not alter the risk profiles of each participant beyond a level acceptable to the participant. Consequently, we would expect existing derivatives that would be reasonably likely to significantly increase the risk exposure of the participant to not be included in the multilateral portfolio compression exercise in order for this exemption to be available.

We would ~~generally~~ expect that a mandatory clearable derivative resulting from the multilateral portfolio compression exercise would have the same material terms (including the floating index, the maximum maturity of the derivative and the weighted average maturity of the derivative) as the derivatives that were replaced with the exception of reducing the number or notional amount of outstanding derivatives.

Section 9 – Recordkeeping

We would generally expect that reasonable supporting documentation kept in accordance with section 9 would include complete records of any analysis undertaken by the local counterparty to demonstrate it satisfies the conditions necessary to rely on the intragroup exemption under section 7 or the multilateral portfolio compression exemption under section 8, as applicable.

A local counterparty subject to the mandatory central counterparty clearing requirement is responsible for determining whether, given the facts available, an exemption is available. Generally, we would expect a local counterparty relying on an exemption to retain all documents that show it properly relied on the exemption. It is not appropriate for a local counterparty to assume an exemption is available.

Counterparties using the intragroup exemption under section 7 should have appropriate legal documentation between them and detailed operational material outlining the risk management techniques used by the overall parent entity and its affiliated entities with respect to the mandatory clearable derivatives benefiting from the exemption.

~~**PART 4**~~
~~**MANDATORY CLEARABLE DERIVATIVES**~~

~~**and**~~

~~**PART 6**~~
~~**TRANSITION AND EFFECTIVE DATE**~~

~~**Section 10 – Submission of Form 94-101F2 & Section 12 – Transition for the submission of Form 94-101F2**~~

~~A regulated clearing agency must deliver a Form 94-101F2 *Derivatives Clearing Services* ("Form 94-101F2") to identify all derivatives for which it provides clearing services within 30 days of the coming into force of the Instrument pursuant to section 12. A new derivative or class of derivatives added to the offering of clearing services after the Instrument is in force is declared through a Form 94-101F2 within 10 days of the launch of such service pursuant to section 10.~~

~~Each regulator or securities regulatory authority has the power to determine by rule or otherwise which derivative or class of derivatives will be subject to mandatory central counterparty clearing. Furthermore, the CSA may consider the information required by Form 94-101F2 to determine whether a derivative or class of derivatives will be subject to mandatory central counterparty clearing.~~

APPENDIX A
MANDATORY CLEARABLE DERIVATIVES

In the course of determining whether a derivative or class of derivatives will be subject to mandatory central counterparty clearing, the factors we will consider include the following:

- the derivative is available to be cleared on a regulated clearing agency;
- the level of standardization of the derivative, such as the availability of electronic processing, the existence of master agreements, product definitions and short form confirmations;
- the effect of central clearing of the derivative on the mitigation of systemic risk, taking into account the size of the market for the derivative and the available resources of the regulated clearing agency to clear the derivative;
- whether mandating the derivative or class of derivatives to be cleared would bring undue risk to regulated clearing agencies;
- the outstanding notional amount of the counterparties transacting in the derivative or class of derivatives, the current liquidity in the market for the derivative or class of derivatives, the concentration of participants active in the market for the derivative or class of derivatives, and the availability of reliable and timely pricing data;
- the existence of third-party vendors providing pricing services;
- with regards to a regulated clearing agency, the existence of an appropriate rule framework, and the existence of capacity, operational expertise and resources, and credit support infrastructure to clear the derivative on terms that are consistent with the material terms and trading conventions on which the derivative is traded;
- whether a regulated clearing agency would be able to manage the risk of the additional derivatives that might be submitted due to the mandatory central counterparty clearing requirement determination;
- the effect on competition, taking into account appropriate fees and charges applied to clearing, and whether mandating clearing of the derivative could harm competition;
- alternative derivatives or clearing services co-existing in the same market;
- the public interest.

~~**FORM 94-101F1**~~
~~***INTRAGROUP EXEMPTION***~~

~~**Submission of information on intragroup transactions by a local counterparty**~~

~~In paragraph (a) of item 1 in section 2, we refer to information required under section 28 of the TR Instrument.~~

~~We intend to keep the forms delivered by or on behalf of a local counterparty under the Instrument confidential in accordance with the provisions of the applicable legislation. We are of the view that the forms generally contain proprietary information, and that the cost and potential risks of disclosure for the counterparties to an intragroup transaction outweigh the benefit of the principle requiring that forms be made available for public inspection.~~

~~While we intend for Form 94-101F1 and any amendments to it to be kept generally confidential, if the regulator or securities regulatory authority considers that it is in the public interest to do so, it may require the public disclosure of a summary of the information contained in such form, or amendments to it.~~

~~**FORM 94-101F2**~~
~~***DERIVATIVES CLEARING SERVICES***~~

~~**Submission of information on clearing services of derivatives by the regulated clearing agency**~~

~~Paragraphs (a), (b) and (c) of item 2 in section 2 address the potential for a derivative or class of derivatives to be a mandatory clearable derivative given its level of standardization in terms of market conventions, including legal documentation, processes and procedures, and whether pre- to post- transaction operations are carried out predominantly by electronic means. The standardization of economic terms is a key input in the determination process.~~

~~In paragraph (a) of item 2 in section 2, "life-cycle events" has the same meaning as in section 1 of the TR Instrument.~~

~~Paragraphs (d) and (e) of item 2 in section 2 provide details to assist in assessing the market characteristics such as the activity (volume and notional amount) of a particular derivative or class of derivatives, the nature and landscape of the market for that derivative or class of derivatives and the potential impact its determination as a mandatory clearable derivative could have on market participants, including the regulated clearing agency. Assessing whether a derivative or class of derivatives should be a mandatory clearable derivative may involve, in terms of liquidity and price availability, considerations that are different from, or in addition to, the considerations used by the regulator or securities regulatory authority in permitting a regulated clearing agency to offer clearing services for a derivative or class of derivatives. Stability in the availability of pricing information will also be an important factor considered in the determination process. Metrics, such as the total number of transactions and aggregate notional amounts and outstanding positions, can be used to justify the confidence and frequency with which the pricing of a derivative or class of derivatives is calculated. We expect that the data presented cover a reasonable period of time of no less than 6 months. Suggested information to be provided on the market includes:~~

- ~~statistics regarding the percentage of activity of participants on their own behalf and for customers,~~
- ~~average net and gross positions including the direction of positions (long or short), by type of market participant submitting mandatory clearable derivatives directly or indirectly, and~~
- ~~average trading activity and concentration of trading activity among participants by type of market participant submitting mandatory clearable derivatives directly or indirectly to the regulated clearing agency.~~

ANNEX E

SUMMARY OF COMMENTS AND CSA RESPONSES

Section Reference	Issue/Comment	Response
S. 1 – Definitions: Affiliated entity	Two commenters pointed out that an implementation period will be needed to amend the existing ISDA Canadian Clearing Classification Letter and to allow for its exchange between market participants.	Change made. The Amendments will come into force on September 1, 2022.
S. 3 – Duty to clear	A commenter suggested to make drafting changes to the section 3(1) and 3(2) of the CP.	Changes made.
S. 7 – Intragroup exemption	Two commenters pointed out that the required agreements in paragraphs 7(1)(b) and 7(1)(d) are unnecessary and create an additional burden.	Change made in paragraph 7(1)(b). The CSA agrees that the reliance on the intragroup exemption should be viewed as the default position for the affiliated counterparties.
	One commenter suggested that if the required agreement in paragraph 7(1)(d) was to be kept, the CSA should clarify its expectations.	Change made to the CP. No change made to paragraph 7(1)(d) of the National Instrument. The CSA's intent is that affiliated entities should have their transactions in mandatory clearable derivatives documented. Trade confirmations, for instance, would satisfy this requirement.

List of Commenters

1. Canadian Market Infrastructure Committee
2. International Swaps and Derivatives Association

ANNEX F

LOCAL MATTERS

The amendments to NI 94-101 and other required materials were delivered to the Minister of Finance on or about January 27, 2022. The Minister may approve or reject the amendments to NI 94-101 or return them for further consideration. If the Minister approves NI 94-101 or does not take any further action by April 12, 2022, the amendments to NI 94-101 will come into force on September 1, 2022 with the exception of the amendments to Appendix A and B of NI 94-101 which will come into force on April 12, 2022.

1.1.2 Threegold Resources Inc. et al. – Notice of Correction

NOTICE OF CORRECTION

File No. 2019-42

IN THE MATTER OF
THREEGOLD RESOURCES INC.,
VICTOR GONCALVES AND
JON SNELSON

(2021), 44 OSCB 10381. Please be advised that the following errors have been corrected in the Reasons and Decision in the above matter:

- on the cover page, “2021-08-15” is replaced with “2021-12-15”; and
- on the cover page, “THREEGOLD REOURCES INC.” is replaced with “THREEGOLD RESOURCES INC.”.

The Reasons and Decision is republished in full in Chapter 3.

1.1.3 Notice of Coming into Effect of Memorandum of Understanding with the Croatian Financial Services Supervisory Agency ("Hanfa") Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Alternative Investment Fund Managers

NOTICE OF COMING INTO EFFECT OF
MEMORANDUM OF UNDERSTANDING WITH
THE CROATIAN FINANCIAL SERVICES SUPERVISORY AGENCY ("HANFA")
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO
THE SUPERVISION OF CROSS-BORDER ALTERNATIVE INVESTMENT FUND MANAGERS

January 27, 2022

On November 17, 2021, the Ontario Securities Commission, together with the Autorité des marchés financiers, Alberta Securities Commission and British Columbia Securities Commission (the "Canadian Authorities") entered into a supervisory Memorandum of Understanding (the "Supervisory MOU") concerning consultation, cooperation and the exchange of information related to the supervision of managers of alternative investment funds with the Croatian Financial Services Supervisory Agency ("Hanfa").

The Supervisory MOU came into effect on January 24, 2022, pursuant to section 143.10 of the *Securities Act* (Ontario).

The Canadian Authorities entered into similar supervisory MOUs with other European Union and European Economic Area member state financial securities regulators in 2013. The entering into of such supervisory MOUs was a pre-condition under the EU Alternative Investment Fund Managers Directive ("AIFMD") for allowing non-EU Alternative Investment Fund Managers ("AIFMs") to manage and market Alternative Investment Funds ("AIFs") in the EU and to perform fund management activities on behalf of EU Managers. Under the AIFMD, AIFMs are legal persons whose regular business is the risk and/or portfolio management of AIFs and AIFs are collective investment undertakings other than those that comply with the EU Undertakings for Collective Investment in Transferable Securities Directive.

The purpose of the Supervisory MOU is to facilitate consultation, cooperation and the exchange of information related to the supervision of AIFMs that operate on a cross-border basis in the jurisdictions of both Hanfa and the relevant Canadian Authority.

Questions may be referred to:

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Manager, Global Affairs
Global and Domestic Affairs
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Conor Breslin
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1.4 Notices from the Office of the Secretary

1.4.1 VRK Forex & Investments Inc. and Radhakrishna Namburi

FOR IMMEDIATE RELEASE
January 25, 2022

VRK FOREX & INVESTMENTS INC. AND
RADHAKRISHNA NAMBURI,
File No. 2019-40

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

A copy of the Reasons and Decision dated January 24, 2022 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 AGF Investments Inc. and AGFWave Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

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

January 14, 2022

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
AGF INVESTMENTS INC.
(AGF)

AND

AGFWAVE ASSET MANAGEMENT INC.
(AGFWave, and together with AGF, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the restriction in paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (the **Dual Registration Restriction**), pursuant to section 15.1 of NI 31-103, to permit each of Grant Wang, Mark Stacey and Robert Yan (collectively, the **Existing Representatives**) – and future individuals (the **Future Representatives**, and together with the Existing Representatives, the **Representatives**) – to be registered as advising representatives or associate advising representatives of each of AGF and AGFWave (the **Exemption Sought**). The Exemption Sought will apply to up to five Representatives at any one time.

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

a) the Ontario Securities Commission (**OSC**) 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 by the Filers in each province and territory of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. AGFWave is a corporation incorporated under the laws of Ontario and is a Canadian joint venture between AGF Management Limited and WaveFront Global Asset Management Corp. (**WaveFront**). AGFWave has concurrently applied to the OSC for registration as a portfolio manager in Ontario. The head office of AGFWave is in Toronto, Ontario.

2. AGFWave was formed to provide asset management services and products in China and South Korea, by combining AGF's brand and investment expertise with WaveFront's distribution partners in China and South Korea.

3. AGF is a wholly owned subsidiary of AGF Management Limited and is registered as an exempt market dealer in Alberta, British Columbia,

Manitoba, Ontario, Québec and Saskatchewan, as a portfolio manager in each province and territory of Canada, as an investment fund manager in Alberta, British Columbia, Newfoundland and Labrador, Ontario and Québec, as a mutual fund dealer in British Columbia, Ontario and Québec and as a commodity trading manager in Ontario. The head office of AGF is in Toronto, Ontario.

4. Since AGF and AGFWave are under common control, each such entity is an affiliate of the other and are affiliated registrants.

5. Grant Wang is a resident of Toronto, Ontario and is registered as an advising representative (portfolio manager) of AGF in each province and territory of Canada. Since January 2020, Grant Wang has been Senior Vice-President and Co-Chief Investment Officer of AGFiQ Quantitative Investing. Grant Wang helps lead AGF's quantitative investment platform, AGFiQ, by developing, enhancing and managing quantitative investment strategies and serves as Head of Research.

6. Mark Stacey is a resident of London, Ontario and is registered as an advising representative (portfolio manager) of AGF in each province and territory of Canada. Since January 2020, Mark Stacey has been Senior Vice-President and Co-Chief Investment Officer of AGFiQ Quantitative Investing. Mark Stacey helps lead investment management functions for AGF's quantitative investment platform, AGFiQ and serves as Head of Portfolio Management.

7. Robert Yan is a resident of London, Ontario and is registered as an advising representative (portfolio manager) of AGF in each province and territory of Canada. Since January 2020, Robert Yan has been Vice-President and Portfolio Manager at AGF, managing non-Canadian equity portfolios with a specific focus on global markets and infrastructure strategies.

8. Upon the registration of AGFWave in the category of portfolio manager in Ontario, if the Exemption Sought is granted, each of the Existing Representatives will register as an advising representative of AGFWave while maintaining his registration as an advising representative of AGF. Grant Wang, Mark Stacey, and Robert Yan will each be appointed to the position of portfolio manager with AGFWave and be part of AGFWave's Investment Committee. In their respective capacity, each individual will be responsible for multiple aspects of AGFWave's research and investment process, including idea generation, developing and managing investment models and strategies, financial modelling, industry analysis and risk management.

9. AGFWave requires the investment management capabilities and expertise of the Existing Representatives in order to achieve its business objectives. The Existing Representatives are familiar with the business model of each of AGF and AGFWave and are or will be in the best position to act in the existing and proposed dual roles with AGF and AGFWave.

10. It is anticipated that any Future Representatives would have similar duties at AGF and AGFWave to those described for each of the Existing Representatives. The Filers expect that additional Future Representatives will be so engaged as necessary depending on the status of the Existing Representatives.

11. Dual registration would allow the Existing Representatives to continue to act as advising representatives of AGF while also acting as advising representatives of AGFWave. Registration as an advising or associate advising representative, as the case may be, for each of the Future Representatives would permit them to conduct similar activities in their applicable capacities.

12. The terms and conditions, if any, on each of the Representatives' registration as advising or associate advising representative of AGF, as the case may be, would be the same as under his or her advising or associate advising representative registration of AGFWave.

13. Each of the Representatives will be subject to supervision by, and the applicable compliance requirements of, both Filers.

14. Each of the Filers' respective Ultimate Designated Person will ensure that each of the Representatives have sufficient time and resources to adequately serve each Filer and its clients. Each of the Filers' respective Chief Compliance Officers and management ensure each of the Representatives have sufficient time and resources to adequately serve each Filer and its clients.

15. Neither AGF nor AGFWave is in default of any requirement of securities or derivatives legislation in any of the Jurisdictions.

16. The dual registration of the Representatives will not give rise to the conflicts of interest that may be present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned, and because the role of the Representatives will be to support the business activities and interests of the Filers, the potential for conflicts of interests is remote. Further there is little expected overlap of the business mandates, client base or investment strategies of AGF and AGFWave.

17. Each Filer has adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representatives and will be able to appropriately deal with any such conflicts, should they arise.

18. There is adequate supervision of any identified potential conflicts of interest to ensure that each of the Representatives, and each of the Filers, can take appropriate measures.

19. The Filers do not expect that the dual registration of the Existing Representatives, or the Future Representatives, will create significant additional work and are confident that each of the Representatives will have sufficient time to adequately serve both firms.

20. The Filers will provide written disclosure of the affiliated registrant relationship between the Filers as well as the dual registration of the Existing Representatives and any Future Representatives in disclosure documents provided by each fund for which a Representative acts as an advising or associate advising representative, as applicable.

21. Each of the Representatives will act in the best interest of all clients of each Filer and will deal fairly, honestly and in good faith with these clients.

22. In the absence of the Exemption Sought, the Filers would be prohibited by the Dual Registration Restriction from permitting any of the Representatives to be registered as an advising representative or associate advising representative, as the case may be, of each Filer, even though the Filers have controls and compliance procedures in place to deal with such advising and associate advising activities.

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:

i. at any point in time, no more than five (5) Representatives are dually registered with both Filers;

ii. the Representatives are subject to supervision by, and the applicable compliance requirements of, both Filers;

iii. the Chief Compliance Officer and Ultimate Designated Person of each Filer ensures that the Representatives have sufficient time and resources to adequately service each Filer and its respective clients;

iv. the Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representatives and deal appropriately with any such conflicts; and

v. the relationship between the Filers and the fact that the Representatives are dually registered with both of them is fully disclosed in writing to clients of each of them that deal with such person.

"Felicia Tedesco"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.2 MFS Investment Management Canada Limited

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 31, 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
MFS INVESTMENT MANAGEMENT CANADA LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of Canada and has its head office in Toronto, Ontario.

2. The Filer is registered as a portfolio manager and exempt market dealer in all of the Jurisdictions, and is registered as an investment fund manager in Ontario, Quebec, and Newfoundland & Labrador.

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

4. The Filer manages portfolios on behalf of pension, foundation and endowment clients from offices in Toronto, Montréal and Vancouver.

5. The Filer is majority-owned and controlled, indirectly, by Sun Life Financial Inc. (**SLF**) and is part of the MFS group of companies (collectively, **MFS**) that operate a global investment management business and include MFS Institutional Advisors, Inc. (U.S.), Massachusetts Financial Services Company (U.S.), MFS International (U.K.) Limited, MFS International (Hong Kong) Limited and MFS Investment Management Company (Luxemburg).

6. MFS has a global client base that includes public pension plans, corporate pension plans, insurance companies, sovereign wealth funds, endowments and foundations, multi-employer plans, and investment advisory firms and had approximately US $650 billion in assets under management as of September 30, 2021.

7. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately ten Registered Individuals.

8. The current titles used by the Registered Individuals include the words “Director”, “Managing Director”, “Associate Director” and “Senior

Managing Director", and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**). The Titles used by the Registered Individuals are consistent with the titles used by MFS's global affiliates.

9. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

10. The Registered Individuals interact only with institutional clients that are, each, a non-individual "permitted client", as defined in subsection 1.1 of NI 31-103 (the **Clients**).

11. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

12. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

13. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

14. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

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, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2021/0646

2.1.3 Echelon Wealth Partners Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 31, 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
ECHELON WEALTH PARTNERS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of Ontario with its head office in Toronto, Ontario.

2. The Filer is registered as an investment dealer in each of the Jurisdictions and is registered as a derivatives dealer in Quebec. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

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

4. The Filer offers limited financial services to non-individual institutional clients. The Filer does not onboard or interact with retail clients.

5. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately eleven Registered Individuals.

6. The current titles used by the Registered Individuals include the words “Director”, “Managing Director”, and “Vice President”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).

7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

8. The Registered Individuals interact only with institutional clients that are, each, a non-individual “institutional client” as defined in IIROC Rule 1201 (the **Clients**).

9. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

10. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

11. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

12. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

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, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "institutional clients" as defined in IIROC Rule 1201.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2021/0747

2.1.4 Goldman Sachs Asset Management, L.P.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 31, 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
GOLDMAN SACHS ASSET MANAGEMENT, L.P.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is

intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a limited partnership governed by the laws of Delaware, USA and is headquartered in New York, New York USA. The general partner of the Filer is GSAM Holdings LLC, which is wholly owned by The Goldman Sachs Group, Inc. (**GS Group**) and the limited partner is GSAM Holdings II LLC, which is wholly owned by GSAM Holdings LLC.

2. The Filer provides investment management and advisory services for large institutional clients and primarily conducts business outside of Canada.

3. The Filer is registered in the Jurisdictions in the category of portfolio manager, as a commodity trading manager in Ontario and as a derivatives portfolio manager in Quebec. The Filer also relies upon the non-resident investment fund manager exemption in Ontario, Quebec, and Newfoundland and Labrador.

4. The Filer is an indirect wholly-owned subsidiary of GS Group, a public company listed on the New York Stock Exchange. The Filer operates a global investment management business that spans asset classes, industries and geographies. As of March 31, 2021, the Filer oversees more than $1.3 trillion in assets under supervision.

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

6. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law or equivalent partnership law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately 31 Registered Individuals.

7. The current titles used by the Registered Individuals include the words “Vice President” and “Managing Director”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**). The Titles used by the Registered Individuals are consistent with the titles used by other employees of the Filer and its affiliates who conduct business outside of Canada.

8. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

9. The Registered Individuals interact only with institutional clients that are, each, a non-individual “permitted client”, as defined in subsection 1.1 of NI 31-103 (the **Clients**).

10. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

11. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

12. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

13. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

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, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “permitted clients” as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2021/0706

2.1.5 TD Securities Inc.

Headnote

Application for a ruling pursuant to section 74 of the Securities Act granting relief from the dealer registration requirement in section 25 of the OSA to allow the Filer, an investment dealer and member of the Investment Industry Regulatory Organization of Canada (IIROC), to use employees of certain Designated Foreign Affiliates for "after-hours trading" in securities on the Bourse de Montréal Inc. – Relief granted, subject to terms and conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1) and 144(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.

January 17, 2022

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
TD SECURITIES INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Designated Foreign Affiliate Employees (as defined below) of the Filer, when conducting Extended Hours Activities (as defined below) on the Bourse de Montréal Inc. (the **MX**), from the dealer registration requirement in the Legislation (the **Dealer Registration Requirement**), subject to the terms and conditions set out below (the **Exemption Sought**).

The principal regulator granted exemptive relief to the Filer in a decision dated June 4, 2019 (the **Original Decision**) in respect of the Dealer Registration Requirement when conducting after-hours trading from 2:00 a.m. to 6:00 a.m. Eastern time (**ET**) each day on the MX. The Filer has applied for an order pursuant to the Legislation to revoke the Original Decision as of the date hereof.

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer in each of the remaining provinces and territories of Canada, other than Québec.

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation formed under the laws of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment dealer under the securities legislation of all the provinces and territories of Canada; is registered as a futures commission merchant under the commodity futures legislation of Ontario and Manitoba; and is registered as a derivatives dealer under the derivatives legislation of Québec.

3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and an approved participant of the MX.

4. The Filer is not in default of securities, derivatives or commodity futures legislation in any jurisdiction of Canada.

5. Foreign affiliates of the Filer are located in the United Kingdom and Singapore as follows:

(a) The Toronto-Dominion Bank, London Branch (**TD Bank London**) is a foreign bank branch of The Toronto-Dominion Bank, a Schedule I bank under the *Bank Act* (Canada). The principal executive offices of TD Bank London are located in London, United Kingdom. TD Bank London is a United Kingdom-based financial service provider that carries on business in the United Kingdom, and is authorized and regulated by the Financial Conduct Authority;

(b) The Toronto-Dominion Bank, Singapore Branch (**TD Bank Singapore**) is a foreign bank branch of The Toronto-Dominion Bank. The principal executive offices of TD Bank Singapore are located in Singapore. TD Bank Singapore is a licensed bank in Singapore that carries on business in Singapore, and is regulated by the Monetary Authority of Singapore.

TD Bank London and TD Bank Singapore are hereinafter collectively referred to as the **Designated Foreign Affiliates**.

6. The Filer is a wholly-owned subsidiary of The Toronto-Dominion Bank. TD Bank London is the London-based foreign bank branch of The Toronto-Dominion Bank and TD Bank Singapore is the Singapore-based foreign bank branch of The Toronto-Dominion Bank.

7. The Filer wishes to make use of certain designated employees of the Designated Foreign Affiliates (the **Designated Foreign Affiliate Employees**) certified under applicable laws of the United Kingdom or Singapore, as applicable, in a category that permits trading the types of products which they would be trading on the MX to handle trading requests on the MX from the Filer's clients and the Filer on a proprietary basis during the MX's extended trading hours, including from 4:30 p.m. (T-1) to 6:00 a.m. ET each day on which the MX is open for trading (the **Extended Hours Activities**).

8. The Filer was granted exemptive relief by the principal regulator from the Dealer Registration Requirement for designated employees of TD Securities Limited (**TDSL**) pursuant to the Original Decision.

9. As part of an internal reorganization, the Filer intends to reorganize its Extended Hours Activities in the United Kingdom by moving those operations from TDSL to TD Bank London.

The MX Extended Trading Hours Amendments

10. The MX, based in Montréal, Québec, operates an exchange for options, commodity futures contracts and commodity futures options, and offers access to trading in those to market participants in Canada.

11. On July 9, 2018, the MX announced that the MX had approved amendments to its rules and procedures in order to accommodate the extension of the MX's trading hours (the **Initial Extended Hours Initiative**). As a result of these amendments, starting on October 9, 2018, trading of certain products on the MX commenced at 2:00 a.m. ET rather than the previous 6:00 a.m. ET.

12. As set out in MX Circular 111-18, in order to accommodate this earlier trading, the MX amended its rules to allow participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX

participant's clients or the MX participant on a proprietary basis. In furtherance of the Initial Extended Hours Initiative, the Filer sought and obtained the Original Decision.

13. On March 17, 2020, the MX announced that the MX had approved non-material amendments to its rules and procedures in order to accommodate the further extension of the MX's trading hours (the **Asian Trading Hours Initiative**). As a result of these amendments, trading of certain products on the MX now commences at 8:00 p.m. ET (T-1) rather than 2:00 a.m. ET. These amendments are considered non-material insofar as the framework put in place in connection with the Initial Extended Hours Initiative applies to the Asian Trading Hours Initiative, allowing participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or the MX participant on a proprietary basis. See MX Circulars 135-20, 024-21 and 063-21.

14. The IIROC Relief (as defined below) allows for trading to commence at 4:30 p.m. ET(T-1) rather than 8 p.m. ET(T-1) as contemplated by the Asian Trading Hours Initiative, subject to the MX trading rules being modified. The Exemption Sought accordingly conforms to the IIROC Relief with respect to Extended Hours Activities.

Application of the Dealer Registration Requirement to Designated Foreign Affiliate Employees

15. The Filer is an MX approved participant and each of the Designated Foreign Affiliates is an affiliate of the Filer. The Filer wishes to make use of the Designated Foreign Affiliate Employees to conduct the Extended Hours Activities.

16. The Dealer Registration Requirement under the Legislation requires an individual to be registered to act as a dealing representative on behalf of a registered firm. The Exemption Sought is intended to provide the Filer with an exemption from (i) the requirement that the Filer use only registered dealing representatives to conduct the Extended Hours Activities; and (ii) the requirement that the Designated Foreign Affiliate Employees who will be conducting the Extended Hours Activities be registered as dealing representatives of the Filer.

17. The Filer seeks an exemption from the Dealer Registration Requirement because, in the absence of such exemption, each Designated Foreign Affiliate Employee who trades on behalf of the Filer will be required to become individually registered and licensed in Canada. The Filer believes this is duplicative since the Designated Foreign Affiliate Employees are, or will be, certified or authorized, as applicable, under applicable United Kingdom or Singapore law and will be supervised by the Filer's Designated Supervisors (as defined below) and are otherwise subject to the conditions set forth below. The Filer believes the Dealer Registration Requirement is unduly onerous in light of the limited trading activities the Designated Foreign Affiliate Employees will be conducting and only during the period from 4:30 p.m. ET (T-1) to 6:00 a.m. ET.

18. The Filer has also applied to, and obtained from, IIROC an exemption from the registered representative requirements that are found in IIROC Dealer Member Rules 18.2 and 500 and the requirement to enter into an employee or agent relationship with the person conducting securities related business on its behalf that is found in IIROC Dealer Member Rule 39.3 (the **IIROC Relief**).

19. The IIROC Relief obtained by the Filer is subject to certain conditions, including:

    (a) The Designated Foreign Affiliate Employees must be registered, licensed, certified or authorized and subject to equivalent regulatory supervision in the United Kingdom or Singapore, as applicable in a category that permits trading the types of products which they will be trading on the MX.

    (b) The Designated Foreign Affiliate Employees may only accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (T-1) to 6:00 a.m. ET, subject to the MX trading rules being modified to allow for trading to commence at 4:30 p.m. ET (T-1) rather than 8:00 p.m. ET (T-1) as contemplated by the Asian Trading Hours Initiative, and are not permitted to provide advice.

    (c) The actions of the Designated Foreign Affiliate Employees must be supervised by Canadian based registered supervisors qualified to supervise the relevant trading (including futures contracts, futures contract options and options) (the **Designated Supervisors**).

    (d) The Filer must establish and maintain written policies and procedures that address the performance and supervision requirements relating to this extended trading hours arrangement.

    (e) The Filer and each Designated Foreign Affiliate must jointly and severally undertake to ensure IIROC has, upon request, prompt access to the audit trail of all trades, wherever located, that relate to Extended Hours Activities at each Designated Foreign Affiliate, and records evidencing the supervision of such activities.

(f) The Filer retains all responsibilities for its client accounts.

(g) The Filer and each Designated Foreign Affiliate Employee must enter into an agency agreement pursuant to which the Filer would assume all responsibility for the actions of the Designated Foreign Affiliate Employee and of the Designated Foreign Affiliates that relate to the Filer's clients and the Filer would be liable under IIROC rules for such actions.

(h) All MX trading rules will apply to orders entered by the Designated Foreign Affiliate Employees.

(i) All other existing Canadian regulatory requirements continue to apply, including:

(i) the Filer's client accounts would continue to be carried on the books of the Filer;

(ii) all communications with the Filer's clients will continue to be in the name of the Filer; and

(iii) the Filer's client account monies, security and property will continue to be held by the Filer.

(j) The Filer must disclose this extended trading hours arrangement to its clients and provide specific instructions concerning the placement of orders relating to the extended trading hours arrangement.

(k) The Filer must provide, in writing to IIROC, the names of the foreign affiliate(s) and all Designated Foreign Affiliate Employees authorized to accept and enter orders from the Filer's clients on behalf of the Filer under the extended trading hours arrangement. Such individuals are subject to IIROC's "fit and proper" review and IIROC Registration staff may refuse their participation in this extended trading hours arrangement.

(l) The Filer must provide, in writing to IIROC, timely updates to the list of Designated Foreign Affiliate Employees, and confirm any changes on at least an annual basis.

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:

1. the Original Decision is revoked, and

2. the Exemption Sought is granted so long as:

(a) the Designated Foreign Affiliates and the Designated Foreign Affiliate Employees are registered, licensed, certified or authorized under the applicable laws of the foreign jurisdiction in which the head office or principal place of business of the Designated Foreign Affiliate is located in a category that permits trading the type of products which the Designated Foreign Affiliate Employees will be trading on the MX;

(b) the Designated Foreign Affiliate Employees are permitted to accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (T-1) to 6:00 a.m. ET, and will not be permitted to give advice;

(c) the Filer retains all responsibilities for its client accounts;

(d) the actions of the Designated Foreign Affiliate Employees will be supervised by the Designated Supervisors, each of whom is qualified to supervise trading in futures contracts, futures contract options and options;

(e) the Filer and the Designated Foreign Affiliate Employees enter into an agency agreement substantially as described in paragraph 19(g), and such agreement remains in effect; and

(f) the Filer remains in compliance with the terms and conditions of the IIROC Relief.

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

"M. Cecilia Williams"
Commissioner
Ontario Securities Commission

OSC File #: 2021/0551

2.1.6 AGF Investments Inc. and Highstreet Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

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

January 20, 2022

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
AGF INVESTMENTS INC. (AGF)

AND

HIGHSTREET ASSET MANAGEMENT INC.
(Highstreet, and together with AGF, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the restriction in paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (the **Dual Registration Restriction**), pursuant to section 15.1 of NI 31-103, to permit Stephen Duench (the **Representative**) to be registered as an advising representative of each of AGF and Highstreet (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (**OSC**) 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 by the Filers in each province and territory of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. AGF is a wholly owned subsidiary of AGF Management Limited and is registered as an exempt market dealer in Alberta, British Columbia, Manitoba, Ontario, Québec and Saskatchewan, as a portfolio manager in each of the Jurisdictions, as an investment fund manager in Alberta, British Columbia, Newfoundland and Labrador, Ontario and Québec, as a mutual fund dealer in British Columbia, Ontario and Québec and as a commodity trading manager in Ontario. The head office of AGF is in Toronto, Ontario.

2. Highstreet is a wholly owned subsidiary of AGF. Highstreet is registered as a portfolio manager and as an exempt market dealer in each of the Jurisdictions. The head office of Highstreet is in London, Ontario. Highstreet currently performs its registrable portfolio management services through one registered advising representative, and two supporting registered associate advising representatives.

3. Since Highstreet is a wholly owned subsidiary of AGF, each such entity is an affiliate of the other and are affiliated registrants.

4. Stephen Duench is a resident of London, Ontario and is a registered advising representative (portfolio manager) in each of the Jurisdictions. Stephen Duench is also the Co-Head of Highstreet Private Client at Highstreet and Vice-President and Portfolio Manager at AGF. As Co-Head of Highstreet Private Client at Highstreet, Stephen is responsible for establishing the direction of Highstreet and leads the effective and accountable management and administration of Highstreet. As Vice-President and Portfolio Manager at AGF, Stephen acts as the portfolio manager for AGF's North American equity income products and is the lead portfolio manager for Highstreet Dividend

Income Fund. Stephen contributes to both quantitative and fundamental research initiatives.

5. If the Exemption Sought is granted, the Representative will register as advising representative of Highstreet, while maintaining his registration as an advising representative of AGF. The Representative will be appointed to the position of registered advising representative (portfolio manager) with Highstreet. The Representative will be responsible for supervisory oversight of the associate advising representatives and may also provide limited advice directly to Highstreet clients.

6. Highstreet requires a new registered advising representative to replace its current registered advising representative. Subject to the Exemption Sought, effective January 22, 2022, Highstreet will no longer employ a registered advising representative. The investment management capabilities and expertise of the Representative are needed in order for Highstreet to achieve its business objectives and continue its management of client accounts, including new account openings, in the ordinary course of business.

7. The Representative is familiar with the business model of each of AGF and Highstreet and is in the best position to act in the existing and proposed dual roles with AGF and Highstreet. The Representative has the requisite proficiency and registered capabilities to perform the duties of the current registered advising representative, and is already concurrently acting as the Co-Head of Highstreet Private Client at Highstreet, the Filers believe that the Representative is familiar, qualified and suitable to replace the departing advising representative in both the short and long term.

8. Dual registration would allow the Representative to continue to act as an advising representative of AGF while also acting as an advising representative of Highstreet.

9. The terms and conditions, if any, on the Representative's registration as an advising representative of Highstreet would be the same as under his advising representative registration with AGF. As of the date hereof, there are no terms and conditions on Stephen Duench's registration as an advising representative of AGF.

10. The Representative will be subject to supervision by, and the applicable compliance requirements of, both Filers.

11. Each of the Filers' respective Ultimate Designated Person will ensure that the Representative has sufficient time and resources to adequately serve each Filer and its clients. Each of the Filers' respective Chief Compliance Officers and management will ensure the Representative has sufficient time and resources to adequately serve each Filer and its clients.

12. Neither AGF nor Highstreet is in default of any requirement of securities or derivatives legislation in any of the Jurisdictions.

13. The dual registration of the Representative will not give rise to the conflicts of interest that may be present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned, and because the role of the Representative will be incremental to his existing roles with both AGF and Highstreet and to support the business activities and interests of the Filers, the potential for conflicts of interests is remote. Further there is little expected overlap of the business mandates, client base or investment strategies of AGF and Highstreet.

14. Each Filer has adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representative and will be able to appropriately deal with any such conflicts, should they arise.

15. There is adequate supervision of any identified potential conflicts of interest to ensure that the Representative, and each of the Filers, can take appropriate measures.

16. The Filers do not expect that the dual registration of the Representative will create significant additional work and are confident that the Representative will have sufficient time to adequately serve both firms.

17. The relationship between AGF and Highstreet and the fact that the Representative is dually registered with both AGF and Highstreet will be fully disclosed to clients and prospective clients of AGF and Highstreet, as applicable. The Filers will provide written disclosure to the investors of the funds and accounts managed by each Filer, as applicable, of the affiliated registrant relationship between the Filers as well as the dual registration of the Representative in disclosure documents provided by any affected fund to their investors.

18. The Representative will act in the best interest of all clients of each Filer and will deal fairly, honestly and in good faith with these clients.

19. In the absence of the Exemption Sought, the Filers would be prohibited by the Dual Registration Restriction from permitting the Representative to be registered as an advising representative of each Filer, even though the Filers have controls and compliance procedures in place to deal with such advising and associate advising activities.

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 on the following conditions:

i. The Representative is subject to supervision by, and the applicable compliance requirements of, both Filers;

ii. The Chief Compliance Officer and Ultimate Designated Person of each Filer ensures that the Representative has sufficient time and resources to adequately service each Filer and its respective clients;

iii. The Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representative and deal appropriately with any such conflicts; and

iv. The relationship between the Filers and the fact that the Representative is dually registered with both of them is fully disclosed in writing to clients of each of them that deal with the Representative.

"Felicia Tedesco"
Seputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

Application File #: 2022/0005

2.1.7 County Capital 2 Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An issuer (a capital pool company) proposes to complete a reverse take-over transaction with a target company – The proposed transaction, if completed, will serve as the issuer's qualifying transaction under Policy 2.4 Capital Pool Companies of the TSX Venture Exchange (TSXV) – The issuer applied for relief from the requirements in section 4.10(2)(a)(ii) of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) and Item 5.2 of Form 51-102F3 Material Change Report to file, in respect of the proposed transaction, historical audited financial statements of certain predecessor entities that are not material to the issuer. Relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 4.10(2)(a)(ii).
Form 51-102F3 Material Change Report, Item 5.2.

October 15, 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
COUNTY CAPITAL 2 LTD.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdictions (as defined below) has received an application from the Filer for a decision under the securities legislation of Ontario (the "**Legislation**") for an exemption from the requirements in subparagraph 4.10(2)(a)(ii) of National Instrument 51-102 - *Continuous Disclosure Obligations* ("**NI 51-102**") and item 5.2 of Form 51-102F3 Material Change Report ("**51-102F3**") to file all of the financial statements of a reverse takeover acquirer that would be required to be included in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the Jurisdictions (the "**Exemption Sought**").

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia and Alberta,

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 51-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

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

1. The Filer was incorporated under the *Business Corporations Ac*t (British Columbia) on October 15, 2019. The Filer is a capital pool company whose common shares ("**Shares**") are listed on the TSX Venture Exchange ("**TSXV**"). As a result, the principal business of the Filer to date has been to identify and evaluate businesses and assets with a view to completing a Qualifying Transaction, as that term is defined in Policy 2.4 of the TSXV Corporate Finance Manual.

2. The registered and head office of the Filer is located at 301 – 1665 Ellis Street, Kelowna, British Columbia.

3. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of securities legislation in any Jurisdiction.

4. The Shares are listed and posted for trading on the TSXV under the trading symbol "CTWO.P."

5. The Filer's financial year end is November 30.

6. Givex was incorporated on April 5, 2000 under the *International Business Companies Act* (Bahamas) with a head office located at 134 Peter Street, Suite 1400, Toronto, Ontario.

7. Givex is not in default of securities legislation in any jurisdiction.

8. Givex operates as a full-suite omni-channel gift card, loyalty, analytics, stored value ticketing, payments and cloud-based POS solutions provider and its principal business operations are conducted from Toronto, with services provided globally.

9. On September 7, 2021, Givex and the Filer entered into a binding qualifying transaction agreement pursuant to which the Filer will acquire all of the outstanding shares of Givex by way of a merger of Givex and a wholly-owned subsidiary of the Filer (the "**Qualifying Transaction**").

10. The Qualifying Transaction will be a "reverse takeover" as defined in NI 51-102 and will serve as the Filer's "Qualifying Transaction" under TSXV Policy 2.4 - Capital Pool Companies. In connection with the Qualifying Transaction, the Filer intends to file a filing statement (the "**Filing Statement**") in the form of Form 3B2 Information Required in a Filing Statement for a Qualifying Transaction ("**TSXV Form 3B2**") pursuant to the policies of the TSXV. TSXV Form 3B2 requires disclosure of financial statements of the Filer and Givex prescribed by National Instrument 41-101 - *General Prospectus Requirements* and Form 41-101F1 - *Information Required in a Prospectus* ("**Form 41-101F1**"). In addition to applying to the principal regulator for the exemptive relief requested herein, the Filer has made application to the TSXV for a waiver from the equivalent financial statement requirements under TSXV Form 3B2.

11. On October 1, 2018, Givex acquired 100% of ValueAccess Limited ("**ValueAccess**") for total consideration of approximately $2.34 million.

12. ValuAccess was established in 2005 in Hong Kong and was a gift card processing company in Malaysia, Singapore, China and Hong Kong. This acquisition allowed Givex to expand into Asia Pacific markets, provide further support for its growing list of multinational clients and provide merchants with more effective localized support.

13. On June 1, 2019, Givex acquired 100% of Owen Business Services Ltd. ("**OBS**") for total consideration of approximately $790,000.

14. OBS has operated for over 50 years in British Columbia, Canada as a distributor and service provider of retail and hospitality POS systems and related equipment throughout Canada. This acquisition provided Givex with an upsell opportunity to OBS's Canadian client base. Givex was also able to integrate OBS's retail POS system, "eStream POS XDB" into its retail POS system to enhance functionality for Givex's customers in fashion, grocery and other retail verticals.

15. On July 1, 2019, Givex acquired 100% of Givex Mexico, S.A. de C.V. (formerly Easy Information Solutions S.A. de C.V.) ("**EIS**") for total consideration of approximately $860,000.

16. EIS has operated for over 20 years in Mexico as a distributor and reseller of POS, accounting and administrative systems to hotel and restaurant brands. EIS was previously renowned for its experience representing international technology brands in the Mexican market. This acquisition allowed Givex to expand into Mexico and gain access to EIS's existing customer base. This

acquisition also allowed Givex to integrate into its product offerings EIS's POS system, self-service kiosks, tableside ordering tablets, online ordering platforms, kitchen management systems and gift card and loyalty programs.

17. On August 16, 2019, Givex acquired certain assets relating to giftcertificates.ca, a gift card commerce product (the "**GIFTPASS Assets**"), for total consideration of approximately $2.25 million.

18. Giftcertificates.ca is a product which facilitates the sale of multiple brands' gift cards and e-gift cards directly to consumers and to corporate customers. The GIFTPASS Assets, mainly consisted of a domain name, gift card inventory to a variety of brands, and customer lists. Acquiring the GIFTPASS Assets provided Givex with an additional online marketplace to expand its ability to sell gift cards.

19. On January 1, 2021, Givex acquired 100% of Givex EU (formerly PI Cash Système SARL) ("**Pi Cash**") for total consideration of approximately $1.8 million.

20. Pi Cash has operated for over 20 years in Switzerland as a provider of POS solutions to hotels, restaurants and retailers in Europe. This acquisition allowed Givex to strengthen its reach in Europe and provided an upsell opportunity to the Pi Cash customer base. Acquiring Pi Cash also allowed Givex to further support its existing European regional clients while strengthening its presence in France, Germany, Spain and Italy. Further, Givex was able to integrate new technology and integration expertise which will facilitate future growth of the Company.

21. With respect to reverse takeover transactions, Section 4.10(2)(a)(ii) of NI 51-102 and item 5.2 of 51-102F3 require that a reporting issuer file, within specified periods, the financial statements as prescribed by the appropriate prospectus form for the reverse takeover acquirer, being Form 41-101F1. The reverse takeover acquirer in respect of the Filer is Givex.

22. The Filing Statement will include the following Givex financial statements (the "**Givex Financial Statements**"):

    (i) Givex's audited consolidated financial statements for the years ended December 31, 2018, 2019 and 2020; and

    (ii) Givex's unaudited (but auditor reviewed) consolidated financial statements for the six months ended June 30, 2021 and 2020.

23. The Givex Financial Statements, together with the other disclosure prescribed by TSXV Form 3B2 that will be included in the Filing Statement, will provide disclosure of all material facts relating to the Filer, Givex and Givex's business and will contain sufficient information to permit investors to make a reasoned assessment of the Filer's business following completion of the Qualifying Transaction.

24. Subsection 4.10(2)(a) of NI 51-102 provides that if a reporting issuer completes a reverse takeover, it must file the following financial statements for the reverse takeover acquirer, unless the financial statements have already been filed:

    (i) financial statements for all annual and interim periods ending before the date of the reverse takeover and after the date of the financial statements included in an information circular or similar document, or under item 5.2 of the Form 51-102F3 Material Change Report, prepared in connection with the transaction; or

    (ii) if the reporting issuer did not file a document referred to in subparagraph (i), or the document does not include the financial statements for the reverse takeover acquirer that would be required to be included in a prospectus, the financial statements prescribed under securities legislation and described in the form of prospectus that the reverse takeover acquirer was eligible to use prior to the reverse takeover for a distribution of securities in the jurisdiction.

25. Item 5.2 of Form 51-103F3 requires a material change report filed in respect of a closing of the Qualifying Transaction to include, for each entity that results from the Qualifying Transaction, disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the entity would be eligible to use.

26. The financial statement requirements for a prospectus are found in NI 41-101 and Form 41-101F1. Item 32.1 of Form 41-101F1 includes the following requirements:

    The financial statements of an issuer required under this item to be included in a prospectus must include:

    (a) the financial statements of any predecessor entity that formed, or will form, the basis of the business of the issuer, even though the predecessor entity is, or may have been, a different legal entity, if the issuer has not existed for 3 years,

    (b) the financial statements of a business or businesses acquired by the issuer within 3 years before the date of the prospectus or proposed to be acquired, if a reasonable investor reading the

> *prospectus would regard the primary business of the issuer to be the business or businesses acquired, or proposed to be acquired, by the issuer, [emphasis added] and*
>
> *(c) ...*

27. Subsection 5.3(1) of the Companion Policy to NI 41-101 notes that both a reverse takeover and a qualifying transaction for a capital pool company are examples of when a reasonable investor might regard the primary business of the issuer to be the acquired business.

28. Accordingly, to the extent any of ValueAccess, OBS, EIS, the GIFTPASS Assets or PiCash are deemed to constitute the primary business of Givex, the Filing Statement would also have to include, in addition to the Givex Financial Statements, audited financial statements of each of ValueAccess, OBS, EIS, the GIFTPASS Assets and PiCash for the "stub" period from January 1, 2018 to the date of acquisition (collectively, the "**Stub Period Statements**").

29. Provided the Exemption Sought is granted, the Filing Statement will not include the Stub Period Statements and shall be filed forthwith following acceptance by the TSXV.

Decision

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

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

1. the Filing Statement includes the Givex Financial Statements; and

2. the Filing Statement is filed on SEDAR forthwith following acceptance by the TSXV.

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2021/0530

2.1.8 Stelco Holdings Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the extension take up requirements in subsection 2.32(4) of National Instrument 62-104 Take-Over Bids and Issuer Bids – an issuer conducting an issuer bid by way of a modified Dutch auction procedure – issuer may wish to extend the bid if it is undersubscribed and the market price of the shares at the time is not greater than the range of proposed prices under the bid – requires relief from the requirement not to extend its issuer bid if all terms and conditions are met unless the issuer first takes up all securities validly deposited and not withdrawn under the issuer bid as all tenders need to be known in order to calculate the purchase price per share – requested relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, ss. 2.32(4) and 6.1.

January 24, 2022

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
STELCO HOLDINGS INC.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the "**Shares**") pursuant to an issuer bid commenced on December 22, 2021 (the "**Offer**"), the Filer be exempt from the requirement set out in subsection 2.32(4) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived, unless the Filer first takes up all Shares deposited under the Offer and not withdrawn (the "**Exemption Sought**").

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102"**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Nunavut, and the Yukon Territory.

Interpretation

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

Representations

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

1. The Filer is a corporation validly existing under the *Canada Business Corporations Act* and is in good standing.

2. The head office of the Filer is located at 386 Wilcox Street, Hamilton, Ontario L8L 8K5.

3. The Filer is a reporting issuer in each of the provinces and territories of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") under the symbol "STLC". The Filer is not in default of any requirement of the securities legislation in any of the jurisdictions in which it is a reporting issuer.

4. The Filer's authorized share capital consists of (i) an unlimited number of Shares and (ii) an unlimited number of preference shares, issuable in series. As of close of business on December 20, 2021, there were 77,315,265 Shares issued and outstanding and no preference shares issued and outstanding.

5. On December 20, 2021, the last full trading day prior to the date the Filer announced its intention to make the Offer, the closing price of the Shares on the TSX was $37.68 per Share. Based on such closing price, the Shares had an aggregate market value of approximately $2,913,239,186.

6. On December 22, 2021, the Filer commenced the Offer. The issuer bid circular dated December 21, 2021 prepared and sent by the Filer in connection with the Offer (the "**Circular**") specifies that the Filer proposes to purchase, by way of a modified "Dutch auction" procedure in the manner described therein and below, up to $250,000,000 of the issued and outstanding Shares at a purchase price of not less than $31.00 and not more than $37.00 per Share (the "**Price Range of Shares**").

7. Pursuant to subsection 2.8(b) of NI 62-104, the Filer also made the Offer to each holder of convertible securities that, before the expiry of the deposit period of the Offer, are convertible into Shares. Such convertible securities may, at the option of the holder, be converted for Shares in accordance with the terms of such convertible securities prior to the expiry of the deposit period of the Offer. Shares issued upon the conversion of the convertible securities may be tendered to the Offer in accordance with the terms of the Offer.

8. The Filer will fund the purchase of Shares pursuant to the Offer, together with all related fees and expenses of the Offer, from available cash on hand.

9. Holders of Shares (collectively, the "**Shareholders**") wishing to tender to the Offer will be able to do so:

   (a) by making auction tenders pursuant to which they agree to sell a specified number of Shares (subject to proration) to the Filer at a specified price per Share (an "**Auction Price**") within the Price Range of Shares in increments of $0.25 per Share (each, an "**Auction Tender**"); and/or

   (b) by making purchase price tenders in which the tendering Shareholders do not specify a price per Share, but rather agree to have a specified number of Shares (subject to proration) purchased at the Purchase Price per Share (as defined below) to be determined by the Auction Tenders (each, a "**Purchase Price Tender**").

10. Shareholders may make both Auction Tenders and Purchase Price Tenders, but not in respect of the same Shares. Shareholders may also make multiple Auction Tenders at different Auction Prices but not in respect of the same Shares (i.e., Shareholders may tender different Shares at different prices, but cannot tender the same Shares at different prices) and must complete a separate letter of transmittal (and, if applicable, a notice of guaranteed delivery) for each Auction Price. Shareholders making Auction Tenders or Purchase Price Tenders may tender less than all of their Shares to the Offer

11. Shareholders who tender Shares without making a valid Auction Tender or Purchase Price Tender will be deemed to have made a Purchase Price Tender.

12. Any Shareholder that owns fewer than 100 Shares (an "**Odd-Lot Holder**") and tenders all of their Shares pursuant to an Auction Tender at or below the Purchase Price or pursuant to a Purchase Price Tender, will be considered to have made an "**Odd-Lot Tender**".

13. The Filer will determine a single purchase price payable per Share (the "**Purchase Price**") by taking into account the number of Shares deposited pursuant to Auction Tenders and Purchase Price Tenders and the Auction Prices specified by Shareholders depositing Shares pursuant to Auction Tenders. For the purpose of determining the Purchase Price, Shares deposited pursuant to a Purchase Price Tender will be deemed to have been deposited at a price of $31.00 per Share (which is the minimum price per Share under the Offer). The Purchase Price will be the lowest price per Share that enables the Filer to purchase the maximum number of Shares validly deposited and not withdrawn pursuant to the Offer having an aggregate Purchase Price not to exceed $250,000,000.

14. If the aggregate Purchase Price for Shares validly deposited and not withdrawn pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders would result in an aggregate Purchase Price in excess of $250,000,000, then such deposited Shares will be purchased as follows:

    (a) first, the Filer will purchase all Shares tendered at or below the Purchase Price by Odd-Lot Holders at the Purchase Price; and

    (b) second, the Filer will purchase Shares at the Purchase Price on a *pro rata* basis according to the number of Shares deposited or deemed to be deposited at a price equal to or less than the Purchase Price by the depositing Shareholders, less the number of Shares purchased from Odd-Lot Holders. All Auction Tenders and Purchase Price Tenders will be subject to adjustment to avoid the purchase of fractional Shares.

15. All Shares purchased by the Filer pursuant to the Offer (including Shares tendered at Auction Prices below the Purchase Price) will be purchased at the Purchase Price and payable in cash. All payments to Shareholders will be subject to deduction of applicable withholding taxes.

16. Shares validly deposited by a Shareholder pursuant to an Auction Tender will not be purchased by the Filer pursuant to the Offer if the Auction Price per Share specified by the Shareholder is greater than the Purchase Price.

17. All Shares tendered to the Offer and not taken up will be returned to the appropriate Shareholders.

18. Assuming the Offer is fully subscribed:

    (a) if the Purchase Price is determined to be $31.00, being the minimum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 8,064,516, representing approximately 10.4% of the Filer's issued and outstanding Shares as at December 20, 2021; and

    (b) if the Purchase Price is determined to be $37.00, being the maximum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 6,756,756, representing approximately 8.7% of the Filer's issued and outstanding Shares as at December 20, 2021.

19. Shareholders who do not accept the Offer will continue to hold the same number of Shares held before the Offer and their proportionate Share ownership will increase following completion of the Offer, subject to the number of Shares purchased under the Offer.

20. As of December 21, 2021, to the knowledge of the Filer and its directors and officers, after reasonable inquiry, no director or officer of the Filer, no insider of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, and no person or company acting jointly or in concert with the Filer has indicated any present intention to deposit any of such person's or company's Shares pursuant to the Offer.

21. The Offer is scheduled to expire at 11:59 p.m. (Toronto time) on January 26, 2022 (the "**Expiration Date**").

22. The Filer may wish to extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date but the aggregate Purchase Price for Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than $250,000,000.

23. The Filer will not extend the Offer if, at the time the decision to extend the Offer is made or implemented, the market price of the Shares on the TSX is greater than any of the prices within the Price Range of Shares.

24. Pursuant to subsection 2.32(4) of NI 62-104, an issuer may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all the securities deposited and not withdrawn under the issuer bid.

25. As the determination of the Purchase Price requires that all Auction Prices and the number of Shares deposited pursuant to both Auction Tenders and Purchase Price Tenders be known and taken into account, the Filer will be unable to take up the Shares deposited and not withdrawn under the Offer as of the Expiration Date prior to extending the Offer because the Purchase Price will not and cannot be known as additional Auction Tenders and Purchase Price Tenders may be made during the extension period that will impact the calculation

of the Purchase Price. Accordingly, the Exemption Sought is required in connection with an extension of the Offer to enable the Filer to make a final determination regarding the Purchase Price, taking into account all Shares tendered prior to the Expiration Date and those tendered during any extension period.

26. Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Date, may be withdrawn by the Shareholder at any time during any extension period.

27. The Filer is relying on the exemption from the formal valuation requirements applicable to issuer bids under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") set out in subsection 3.4(b) of MI 61-101 (the "**Liquid Market Exemption**").

28. There was a "liquid market" for the Shares, as such term is defined in MI 61-101, at the time the Offer was made because:

    (a) there is a published market for the Shares (i.e., the TSX);

    (b) the requirements of the test set out in paragraph 1.2(1)(a) of MI 61-101 is satisfied (the "**Liquid Market Test**"); and

    (c) the board of directors of the Filer obtained, on a voluntary basis, an opinion (the "**Liquidity Opinion**") from BMO Nesbitt Burns Inc., its dealer manager in connection with the Offer, that a liquid market for the Shares exists as of December 20, 2021, and that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer. A copy of the Liquidity Opinion was included in the Circular.

29. Based on the maximum number of Shares that may be purchased under the Offer, the satisfaction of the Liquid Market Test, and the Liquidity Opinion, the board of directors of the Filer determined that it is reasonable to conclude that, following the completion of the Offer in accordance with its terms, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.

30. The board of directors of the Filer has determined that the Offer is in the best interests of the Filer and believes that the Offer is an advisable use of the Filer's financial resources given its ongoing cash requirements and borrowing costs.

31. The Circular:

    (a) discloses the mechanics for the take-up of, and payment for, Shares as described herein;

    (b) explains that, by tendering Shares at the lowest price in the Price Range of Shares under an Auction Tender or by making a Purchase Price Tender, a Shareholder can reasonably expect that the Shares so tendered will be purchased at the Purchase Price, subject to proration and other terms of the Offer as specified herein;

    (c) discloses that the Filer has applied for the Exemption Sought;

    (d) discloses the manner in which an extension of the Offer will be communicated to Shareholders;

    (e) discloses that Shares deposited pursuant to the Offer may be withdrawn at any time prior to the expiry of the Offer;

    (f) discloses the facts supporting the Filer's reliance on the Liquid Market Exemption, including the Liquidity Opinion; and

    (g) includes the disclosure prescribed by applicable securities laws with respect to issuer bids.

Decision

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

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

    (a) the Filer takes up and pays for Shares deposited pursuant to the Offer and not withdrawn, in each case, in the manner described above and as set out in the Circular; and

    (b) the Filer is eligible to rely on the Liquid Market Exemption.

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

2.1.9 Evermore Capital Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief to permit exchange-traded mutual fund prospectus to omit an underwriter's certificate – relief from take-over bid requirements for normal course purchases of ETF securities on a marketplace in Canada – relief granted to facilitate the offering of exchange-traded mutual funds.

Applicable Legislative Provisions

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

January 21, 2022

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
EVERMORE CAPITAL INC.
(the Filer)

AND

EVERMORE RETIREMENT ETF 2025
EVERMORE RETIREMENT ETF 2030
EVERMORE RETIREMENT ETF 2035
EVERMORE RETIREMENT ETF 2040
EVERMORE RETIREMENT ETF 2045
EVERMORE RETIREMENT ETF 2050
EVERMORE RETIREMENT ETF 2055
EVERMORE RETIREMENT ETF 2060
(the Proposed ETFs)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Proposed ETFs and any additional exchange-traded mutual funds (the **Future ETFs**, and together with the Proposed ETFs, the **ETFs**, each an **ETF**) established in the future for which the Filer is the manager, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) exempts the Filer and each ETF from the requirement to include a certificate of an underwriter in an ETF's prospectus (the **Underwriter's Certificate Requirement**); and

(b) exempts a person or company purchasing ETF Securities (as defined below) in the normal course through the facilities of the NEO (as defined below) or another Marketplace (as defined below) from the Take-Over Bid Requirements (as defined below)

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

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

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

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

Interpretation

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

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

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

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

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

ETF Facts means a prescribed summary disclosure document required in respect of one or more classes or series of ETF Securities being distributed under a prospectus.

ETF Security means a listed security of an ETF.

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

NEO means the NEO Exchange Inc.

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

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

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

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

Securityholders means beneficial or registered holders of ETF Securities.

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

Representations

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

The Filer

1. The Filer is a corporation subsisting under the laws of Canada with its head office to be located in Toronto, Ontario.

2. The Filer is registered as a portfolio manager in Ontario and an investment fund manager in Ontario, Québec and Newfoundland and Labrador.

3. The Filer is, or will be, the investment fund manager of the ETFs. The Filer has applied, or will apply, to list the ETF Securities on the NEO or another Marketplace.

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

The ETFs

5. Each Proposed ETF will be a mutual fund structured as a trust that is governed by the laws of the Province of Ontario. The Future ETFs will be either trusts or corporations or classes thereof governed by the laws of a Jurisdiction. Each ETF will be a reporting issuer in the Jurisdiction(s) in which its securities are distributed.

6. Subject to any exemptions that have been, or may be, granted by the applicable securities regulatory authorities, each ETF will be an open-ended mutual fund subject to NI 81-102 and Securityholders of each ETF will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.

7. The ETF Securities will be listed on the NEO or another Marketplace.

8. The Filer will file a final long form prospectus prepared and filed in accordance with National Instrument 41-101 *General Prospectus Requirements*, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

9. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus. ETF Securities may generally only be subscribed for or purchased directly from the ETFs (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the NEO or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the NEO or another Marketplace.

10. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.

11. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash in an amount sufficient so that the value of the Basket of Securities and/or cash delivered is equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order. In the discretion of the Filer, the ETFs may also accept

subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.

12. Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or an ETF may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.

13. Upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker may be contractually required to subscribe for Creation Units of an ETF for cash in an amount not to exceed a specified percentage of the net asset value of the ETF or such other amount established by the Filer.

14. Each ETF will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.

15. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally will not be able to be purchased directly from an ETF. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the NEO or another Marketplace. ETF Securities may also be issued directly to ETF Securityholders upon a reinvestment of distributions of income or capital gains.

16. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the NEO or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the NEO or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

Underwriter's Certificate Requirement

17. Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting.

18. The Filer will generally conduct its own marketing, advertising and promotion of the ETFs.

19. The Authorized Dealers and Designated Brokers will not be involved in the preparation of an ETF's prospectus, will not perform any review or any independent due diligence as to the content of an ETF's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the Filer in connection with the distribution of ETF Securities. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities.

20. In addition, neither the Filer nor the ETFs will pay any fees or commissions to the Designated Brokers and Authorized Dealers. As the Designated Brokers and Authorized Dealers will not receive any remuneration in connection with distributing ETF Securities and as the Authorized Dealers will change from time to time, it is not practical to provide an underwriters' certificate in the prospectus of the ETFs.

Take-Over Bid Requirements

21. As equity securities that will trade on the NEO or another Marketplace, it is possible for a person or company to acquire such number of ETF Securities so as to trigger the application of the Take-Over Bid Requirements. However:

    (a) it will not be possible for one or more Securityholders to exercise control or direction over an ETF, as the constating documents of each ETF provide that there can be no changes made to such ETF which do not have the support of the Filer;

    (b) it will be difficult for purchasers of ETF Securities to monitor compliance with the Take-Over Bid Requirements because the number of outstanding ETF Securities will always be in flux as a result of the ongoing issuance and redemption of ETF Securities by each ETF; and

    (c) the way in which the ETF Securities will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium for outstanding ETF Securities

because pricing for each ETF Security will generally reflect the net asset value of the ETF Securities.

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

Decision

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

The decision of the principal regulator is that the Exemption Sought from:

1. the Underwriter's Certificate Requirement is granted; and

2. the Take-Over Bid Requirements is granted.

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

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

"Cathy Singer"
Commissioner
Ontario Securities Commission

As to the Exemption Sought from the Take-Over Bid Requirements:

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

Application File #: 2021/0615

2.1.10 Baillie Gifford Overseas Limited and Baillie Gifford International LLC

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

January 24, 2022

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
BAILLIE GIFFORD OVERSEAS LIMITED
(BGO)
AND
BAILLIE GIFFORD INTERNATIONAL LLC
(BGI)
(collectively, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), each Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

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

(b) each Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. BGO is registered as an exempt market dealer and portfolio manager in each of Ontario, Alberta, Manitoba, Newfoundland, Québec and Saskatchewan and as an exempt market dealer in each of British Columbia, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon. The head office of BGO is in Edinburgh, Scotland. BGO is authorized in the United Kingdom by the Financial Conduct Authority and is also registered as an investment adviser with the U.S. Securities and Exchange Commission (**SEC**).

2. BGI is registered as an exempt market dealer in each Jurisdiction and has an office in Ontario. The head office of BGI is in New York, New York, USA. BGI is registered as an investment adviser with the SEC.

3. Other than with respect to the subject of this decision, neither Filer is in default of securities legislation in any the Jurisdictions.

4. BGO and BGI are wholly-owned subsidiaries of the same ultimate parent entity, Baillie Gifford & Co and are therefore affiliates. Baillie Gifford & Co and its subsidiaries are collectively referred to herein as **Baillie Gifford**.

5. BGO provides investment management services to a range of institutional clients in Canada, including pension funds, charities, endowments and foundations. BGO acts as sub-adviser to several Canadian mutual funds, all of which are "permitted clients" as defined in NI 31-103. BGO also manages seven Canadian pooled funds and acts as an exempt market dealer primarily to distribute these Canadian pooled funds to institutional investors and other high net worth clients that qualify as "accredited investors" as defined in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and "permitted clients" as defined in NI 31-103.

6. BGI acts as agent for Baillie Gifford for the provision of client service and marketing support in Canada for the investment funds managed by Baillie Gifford. BGI does not act as dealer of record for any clients in Canada, but rather, acts in a marketing and business development role to build the Baillie Gifford brand at a strategy level. All clients are clients of BGO, which acts as dealer of record. BGI has no clients and is solely the marketing entity. All clients are contracted with BGO. This arrangement is consistent with Baillie Gifford's organizational structure outside of Canada. BGI also acts as agent for BGO, in its capacity as sub-advisor for investment funds managed by third parties, for the provision of certain marketing services in Canada.

7. Each Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, BGO has approximately 13 Registered Individuals and BGI has one Registered Individual, who, pursuant to exemptive relief from section 4.1 of NI 31-103, is also registered with BGO.

8. The current titles used by the Registered Individuals include the word "Director" and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**). The Titles used by the Registered Individuals are consistent with the titles used by other Baillie Gifford entities.

9. Each Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by a Filer to award one of the Titles.

10. The Registered Individuals interact only with institutional clients that are, each, a non-individual "permitted client", as defined in subsection 1.1 of NI 31-103 (the **Clients**).

11. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients

unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

12. There would be significant operational and human resources challenges for the Filers to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filers and their Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

13. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

14. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

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, when using the Titles, each Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2021/0775

2.1.11 Carta Capital Markets, LLC

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application from U.S. SEC FINRA broker-dealer for relief from the dealer registration requirement to facilitate sales of foreign private issuers' securities held by Canadian residents on an alternative trading system – Relief from the application of all provisions of NI 21-101, NI 23-101 and NI 23-103 that apply to a person or company carrying on business as an alternative trading system – Securities are those of foreign non-reporting issuers with limited connection to Canada – Relief granted subject to terms and conditions.

January 21, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(for a passport application),
BRITISH COLUMBIA,
ALBERTA,
SASKATCHEWAN,
MANITOBA,
QUEBEC,
NEW BRUNSWICK,
NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR,
PRINCE EDWARD ISLAND,
YUKON,
NORTHWEST TERRITORIES AND
NUNAVUT
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
CARTA CAPITAL MARKETS, LLC
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in Ontario has received an application from the Filer for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) for an exemption from the dealer registration requirement in the Legislation to permit the Filer to provide Canadian residents who hold securities of private issuers domiciled in the United States and other jurisdictions outside of Canada (**foreign private issuers**) with brokerage services to allow them to sell such securities in transactions offered on the Alternative Trading System (**ATS**) operated by the Filer (collectively, the **Passport Exemption** or the **Dealer Registration Relief**).

The securities regulatory authority or regulator in each of the Jurisdictions (the **Coordinated Exemptive Relief Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for exemptions under:

(a) section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from NI 21-101 in whole;

(b) section 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**) from NI 23-101 in whole; and

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

(the **Coordinated Exemptive Relief** or the **Marketplace Relief**, and together with the Dealer Registration Relief, the **Requested Relief**).

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

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

(b) in respect of the Dealer Registration Relief, the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut,

(c) in respect of the Marketplace Relief, the decision is the decision of the principal regulator, and

(d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

Terms defined in MI 11-102, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) or National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated in the State of Delaware. The head office of the Filer is in New York, New York.

2. The Filer operates under the business name "**CCMX**".

3. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) (SEC#8-70396), is a member of the Financial Industry Regulatory Authority (**FINRA**) (CRD#: 304751) and is the operator of the ATS known as "**CartaX**".

4. The Filer is a wholly-owned subsidiary of eShares, Inc., doing business as Carta, Inc. (**CINC**). CINC is a corporation incorporated in the State of Delaware. The head office of CINC is in San Francisco, California.

5. CINC is a transfer agent registered with the SEC. CINC provides capitalization table management services to private companies, including registrar and transfer agency, equity compensation plan administration and related services.

6. CINC provides services to over 20,000 companies and over 1.2 million securityholders globally, including over 250 companies in Canada.

7. The Filer has taken steps to rely on the International Dealer Exemption set out in Section 8.18 of NI 31-103 (the **International Dealer Exemption**) in certain Jurisdictions to trade in foreign securities with permitted clients in such Jurisdictions. However, the Filer is unable to rely on the international dealer exemption until such time as the Marketplace relief is granted as a consequence of section 6.2 of NI 21-101, which section provides that, "[e]xcept as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS."

8. If the Marketplace Relief is granted, the Filer will be able to rely on the International Dealer Exemption to trade securities of foreign private issuers to, with or on behalf of permitted clients, since section 6.2 of NI 21-101 will not apply to the Filer.

9. The Filer is not in default of securities legislation in any jurisdiction of Canada, other than as a consequence of section 6.2 of NI 21-101. The Filer is in compliance in all material respects with U.S. securities laws.

CartaX

10. CartaX is an ATS which offers secondary market transactions in securities (**Eligible Securities**) of Eligible Issuers.

11. Two types of transactions are offered on CartaX:

(a) secondary purchases and sales of Eligible Securities which facilitate price discovery through a single-price auction-based mechanism (**Carta Cross**); and

(b) offerings by an Eligible Issuer or one or more third parties (**Offerors** and each an **Offeror**) to the current holders of Eligible Securities of the Eligible Issuer to buy the Eligible Securities at a set price (**Tender Offers** or **TOs,** and together with Carta Cross, **CartaX Transactions**).

12. All Eligible Issuers are customers of CINC's transfer agency services.

13. The Filer conducts comprehensive due diligence on each Eligible Issuer and obtains representations from each Eligible Issuer that all CartaX Transactions are conducted in compliance with U.S. securities laws and that all Eligible Securities traded on CartaX have been issued pursuant to private placement exemptions under the securities laws in the jurisdiction of the Eligible Issuer and the selling securityholder.

14. The Filer conducts due diligence on each Eligible Issuer and Offeror prior to approving the Eligible Issuer and/or Offeror to conduct a CartaX Transaction, including account registration and onboarding, review and approval of all offering documents and transaction documents and review of all potential buyers and sellers that an Eligible Issuer proposes to invite to participate in the CartaX Transaction.

15. An Eligible Issuer that has been approved to make its shares available for trading on CartaX (an **Approved Issuer**) determines the securities they want to permit to transact and designates existing shareholders and new investors as (**Permissioned Buyers)** for each Carta Cross. Eligible Issuers may also participate in a Carta Cross as Permissioned Buyers. Existing shareholders of an Approved Issuer (e.g., employees, former employees, affiliates/insiders, early-stage investors and others) may be allowed to sell (**Permissioned Sellers**).

16. The Filer works with Eligible Issuers to configure their Carta Cross to maximize orderly price discovery, liquidity and fairness for all participants, within parameters set out in the CartaX initial operating report (**Form ATS**), which has been filed with the SEC. Each Carta Cross is executed at a "Final Clearing Price", which is the single price determined by CartaX's proprietary algorithm at which the maximum number of Eligible Securities can transact between Permissioned Buyers and Permissioned Sellers while respecting order prioritization and minimum fill requirements.

17. CartaX operates on a private, invite-only, closed network. All orders submitted to a Carta Cross auction are submitted on a "sealed-bid" basis, meaning individualized price or volume order information is not revealed to any other participant or the Approved Issuer throughout or after the auction process.

18. Tender Offers feature a single price determined by the Offeror at which selling shareholders can choose whether to tender their Eligible Securities for sale. All Tender Offers are conducted in compliance with the tender offer rules of the *Securities Exchange Act of 1934* (the '**34 Act**), as amended, including by ensuring that the Tender Offer is made to all shareholders of the Eligible Issuer (the **TO Issuer**). For the purpose of this Decision, **Permissioned Sellers** includes shareholders of TO Issuers that have opened brokerage accounts with the Filer.

19. The Filer represents the orders of Permissioned Buyers, Permissioned Sellers and Offerors to the ATS in an agency capacity only and does not trade on CartaX in a principal capacity. Orders are entered by Permissioned Buyers and Permissioned Sellers through their CCMX brokerage account (an electronic user interface offered by the Filer) and cleared and settled programmatically.

20. The Filer maintains risk controls for restricting or suspending access, disabling functionality or halting trading due to concerns regarding illegal activities, violation of contractual provisions with the Filer, or technical issues which could pose a risk to participants, Approved Issuers, Offerors, CartaX or the capital markets more generally.

Onboarding and KYC

21. Permissioned Sellers must open brokerage accounts with the Filer to enter sell orders for Eligible Securities under Carta Cross transactions and to tender Eligible Securities to Tender Offers. Such orders are directed by the Filer, as agent, to CartaX for execution. Permissioned Sellers do not have direct access to CartaX.

22. Similarly, Permissioned Buyers and Offerors must open brokerage accounts with the Filer to fund buy orders for purchases of Eligible Securities and Tender Offers. Such orders are directed by the Filer, as agent, to CartaX for execution. Permissioned Buyers and Offerors do not have direct access to CartaX.

23. The Filer's onboarding process complies with applicable securities laws, anti-money laundering, anti-terrorist financing and economic sanctions laws in the United States. The Filer has adopted processes for complying with anti-money laundering, anti-terrorist financing and economic sanctions laws in Canada when onboarding permitted clients in reliance on the International Dealer Exemption.

24. Under the Filer's brokerage account agreement, customers are required to acknowledge and agree that:

    (a) the account is self-directed, and the customer alone is solely responsible for any and all orders placed in its account, and all orders entered by the customer or on the customer's behalf are unsolicited and based on its own investment decisions;

(b) the customer has not received and does not expect to receive any investment, legal, tax or accounting advice from the Filer; and

(c) the customer alone is responsible for determining the suitability of customer's investments in light of customer's particular circumstances and the Filer assumes no responsibility for such determination.

25. The Filer provides customers with relationship disclosure as required under FINRA rules, including disclosure of the risk related to the use of services and the risks involved with opening a brokerage account with the Filer.

26. Permissioned Sellers that open brokerage accounts with the Filer are not required to sell their Eligible Securities in the relevant Carta Cross or Tender Offer. Rather, Permissioned Sellers may simply use the online interface provided by the Filer to view relevant information about the Eligible Securities.

Canadian Participation in Carta Crosses and Tender Offers

27. Numerous Eligible Issuers have Canadian securityholders. Many Canadian securityholders have acquired their Eligible Securities as equity-based compensation in their capacities as employees, consultants or advisors to an Eligible Issuer or a Canadian affiliate of an Eligible Issuer. Some Canadian securityholders have acquired eligible securities as early stage investors in Eligible Issuers.

28. Canadian permitted clients resident in Jurisdictions where the Filer intends to rely on the International Dealer Exemption may open brokerage accounts with the Filer through which the permitted client may enter buy and sell orders for Eligible Securities through the Filer.

29. Because the Filer, in its capacity as executing broker, routes the orders of Permissioned Buyers and Permissioned Sellers directly to the ATS which is also operated by the Filer, if the Filer were to provide brokerage services to Canadian securityholders, the Filer would be operating an ATS in the Jurisdictions of residence of such Canadian securityholders.

30. As a result of operating an ATS in the Jurisdictions, the Filer is unable to rely on the International Dealer Exemption in NI 31-103 as a consequence of section 6.2 of NI 21-101, which section provides that, "[e]xcept as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS."

31. Accordingly, the Filer is seeking the Dealer Registration Relief to provide Permissioned Sellers that are not permitted clients with brokerage services to allow them to sell such securities in transactions offered on the ATS operated by the Filer. If the Marketplace Relief is granted, the Filer will rely on the International Dealer Exemption in NI 31-103 to provide permitted clients with brokerage services to allow them to buy and sell such securities in transactions offered on the ATS operated by the Filer.

32. Canadian securityholders of Eligible Issuers who do not qualify as permitted clients cannot open brokerage accounts with the Filer and, therefore, cannot sell their Eligible Securities in Carta Crosses or Tender Offers.

33. It would be beneficial to Canadian securityholders who are not permitted clients but who are holders of Eligible Securities to be able to sell their Eligible Securities in CartaX Transactions, as these transactions provide Canadian securityholders with unique opportunities for liquidity and fair price discovery for their Eligible Securities prior to a public offering.

34. It would be beneficial to Canadian institutional investors who are permitted clients to be able to participate as a Permissioned Buyer, Permissioned Seller or Offeror in CartaX Transactions, as these transactions provide unique opportunities to invest in private issuers.

35. Section 3.1 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada* (**OSC Rule 72-503**) and Section 13 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta* (**ASC Rule 72-501**) (the **Outside Canada Dealer Registration Exemptions**) reflect the policy position of the securities regulators in these Jurisdictions that Canadian residents holding securities of foreign issuers with minimal connections to Canada should be permitted to trade such securities on markets outside of Canada without going through a Canadian registered dealer. Many of the CartaX Transactions would satisfy the conditions set out in the Outside Canada Dealer Registration Exemptions. However, the Requested Relief is necessary because:

(a) the Outside Canada Dealer Registration Exemptions in Ontario and Alberta generally require the distribution to be made to a person or company outside of Canada; in the context of Carta Crosses, it is not possible for the Filer to ensure with certainty that the purchaser of an Eligible Security from a Canadian Permissioned Seller is not also a Canadian resident, since orders interact programmatically and matched orders cannot be manually changed by the Filer;

(b) it is possible that a permitted client in Canada could be an offeror in a Tender Offer or a Permissioned Buyer in a Carta Cross, in which case the Outside Canada Dealer Registration Exemptions would not be available;

(c) the Outside Canada Dealer Registration Exemptions are not available in Jurisdictions other than Ontario and Alberta; and

(d) Under section 6.2 of NI 21-101, the registration exemptions applicable to dealers under securities legislation (including the Outside Canada Dealer Registration Exemptions) are not available to an ATS such as the Filer.

36. It is expected that all sales of Eligible Securities by Canadian Permissioned Sellers made through the Filer would qualify for one or more exemptions from the prospectus requirement, including Sections 2.14 or 2.15 of National Instrument 45-102 *Resale of Securities*, Section 10 or 11 of ASC Rule 72-501 or Sections 2.7 and 2.8 of OSC Rule 72-503. These prospectus exemptions demonstrate the policy position of the CSA that Canadian residents should be permitted to sell their securities of foreign issuers acquired pursuant to prospectus exemptions without compliance with the prospectus requirement provided that there are minimal connections to Canada associated with the transaction.

37. It would be beneficial to Approved Issuers to offer the same opportunities for liquidity and fair price discovery to their Canadian employees, consultants and advisors that have earned equity-based compensation as they offer to their employees in the United States and other jurisdictions where the Filer is authorized to conduct business.

Decision

Each of the principal regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the principal regulator under the Legislation is that the Dealer Registration Relief is granted, provided that:

(a) The Filer continues to be registered as a broker-dealer with the SEC and continues to be a member of FINRA.

(b) The Filer continues to be regulated as an ATS by the SEC and FINRA.

(c) The Filer materially complies with all applicable conduct and other regulatory requirements of U.S. federal securities law, state securities law of the United States of America and FINRA rules in connection with its customers in Canada.

(d) Canadian customers of the Filer receive disclosure at the time of account-opening that the Filer operates a self-directed platform and the Filer does not provide advice or recommendations regarding the sale of Eligible Securities in CartaX Transactions.

(e) The Filer has submitted to the securities regulatory authority or regulator in the jurisdiction of residence of each Canadian customer a completed Submission to Jurisdiction and Appointment of Agent for Service.

(f) The Filer notifies each Canadian customer at the time of account opening that:

(i) the Filer is not registered under the securities laws of the jurisdiction of residence of the customer to make the trade;

(ii) that the head office of the Filer is located in New York, New York, USA;

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

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

(v) the name and address of the agent for service of process of the Filer in the jurisdiction of residence of the customer.

(g) in the case of CartaX Transactions in which a Canadian customer sells Eligible Securities through the Filer, the Filer takes reasonable steps to ensure the sale is made

(i) to a person or company outside of Canada or

(ii) if to a person or Company in Canada, the purchaser is a permitted client that is an offeror in a Tender Offer or a Permissioned Buyer in a Carta Cross.

For the purposes of this condition, a sale made on or through the facilities of the ATS operated by the Filer is a distribution to a person or company outside Canada if neither the Filer nor any person acting on its behalf has reason to believe that the distribution has been pre-arranged with a buyer in Canada.

(h) In the case of CartaX Transactions to, with or on behalf of permitted clients, the Filer relies on and complies with the terms and conditions of the International Dealer Exemption;

(i) the Filer is not registered in any jurisdiction of Canada in the category of dealer.

In respect of the Dealer Registration Relief

Date: January 10, 2022

"Cecilia Williams"
Commissioner
Ontario Securities Commission

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

The decision of the principal regulator and the Coordinated Review Decision Makers is that the Marketplace Relief is granted provided that the Filer complies with the terms and conditions attached hereto as Schedule A.

In respect of the Marketplace Relief

Date: January 21, 2022

"Susan Greenglass"
Director, Market Regulation
Ontario Securities Commission

Schedule A

Terms and Conditions

Regulation and Oversight

1. The Filer will continue to be registered as a broker-dealer with the SEC and will continue to be a member of FINRA.

2. The Filer will continue to be regulated as an ATS by the SEC and FINRA.

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 open an account for a Canadian client unless the client is:

   (a) a permitted client resident in a Jurisdiction in which the Filer relies on the International Dealer Exemption; or

   (b) a Permissioned Seller that has been designated by an Approved Issuer.

Trading by Canadian Participants

5. The filer will not provide access to a Canadian client to trading in securities of an issuer that is a reporting issuer as defined in applicable Canadian securities legislation or a reporting company under the United States Securities Exchange Act of 1934.

6. Trades on CartaX will be cleared and settled by the Filer as described in the Filer's Form ATS or through a clearing agency or arrangement that has been approved by the SEC.

7. The Filer will permit Canadian clients to trade only those securities which are permitted to be traded on CartaX in the United States and/or in the home jurisdiction of the Approved Issuer in the relevant CartaX Transaction.

Reporting

8. The Filer will comply with all applicable trade reporting requirements under the FINRA rules in respect of all trades conducted on CartaX.

9. 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 its application for exemptive relief, including, but not limited to:

      (i) changes to its regulatory oversight;

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

      (iii) systems and technology for CartaX as described in its current Form ATS on file with the SEC; and

      (iv) its clearing and settlement arrangements;

   (b) any material change in the regulations or the laws, rules, and regulations in the United States and/or in the home jurisdiction of the Approved Issuer relevant to the products offered to Canadian clients, provided however that any notice filed under Section 9(a) which describes a change in the Filer's business or operations as a result of such material change in regulations shall satisfy the Filer's obligations under this Section 9(b);

   (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, excluding voluntary information requests and routine compliance examinations that are conducted by the regulator in the ordinary course;

   (d) any matters 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 participant known to the Filer or its representatives that may have a material, adverse impact upon the Filer or any Canadian client.

10. 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 clients, organized on a per provincial and territorial basis, identifying whether the Canadian client is a permitted client;

    (b) for each CartaX Transaction in which Canadian clients participated during the period:

        (i) the total trading volume and value originating from Canadian clients, presented on a per provincial and territorial basis, and

        (ii) the proportion of worldwide trading volume and value on CartaX conducted by Canadian clients, presented in the aggregate for such Canadian clients on a per provincial and territorial basis; and

    (c) a list of system outages that occurred for any system impacting Canadian clients' trading activity on CartaX which were reported to the regulator in the Filer's home jurisdiction.

Disclosure

11. The Filer will provide to its Canadian clients at the time of account opening 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 CartaX 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 its home jurisdiction, rather than the Decision Makers.

Submission to Jurisdiction and Appointment of Agent for Service

12. 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 that securities 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 that securities regulatory authority's province or territory, and (ii) an administrative proceeding in that province or territory.

13. The Filer will submit to the Decision Makers a valid and binding appointment of an agent for service in those jurisdictions upon which the applicable securities regulatory authorities may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal or other proceedings arising out of or relating to or concerning the applicable securities regulatory authorities' regulation and oversight of the Filer's activities in Canada.

Information Sharing

14. The Filer shall promptly provide to the applicable securities regulatory authorities, on request, any and all data, information and analyses in the custody or control of the Filer that relates to the Filer's services provided to Canadian clients without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

    (a) data, information and analyses relating to its businesses that is relevant to the Filer's services provided to Canadian clients; and

    (b) unless prohibited under applicable privacy laws, data, information and analyses of third parties in its or their custody or control that is relevant to the Filer's services provided to Canadian client.

2.1.12 Perimeter Markets Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement to engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards – relief subject to updated management reviews of systems and controls similar in scope to that which would have applied to an independent systems review – National Instrument 21-101 Marketplace Operation.

Instrument Cited

National Instrument 21-101 Marketplace Operation, ss. 12.2, 15.1.

January 25, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA,
SASKATCHEWAN,
MANITOBA,
QUÉBEC,
ONTARIO,
NEW BRUNSWICK,
NOVA SCOTIA,
PRINCE EDWARD ISLAND AND
NEWFOUNDLAND AND LABRADOR
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
PERIMETER MARKETS INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for a permanent exemption pursuant to section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from s. 12.2 of NI 21-101 which requires that the Filer annually engage a qualified party to conduct an independent systems review (**ISR**) and prepare a report in accordance with established audit standards (the **Exemptive Relief Sought**).

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

(a) the Ontario Securities Commission (the **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* 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. Perimeter Markets Inc. (**PMI**) is a corporation established under the laws of the Province of Ontario and its principal business is to operate an alternative trading system (**ATS**) as that term is defined in NI 21-101;

2. The head office of PMI is located in Toronto, Ontario;

3. PMI is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Canadian Investor Protection Fund (**CIPF**) and is registered in all provinces as a dealer in the category of investment dealer;

4. Bondview and CBID are the trademark ATS platforms of PMI (**PMI Systems**);

5. PMI operates the PMI Systems exclusively for trading over-the-counter, fixed income securities;

6. The PMI Systems are not connected to any other marketplaces and cannot affect any other marketplace or be affected by any other marketplace, whether fixed income or otherwise;

7. For each of PMI's Systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, PMI has developed and maintains:

    - reasonable business continuity and disaster recovery plans;
    - an adequate system of internal control over those systems; and
    - adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support, and system software support.

8. In accordance with prudent business practices, on a reasonably frequent basis and, in any event, at least annually, PMI:

    - makes reasonable current and future capacity estimates;
    - conducts capacity stress tests to determine the ability of its systems to process transactions in an accurate, timely, and efficient manner;
    - tests its business continuity and disaster recovery plans; and
    - reviews the vulnerability of the PMI Systems and data centre computer operations to internal and external threats including physical hazards and natural disasters.

9. PMI's current trading and order entry volumes in the PMI Systems are less than ten percent of the current design and peak capacity of the PMI Systems and PMI has not experienced any failure of the PMI Systems;

10. The PMI Systems transaction volume is less than 300 trades per day;

11. The estimated cost to PMI of an annual ISR by a qualified third party would represent a significant portion of PMI's annual net income;

12. The PMI Systems are monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;

13. PMI shall promptly notify Staff of the Commission of any failure to comply with the representations set out herein;

14. The cost of an ISR is prejudicial to PMI and represents a disproportionate impact on PMI's revenue; and

15. The Filer is not in default of the Legislation in any of the Jurisdictions.

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 Exemptive Relief Sought is granted provided that:

1. PMI must promptly notify Staff of the Commission of any material changes to its governance and organizational structure, its systems and technology infrastructure, and its share of trading in unlisted debt securities as that term is defined in NI 21-101;

2. PMI must promptly notify Staff of the Commission of any material changes to its annual net income;

3. PMI must complete an annual management review of the PMI Systems and of its controls, similar in scope to that which would have applied had PMI undergone an ISR (**Management Reviews**) and should any material concern

arise relating to its systems and controls, PMI must notify the Commission which will consider whether the Exemptive Relief Sought should be revoked; and

4. PMI must prepare and submit written reports of its Management Reviews upon request by Staff of the Commission, which shall be submitted to Staff of the Commission no later than 30 days after the request is made.

"Tracey Stern"
Manager, Market Regulation
Ontario Securities Commission

2.4 Rulings

2.4.1 TD Securities Inc. – ss. 38(1), 78(1) of the CFA

Headnote

Application for a ruling pursuant to section 38 of the Commodity Futures Act granting relief from the dealer registration requirement in section 22 of the CFA to allow the Filer, an investment dealer and member of the Investment Industry Regulatory Organization of Canada (IIROC), to use employees of certain Designated Foreign Affiliates for "after-hours trading" in commodity futures contracts and commodity futures options on the Bourse de Montréal Inc. – Relief granted, subject to terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 22(1), 38(1) and 78(1).

January 17, 2022

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

AND

IN THE MATTER OF
TD SECURITIES INC.
(the Filer)

RULING
(Subsections 38(1) and 78(1) of the CFA)

UPON the application (the **Application**) of the Filer to the Ontario Securities Commission (the **Commission**) for a ruling of the Commission, pursuant to subsection 38(1) of the CFA, that the Designated Foreign Affiliate Employees (as defined below) of the Filer are not subject to the dealer registration requirement in the CFA when conducting Extended Hours Activities (as defined below) on the Bourse de Montréal Inc. (the **MX**), subject to the terms and conditions set out below (the **Exemption Sought**);

AND WHEREAS the Commission granted exemptive relief to the Filer in a decision dated June 4, 2019 (the **Original Decision**), pursuant to subsection 38(1) of the CFA, in respect of the dealer registration requirement in the CFA when conducting after hours trading from 2:00 a.m. to 6:00 a.m. Eastern Time (**ET**) each day on the MX. The Filer has applied for an order pursuant to subsection 78(1) of the CFA to revoke the Original Decision as of the date hereof;

AND WHEREAS for the purposes of this ruling (the **Decision**):

"**dealer registration requirement in the CFA**" means the provisions of section 22 of the CFA that prohibit a person or company from trading in commodity futures contracts or commodity futures options (as those terms are defined in subsection 1(1) of the CFA) unless the person or company satisfies the applicable provisions of subsection 22(1)(a) of the CFA; and

terms used in this Decision that are defined in the *Securities Act* (Ontario) (**OSA**), and not otherwise defined in this Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

AND UPON the Filer having represented to the Commission and the Director as follows:

The Filer

1. The Filer is a corporation formed under the laws of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment dealer under the securities legislation of all the provinces and territories of Canada; is registered as a futures commission merchant under the commodity futures legislation of Ontario and Manitoba; and is registered as a derivatives dealer under the derivatives legislation of Québec.

3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and an approved participant of the MX.

4. The Filer is not in default of securities, derivatives or commodity futures legislation in any jurisdiction of Canada.

5. Foreign affiliates of the Filer are located in the United Kingdom and Singapore as follows:

   (a) The Toronto-Dominion Bank, London Branch (**TD Bank London**) is a foreign bank branch of The Toronto-Dominion Bank, a Schedule I bank under the *Bank Act* (Canada). The principal executive offices of TD Bank London are located in London, United Kingdom. TD Bank London is a United Kingdom-based financial service provider that carries on business in the United Kingdom, and is authorized and regulated by the Financial Conduct Authority;

   (b) The Toronto-Dominion Bank, Singapore Branch (**TD Bank Singapore**) is a foreign bank branch of The Toronto-Dominion Bank. The principal executive offices of TD Bank Singapore are located in Singapore. TD Bank Singapore is a licensed bank in Singapore that carries on business in Singapore, and is regulated by the Monetary Authority of Singapore.

   TD Bank London and TD Bank Singapore are hereinafter collectively referred to as the **Designated Foreign Affiliates**.

6. The Filer is a wholly-owned subsidiary of The Toronto-Dominion Bank. TD Bank London is the London-based foreign bank branch of The Toronto-Dominion Bank and TD Bank Singapore is the Singapore-based foreign bank branch of The Toronto-Dominion Bank.

7. The Filer wishes to make use of certain designated employees of the Designated Foreign Affiliates (the **Designated Foreign Affiliate Employees**) certified under applicable laws of the United Kingdom or Singapore, as applicable, in a category that permits trading the types of products which they would be trading on the MX to handle trading requests on the MX from the Filer's clients and the Filer on a proprietary basis during the MX's extended trading hours, including from 4:30 p.m. (T-1) to 6:00 a.m. ET each day on which the MX is open for trading (the **Extended Hours Activities**).

8. The Filer was granted exemptive relief by the Commission from the dealer registration requirement in the CFA for designated employees of TD Securities Limited (**TDSL**) pursuant to the Original Decision.

9. As part of an internal reorganization, the Filer intends to reorganize its Extended Hours Activities in the United Kingdom by moving those operations from TDSL to TD Bank London.

The MX Extended Trading Hours Amendments

10. The MX, based in Montréal, Québec, operates an exchange for options, commodity futures contracts and commodity futures options, and offers access to trading in those to market participants in Canada.

11. On July 9, 2018, the MX announced that the MX had approved amendments to its rules and procedures in order to accommodate the extension of the MX's trading hours (the **Initial Extended Hours Initiative**). As a result of these amendments, starting on October 9, 2018, trading of certain products on the MX commenced at 2:00 a.m. ET rather than the previous 6:00 a.m. ET.

12. As set out in MX Circular 111-18, in order to accommodate this earlier trading, the MX amended its rules to allow participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or the MX participant on a proprietary basis. In furtherance of the Initial Extended Hours Initiative, the Filer sought and obtained the Original Decision.

13. On March 17, 2020, the MX announced that the MX had approved non-material amendments to its rules and procedures in order to accommodate the further extension of the MX's trading hours (the **Asian Trading Hours Initiative**). As a result of these amendments, trading of certain products on the MX now commences at 8:00 p.m. ET (T-1) rather than 2:00 a.m. ET. These amendments are considered non-material insofar as the framework put in place in connection with the Initial Extended Hours Initiative applies to the Asian Trading Hours Initiative, allowing participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or the MX participant on a proprietary basis. See MX Circulars 135-20, 024-21 and 063-21.

14. The IIROC Relief (as defined below) allows for trading to commence at 4:30 p.m. ET(T-1) rather than 8 p.m. ET(T-1) as contemplated by the Asian Trading Hours Initiative, subject to the MX trading rules being modified. The Exemption Sought accordingly conforms to the IIROC Relief with respect to Extended Hours Activities.

Application of the dealer registration requirement in the CFA to Designated Foreign Affiliate Employees

15. The Filer is an MX approved participant and each of the Designated Foreign Affiliates is an affiliate of the Filer. The Filer wishes to make use of the Designated Foreign Affiliate Employees to conduct the Extended Hours Activities.

16. The dealer registration requirement in the CFA requires an individual to be registered to act as a dealing representative on behalf of a registered firm. The Exemption Sought is intended to provide the Filer with an exemption from (i) the requirement that the Filer use only registered dealing representatives to conduct the Extended Hours Activities; and (ii) the requirement that the Designated Foreign Affiliate Employees who will be conducting the Extended Hours Activities be registered as dealing representatives of the Filer.

17. The Filer seeks an exemption from the dealer registration requirement in the CFA because, in the absence of such exemption, each Designated Foreign Affiliate Employee who trades on behalf of the Filer will be required to become individually registered and licensed in Canada. The Filer believes this is duplicative since the Designated Foreign Affiliate Employees are, or will be, certified or authorized, as applicable, under applicable United Kingdom or Singapore law, and will be supervised by the Filer's Designated Supervisors (as defined below) and are otherwise subject to the conditions set forth below. The Filer believes the dealer registration requirement in the CFA is unduly onerous in light of the limited trading activities the Designated Foreign Affiliate Employees will be conducting and only during the period from 4:30 p.m. ET (T-1) to 6:00 a.m. ET.

18. The Filer has also applied to, and obtained from, IIROC an exemption from the registered representative requirements that are found in IIROC Dealer Member Rules 18.2, 18.3 and 500 and the requirement to enter into an employee or agent relationship with the person conducting securities related business on its behalf that is found in IIROC Dealer Member Rule 39.3 (the **IIROC Relief**).

19. The IIROC Relief obtained by the Filer is subject to certain conditions, including:

    (a) The Designated Foreign Affiliate Employees must be registered, licensed, certified or authorized and subject to equivalent regulatory supervision in the United Kingdom or Singapore, as applicable in a category that permits trading the types of products which they will be trading on the MX.

    (b) The Designated Foreign Affiliate Employees may only accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (T-1) to 6:00 a.m. ET, subject to the MX trading rules being modified to allow for trading to commence at 4:30 p.m. ET (T-1) rather than 8:00 p.m. ET (T-1) as contemplated by the Asian Trading Hours Initiative, and are not permitted to provide advice.

    (c) The actions of the Designated Foreign Affiliate Employees must be supervised by Canadian based registered supervisors qualified to supervise the relevant trading (including futures contracts, futures contract options and options) (the **Designated Supervisors**).

    (d) The Filer must establish and maintain written policies and procedures that address the performance and supervision requirements relating to this extended trading hours arrangement.

    (e) The Filer and each Designated Foreign Affiliate must jointly and severally undertake to ensure IIROC has, upon request, prompt access to the audit trail of all trades, wherever located, that relate to Extended Hours Activities at each Designated Foreign Affiliate, and records evidencing the supervision of such activities.

    (f) The Filer retains all responsibilities for its client accounts.

    (g) The Filer and each Designated Foreign Affiliate Employee must enter into an agency agreement pursuant to which the Filer would assume all responsibility for the actions of the Designated Foreign Affiliate Employee and of the Designated Foreign Affiliates that relate to the Filer's clients and the Filer would be liable under IIROC rules for such actions.

    (h) All MX trading rules will apply to orders entered by the Designated Foreign Affiliate Employees.

    (i) All other existing Canadian regulatory requirements continue to apply, including:

        i. the Filer's client accounts would continue to be carried on the books of the Filer;

        ii. all communications with the Filer's clients will continue to be in the name of the Filer; and

        iii. the Filer's client account monies, security and property will continue to be held by the Filer.

    (j) The Filer must disclose this extended trading hours arrangement to its clients and provide specific instructions concerning the placement of orders relating to the extended trading hours arrangement.

(k) The Filer must provide, in writing to IIROC, the names of the foreign affiliate(s) and all Designated Foreign Affiliate Employees authorized to accept and enter orders from the Filer's clients on behalf of the Filer under the extended trading hours arrangement. Such individuals are subject to IIROC's "fit and proper" review and IIROC Registration staff may refuse their participation in this extended trading hours arrangement.

(l) The Filer must provide, in writing to IIROC, timely updates to the list of Designated Foreign Affiliate Employees, and confirm any changes on at least an annual basis.

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

IT IS RULED pursuant to subsection 78(1) of the CFA that the Original Decision is revoked;

AND IT IS RULED pursuant to subsection 38(1) of the CFA that the Exemption Sought is granted, so long as:

(a) the Designated Foreign Affiliates and the Designated Foreign Affiliate Employees are registered, licensed, certified or authorized under the applicable laws of the foreign jurisdiction in which the head office or principal place of business of the Designated Foreign Affiliate is located in a category that permits trading the type of products which the Designated Foreign Affiliate Employees will be trading on the MX;

(b) the Designated Foreign Affiliate Employees are permitted to accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (T-1) to 6:00 a.m. ET, and will not be permitted to give advice;

(c) the Filer retains all responsibilities for its client accounts;

(d) the actions of the Designated Foreign Affiliate Employees will be supervised by the Designated Supervisors, each of whom is qualified to supervise trading in futures contracts, futures contract options and options;

(e) the Filer and the Designated Foreign Affiliate Employees enter into an agency agreement substantially as described in paragraph 19(g), and such agreement remains in effect; and

(f) the Filer remains in compliance with the terms and conditions of the IIROC Relief.

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

"M. Cecilia Williams"
Commissioner
Ontario Securities Commission

OSC File #: 2021-0552

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Threegold Resources Inc. et al. – s. 127(1)

Citation: *Threegold Resources Inc. (Re)*, 2021 ONSEC 30
Date: 2021-12-15
File No.: 2019-42

IN THE MATTER OF
THREEGOLD RESOURCES INC.,
VICTOR GONCALVES AND
JON SNELSON

REASONS AND DECISION
(Section 127(1) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	In Writing	
Decision:	December 15, 2021	
Panel:	Wendy Berman	Vice-Chair and Chair of the Panel
Appearances:	Alexandra Matushenko	Staff of the Commission
	No one appearing for Threegold Resources Inc.	

REASONS AND DECISION

I. OVERVIEW

[1] Staff of the Commission alleges that the respondent, Threegold Resources Inc., contravened Ontario securities law by issuing securities of Threegold, specifically convertible debentures. Staff alleges that by engaging in such activity, Threegold distributed securities without a prospectus and without an available exemption, engaged in the business of trading in securities without being registered and without an available exemption and breached a Commission order cease trading all securities of Threegold.

[2] This proceeding relates only to the conduct of Threegold. The Commission approved a settlement agreement between Staff and the other respondents, Victor Goncalves and Jon Snelson, with respect to the allegations against them on February 8, 2021.

[3] This decision concludes a proceeding that combines a merits hearing and a sanctions hearing, both in writing, pursuant to the Commission's order of March 15, 2021. That order waived the requirement to serve Threegold with the Notice of Hearing, Statement of Allegations and all future processes on the basis that Staff had exhausted all reasonable efforts to serve Threegold.

[4] Threegold did not file any materials with respect to this proceeding. Section 7 of the *Statutory Powers and Procedures Act*[1] authorizes a tribunal to proceed in the absence of a party when that party has been given notice of the hearing.

[5] I note that the Notice of Hearing and the Statement of Allegations were served on the other respondents (both of whom are former directors and officers of Threegold) and were publicly posted on the Commission's website. Threegold does not currently have any directors, officers or representatives and is not operational.

[6] Given these circumstances and the waiver of service on Threegold, I am satisfied that I can proceed with the merits and sanctions hearing in the absence of Threegold.

[1] RSO 1990, c. S.22

[7] For the reasons set out below, I find that Threegold contravened Ontario securities law by distributing debentures without a prospectus and in breach of a Commission cease trade order and that it is in the public interest to issue an order permanently prohibiting Threegold from trading in securities.

II. EVIDENCE

[8] Staff filed an affidavit, with attached documents, from its witness Sherry Brown, a senior forensic accountant with the Commission's Enforcement Branch.[2] Ms. Brown's affidavit included affidavits from the respondent Mr. Goncalves, sworn on August 20, 2020,[3] and the respondent Mr. Snelson, sworn on July 16, 2020 No further evidence was presented.

III. BACKGROUND FACTS

[9] Threegold is a reporting issuer in all provinces and territories in Canada. The securities of Threegold were listed on the NEX Exchange during the relevant time and subsequently delisted in April 2020.

[10] During the relevant time, the individual respondents were directors and officers of Threegold. Mr. Goncalves was the president, CEO and director of Threegold, and Mr. Snelson was a director and the treasurer of Threegold. Mr. Snelson was also at various times a registered salesperson or dealing representative under the categories of mutual fund dealer and limited market dealer. Mr. Goncalves and Mr. Snelson resigned as executives and directors on May 17, 2016, and June 30, 2018, respectively. Since Mr. Snelson's resignation, Threegold has not had any directors or officers.

[11] In May 2014, the Commission issued an order cease trading all securities of Threegold, because Threegold had failed to make required continuous disclosure filings, including failing to file audited annual financial statements for the year ended December 31, 2013. The cease trade order remained in effect during the relevant time.

[12] Threegold is also the subject of cease trade orders by the Autorité des marchés financiers (Québec), British Columbia Securities Commission, Manitoba Securities Commission and Alberta Securities Commission, all of which were issued in 2014 and remained in effect during the relevant time.

[13] From July to November 2015, and while the Commission cease trade order was in effect (as well as the cease trade orders of the other Commissions as indicated above), Threegold issued and distributed $310,000 of debentures to 19 Ontario-resident investors.

[14] The terms of the debentures were contained in written agreements which provided that the debentures were convertible into common shares of Threegold, had a maturity date of November 16, 2015, and an interest rate of 5%.

[15] The investors have not received any payments of interest or principal related to the debentures and none of the debentures were converted into common shares.

[16] Threegold does not currently have any directors, officers or representatives and is no longer operational.

IV. ANALYSIS

A. Introduction

[17] I turn now to my analysis of the three principal issues raised by Staff's allegations:

a. Did Threegold distribute securities without a prospectus, and without any available exemptions from the prospectus requirement, contrary to s. 53(1) of the *Securities Act*[4] (the **Act**)?

b. Did Threegold contravene Ontario securities law by distributing securities in breach of the terms of the cease trade order?

c. Did Threegold engage in the business of trading in securities without being registered and without any exemption from registration, contrary to s. 25(1) of the Act?

B. Did Threegold distribute the debentures without a prospectus, and without any applicable exemptions from the prospectus requirement?

2 Exhibit 1, Affidavit of Sherry Brown, sworn April 22, 2021 (**Brown Affidavit**)
3 Affidavit of Victor Goncalves, sworn August 20, 2020, Exhibit 1, Brown Affidavit, Exhibit A, Tab 2
4 RSO 1990, c. S.5

[18] A person or company must not distribute a security without a prospectus, unless an exemption applies.[5] The prospectus requirement is a cornerstone of Ontario's securities regulatory regime designed to ensure that investors receive the necessary information to make an informed investment decision.[6]

[19] The debentures were securities as defined in the Act.[7] Threegold issued and sold $310,000 in debentures to 19 investors. Each sale of a debenture constituted a trade in securities by Threegold.

[20] The debentures were also previously unissued securities and accordingly the issuance of the debentures was a "distribution" as defined in the Act.[8]

[21] No preliminary prospectus or prospectus was filed for the distribution of the debentures. Accordingly, I must consider whether Threegold was entitled to an exemption from the prospectus requirement.

[22] Staff submits that no prospectus exemptions were available in respect of the Debentures as most of the investors were not accredited investors and there were no other applicable prospectus exemptions.

[23] None of the documents prepared and delivered by Threegold in respect of the debenture offering expressly state any reliance on a prospectus exemption or allude to any reliance on a prospectus exemption. Further, none of these documents demonstrates any attempt to rely on any applicable prospectus exemptions for securities issued to individuals, including the accredited investor exemption or the offering memorandum exemption, by, for example, gathering the required investor financial information, placing restrictions on the resale of the debentures or requiring investors to complete the prescribed risk acknowledgement form.[9]

[24] In addition, a company must file a report of exempt distribution with the Commission to rely on the accredited investor or offering memorandum exemption. Threegold did not deliver or file an offering memorandum to the Commission and did not file any reports of exempt distribution with the Commission.

[25] Mr. Snelson and Mr. Goncalves testified that they initially believed that the debentures qualified as loans and were not securities. They both acknowledged, however, that Threegold ultimately distributed convertible debentures and that they facilitated the sale of these debentures from July to November 2015.

[26] The debentures were distributed to 19 individuals, all of whom were Ontario residents. Fifteen of the individual investors, approximately 80% of the investor group, were mutual fund clients of Mr. Snelson. Most of these individual investors, approximately 64%, did not meet the personal financial requirements for the accredited investor exemption or the offering memorandum exemption.

[27] I am satisfied that the above evidence demonstrates that Threegold engaged in a distribution of securities without filing a preliminary prospectus or prospectus, and without an applicable exemption from the prospectus requirement, and therefore contravened s. 53(1) of the Act.

C. Did Threegold contravene Ontario securities law by distributing securities in breach of the terms of the cease trade order?

[28] The cease trade order dated May 20, 2014, provided that all trading in the securities of Threegold, whether direct or indirect, cease until further order.[10]

[29] The cease trade order forms part of "Ontario securities law" under the Act, which defines that term to include a decision of the Commission or of a Director.[11]

[30] To find that Threegold breached the cease trade order, I must be satisfied that Threegold traded in its own securities while the cease trade order was in effect.[12]

[31] The debentures were securities of Threegold and Threegold issued and sold $310,000 in debentures to 19 investors. Each distribution of a debenture constituted a trade in securities by Threegold while the cease trade order was in effect.

[32] Accordingly, I find that the distribution of the debentures by Threegold breached the cease trade order and, as a result, Threegold contravened Ontario securities law.

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5 Act, s. 53(1)
6 *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (***Money Gate Merits***) at para 168
7 Act, s. 1(1) "security" definition at paras (a), (b) and (c)
8 Act, s. 1(1), "distribution" definition at para (a); *Limelight Entertainment Inc, Re*, 2008 ONSEC 4 at paras 139-140
9 National Instrument 45-106 – Prospectus Exemptions, ss. 2.3, 2.6.2, 2.9 and 2.10
10 Order dated May 20, 2014, Exhibit 1, Brown Affidavit, Exhibit A, Tab 15
11 Act, s. 1(1)
12 *MOAG Copper Gold Resources Inc (Re)*, 2020 ONSEC 3 at para 33

D. Did Threegold engage in, or hold itself out as engaging in, the business of trading in securities?

[33] A person or company must be registered under Ontario securities law to engage in the business of trading in securities unless an exemption applies.[13]

[34] The registration requirement is a cornerstone of the securities regulatory regime designed to ensure that those who engage in the business of trading related to securities are proficient and solvent, and that they act with integrity. Unregistered trading or advising defeats some of these necessary legal protections and undermines investor protection and the integrity of the capital markets.[14]

[35] Staff submits that Threegold engaged in, or held itself out as engaging in, the business of trading securities without being registered to do so, and where no exemption from registration was available.

[36] Threegold was never registered in any capacity under the Act. In addition, neither of the senior executives who were involved in the sale of the debentures, Mr. Snelson and Mr. Goncalves, was registered to trade or advise in respect of the sale of debentures during the relevant time.

[37] Therefore, the only question I must determine is whether Threegold engaged in the business of trading securities. To do so, I am required to determine whether Threegold's conduct constituted "trading", and if so, whether that conduct was carried out for a business purpose.

[38] As outlined above, I have concluded that Threegold's actions in distributing the debentures constituted "trading" in securities of Threegold within the meaning of the Act and that each sale of a debenture constituted a trade in a security. Accordingly, I turn now to consider whether in distributing the debentures, Threegold was engaged in, or held itself out as engaging in, the busines of trading securities.

[39] Guidance on the factors that are relevant in determining whether a company is engaged in the business of trading, commonly described as the "business trigger", is provided in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103CP**). The Companion Policy sets out factors to be considered in determining whether the trading activities are for a business purpose. The factors include, among other things:

a. engaging in activities similar to those of a registrant;

b. carrying on the activity with repetition, regularity, or continuity, whether or not the activity is the sole or even primary endeavour;

c. receiving, or expecting to receive, compensation for the activity; and

d. directly or indirectly soliciting securities transactions.

[40] The Commission has previously relied on the business trigger factors in NI 31-103CP to determine whether the conduct was carried out for a business purpose.[15] These factors are useful but ultimately, I must take a holistic view to determine whether Threegold was acting like a securities dealer in the business of trading securities or was seeking to raise capital for the advancement of an underlying business.

1. Engaging in activities similar to a registrant with repetition and regularity

[41] Staff submits that Threegold's activities were similar to those of an exempt market dealer and that the sale of the debentures by Threegold constituted engaging in the business of trading. Staff submits that Threegold engaged in regular and continuous solicitation of investors to purchase the debentures over a four-month period.

[42] Staff also submits that the admissions by Mr. Goncalves and Mr. Snelson that they engaged in the business of trading in securities without being registered as contained in the settlement agreement between them and Staff can be relied on as evidence to conclude that Threegold engaged in the business of trading.

[43] I disagree. Mr. Goncalves and Mr. Snelson did not make these admissions on behalf of Threegold. At best these admissions are some evidence relating to the determination of whether Threegold engaged in the business of trading but are not conclusive. I must consider all the evidence in this proceeding to assess the activities of Threegold, including the activities undertaken by representatives of Threegold to facilitate the debenture offering, and determine whether such conduct satisfies the components of the business purpose test.

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13 Act, s. 25(1)
14 *Money Gate Merits* at para 140; *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11 (***Al-Tar Energy Corp***) at para 81
15 *Money Gate Merits* at paras 144-145; *Merharchand (Re)*, 2018 ONSEC 51 at para 111

[44] In my view, the evidence clearly establishes that Threegold engaged in the following activities through its executives:

[45] Ongoing efforts to solicit investors to purchase debentures over a four-month period, which included approaching a number of individuals to discuss and recommend participation in the debenture offering and facilitating the sale of debentures to investors;

a. Preparation of documents setting out the terms of the debentures and use of proceeds for the debenture offering and delivery of these documents to investors;

b. Receipt of funds from investors and delivery of executed documents evidencing the debentures, including agreements and use of proceeds documents; and

c. Issuance of a news release which announced, among other things, the total funds of $310,000 raised in the debenture offering and additional funds from a loan of $500,000, with such funds to be used to advance exploration work on its mining property and for general and administrative purposes.

d. By carrying out these activities, Threegold regularly and continuously engaged in extensive efforts over a four-month period to raise capital and succeeded in selling debentures to 19 investors for total proceeds of $310,000.

2. Receiving or expecting to receive compensation for trading

[46] Staff submits that Threegold expected to receive, and did receive, a financial benefit from the sale of the debentures, being the funds received from investors for the preservation of Threegold's business.

[47] Staff also submits that the expectation of compensation and/or receipt of compensation by the Threegold executives involved in the solicitation and sale of the debentures satisfies the compensation aspect of the business purpose test. Staff relies on the fact that Threegold recorded management fee expenses of approximately $180,000 owing to Mr. Goncalves and Mr. Snelson during the relevant time and Mr. Goncalves received salary compensation that was at least partly related to his efforts in soliciting and selling debentures.

[48] In soliciting and distributing the debentures, Threegold expected to receive and did receive a financial benefit, being the funds from investors.

[49] Given Mr. Goncalves's executive position and that some of his time was devoted to facilitating the distribution of the debentures, I find that at least a portion of his remuneration was attributable to the sale of the debentures. Although Mr. Snelson received no compensation, commissions or fees related to the sale of the debentures, he acknowledged that he had an expectation of financial gain.

3. Soliciting securities transactions

[50] Any entity that seeks capital investment through the distribution of securities is soliciting securities transactions. By distributing the debentures and accepting investor funds for the purchase of debentures, Threegold engaged in soliciting and trading in securities.

[51] I must determine whether the activities of Threegold crossed the line between permissible capital raising and the business of trading.[16] In doing so, I must consider the surrounding circumstances of the debenture offering, including the extent to which Threegold's efforts were devoted to capital raising as opposed to any underlying business during the relevant time.

[52] At the relevant time, Threegold was experiencing financial difficulties and lacked sufficient funds to conduct its ongoing business activities as a mineral exploration company. Accordingly, it engaged in efforts to raise capital for the stated purposes of advancing one of its exploration projects (the Lotus mining project) and completing its audited financial statements.

[53] Based on various documents filed by Staff, including Threegold's unaudited quarterly financial statements for the period ending September 30, 2015, Threegold continued to engage in business activities related to its mineral exploration projects during the relevant time. In fiscal 2015, Threegold incurred approximately $20,000 in mining project-related expenses, $36,000 in professional and consultant fees and $140,000 in promotional expenses. Threegold also made payments to external legal advisors, an external auditing firm, and an engineering consultant during the relevant time.

[54] Mr. Snelson and Mr. Goncalves both testified about their involvement in facilitating the sale of the debentures. Mr. Goncalves testified that he was involved as a director and office of Threegold in facilitating the sale of the debentures to 19 investors. He further testified that he drafted the debenture documents.

[16] *Blue Gold Holdings Ltd (Re)*, 2016 ONSEC 24 at para 20; *Money Gate Merits* at para 143

[55] Mr. Snelson stated that he recommended and sold the debentures as an officer and director of Threegold. In particular, he solicited investors, many of whom were also his mutual fund clients at the time, to discuss the debenture investment and facilitated the sale of the debentures to 19 individuals including signing the debenture documents as an authorized signatory on behalf of Threegold.

[56] In terms of Threegold's mineral exploration business activities, Mr. Snelson testified that Threegold was seeking to raise funds for one of its exploration projects through the sale of the debentures. Also, neither Mr. Snelson nor Mr. Goncalves stated that the debenture offering constituted the primary or sole business activity of Threegold or that there were no ongoing mineral exploration activities or other business activities of Threegold.

[57] In my view, the evidence falls short of establishing that Threegold's activities crossed the line from capital raising into the business of trading securities. To the contrary, Threegold was pursuing a strategy to further its mineral exploration business activities and the capital raising through the debenture offering was ancillary to these activities.

[58] Accordingly, I conclude that Threegold was not engaged in the business of trading in securities and that there was no breach of s. 25(1) of the Act.

V. SANCTIONS

[59] I will now address the applicable sanctions against Threegold.

A. Overview

[60] Staff seeks the following sanctions against Threegold for its breaches of Ontario securities law:

a. an order that trading in any securities of Threegold cease permanently;

b. an order that trading in any securities or derivatives by Threegold cease permanently;

c. an order that Threegold be prohibited from acquiring any securities permanently; and

d. an order that the exemptions contained in Ontario securities law do not apply to Threegold permanently.

[61] Staff seeks these sanctions as Threegold continues to exist as a corporate entity and could be reactivated. Staff does not seek any financial sanctions or costs order against Threegold as it is no longer operational.

B. Legal Framework for Sanctions

[62] The Commission may impose sanctions under s. 127(1) of the Act where it finds that it is in the public interest to do so. The Commission must exercise this jurisdiction in a manner that is consistent with the Act's purposes, which includes investor protection and the fostering of fair and efficient capital markets.[17]

[63] The sanctions available under s. 127(1) of the Act are protective and preventative and intended to prevent future harm to investors and the capital markets.[18]

[64] Sanctions must be proportionate to the respondent's conduct in the circumstances.[19] The Commission has identified a non-exhaustive list of factors to be considered with respect to sanctions generally, including the seriousness of the misconduct, whether the misconduct was isolated or recurrent, the size of the profit made from the misconduct, any mitigating factors, and the likely effect that any sanction would have on the respondent as well as on others.[20]

C. Appropriate Sanctions

[65] Threegold's misconduct was serious. In contravention of Ontario securities law, Threegold engaged in a course of conduct over a four-month period to solicit and distribute debentures to 19 investors for total proceeds of $310,000. All the investors lost their invested funds, and none received any of the interest payments due under the terms of the debentures.

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17 *Borealis International Inc (Re)*, 2011 ONSEC 11 at para 16 (***Borealis***); *Money Gate Mortgage Investment Corporation (Re),* 2021 ONSEC 10 (***Money Gate Sanctions***) at paras 7-8

18 *Money Gate Sanctions* at para 9; *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42 to 43; *Bradon Technologies Ltd (Re)*, 2016 ONSEC 9 (***Bradon***) at paras 26-27.

19 *Borealis* at para 20; *Bradon* at paras 28

20 *Bradon* at paras 28; *Re Cartaway Resources Corp*, 2004 SCC 26 at para 60; *Money Gate Sanctions* at para 9

[66] Threegold violated prospectus requirements, which are a cornerstone of Ontario's regulatory regime designed to ensure that investors have sufficient information to properly assess the risks of an investment in a security and make informed decisions.[21]

[67] Threegold also distributed the debentures while the cease trade order was in effect. The requirement that persons and companies subject to cease trade orders abide by the terms of those orders is essential to the Commission's ability to achieve the purposes and objectives of the Act. Breaching a Commission order is a very serious misconduct.[22]

[68] Threegold's misconduct was recurring, it extended over four months and it affected many investors. The funds obtained by Threegold over a short period were significant. By its misconduct, Threegold caused investors to suffer harm and compromised the integrity of Ontario's capital markets.

[69] Importantly, the cease trade order did not deter Threegold from capital raising activities and distribution of the debentures.

[70] Participation in the capital markets is a privilege, not a right.[23] A permanent trading ban is a severe sanction and accordingly I must ensure it is necessary as protective and preventative.

[71] I have considered the serious nature of the misconduct, the financial harm caused by the misconduct and the failure to abide by the terms of the cease trade order. In my view, only a permanent removal from the capital markets would be proportionate to the type of misconduct in this case and would be sufficient to protect Ontario investors by deterring Threegold (and any individual who might resurrect it) from engaging in similar or other misconduct, and by acting as a general deterrent to other like-minded persons.

VI. CONCLUSION

[72] For the reasons set out above, I find that Threegold:

a. distributed securities without a prospectus, and without any applicable exemptions from the prospectus requirement, contrary to s. 53(1) of the Act; and

b. contravened Ontario securities law by trading in its own securities in breach of the terms of the cease trade order.

[73] I shall issue an order that provides:

a. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the Act, that:

i. trading in the securities of Threegold shall cease permanently;

ii. trading in any securities or derivatives by Threegold shall cease permanently; and

iii. the acquisition of any securities by Threegold is prohibited permanently.

b. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Threegold permanently.

Dated at Toronto this 15 day of December, 2021.

"Wendy Berman"

[21] *Bradon* at para 32
[22] *Al-Tar Energy Corp* at para 341; *MOAG Copper Gold Resources Inc (Re)*, 2020 ONSEC 29 (***MOAG Sanctions***) at para 15
[23] *Borealis* at para 51; *MOAG Sanctions* at para 36

3.1.2 VRK Forex & Investments Inc. and Radhakrishna Namburi – s. 127(1)

Citation: VRK Forex & Investments Inc (Re), 2022 ONSEC 1
Date: 2022-01-24
File No.: 2019-40

IN THE MATTER OF
VRK FOREX & INVESTMENTS INC. AND
RADHAKRISHNA NAMBURI

REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	February 1, 3, 4, 5, 9, 10, 11 and 12, 2021; written submissions received March 12, April 19, and December 6 and 20, 2021	
Decision:	January 24, 2022	
Panel:	Wendy Berman	Vice-Chair and Chair of the Panel
	Timothy Moseley	Vice-Chair
	Frances Kordyback	Commissioner
Appearances:	Gavin MacKenzie	For Staff of the Commission
	Erin Hoult	
	Radhakrishna Namburi	For himself and VRK Forex & Investments Inc.

REASONS AND DECISION

I. OVERVIEW

[1] Staff of the Commission alleges that from September 2016 to September 2019 (the **Material Time**), the respondents Radhakrishna Namburi and VRK Forex & Investments Inc. (**VRK Forex**) engaged in the business of trading and advising in securities without being registered to do so.

[2] Staff alleges that the respondents entered into agreements with at least 19 investors, by which the investors authorized the respondents to make discretionary trades in contracts for difference (**CFDs**) in their online trading accounts. As a result of this activity, the respondents received profit-sharing payments totaling approximately $400,000 and the investors lost an aggregate of approximately $1.9 million.

[3] Staff also alleges that by engaging in this activity, Namburi and VRK Forex failed to comply with the terms of a written undertaking they gave to Staff in September 2016 (the **Undertaking**), by which they promised to cease similar activity and to obtain registration or retain the services of a registrant prior to accepting new funds or entering Ontario's capital markets.

[4] The respondents deny Staff's allegations. In particular, they dispute that the CFDs in this case were securities. If they are correct in their position, all allegations against the respondents should be dismissed.

[5] For the reasons set out below, we find that the CFDs in this case were securities. We also find that the respondents extensively promoted a CFD trading program, solicited investors, provided advice related to CFD trading, and conducted CFD trading in investor accounts, sometimes on a discretionary basis. The respondents received significant compensation for these activities from investors. In so doing, the respondents engaged in the business of trading and advising in securities without being registered to do so, and thereby contravened Ontario securities law.

[6] As for the Undertaking, we dismiss the allegations against the respondents. We find that the Undertaking lacks sufficient clarity to support a conclusion that the respondents breached it, or to support an order for sanctions under s. 127 of the *Securities Act*[1] (the **Act**) arising from it.

II. BACKGROUND FACTS

[7] Namburi is the sole director of VRK Forex and described VRK Forex as his "own business".[2] VRK Forex operated out of a storefront office in a shopping mall in Mississauga and out of Namburi's residence. For convenience in these reasons, we often speak about Namburi's activities without referring to VRK Forex. However, all our findings about Namburi apply equally to VRK Forex.

[8] In 2016, Staff investigated the activities of the respondents, including whether the respondents were trading securities on behalf of others without being registered to do so. As part of its investigation, Staff communicated with Namburi.

[9] On September 1, 2016, following those communications, Namburi signed the Undertaking, which was entitled "Acknowledgment and Undertaking" and was directed to Staff. Namburi signed the Undertaking on his own behalf and on behalf of VRK Forex. In the Undertaking, the respondents acknowledged that they had contravened Ontario securities law by engaging in the business of trading in securities and represented that they had ceased such activities. The undertaking also addressed the respondents' future activities. We address the specific language of the Undertaking, and its implications, in our analysis below.

[10] During the Material Time, the respondents:

a. promoted CFD trading as a form of investment with significant daily returns;

b. agreed with the investors to work in their accounts in respect of CFD trading and to receive 50% of the monthly net realized profits from the CFD trading;

c. assisted investors in the opening and funding of online accounts with CFD providers;

d. accessed investors' accounts and monitored and executed trades in CFDs in the investors' accounts based on certain instructions; and

e. received approximately $400,000 from investors as profit-sharing payments.

[11] At least 19 Ontario-resident investors engaged the respondents and deposited approximately $3.8 million into accounts on two online trading platforms, both of which were recommended by the respondents. The two entities that provided the trading platforms were Oanda (Canada) Corporation ULC (**Oanda**) and Vantage Global Prime Pty LLP (**Vantage**).

[12] Each of the two entities played two roles simultaneously. The entity not only provided the platform on which the CFDs were traded; it was also the counterparty to the investor for every CFD traded on that platform.

III. ANALYSIS

A. Introduction

[13] We turn now to our analysis of the three principal issues raised by Staff's allegations:

a. Were the CFDs "securities"?

b. If so, did the respondents engage in the business of trading or advising in securities without being registered contrary to ss. 25(1) and 25(3) of the Act?

c. Did the respondents fail to comply with the terms of the Undertaking, and if so, is it in the public interest to sanction such conduct?

B. Were the CFDs "securities"?

[14] We begin with the question of whether the CFDs were "securities", as that term is defined in s. 1(1) of the Act. We conclude that they were.

[15] Before we undertake the necessary legal analysis to reach that conclusion, it is important to understand who the parties to the CFDs were, and the attributes of CFDs.

1 RSO 1990, c S.5
2 Exhibit 8, Affidavit of Radhakrishna Namburi sworn December 7, 2020, at para 3

[16] A CFD is a financial instrument that allows investors to obtain leveraged exposure to assets such as equities, commodities, or currencies, without the need for ownership and physical delivery of the underlying asset. CFDs are offered to investors through online trading platforms operated by CFD providers and are generally traded "over the counter" (*i.e.*, not on an exchange).

[17] CFDs have no standard term to expiry or contract size. CFDs allow investors to take long or short positions and are effectively renewed at the close of each day if desired.

[18] In this case, Oanda and Vantage were the CFD providers engaged by the investors on the recommendation of the respondents. Each of Oanda and Vantage operated a proprietary online trading platform. Each offered CFDs to investors as principal and acted as counterparty to the CFD trades in the investors' accounts on its platform.

[19] The trading in investors' accounts on those platforms included the purchase and sale of CFDs with underlying commodity assets such as copper, oil, wheat, sugar, and natural gas. Some CFDs had currency pairs as their underlying assets.

[20] Generally, CFDs are traded on a leveraged basis, which amplifies both the potential for profit and the risk of loss for investors. The Oanda and Vantage platforms were no exception. They permitted investors to engage in highly leveraged trading in their online accounts, with leverage ratios ranging between 10:1 and 500:1, with most trading at 50:1 leverage.

[21] The term "security" is broadly defined by a non-exhaustive list of 16 enumerated categories of instruments. Staff relies on one of those in submitting that each CFD was an "investment contract".

[22] In interpreting "security", and by extension "investment contract" (which is not defined in the Act), we must adopt a purposive approach, which includes consideration of the objective of investor protection.[3]

[23] As articulated by the Supreme Court of Canada and adopted by the Commission in numerous cases,[4] an investment contract comprises four elements:

a. an investment of money;

b. with a view to a profit;

c. in a common enterprise where the success or failure of the enterprise is interwoven with, and dependent on, the efforts of persons other than the investors; and

d. the efforts made by those others significantly affect the success or failure of the enterprise.

[24] However, we must be careful not to approach our interpretation of whether a CFD is an investment contract in a formulaic manner based on these static elements. We must assess the attributes of the CFDs through the overarching lens of investor protection to ensure that the interpretation of investment contract is flexible and capable of adaptation to address the breadth and variability of investment schemes devised in the capital markets.[5]

[25] There is no dispute in this case that the respondents' clients invested money with a view to a profit. The investors deposited approximately $3.8 million into online accounts with Oanda and/or Vantage, for investment in CFDs on margin, expecting to earn profits from that trading. This expectation was based fully, or in part, on the respondents' statements about the CFD trading program as a form of investment with significant daily returns. The first two of the four elements of an investment contract are established.

[26] In submitting that the third and fourth elements are established as well, Staff states that the investors were entirely dependent on the managerial efforts and control of the CFD provider and its ability to perform its obligation under the contract to realize any profit in their accounts. Staff submits that in this way, the investors remained exposed to counterparty risk in form of, among other things, insolvency/credit risk, misappropriation risk and performance risk on the part of the CFD provider.

[27] The respondents submit that the CFDs were not securities, for two main reasons:

a. the CFDs were not traded like conventional securities, in that they were not traded on any exchange, and could not be delivered to the investor; and

b. in any case, they were not an investment, but a form of betting, like that offered on gaming websites.

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3 *Furtak (Re),* 2016 ONSEC 35, (2016) 39 OSCB 9731 (***Furtak***) at para 67; *Pacific Coast Coin Exchange v Ontario Securities Commission,* [1978] 2 SCR 112 (***Pacific Coin***) at 127

4 *Pacific Coin* at 114 and 128; *Furtak* at para 66; *Axcess Automation LLC (Re)*, 2012 ONSEC 34, (2012) 35 OSCB 9019 (***Axcess***) at paras 140-141

5 *Pacific Coin* at 127-132

[28] We can dispose easily of the first of those two submissions. An instrument may be a security regardless of whether it is traded on an exchange or can be delivered to the investor. The definition of "security" in the Act contains no such constraints, and the respondents' proposed approach is inconsistent with the important investor protection policy underlying the definition.

[29] The second submission brings us to a consideration of the third and fourth elements of an investment contract. Did the CFDs constitute a common enterprise between the investors and the CFD provider, by which the efforts of the CFD provider significantly affected the success or failure of the investor's investment? We conclude that they did.

[30] As we have noted, Oanda and Vantage provided both the platform on which the investors could buy and sell CFDs, and the CFDs themselves.

[31] The investors relied on the CFD provider:

a. for access to CFDs with underlying exposure to assets such as equities, commodities, or currencies;

b. for the performance of the CFDs as there was no market for the CFDs and the CFDs were not transferable (*i.e.*, once a CFD position was opened, the investor was restricted to closing the position with the CFD provider);

c. to provide access to, and operate, the online proprietary trading platform; and

d. to hedge risk, including credit risk, performance risk and misappropriation risk appropriately so that the CFD provider could satisfy its payment and performance obligations.

[32] The CFD providers facilitated the key attributes of the common enterprise to buy or sell CFDs, including by providing investors:

a. CFDs, and exposure to markets and instruments that may not otherwise be directly available, or available in a cost-effective manner, and acting as counterparty;

b. access to leverage their investment using margin; and

c. an online platform for the execution of purchases and sales of CFDs.

[33] Our conclusion that the CFDs were securities is reinforced by the investor protection concerns that CFDs present, including their complexity, the use of margin or leverage, the potential volatility of the underlying asset, the embedded fees, the lack of price transparency, and counterparty risk.

[34] Contrary to the respondents' argument, the speculative nature of the CFDs does not detract from our determination that the CFDs are securities; rather, it raises investor protection concerns about the trading of those instruments.

[35] For these reasons, we find that the CFDs traded in the investors' accounts were investment contracts and were therefore securities within the meaning of the Act.

C. Did the respondents engage in the business of trading or advising in securities without being registered?

[36] Having found that the CFDs were securities, we turn to the second of the three issues; namely, whether the respondents engaged in the business of trading those securities, or of advising about them, without being registered. We conclude that they did engage in the business of both trading and advising.

[37] A person or company must be registered under Ontario securities law to engage in the business of trading in securities and the business of advising with respect to investing in, buying, or selling securities, unless an exemption applies.[6]

[38] The registration requirement is a cornerstone of the securities regulatory regime designed to ensure that those who engage in trading or advising related to securities are proficient and solvent, and that they act with integrity. Unregistered trading or advising defeats some of these necessary legal protections and undermines investor protection and the integrity of the capital markets.[7]

[39] Neither Namburi nor VRK Forex was ever registered in any capacity under the Act. Neither argued that any exemption contained in the Act applied to their activities.

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6 Act, ss. 25(1) and (3)

7 *Meharchand (Re),* 2019 ONSEC 7, (2019) 42 OSCB 1135 (***Meharchand***) at para 47; *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40, (2020) 43 OSCB 35 (***Money Gate***) at para 140

[40] Therefore, the only question we must answer is whether the respondents engaged in the business of trading or advising. That requires us to first decide whether the respondents' conduct constituted "trading" or "advising", and if so, whether that conduct was carried out for a business purpose.

1. Was the activity "trading"?

[41] The concept of "trading" under the Act is broad and includes any sale or disposition of a security for valuable consideration, as well as any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.[8]

[42] In determining whether a person has engaged in acts in furtherance of trading in securities, we must take a contextual approach and consider the totality of the conduct, including the surrounding circumstances, the impact of the conduct and the proximity of the acts to actual or potential trades in securities.[9]

[43] The Commission has previously found that a variety of activities constitute acts in furtherance of trading in securities (and are thereby trades, as that term is defined in the Act), including:

a. meeting with investors;

b. distributing promotional materials concerning investment programs;

c. conducting information sessions with investors;

d. assisting investors with opening trading accounts and transferring funds to those accounts;

e. placing online orders on behalf of investors; and

f. accessing client accounts for the purpose of trading in securities through powers of attorney or obtaining account information.[10]

[44] Staff alleges that the respondents engaged in trading activity by directly trading CFDs in the investors' accounts and by engaging in various acts in furtherance of such trading, including the solicitation of investors.

[45] The respondents submit that they did not engage in any trading activity. They say that the investors did not provide any funds to them but rather invested funds in their individual online accounts with the CFD providers. Further, Namburi's role was limited to working as an employee of each investor in executing trades as per the investors' instructions and to providing education to them on how to trade CFDs and "work with high-risk leverage investments".[11]

[46] We will first consider whether the respondents were directly trading on behalf of the investors. We will then consider whether any of the respondents' activities constituted acts in furtherance of trades.

(a) Directly Trading

[47] We conclude that when the respondents effected transactions in the investors' accounts, the respondents were trading. We do not accept the respondents' submission that Namburi was acting as an employee of the investor.

[48] In most instances, the respondents' contractual arrangements with the investors were formalized in a written agreement entitled "Mutual Agreement for working for Forex, Commodities CFDs and ETFs". The written agreement referred to the investor as "Employer/Investor" and the respondents as "Employee". Under these arrangements, the investors agreed to:

a. open and fund online accounts with the CFD providers for investment in CFDs on margin (the written agreement referred to these funds as "total investment");

b. give the respondents access to the investors' accounts for the purposes of trading CFDs and monitoring the CFD holdings in their accounts; and

c. pay the respondents 50% of the monthly net realized profits for all CFD trading in their accounts.

[49] The investors deposited approximately $3.8 million into their online accounts. They shared with the respondents the usernames and passwords necessary to access these accounts.

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8 Act, s. 1(1); *Khan (Re),* 2014 ONSEC 41, (2015) 35 OSCB 61 (***Khan***) at para 80; *Axcess* at paras 143-145
9 *Simba (Re),* 2018 ONSEC 41, (2018) 41 OSCB 6487 (***Simba***) at para 26; *Axcess* at paras 143-146
10 *Simba* at para 27; *Axcess* at para 144; *Khan* at paras 102-108
11 Written Submissions of VRK Forex & Investments Inc and Radhakrishna Namburi dated April 19, 2021, paras 219 and 220

[50] All six investors called as witnesses at the hearing (three by Staff and three by the respondents) confirmed that Namburi accessed their online accounts and traded CFDs on margin as well as monitored the CFD holdings on their behalf. These witnesses also confirmed that they made payments to the respondents based on the respondents' calculation of monthly net realized profits from the CFD trading in their accounts.

[51] Two investor witnesses testified that they placed some of the CFD trades in their accounts and that they received guidance or training from the respondents on these CFD trades. These investors acknowledged that the respondents were entitled to profit sharing from all trading, including trades placed by the investors and trades placed by the respondents.

[52] The respondents acknowledge that they accessed the investors' online accounts and purchased and sold CFDs on margin in these accounts. The respondents submit that these activities were based on standard instructions from the investors to "buy at a low price, sell at a high price and if it comes to profit, close the transaction".

[53] The respondents state that they prepared and provided calculations of monthly net realized profits from CFD trading to the investors. The respondents also admit that they received approximately $400,000 as profit-sharing payments from the CFD trading in the investors' accounts.

[54] There is no requirement that funds be deposited directly with the respondents for such activity to constitute trading. It is sufficient that funds were invested in online accounts with CFD providers, and that the respondents accessed these accounts and purchased and sold CFDs.

[55] We find that the respondents' actions in accessing the investors' online accounts and placing orders for purchases and sales of CFDs for significant compensation constituted "trading" within the meaning of the Act and that each sale of a CFD constituted a trade in a security. This finding is not undermined by the respondents' submission that Namburi was "working" as an employee for the investors and placing CFD trades based on standard instructions, a submission we explore further in our analysis beginning at paragraph [91] below on whether the respondents were engaged in the business of advising with respect to securities.

(b) Acts in Furtherance of a Trade

[56] Before considering that allegation, we address Staff's allegations that in addition to effecting actual trades in investors' accounts, the respondents engaged in various activities that constituted acts in furtherance of trades (which activities would constitute trades, as that term is defined in the Act). We agree with Staff's submissions that the respondents did engage in such acts.

[57] Staff alleges that the respondents:

a. used materials that promoted the CFD trading program as a form of investment with significant daily returns;

b. met with potential investors at trade shows and VRK Forex's offices to discuss the CFD trading program Namburi had developed, his expertise, his track record trading CFDs, and expected daily profits;

c. directed investors to CFD providers, and assisted the investors with opening and funding online accounts with those CFD providers; and

d. implemented profit-sharing arrangements with the investors, for which the respondents received approximately $400,000.

[58] We will examine each of these allegations in turn.

i. Promotional activities and meetings with investors

[59] Of the six investor witnesses who testified at the hearing, the three called by Staff testified that they learned of the CFD trading program through various promotional activities. One witness saw an electronic display at VRK Forex's office promoting investment opportunities and met with Namburi. Another witness responded to an online advertisement by VRK Forex about a trading training program and met with Namburi. The third witness was approached by Namburi at an investment conference about investment opportunities related to a CFD trading program developed by Namburi.

[60] The three investor witnesses called by the respondents shared residential or office space with Namburi and testified that they learned of the CFD trading program through discussions with him.

[61] All investor witnesses testified that they met with Namburi, some of them on multiple occasions, before opening their accounts. At these meetings, Namburi spoke of his background, education, experience and expertise trading currencies, commodities and CFDs, and of the opportunity to earn significant daily returns. Namburi also showed them the profitable CFD trading performance in his account or the accounts of other clients.

[62] Namburi confirmed to us that he told investors about his experience and the attributes of the CFD trading program, including the potential for significant returns, and that he distributed or showed the investors the profitable CFD trading performance in his account and other client accounts.

[63] The materials that the respondents disseminated to investors referenced investment opportunities and the potential for significant returns. These materials included:

a. business cards describing various services offered by the respondents, including:

i. a business card that included the words "Forex, Commodities, Real-Time Training. Portfolio Management, Investments, Mortgage Referral Services. Gold, Silver Bars Wholesale"; and

ii. a business card that included the words "Buy/Sell gold, Silver, Current, Best FxGlobal Money Transfer, Guaranteed Trade Investments and Financial Advisory Services";

b. an electronic scrolling display in the front window of the respondents' shopping mall office, which included messages about investment opportunities, such as "Earn every day 1 to 5 percent"; and

c. copies of other clients' account statements showing profitable CFD trading.

[64] In communications (primarily text messages) with some of the investors, Namburi repeatedly made positive statements about:

a. earnings on various CFD trades;

b. successful performance in CFD trading for other clients (including by attaching pictures of account statements showing significant investment returns); and

c. the CFD trading program generally, such as "…We make profit on regular basis. If account is more than 100k. 100% safe" and "They are giving every day 5% return on investment" (related to his suggestion to open an Oanda account in the Middle East).

[65] Namburi testified that the materials and his discussions with investors were for the purpose of promoting an opportunity to learn about a method to generate earnings on their investments. He said that the wording contained on the first business card conveyed that the respondents provided only referral services related to investments and portfolio management. The business card did not convey, and was not meant to convey, that the respondents provided investment management or portfolio management services.

[66] Namburi acknowledged that the electronic message display at VRK Forex's offices was intended to draw individuals into the office but stated that this was only for the purpose of promoting a learning opportunity and not to solicit investors.

[67] We heard conflicting evidence about the information provided by Namburi to investors about the risks and investment returns related to CFD trading. Two investor witnesses testified that Namburi stated that there was no risk to their invested funds, *i.e.*, either that the investment funds were "safe" or "fully protected", and that a daily return of between 1% and 5% was guaranteed.

[68] The other four investor witnesses testified that they understood there was risk related to the CFD trading program, with three stating that Namburi told them about clients who had suffered losses in the CFD trading program or showed them accounts with losses or accounts "waiting for money to be made".

[69] Namburi testified that he never told any investors that the CFD trading program had guaranteed returns, was safe or that there were no risks to their invested funds. Namburi stated that any references to specific returns related solely to his past performance experience. He further stated that any statements about the safety of the invested funds was a reference to the protection available in the event the CFD provider became bankrupt through the Canadian Investor Protection Fund. We note that Oanda was a member of the Canadian Investor Protection Fund as a registered order-execution-only dealer in Ontario and elsewhere in Canada, whereas Vantage was not.

[70] The respondents submit that all investors were aware of the risks as the written agreement provided by the respondents and the documents provided by both CFD providers, Oanda and Vantage, stated clearly that the trading was highly risky.

[71] The Oanda and Vantage documents contained cautions about the highly speculative and risky nature of CFD trading and the potential to lose some or all the invested funds. The written agreement prepared by the respondents contained statements about risk and investment returns including "Oanda FX trading is highly risky" and "Past Performance is not guaranteed for future Returns and Profits were not guaranteed by VRK".

[72] The three investors called by Staff testified that they did not review the materials from the CFD provider, nor the written agreement prepared by the respondents, and that they were not aware of any statements related to risk in the documents. The three investors called by the respondents acknowledged the risk statements in these documents.

[73] For the purposes of assessing whether the respondents engaged in acts in furtherance of trades, we need not determine whether they represented to investors that their invested capital would be safe or whether they guaranteed daily returns of 1% to 5%. We note the conflicting evidence of Namburi and certain investor witnesses in this regard and make no finding as to whether some or all investors were told there was no risk or that certain returns were guaranteed.

[74] We find that Namburi engaged in a variety of activities to inform investors about CFD trading, including disseminating materials promoting CFD trading as a means to earn significant returns, advertising investment training programs and meeting with investors to discuss the CFD trading program that he had developed.

ii. Information sessions about the CFD trading program

[75] The respondents also conducted information or training sessions with investors and potential clients on the CFD trading program. Some of these sessions were "live" trading sessions during which Namburi would trade in his own account or the accounts of other clients and suggest trades to those attending the session or suggest they mimic his trading. In some sessions, Namburi demonstrated the CFD trading program by reviewing and conducting trading in several trading accounts using multiple computer monitors.

[76] Four investor witnesses testified that they met with Namburi several times and observed Namburi trading in several accounts with multiple computer monitors. At these sessions, Namburi provided explanations and information about the CFD trading he was conducting. One of these investor witnesses also testified that in these sessions he would observe the trading in his account that Namburi was conducting.

[77] Namburi acknowledged that investors attended his trading demonstration sessions, observed his CFD trading and "followed" that trading in their own accounts.

iii. Facilitation of the opening and funding of trading accounts

[78] All investor witnesses testified that the respondents directed them to open and fund online accounts with either Oanda or Vantage and that they did so.

[79] The three investor witnesses called by Staff testified that Namburi assisted them in opening their online accounts with Oanda, including by providing guidance on the completion of information and providing the banking information to transfer funds to Oanda. Electronic communications between Namburi and these investors also show that he assisted them with opening and funding the online accounts.

[80] One of these witnesses testified that Namburi completed the Oanda account opening process and opened the account for him, including creating the username and password.

[81] The respondents confirm that they assisted clients in opening online accounts with CFD providers. Namburi testified that he referred investors to Oanda and later to Vantage to open online accounts. Namburi estimated that during the Material Time he assisted approximately 100 individuals in opening online accounts for CFD trading with these CFD providers.

iv. Placing orders on behalf of clients and sharing profits

[82] The respondents accessed investors' online accounts and placed orders to purchase or sell CFDs in these accounts. The investors gave the respondents authority to place the trades, including the authority to determine some or all the aspects of the trade, including the type of CFD, price, timing, and amount of leverage.

[83] It is undisputed that the respondents had arrangements with the investors to receive significant compensation for all CFD trading in their accounts, both trades placed by the respondents and trades placed by the investors, and that the respondents received profit-sharing payments of approximately $400,000 from investors.

v. Conclusion

[84] The respondents deny that any of their actions, communications or materials promoted investment opportunities or investment management services or were designed to solicit or facilitate CFD trading. They submit that the promotional materials, the statements made by them to investors, and the meetings and training sessions with individuals were undertaken solely to provide information and educate individuals about CFDs. They further argue that such conduct was designed to solicit potential clients for the purpose of "training in trading CFDs".

[85] We disagree. We do not accept Namburi's evidence that these activities were designed only to promote a learning opportunity for CFD investing and not to solicit trades in CFDs. In our view, these activities by the respondents were designed to:

a. create an interest in investing in CFDs;

b. solicit investors to open and fund online accounts and facilitate the opening and funding of these accounts;

c. ensure CFD trading was conducted in these accounts, either wholly or partially by the respondents; and

d. earn compensation from the CFD trading in these accounts.

[86] Although there may have been an additional purpose of training or education related to CFDs, this does not detract from the overall effect of the conduct to solicit investors to participate in a CFD trading program and to be compensated for that trading.

[87] We also disagree with the respondents' characterization of the wording on the business cards and in the electronic messaging, in support of their submission that they were offering only training and referral services related to investment management.

[88] We find that the respondents promoted the CFD trading program, and their services related to the CFD trading program, including monitoring and trading CFDs on behalf of investors, and that they solicited individuals to invest in the CFD trading program.

[89] The respondents met with investors, disseminated promotional materials, and made various statements about the CFD trading program, which included statements about their expertise, successful track record and potential significant returns. In addition, they provided information sessions, placed CFD trades on behalf of the investors and received significant compensation from the investors who participated in the CFD trading program.

[90] Considering all these activities and their effect, we find that the respondents engaged in acts in furtherance of trades, which constitute trades within the meaning of the Act.

2. Was the activity "advising"?

(a) Introduction

[91] We now consider whether any of the respondents' activity constituted "advising" within the meaning of the Act. We conclude that it did.

[92] An adviser is defined in the Act as any person or company who engages or holds themselves out as engaging in the business of advising others as to investing in or buying and selling securities.[12]

[93] The Commission has interpreted "adviser" in a broad manner. This approach is consistent with Commission's mandate of investor protection.[13]

[94] Giving an opinion about specific securities and the desirability of the investment or recommending the buying or selling of specific securities has been found by the Commission to constitute "advising".[14] Exercising discretionary control over a client's investments or managing their investment portfolio has also been found to be "advising" under the Act.[15]

[95] Staff submits that the respondents managed the CFD trading for the investors and engaged in unregistered advising in securities by exercising discretionary control over the CFD trading in the investors' accounts.

12 Act, s 1(1)
13 *Doulis (Re)*, 2014 ONSEC 31, (2014) 37 OSCB 8911 (***Doulis***) at paras 211 and 216; *Khan* at para 87
14 *Doulis* at paras 190-199, *Simba* at para 31
15 *Khan* at para 120

[96] The respondents submit that they did not advise the investors and did not have discretionary authority over the CFD trading in the investors' accounts. The respondents submit that Namburi worked only in the role of an employee to implement trading instructions from each investor and to educate investors.

(b) The Circumstances and Conduct related to CFD trading in Investors Accounts

[97] In assessing the respondents' activities to determine whether such conduct constituted "advising", we examine the totality of the respondents' activities, including the surrounding circumstances and the impact of these activities.

[98] All investor witnesses testified that they had no prior experience trading CFDs. Two testified that they had no experience trading any stocks or other securities and one testified that he had limited experience trading stocks or other securities. Three other witnesses testified that they had experience trading stocks, with one testifying that he had some knowledge of foreign exchange related trading.

[99] The three witnesses called by Staff testified that they had no understanding of CFDs, including the complex terms and attributes, and that they relied fully on Namburi's expertise for the CFD trading in their accounts. The other three investor witnesses called by the respondents testified that they relied on information or guidance from Namburi who had expertise with CFDs or that they learned about CFDs from observing Namburi's trading activities.

[100] Namburi testified that he had been trading CFDs since 2008. He highlighted his experience and expertise trading CFDs. He admitted that he suggested specific CFD trading to investors during training sessions.

[101] In response to Staff's allegation that he exercised discretion, Namburi testified that he traded CFDs in the investors' accounts "only as per standard instructions to buy low, sell high and to book profit if it comes" and that he traded only in types of CFD's which were selected by each investor from a "favourites list" of between 10 to 20 CFDs that he created (the **CFD Favourites List**).

[102] In sharp contrast, every investor witness testified that they granted Namburi full or partial authority over the CFD trading in their account.

[103] Four investor witnesses (the three called by Staff and one called by the respondents) testified that they engaged the respondents to manage their investments, including to conduct all CFD trading in their accounts and to monitor the CFD holdings in their accounts. They testified that Namburi made all the decisions on the CFD trading in their accounts, including the types of CFDs to trade, the timing of the trade, the amount and at what price to open and close positions.

[104] One witness testified that he sold a few profitable CFD positions in his account and Namburi instructed him to not place any further trades. The electronic communications between them confirm that Namburi told him not to make any trades in his account as it "created confusion". Namburi admitted telling this investor not to conduct any trading and testified that he told the investor to "take his expertise" for determinations of whether and when to close a CFD position.

[105] The three witnesses called by Staff testified that the respondents did not seek instructions for any specific CFD trade and that they learned of the CFD trades after the fact when they accessed their online accounts, spoke with Namburi, or received notifications from the CFD provider. One testified that as his familiarity with Namburi's trading activities increased, he asked questions and made suggestions about trading strategies to Namburi. Namburi did not take any of his suggestions, except for once when he closed a CFD position.

[106] The other witness called by the respondents testified that he gave this authority to Namburi as he did not want to "dictate or limit [Namburi's] expertise" in the CFD trading. He further testified that he did not select or create a list of the types of CFDs for his account but understood that Namburi traded based on the CFD Favourites List.

[107] The electronic communications between the three investor witnesses called by Staff and Namburi demonstrate that Namburi made decisions regarding the CFD trading in their accounts. These communications show that at various times the investors became concerned about losses in their accounts and/or margin notices and instructed Namburi to stop trading and to close the positions to avoid further losses. Namburi did not close these positions as instructed and instead told the investors he would not book or close open positions "until comes to profit".

[108] The remaining two investor witnesses called by the respondents testified that that they conducted some CFD trading and Namburi conducted some CFD trading in their online accounts. They testified that they authorized Namburi to monitor the CFD holdings and conduct CFD trading in their accounts at times when they were not available to do so.

[109] One of these witnesses testified that he authorized Namburi to trade types of CFDs from a list he prepared in consultation with Namburi and other individuals. He testified that during times when he was unable to monitor his account (either when he was working or sleeping), Namburi determined when to sell a CFD position by monitoring the price developments for the CFDs and then forming a view of the resistance level or the point at which the upward price movement was likely being impeded by the emergence of selling pressure. This investor acknowledged that Namburi's assessment of the

resistance level and determination of timing to sell a CFD required experience and skill in interpreting various price movements related to the CFD, which Namburi possessed.

[110] The other investor witness testified that Namburi conducted approximately 25% of the CFD trading in his account. He testified that he selected three types of CFDs with underlying foreign currencies and that he gave Namburi authority to purchase and sell these CFDs, including determining the amount, timing, and price to open or close positions. He also stated that sometimes Namburi would recommend a particular currency and if he felt comfortable, he would authorize Namburi to include this type of CFD in his portfolio.

[111] With respect to the CFD trading they conducted in their accounts, these investors testified that Namburi provided guidance or suggestions on CFD trading strategies and specific CFD trading during live sessions and in other discussions, all of which they used to conduct the CFD trading in their accounts.

(c) Conclusion

[112] We do not accept the respondents' characterization of these activities as training or "working as an employee" limited to administratively placing orders as instructed by investors. In our view, the respondents provided advice on CFD trading and exercised discretion over the CFD trading in the investors' accounts.

[113] It is undisputed that the respondents had experience and expertise related to CFD trading and CFD trading strategies, whereas the investors had no prior experience trading CFDs and limited or no understanding of CFDs, including the complex terms and attributes, prior to engaging the respondents.

[114] All investor witnesses testified that they relied wholly or partially on Namburi for the CFD trading strategy in their accounts, including the type of CFD, the amount and/or the price at which to open or close positions.

[115] Namburi acknowledged that he conducted CFD trading in investors' accounts based only on general instructions to buy low and sell high. He also acknowledged that he made suggestions on specific CFD trading to investors during live training sessions. Finally, he acknowledged telling one investor not to conduct trading in his account and instead to rely on Namburi's expertise.

[116] Many investors were fully dependent on Namburi for the CFD trading in their accounts and did not provide instructions to Namburi on any aspect of the CFD trades. Some investors provided instructions as to the type of CFD only and relied on Namburi to determine the other aspects of the trade.

[117] It is also undisputed that Namburi provided live trading demonstration sessions on CFD trading strategies and specific CFD trading and that investors would mimic Namburi's trading in their own accounts. Namburi stated that these trading demonstration sessions were education or training sessions and that he provided no advice as the investors were free to decide whether to place the trades.

[118] We do not accept Namburi's characterization that he provided training only in these sessions and did not provide any advice on CFD trading. The investors had no experience trading CFDs and limited or no understanding of CFDs and it was reasonable to expect that during the live demonstrations of his CFD trading expertise, investors would follow his suggested trades and rely on his expertise. Further, Namburi was well aware that investors were following or mimicking his trades during these sessions.

[119] In our view, the respondents:

a. made suggestions and recommendations to investors on CFD trading strategies;

b. provided guidance, advice, views, or recommendations to investors regarding specific CFD trading in their accounts;

c. conducted "live" trading sessions during which they recommended the type of CFDs and when to open and close specific CFD positions; and

d. monitored the CFD holdings in investors accounts and made determinations on specific CFD trading, including whether and when to purchase or sell CFDs and at what price.

[120] The respondents had authority to execute purchases and/or sales of CFDs in the investor accounts, accessed the investor accounts and conducted CFD trades in these accounts. In doing so, the respondents exercised authority and discretion over key attributes of some or all the CFD trades, including the timing, extent of leverage, price, and quantity. In many cases, the respondents also determined the type of CFD.

[121] The respondents also had authority to monitor price developments for CFDs held in the investors' accounts and determine when to close CFD positions based on their opinion of the resistance level, all of which required the exercise of judgment.

[122] Even if the respondents had general instructions to "buy low, sell high and close at a profit" or instructions to trade only select types of CFDs, they still exercised authority and discretion over important aspects of the trading of CFDs in investors' accounts, such as timing, price, amount, and extent of leverage.

[123] By engaging in this conduct, the respondents were "advising" on the buying and selling of securities within the meaning of the Act.

3. Was the trading or advising activity carried out for a business purpose?

[124] The registration requirement for trading or advising applies only if the trading or advising activity is carried out for a business purpose. We turn now to consider whether the respondents "engaged in the business of trading or advising" contrary to ss. 25(1) and (3) of the Act. We find that they did.

[125] Guidance on the business purpose test, commonly described as the "business trigger", is provided in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103CP**). The Companion Policy sets out factors to be considered in determining whether the trading activities or provision of advice is for a business purpose. The factors include, among other things:

a. engaging in activities similar to those of a registrant;

b. carrying on the activity with repetition, regularity, or continuity;

c. receiving, or expecting to receive, compensation for the activity; and

d. soliciting securities transactions.

[126] The Commission has previously relied on the business trigger factors in NI 31-103CP to determine whether the conduct was carried out for a business purpose.[16] We adopt this business purpose test as well and turn now to assessing each of these factors.

(a) Engaging in activities similar to a registrant

[127] The respondents engaged in extensive efforts to solicit investors to participate in the CFD trading program as outlined above.

[128] The respondents succeeded in signing up at least 19 investors to open and fund online accounts in the amount of approximately $3.8 million for investment in CFDs on margin with the expectation of earning profits from such trading.

[129] The investors had no prior experience trading CFDs and limited or no understanding of CFDs, including the complex terms and attributes, prior to engaging the respondents. The investors relied wholly or partially on the ability of the respondents to trade CFDs or advise on CFD trading and earn any profits in their accounts.

[130] The respondents admit that they:

a. provided guidance and assistance to investors on the opening and funding of online accounts;

b. accessed the investors' accounts and purchased and sold CFDs on margin in these accounts. In particular, the respondents generated trading instructions to the CFD providers for the trading of CFDs in the online accounts, including instructions as to the type of CFD, timing, extent of leverage, price, and quantity;

c. provided information, guidance and/or training to some of the investors on CFD trading in their accounts;

d. promoted and provided a service to the investors to continuously monitor the CFDs and related markets;

e. had a 50% net realized profit-sharing arrangement with the investors on all CFD trading in their accounts;

f. completed calculations of monthly profits and profit-sharing amounts in the investors' accounts and provided this information to investors; and

g. received approximately $400,000 from investors as profit-sharing payments from CFD trading in their accounts.

[131] We find that by promoting CFD trading, conducting trades in CFDs in investors' accounts, monitoring the CFDs held in these accounts and related market developments, providing advice and guidance on the trading of CFDs and receiving

[16] *Doulis* at para 196; *Money Gate* at para 145

compensation for such activities from the investors, the respondents engaged in activities that were similar to those of a registered advising representative.

(b) Repetitive, regular or continuous activity

[132] A second factor to be considered is whether the impugned activity was carried on repetitively, regularly or continuously. It is undisputed that this was the case.

[133] During the Material Time, a period of approximately three years, the respondents regularly promoted the CFD program, regularly provided advice and guidance related to CFD trading and repeatedly facilitated trading in CFDs for at least 19 investors for the purpose of generating, and sharing in, profits in investors' accounts over a lengthy period.

(c) Receiving or expecting to receive compensation

[134] We turn next to consider whether the respondents received, or expected to receive, compensation. The Commission has previously found that a business purpose exists when the respondent has an expectation of remuneration.[17]

[135] It is undisputed that the respondents expected remuneration from the CFD trading in the investors' accounts, whether conducted directly by the respondents or by the investor.

[136] The respondents implemented profit-sharing arrangements on the CFD trading in investors' accounts and received profit-sharing payments of approximately $400,000 from investors during the Material Time.

[137] The respondents also participated in an introducing broker arrangement with at least one of the CFD providers (Vantage). Under the terms of this arrangement, the respondents agreed to introduce clients to Vantage and were entitled to receive a commission on completed trades for each client referred to Vantage who opened an online account. The respondents acknowledge the existence of this arrangement.

[138] Accordingly, the respondents also expected to, and did, receive commissions on CFD trading for accounts opened by the investors pursuant to this introducing broker arrangement. The respondents received commissions from Vantage during the Material Time.

[139] The respondents expected to receive, and did receive, significant compensation from the above activity.

(d) Soliciting securities transactions

[140] Finally, we consider whether the respondents solicited investment in the CFDs. Again, we find that they did.

[141] The respondents repeatedly asked investors to refer new clients to them for participation in the CFD trading strategy. The respondents paid at least $8,000 in referral fees to an investor for new client referrals. The respondents solicited securities transactions not only from existing clients, but also from others via referral.

(d) Conclusion

[142] We have concluded that the respondents:

a. engaged in activity that constituted direct trading of, and acts in furtherance of trades of, the CFDs;

b. engaged in advising with respect to the CFDs; and

c. engaged in the trading and advising for a business purpose.

[143] We therefore find that the respondents were engaged in the business of trading and advising in securities without being registered to do so. Accordingly, the respondents contravened ss. 25(1) and 25(3) of the Act.

D. Did the Respondents fail to comply with the terms of the Undertaking and if so, is it in the public interest to sanction such conduct?

[144] We now consider Staff's allegations that by engaging in the activity described above, the respondents breached their promise in the Undertaking to cease that activity. We conclude that the language of the Undertaking is not sufficiently precise to support the allegations.

[17] *Doulis* at para 196 *Money Gate* at para 145

[145] The Undertaking was prepared by Staff following an investigation of certain conduct by the respondents prior to the Material Time. The respondents signed the Undertaking. The Undertaking was provided to Staff, not to the Commission itself.

[146] The Undertaking contained the following:

a. an acknowledgment by the respondents that they had contravened Ontario securities law (prior to the Material Time) by engaging in the business of trading in securities;

b. a representation that the respondents had ceased such activities; and

c. a statement that Namburi "undertakes that in the future **prior to entering Ontario's capital markets and prior to accepting new monies** [our emphasis]", Namburi and VRK Forex "will obtain registration in accordance with Ontario's securities laws, and/or retain the services of a registrant under the Act that will assist Namburi and/or VRK Forex to operate and conduct their business activities in compliance with the requirements of the Act".

[147] Namburi testified that he spoke with an OSC Enforcement Staff member, Ms. Smith, before signing the Undertaking. Namburi testified that based on those discussions, he understood that the Undertaking provided that the respondents could not continue to accept gold trade deposits from individuals without registration and that he stopped doing so. Further, he understood that the respondents did not need to be registered to trade CFDs with CFD providers and that the respondents were permitted to "teach CFDs trading to any clients".

[148] Ms. Smith was not called as a witness. The investigation notes of her call with Namburi were an exhibit to the affidavit of Peter Cho, a senior forensic accountant with the Enforcement Branch of the Commission, filed by Staff. The notes contained the following notations:

a. Namburi stated he traded "forex for himself", he was making good money and he had "friends and relatives who also wanted to trade forex, some opened accounts and gave [Namburi] money to invest for them";

b. Ms. Smith informed Namburi that "forex was a security and explained that to trade securities for other people you had to be registered;" and

c. Ms. Smith informed Namburi that he should review the Undertaking "either himself or with counsel" and then sign.[18]

[149] Namburi confirmed that notations in the investigation notes summarizing what he said to Ms. Smith about his business were accurate. However, he did not agree that the remainder of the notes accurately reflected the discussion. During cross-examination, Namburi acknowledged that Ms. Smith did not tell him he could trade CFDs in the accounts of other individuals. However, he also stated that he did not have any understanding of the registration requirements in the Act at the time he signed the Undertaking.

[150] Staff's allegations hinge on the words of the Undertaking emphasized above, *i.e.*, the requirement that the respondents take certain steps before "entering Ontario's capital markets and prior to accepting new monies". Those words are vague, and the Undertaking does not further specify the activities that would trigger the requirement to be registered or retain a registrant. It does not, for example, clearly specify that trading foreign exchange contracts would require registration; nor does it provide any details or clarification on what is meant by "entering Ontario's capital markets" or "accepting new monies". Those words allow a wide range of activities that would neither be prohibited by Ontario securities law nor require registration or an exemption from registration.

[151] We note the conflict between Namburi's testimony and the investigation notes. Given the lack of any testimony from Ms. Smith, the investigation notes were of limited assistance in dealing with this conflict.

[152] In these circumstances, we are not prepared to find that Namburi understood or was informed that registration was required for trading in foreign exchange contracts or CFDs or that he understood he was giving any undertaking with respect to such conduct.

[153] It is a serious matter to breach the terms of an undertaking given to the Commission or its staff. However, Staff bears the onus of proving that the actual terms of the undertaking were breached. In our view, the Undertaking lacks sufficient clarity to support any finding of a breach of its terms. Even read in the context of the rest of the Undertaking, the words quoted above are not sufficiently precise to give reasonable certainty to a person or company who is subject to the Undertaking.

[154] Accordingly, we dismiss Staff's allegations related to the Undertaking.

[18] Exhibit 1, Affidavit of Peter Cho sworn September 11, 2020 at 29

E. Conduct contrary to the public interest

[155] Finally, we address Staff's allegations that the respondents' breach of ss. 25(1) and (3) of the Act was "contrary to the public interest". Staff seeks a finding to that effect.

[156] As the Commission has previously noted, the phrase "conduct contrary to the public interest" appears nowhere in the Act.[19] It is an expression based on the opening words of s. 127 of the Act, which authorizes the Commission to make certain orders if to do so would be in the public interest.

[157] Given our findings that the respondents breached ss. 25(1) and 25(3) of the Act, a finding that the same conduct was contrary to the public interest is unnecessary. We decline Staff's request.

IV. CONCLUSION

[158] For the reasons set out above, we find that the respondents:

a. engaged in the business of trading in securities without being registered to do so and without an exemption, contrary to s. 25(1) of the Act; and

b. engaged in the business of advising in securities without being registered to do so and without an exemption, contrary to s. 25(3) of the Act.

[159] The parties shall contact the Registrar on or before February 14, 2022 to arrange an attendance in respect of a hearing regarding sanctions and costs. The attendance is to take place on a date that is mutually convenient, that is fixed by the Secretary and that is no later than February 28, 2022.

[160] If the parties are unable to present a mutually convenient date to the Registrar, then each party may submit to the Registrar, for consideration by a panel of the Commission, one-page written submissions regarding a date for an attendance. Any such submissions shall be submitted by 4:30 p.m. on February 14, 2022.

[161] Dated at Toronto this 24th day of January, 2022.

"Wendy Berman"

"Timothy Moseley"

"Frances Kordyback"

[19] *Canadian Tire Corporation, Limited (Re),* (1987) 10 OSCB 857*; Solar Income Fund (Re),* 2021 ONSEC 2, (2021) 44 OSCB 557 at paras 72 to 75

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
THERE IS NOTHING TO REPORT THIS WEEK.		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
High Fusion Inc.	December 31, 2021	January 21, 2022

4.2.2 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Reservoir Capital Corp.	May 5, 2021	
Cronos Group Inc.	November 16, 2021	
GreenBank Capital Inc.	November 30, 2021	
High Fusion Inc.	December 31, 2021	January 21, 2022

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Chapter 6

Request for Comments

6.1.1 CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*,
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*,
AND
RELATED PROPOSED CONSEQUENTIAL AMENDMENTS AND CHANGES

AND

CONSULTATION PAPER ON A BASE SHELF PROSPECTUS FILING MODEL
FOR INVESTMENT FUNDS IN CONTINUOUS DISTRIBUTION

MODERNIZATION OF THE PROSPECTUS FILING MODEL FOR INVESTMENT FUNDS

January 27, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are proposing to modernize the prospectus filing model for investment funds, with a particular focus on investment funds in continuous distribution. The CSA's proposed modernization will reduce unnecessary regulatory burden of the current prospectus filing requirements under securities legislation without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The fund facts document (**Fund Facts**) and the ETF facts document (**ETF Facts**) will continue to be filed annually and will continue to be delivered to investors under the current delivery requirements.

We are seeking feedback on a staged approach to implementation of a new prospectus filing model for investment funds in continuous distribution:

- **Stage 1** – As a first step, we are seeking feedback on proposed amendments that would reduce the frequency of prospectus filings by extending the lapse date period for pro forma prospectuses filed by investment funds in continuous distribution. The end result would be to shift the current prospectus renewal cycle from annual to biennial (every 2 years). There will be no change to when Fund Facts and the ETF Facts must be filed and delivered. The adoption of this change will be contingent on not having a negative impact on filing fees. Additionally, we are proposing to repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus (**90-day rule**) for all investment funds.

- **Stage 2** – In the longer term, we are also contemplating the possibility of introducing a new base shelf prospectus filing model that could apply to all investment funds in continuous distribution. We have developed a conceptual framework for this model based on an adaptation of the current shelf prospectus system and are seeking specific input on the viability of this framework.

As part of Stage 1, we are publishing, for a 90-day comment period, proposed amendments to

- National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), and

- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**),

proposed consequential amendments to

- National Instrument 81-106 *Investment Fund Continuous Disclosure*,

and proposed consequential changes to

- Companion Policy 41-101 *General Prospectus Requirements* (**41-101CP**), and
- Companion Policy 81-101 *Mutual Fund Prospectus Disclosure* (**81-101CP**)

(collectively, the **Proposed Amendments**).

As part of Stage 2, we are publishing, for a 90-day comment period, a consultation paper (the **Consultation Paper**) to provide a forum for discussing possible adaptations to the shelf prospectus filing model that could apply to all investment funds in continuous distribution. Stakeholder comments on the Consultation Paper will be used to formulate appropriate adaptations to the shelf prospectus model for use by all investment funds in continuous distribution. Any adaptations drafted as part of Stage 2 will be subject to further consultation prior to implementation.

We encourage commenters to provide any data and information that could help us evaluate the effects of modernizing the prospectus filing model for investment funds on investor protection. In addition to the general feedback on the Proposed Amendments and the Consultation Paper, we have also set out specific questions for stakeholders to consider.

The text of the Proposed Amendments is contained in Annexes A, B, C, D and E of this notice and will also be available on the websites of the following CSA jurisdictions:

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

Substance and Purpose

The purpose of the Proposed Amendments is to modernize the prospectus filing model for investment funds without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The current prospectus filing model was based on an investment fund prospectus being filed every 12 months in order to remain in continuous distribution and the prospectus being delivered to investors in connection with a purchase. With the introduction of the Fund Facts and the ETF Facts as summary disclosure documents that are now delivered to investors instead of the prospectus, investors are provided with key information about a fund in a simple, accessible and comparable format. The Fund Facts and ETF Facts are required to be filed annually and provide disclosure that changes from year to year. In contrast, a prospectus is also filed annually but the disclosure in the prospectus does not generally change materially from year to year.

A prospectus must contain full, true and plain disclosure of all material facts relating to the securities being distributed. Where material changes in respect of a mutual fund take place prior to that fund's next prospectus renewal (e.g., fee changes, changes in investment objectives or fund mergers), a fund must file a material change report and also amend its prospectus, Fund Facts or ETF Facts to reflect the new information, if applicable. These requirements help ensure that the mutual fund's continuous disclosure and offering documents are kept up to date on a continuous basis so that prospective investors have access to up-to-date disclosure to inform their investment decision.

As part of Stage 1, the Proposed Amendments will

- extend the lapse date for investment funds in continuous distribution from 12 months to 24 months, which will allow investment funds in continuous distribution to file their pro forma prospectuses biennially, rather than annually, and
- repeal the 90-day rule for all investment funds.

Implementation of the Proposed Amendments will better reflect the shift from the delivery of the prospectus to the delivery of the Fund Facts and ETF Facts to investors and reduce unnecessary regulatory burden imposed by the current prospectus filing requirements under securities legislation on investment funds.

Background

The Proposed Amendments are part of Stage 1 of the CSA's proposed modernization of the prospectus filing model for investment funds. The Proposed Amendments are also in response to comments received on the Project RID Consultation (as defined below), as well as the OSC Burden Reduction Consultation (as defined below).

On September 12, 2019, the CSA published for consultation Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1, as part of the CSA's efforts to reduce regulatory burden for investment fund issuers (**Project RID Consultation**). On October 7, 2021, the CSA published final amendments for Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1 (**Project RID amendments**).

On January 14, 2019, the Ontario Securities Commission (**OSC**) published OSC Staff Notice 11-784 *Burden Reduction* to seek suggestions from stakeholders on ways to further reduce unnecessary regulatory burden (**OSC Burden Reduction Consultation**).

The Current Prospectus Filing Model for Investment Funds in Continuous Distribution

The prospectus is the source of all material information about an investment fund and the prospectus renewal process ensures that information is kept current and up-to-date. Securities legislation requires an investment fund to file a new prospectus every 12 months in order to remain in continuous distribution. *A pro forma* prospectus must be filed not less than 30 days prior to the lapse date of the previous prospectus. A final prospectus must then be filed not later than 10 days following the lapse date of the previous prospectus and a receipt for the final prospectus must be obtained within 20 days following the lapse date of the previous prospectus.

For an annual prospectus renewal for conventional mutual funds, the following prospectus and related documents must be prepared and filed: the simplified prospectus (**SP**), Fund Facts, material contracts not previously filed, personal information forms where required, blacklines of the SP and Fund Facts from the latest filed versions, annual and interim financial statements with a signed auditor's report, an auditor's consent letter, and French translations of the SP and Fund Facts, if the documents are also filed in Quebec. For an annual prospectus renewal for exchange-traded mutual funds (**ETFs**), the same documents must be prepared and filed, except ETFs prepare and file a long-form prospectus instead of an SP, and the ETF Facts instead of a Fund Facts.

With respect to the prospectus filing model for investment funds in continuous distribution, stakeholders commented that the model should be modernized because the annual prospectus filing requirement is an unnecessary regulatory burden for investment funds in continuous distribution. Investment fund managers spend significant internal and external resources on the preparation and filing of annual prospectus and related documents, which generally do not change materially from year to year. Some stakeholders suggested reducing the frequency of prospectus renewal by extending the prospectus lapse date to allow for prospectuses to be renewed every other year. Other stakeholders suggested that investment funds in continuous distribution should be allowed to use the shelf prospectus system available to public companies. Stakeholders noted that investors rely on the Fund Facts or the ETF Facts, rather than the prospectus, for key information about a fund to inform their investment decision. Stakeholders also noted that the continuous disclosure regime in National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) ensures that investors will continue to be informed of material changes and prospectus amendments in a timely manner.

The Current 90-Day Prospectus Filing Requirement for Investment Funds

Securities legislation requires that an investment fund issuer file a final prospectus no more than 90 days after the date of the receipt for the preliminary prospectus. If the investment fund issuer is unable to meet the 90-day filing deadline, then an exemptive relief application must be filed to seek an extension of the 90-day rule.

The 90-day rule was implemented to ensure that corporate issuers are not marketing by means of preliminary prospectuses containing outdated information, particularly financial statements. Stakeholders commented that while the 90-day rule was also adopted for investment funds, investment funds generally do not market by means of preliminary prospectuses. Also, preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days. Stakeholders noted that there is no investor protection rationale for the 90-day rule for investment funds, unlike for corporate issuers. Some stakeholders suggested that eliminating the 90-day rule for investment funds would help reduce regulatory burden as investment fund issuers would no longer be required to file an application for exemptive relief in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. Such exemptive relief is routinely granted to investment fund issuers.

Summary of the Proposed Amendments

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

The Proposed Amendments would extend the lapse date for investment funds in continuous distribution from 12 months to 24 months.

The Proposed Amendments would result in the following changes:

(i) Cost Savings

The Proposed Amendments would extend the lapse date for investment funds in continuous distribution from 12 months to 24 months. We anticipate that investment funds in continuous distribution would save the time, effort and costs associated with a prospectus filing, including external and internal resources, every other year.

(ii) Biennial Prospectus Filing

The Proposed Amendments would allow prospectuses and related documents for investment funds in continuous distribution to be filed biennially, instead of annually.

(iii) Prospectus Amendments

The Proposed Amendments would require every prospectus amendment to be filed as an amended and restated prospectus. Prospectus amendments would no longer be made in the form of a "slip sheet" amendment because the number of "slip sheet" amendments associated with a prospectus would increase over a 2-year period relative to a 1-year period, thereby making it more difficult to trace through how disclosure pertaining to a particular fund has been modified.

(iv) Filing Processes

In terms of filing processes, for the years where a "renewal" prospectus is not being filed, a Fund Facts or ETF Facts, as applicable, would be filed as (i) a "Year 2 Fund Facts – Private" or "Year 2 ETF Facts – Private", respectively, where there are material changes to the disclosure from the most recently filed Fund Facts or ETF Facts, or (ii) a "Year 2 Fund Facts – Auto Public" or "Year 2 ETF Facts – Auto Public", respectively, if there are no material changes to the disclosure from the most recently filed Fund Facts or ETF Facts.

(A) Private Filings

The filing of a "Year 2 Fund Facts – Private" or "Year 2 ETF Facts – Private" would be filed with a blackline showing changes from the most recently filed version along with a prospectus certificate and would trigger a "prospectus review process" of any material changes made to the disclosure since the most recently filed Fund Facts or ETF Facts, respectively, which would conclude with the issuance of a receipt in connection with the filing. If the material change(s) relate to the information contained in the corresponding prospectus, then a blackline of the prospectus would also be filed, along with any changes to personal information forms, if applicable.

(B) Auto-Public Filings

Where there are no material changes since the most recently filed Fund Facts or ETF Facts and changes are limited to updating the variable data (i.e., date, top 10 holdings, investment mix, risk rating, past performance, MER, TER and fund expenses), the new filing categories of "Year 2 Fund Facts – Auto Public" and "Year 2 ETF Facts – Auto Public" can be used and the document will be made public automatically without being subject to a prospectus review process. Filings under "Year 2 Fund Facts – Auto Public" and "Year 2 ETF Facts – Auto Public" would be required to be filed with a blackline showing changes from the most recently filed version of the Fund Facts or ETF Facts, as applicable, but would not be required to be filed with a certificate.

(v) Local Fee Rule Changes

By moving to a biennial filing model without changes to local fee rules, there will likely be an impact on fees collected in connection with prospectus filings. We anticipate that affected CSA jurisdictions will make concurrent changes to their fee rules to ensure that the Proposed Amendments will not have a negative impact on filing fees. In some CSA jurisdictions, public consultation on changes to local fee rules may also be required. It is contemplated that local fee rules will be changed such that current filing fees for prospectuses for investment funds in continuous distribution will instead be replaced with filing fees for the Fund Facts and ETF Facts. For additional clarity, filing fees for the Fund Facts and ETF Facts in the years when a "renewal" prospectus is not being filed will be the same as in the years when a "renewal" prospectus is being filed.

The Lapse Date Extension would not affect the following:

(i) Prospectus Form Requirements

The Proposed Amendments would not require amendments to the form requirements for prospectus related disclosure documents for investment funds in continuous distribution.

As part of the CSA's efforts to reduce regulatory burden for investment fund issuers, the Project RID amendments consolidate annual information form disclosure into an SP to provide more streamlined disclosure for investors.

(ii) Fund Facts and ETF Facts Requirements

The Proposed Amendments would not affect the form requirements or the filing requirements for the Fund Facts or the ETF Facts. The Funds Facts or ETF Facts, as applicable, would continue to be filed annually in order to ensure that variable information in those documents is not stale. On this basis, the Fund Facts or ETF Facts would be filed by the 12-month anniversary of the investment fund's most recently filed prospectus.

The Proposed Amendments would not affect the Fund Facts delivery requirement or the ETF Facts delivery requirement. The Fund Facts or ETF Facts must be delivered to purchasers in accordance with securities legislation.

(iii) Material Changes

The Proposed Amendments would not affect the reporting requirements for material changes, or the need to update the prospectus for investment funds in continuous distribution to reflect any material changes. Material changes will continue to be reported by way of material change reports, in accordance with NI 81-106.

(iv) Continuous Disclosure Documents

The Proposed Amendments would not affect the filing requirement or delivery requirement of an investment fund's annual financial statements and interim financial reports, in accordance with NI 81-106.

Similarly, the Proposed Amendments would not affect the filing requirement or delivery requirement of an investment fund's annual management reports of fund performance and interim management reports of fund performance, in accordance with NI 81-106.

(v) Investor Rights

The Proposed Amendments would not affect investor rights relating to liability for misrepresentation in a prospectus. For example, for a conventional mutual fund, the following documents will continue to be incorporated by reference into the simplified prospectus:

- the most recently filed Fund Facts,
- the most recently filed annual financial statements,
- any interim financial reports filed after the annual financial statements,
- the most recently filed management report of fund performance, and
- any interim management report of fund performance filed after the annual management report of fund performance.

(vi) Certificate Pages

The Proposed Amendments would not affect the certificate pages filed with a prospectus or a prospectus amendment. The certificate pages filed with a prospectus or a prospectus amendment include all documents incorporated by reference and are effective until the next prospectus or prospectus amendment filing.

(b) Repeal of the 90-Day Rule for Investment Funds

The Proposed Amendments would repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus for investment funds.

Impact on Investors

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

Although we are proposing to extend the lapse date period, to the extent that an investment fund in continuous distribution does experience a significant change, the material change reporting requirements in NI 81-106 would apply and there would be an obligation to update any affected prospectus disclosure by way of an amendment. As a result, shifting to a biennial prospectus filing model would not affect the currency or accuracy of the information available to investors. In addition, the Proposed Amendments would not affect the filing and delivery requirements of the Fund Facts and the ETF Facts, which provide key information about a fund for investors to make an informed investment decision.

(b) Repeal of the 90-Day Rule for Investment Funds

As preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days, eliminating the 90-day rule does not raise any investor protection issues. The Proposed Amendments will help reduce regulatory burden as investment fund issuers would no longer be required to file an exemptive relief application in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt.

Anticipated Costs and Benefits

The prospectus regime for investment funds is cumbersome and the filing process is repetitive and frequent. Prospectuses must be filed annually even when there are no substantive changes in content. Any lapse date extension must be effected by way of exemptive relief, which results in unnecessary costs for the affected issuer.

Overall, we are of the view that the potential benefits of the Proposed Amendments outweigh the costs of making them. We do not expect investment fund managers will incur any material incremental costs to comply with the Proposed Amendments.

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

The Proposed Amendments will benefit both investors and investment funds in continuous distribution by reducing the unnecessary regulatory burden of the current prospectus filing requirements under securities legislation. Investors will benefit from lower fund expenses as a result of shifting to biennial prospectus filing. Investment funds in continuous distribution will benefit as a result of the time, effort and cost savings of biennial prospectus filing.

(b) Repeal of the 90-Day Rule for Investment Funds

The Proposed Amendments will also benefit investment funds by reducing the unnecessary regulatory burden of filing exemptive relief applications in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt.

Local Fee Changes

As explained above, changes to local fee rules will also be required to ensure that there is not a negative impact on filing fees in each CSA jurisdiction. In some CSA jurisdictions, public consultation will be required on local fee rule changes. Given that fee rule changes are local matters, it is expected that the necessary processes in each jurisdiction would run separately from this consultation and any required changes to local fee rules would be finalized prior to the effective date of the Proposed Amendments.

Transition

There will not be a transition period prior to the effective date of the Proposed Amendments.

Request for Comments

Please submit your comments on the Proposed Amendments, the Consultation Paper, and specifically, the Consultation Questions in this Notice. We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at www.asc.ca, the Ontario Securities Commission at www.osc.ca and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Deadline for Comments

Please submit your comments in writing on or before April 27, 2022. If you are not sending your comments by email, please send a USB flash drive containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to all of the CSA as follows:

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

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

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

M^e^ Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: (514) 864-8381
Email: consultation-en-cours@lautorite.qc.ca

Content of Annexes

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

Annex A: Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*

Annex B: Proposed Changes to Companion Policy 41-101 *General Prospectus Requirements*

Annex C: Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

Annex D: Proposed Changes to Companion Policy 81-101 *Mutual Fund Prospectus Disclosure*

Annex E: Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*

Annex F: Specific Consultation Questions Relating to the Lapse Date Extension

Annex G: Consultation Paper

Annex H: Local Matters

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission

James Leong
Senior Legal Counsel,
Corporate Finance
British Columbia Securities Commission
Tel: 604 899-6681
Email: jleong@bcsc.bc.ca

Michael Wong
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British Columbia Securities Commission
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Email: mpwong@bcsc.bc.ca

Alberta Securities Commission

Chad Conrad
Senior Legal Counsel, Corporate Finance
Alberta Securities Commission
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Email: jan.bagh@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Heather Kuchuran
Director, Corporate Finance
Securities Division
Financial and Consumer Affairs Authority of
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Email: heather.kuchuran@gov.sk.ca

Manitoba Securities Commission

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Senior Analyst
The Manitoba Securities Commission
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Ontario Securities Commission

Irene Lee
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Ontario Securities Commission
Tel: 416-593-3668
Email: ilee@osc.gov.on.ca

Stephen Paglia,
Manager, Investment Funds and
Structured Products Branch
Ontario Securities Commission
Tel: 416-593-2393
Email: spaglia@osc.gov.on.ca

Autorité des marchés financiers

Olivier Girardeau
Senior Analyst, Investment Funds Oversight
Autorité des marchés financiers
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Toll-free: 1 800 525-0337, ext. 4334
Email: olivier.girardeau@lautorite.qc.ca

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ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.

2. Subsection 2.3(1) is amended by adding ", other than an investment fund,***" after "***An issuer***".***

3. Subsection 2.3(1.1) is amended by adding ", other than an investment fund,***" after "***An issuer***".***

4. Subsection 2.3 (1.2) is amended by adding ", other than an investment fund,***" after "***If an issuer***".***

5. The following Part is added:

PART 3D: FILING OF ETF FACTS DOCUMENTS WITHOUT A PROSPECTUS

3D.1 Required documents for filing an ETF facts document – An ETF that files an ETF facts document without a preliminary, pro forma or final prospectus must

(a) file, with an ETF facts document for each class or series of securities of the ETF, the following documents if there is a material change to the ETF in respect of the disclosure in the most recently filed ETF facts document:

(i) an amendment to the corresponding prospectus, certified in accordance with Part 5;

(ii) a copy of any material contract, and any amendments to a material contract, that have not previously been filed, and

(b) at the time an ETF facts document for each class or series of securities of the ETF is filed, deliver or send to the securities regulatory authority

(i) a copy of the ETF facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the most recently filed ETF facts document, and

(ii) if there is a material change to the ETF in respect of the disclosure in the most recently filed ETF facts document,

(A) if an amendment to the prospectus is filed, a copy of the prospectus blacklined to show changes, including the text of deletions, from the most recently filed prospectus, and

(B) details of any changes to the personal information form required to be delivered under subparagraph 9.1(1)(b)(ii), in the form of the personal information form, since the delivery of that information in connection with the filing of the prospectus of the ETF or another ETF managed by the manager.***.***

6. Section 6.1 is amended by adding the following subsection:

(3.1) Despite subsection (1), an amendment to a prospectus of an ETF must be an amended and restated prospectus.***.***

7. Paragraph 10.1(2)(a) is amended by replacing "or the amendment to the final prospectus***" with "***, the amendment to the final prospectus or the ETF facts document referred to in section 3D.1***".***

8. Section 17.2 is amended to add the following subsection:

(1.1) This section does not apply to an ETF.***.***

9. The following sections are added after section 17.2:

17.3 Lapse date of an ETF – (1) This section applies only to an ETF.

(2) In this section, "lapse date" means, with reference to the distribution of a security that has been qualified under a prospectus, the date that is 24 months after the date of the most recent final prospectus relating to the security.

(3) An ETF must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the ETF files a new prospectus that complies with securities legislation and a receipt for that new prospectus is issued by the regulator or, in Québec, the securities regulatory authority.

(4) Despite subsection (3), a distribution may be continued for a further 24 months after a lapse date if

(a) the ETF files an ETF facts document for each class or series of securities of the ETF no earlier than 13 months and no later than 12 months before the lapse date of the previous prospectus,

(b) the ETF delivers a pro forma prospectus not less than 30 days before the lapse date of the previous prospectus,

(c) the ETF files a new final prospectus not later than 10 days after the lapse date of the previous prospectus, and

(d) a receipt for the new final prospectus is issued by the regulator or, in Québec, the securities regulatory authority within 20 days after the lapse date of the previous prospectus.

(5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.

(6) Subject to any extension granted under subsection (7), if a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.

(7) The regulator or, in Québec, the securities regulatory authority may, on an application of an ETF, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

17.4 Lapse date of an ETF – Ontario – In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a prospectus for an ETF is extended to the date 24 months from the date of issuance of the receipt in accordance with section 17.3.**.**

10. This Instrument comes into force on •.

ANNEX B

PROPOSED CHANGES TO
COMPANION POLICY 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. Companion Policy 41-101 General Prospectus Requirements is changed by this Document.

2. Part 5A of the Companion Policy is changed by adding the following section:

5A.6 Filing of an ETF facts document without a prospectus – An ETF facts document that is filed without a prospectus under section 3D.1 of the Instrument should be filed under the category of "Year 2 ETF Facts – Auto Public" or "Year 2 ETF Facts – Private". An ETF facts document filed under the category of "Year 2 ETF Facts – Auto Public" should only include the following changes from the most recently filed ETF facts document:

(a) the date of the document (Item 1(f) of Part I of Form 41-101F4)

(b) the total value of the ETF (Item 2 of Part I of Form 41-101F4)

(c) the MER (Item 2 of Part I and Item 1.3(2) of Part II of Form 41-101F4)

(d) the average daily volume (Item 2(2) of Part I of Form 41-101F4)

(e) the number of days traded (Item 2(2) of Part I of Form 41-101F4)

(f) the pricing information (Item 2(3) of Part I of Form 41-101F4)

(g) the top 10 investments (Item 3(5) of Part I of Form 41-101F4)

(h) the investment mix (Item 3(6) of Part I of Form 41-101F4)

(i) the risk rating (Item 4(2) of Part I of Form 41-101F4)

(j) the past performance (Item 5 of Part I of Form 41-101F4)

(k) the TER (Item 1.3(2) of Part II of Form 41-101F4), and

(l) the ETF expenses (Item 1.3(2) of Part II of Form 41-101F4).

If there is a change to the most recently filed ETF facts document that would be considered to be a material change under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, then the Year 2 ETF Facts should be filed under the category of "Year 2 ETF Facts – Private", together with the documents required to be filed under section 3D.1 of the Instrument and section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.**.**

3. This change become effective on •.

ANNEX C

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. National Instrument 81-101 Investment Funds is amended by this Instrument.

2. Subsection 2.1(1) is amended by

(a) deleting "and***" at the end of subparagraph (d)(iii),***

(b) replacing ".***" at the end of subparagraph (e) with "***; and***", and***

(c) adding the following paragraph:

(f) that files a fund facts document without a simplified prospectus must file the fund facts document in the form of a fund facts document prepared in accordance with Form 81-101F3 for each class or series of securities of the mutual fund.***.***

3. Subsection 2.1(2) is repealed.

4. Section 2.2 is amended by

(a) replacing subsection (1) with the following:

(1) An amendment to a simplified prospectus must be an amended and restated simplified prospectus,***,***

(b) repealing subsection (2), and

(c) replacing subsection (3) with the following:

(3) An amendment to a simplified prospectus must be identified and dated as follows: "Amended and Restated [*identify document*] dated [*insert date of amendment*], amending and restating [*identify document*] dated [*insert date of document being amended*]."***.***

5. Section 2.3 is amended by

(a) deleting "if the amendment to the simplified prospectus is in the form of an amended and restated simplified prospectus,***" from subparagraph (4)(b)(i), and***

(b) adding the following subsection:

(5.2) A mutual fund that files a fund facts document without a preliminary, pro forma or simplified prospectus must

(a) file, with a fund facts document for each class or series of securities of the mutual fund, the following documents if there is a material change to the mutual fund in respect of the disclosure in the most recently filed fund facts document:

(i) an amendment to the corresponding simplified prospectus, certified in accordance with Part 5.1;

(ii) a copy of any material contract, and any amendment to a material contract that have not previously been filed, and

(b) at the time a fund facts document for each class or series of securities of the mutual fund is filed, deliver or send to the securities regulatory authority

(i) a copy of the fund facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the most recently filed fund facts document, and

(ii) if there is a material change to the mutual fund in respect of the disclosure in the most recently filed fund facts document,

(A) if an amendment to the simplified prospectus is filed, a copy of the simplified prospectus blacklined to show changes, including the text of deletions, from the most recently filed simplified prospectus, and

(B) details of any changes to the personal information required to be delivered under subparagraph (1)(b)(ii), (2)(b)(iv) or (3)(b)(iii), in the form of the personal information form and authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager.**.**

6. Section 2.5 is replaced with the following:

2.5 Lapse Date – (1) In this section, "lapse date" means, with reference to the distribution of a security that has been qualified under a simplified prospectus, the date that is 24 months after the date of the most recent simplified prospectus relating to the security.

(2) A mutual fund must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the mutual fund files a new simplified prospectus that complies with securities legislation and a receipt for that new simplified prospectus is issued by the regulator or, in Québec, the securities regulatory authority.

(3) Despite subsection (2), a distribution may be continued for a further 24 months after a lapse date if

(a) the mutual fund files a fund facts document for each class or series of securities of the mutual fund no earlier than 13 months and no later than 12 months before the lapse date of the previous simplified prospectus,

(b) the mutual fund delivers a *pro forma* simplified prospectus not less than 30 days before the lapse date of the previous simplified prospectus,

(c) the mutual fund files a new final simplified prospectus not later than 10 days after the lapse date of the previous simplified prospectus, and

(d) a receipt for the new final simplified prospectus is issued by the regulator or, in Québec, the securities regulatory authority within 20 days after the lapse date of the previous simplified prospectus.

(4) The continued distribution of securities after the lapse date does not contravene subsection (2) unless and until any of the conditions of subsection (3) are not complied with.

(5) Subject to any extension granted under subsection (6), if a condition in subsection (3) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (3) within 90 days after the purchaser first became aware of the failure to comply with the condition.

(6) The regulator or, in Québec, the securities regulatory authority may, on an application of a mutual fund, extend, subject to such terms and conditions as it may impose, the times provided by subsection (3) where in its opinion it would not be prejudicial to the public interest to do so**.**

7. The following section is added after section 2.5:

2.5.1 Lapse Date – Ontario – In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a simplified prospectus is extended to the date 24 months from the date of issuance of the receipt in accordance with section 2.5**.**

8. This Instrument comes into force on •.

ANNEX D

PROPOSED CHANGES TO
COMPANION POLICY 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. Companion Policy 81-101 Mutual Fund Prospectus Disclosure is changed by this Document.

2. Part 4.1 of the Companion Policy is changed by adding the following section:

4.1.6 Filing of a fund facts document without a prospectus – A fund facts document that is filed without a prospectus under subsection 2.3(5.2) of the Instrument should be filed under the category of "Year 2 Fund Facts – Auto Public" or "Year 2 Fund Facts – Private". A fund facts document filed under the category of "Year 2 Fund Facts – Auto Public" should only include the following changes from the most recently filed fund facts document:

(a) the date of the document (Item 1(d) of Part I of Form 81-101F3)

(b) the total value of the fund (Item 2 of Part I of Form 81-101F3)

(c) the MER (Item 2 of Part I and Item 1.3(2) of Part II of Form 81-101F3)

(d) the top 10 investments (Item 3(4) of Part I of Form 81-101F3)

(e) the investment mix (Item 3(5) of Part I of Form 81-101F3)

(f) the risk rating (Item 4(2) of Part I of Form 81-101F3)

(g) the past performance (Item 5 of Part I of Form 81-101F3)

(h) the TER (Item 1.3(2) of Part II of Form 81-101F3), and

(i) the fund expenses (Item 1.3(2) of Part II of Form 81-101F3).

If there is a change to the most recently filed fund facts document that would be considered to be a material change under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, then the Year 2 Fund Facts should be filed under the category of "Year 2 Fund Facts – Private", together with the documents required to be filed under subsection 2.3(5.2) of the Instrument and section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.**.**

3. This change become effective on •.

ANNEX E

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

1. National Instrument 81-106 Investment Funds Continuous Disclosure is amended by this Instrument.

2. Section 9.2 is amended by renumbering it as subsection 9.2(1) and by adding the following subsection:

(2) Subsection (1) does not apply to an investment fund in continuous distribution that, during the 12 months preceding its financial year end, has filed

(a) an ETF facts document under section 3D.1 of National Instrument 41-101 *General Prospectus Requirements*, or

(b) a fund facts document under subsection 2.3(5.2) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.**.**

3. This Instrument comes into force on •.

ANNEX F

SPECIFIC CONSULTATION QUESTIONS RELATING TO THE LAPSE DATE EXTENSION

1. Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.

2. Would cost savings from the Lapse Date Extension be passed onto investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.

3. Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed investment decisions.

4. Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of “slip sheet” amendments make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.

ANNEX G

CONSULTATION PAPER ON A BASE SHELF PROSPECTUS FILING MODEL FOR INVESTMENT FUNDS IN CONTINUOUS DISTRIBUTION

Introduction

This Consultation Paper provides an overview of our Stage 2 proposal and invites stakeholders to provide responses to questions to help shape the proposal, ultimately determining whether we should publish for comment proposed amendments aimed at introducing a base shelf prospectus filing model that could apply to all investment funds in continuous distribution. Such a base shelf prospectus filing model would be based on an adaptation of the shelf prospectus system provided its benefits to market participants would outweigh its costs, including consideration of any adverse impact on the protection of investors.

Current Lapse Date Requirements and the Proposed Amendments

An investment fund in continuous distribution will file a *pro forma* long form prospectus to qualify those distributions. Under current Canadian securities legislation, the *pro forma* long form prospectus will lapse in just over 12 months from the date a receipt is issued for it. If the Proposed Amendments are adopted, the *pro forma* long form prospectus will lapse in just over 24 months from the date a receipt is issued for it. The annual or biennial lapse of a *pro forma* prospectus causes investment funds to incur the time and costs of preparing a renewal prospectus that is subject to pre-receipt regulatory review even though much of the disclosure remains unchanged year-to-year.

Base Shelf Prospectus

If we proceed to Stage 2, we would propose a new rule to permit an investment fund to qualify continuous distributions of its securities with a base shelf prospectus that is subject to a lapse date greater than 24 months (a **Base Shelf Prospectus**).

The Stage 2 proposal will also set out Base Shelf Prospectus requirements to ensure no adverse impact on investor protection. For example, material facts that are not disclosed in a Base Shelf Prospectus should be updated through the filing of either: (i) an amendment to the Base Shelf Prospectus; or (ii) a document that is incorporated by reference into the Base Shelf Prospectus. Moreover, a person or company required to sign a prospectus certificate may be required to provide a forward-looking certificate similar to those required under the base shelf prospectus system set out in Part 9 or Appendix A of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**).

The base shelf prospectus regime under NI 44-102 provides an example of how to ensure a prospectus discloses all material facts and how to impose liability on any person or company required to certify that the prospectus discloses all material facts at the time of a distribution. These two principles then support the adoption of Part 2 of NI 44-102, which provides that the lapse date for a base shelf prospectus is the date 25 months from the date of issuance of the receipt. NI 44-102 further sets out the prospectus requirements in respect of a base shelf prospectus, shelf prospectus supplements (which are incorporated by reference into the base shelf prospectus), and any documents incorporated by reference into the base shelf prospectus. NI 44-102 further sets out the certification requirements so they may be forward-looking.

For investment funds in continuous distribution, the Base Shelf Prospectus could have a lapse date beyond 25 months. To ensure investors continue to receive information necessary to make informed investment decisions, disclosure documents like the Fund Facts and ETF Facts that are required to be delivered to purchasers *in lieu* of a prospectus, would continue to be required to be updated annually and delivered. These documents would be incorporated by reference into the Base Shelf Prospectus and, as a result of forward-looking certification, would be subject to primary market liability in the event of a misrepresentation.

On September 12, 2019, we published for comment,[1] among other things, a proposal to reduce the regulatory burden for investment fund issuers by amending existing rules to remove redundant information in selected disclosure documents. A Base Shelf Prospectus regime would also build on the September 2019 proposal by identifying items within the consolidated disclosure that does not need to be updated annually. Disclosure that does need to be updated annually would be moved into a document that would be incorporated by reference into the Base Shelf Prospectus.

[1] https://www.osc.ca/sites/default/files/pdfs/irps/ni_20190912_41-101_reducing-regulatory-burden-for-investment-fund-issuers.pdf

Consultation Questions

We welcome your comments on the issues outlined in this Consultation Paper. In addition, we are also interested in your views and comments on the following specific questions:

1. Please identify the disclosure required in a simplified prospectus (**SP**) or an ETF prospectus that is unlikely to change year-to-year.

    (a) We think this disclosure should be subject to regulatory review before a prospectus receipt is issued. Do you agree? Please explain.

    (b) We think it would be appropriate to require an amended and restated Base Shelf Prospectus to be filed and be subject to regulatory review before a receipt for the amended and restated Base Shelf Prospectus is issued if there is a change to this disclosure. Do you agree? Please explain.

    (c) Would it be appropriate for Part A of an SP under the Project RID amendments to form the equivalent of a base shelf prospectus for a group of investment funds under a Base Shelf Prospectus regime? Please explain.

    (d) Would it be appropriate for Part B of an SP under the Project RID amendments to form the equivalent of a prospectus supplement establishing an offering program for an investment fund under a Base Shelf Prospectus regime? Please explain.

2. Please identify the disclosure required in an SP and an ETF prospectus that is likely to change year-to-year.

    (a) Please confirm if this disclosure is also required to be updated at least annually in a Fund Facts or ETF Facts or other disclosure document required to be filed by investment funds in continuous distribution under Canadian securities legislation.

    (b) Should this disclosure be subject to regulatory review before a prospectus receipt is issued? Please explain.

    (c) Should this disclosure be subject to regulatory review only on a continuous disclosure basis? Please explain.

3. Please identify, categorize, and estimate the annual costs saved by an investment fund in continuous distribution if it were not required to file an SP or an ETF prospectus. In this regard, we note that any Stage 2 proposal for a Base Shelf Prospectus should not have a negative impact on filing fees. Accordingly, any costs savings identified should not include reduced filing fees.

4. Please identify any adverse impacts a Base Shelf Prospectus may have on the disclosure investors need to make informed investment decisions.

5. Please identify any adverse impacts a Base Shelf Prospectus may have on the liability rights investors currently have under the requirement to file an SP or an ETF prospectus.

6. How should the current base shelf prospectus filing model for public companies be adapted for use by investment funds in continuous distribution?

7. We contemplate a lapse date for a Base Shelf Prospectus to extend beyond 25 months. What would be an appropriate lapse date for a Base Shelf Prospectus for investment funds in continuous distribution? We think it would be prejudicial to the public interest for a Base Shelf Prospectus not to be subject to a lapse date at all. Do you agree? Please explain.

ANNEX H

LOCAL MATTERS

ONTARIO SECURIITES COMMISSION

1. Introduction

This Annex to the accompanying CSA Notice and Request for Comments (the **CSA Notice**) sets out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**). The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice.

The CSA are publishing for comment proposed amendments to:

- National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), and
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**),

and proposed changes to:

- Companion Policy 41-101 *General Prospectus Requirements* (**41-101CP**), and
- Companion Policy 81-101 *Mutual Fund Prospectus Disclosure* (**81-101CP**)

(collectively, the **Proposed Amendments**). The Proposed Amendments will:

(i) reduce the frequency of prospectus filings by extending the lapse date period for pro forma prospectuses filed by investment funds in continuous distribution, and

(ii) repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus (**90-day rule**) for all investment funds.

Please refer to the main body of the CSA Notice.

2. Overview

(a) The Current Prospectus Filing Model for Investment Funds in Continuous Distribution

Investment funds are required under securities legislation to file a new prospectus every 12 months in order to remain in continuous distribution. A pro forma prospectus must be filed not less than 30 days prior to the lapse date of the previous prospectus. A final prospectus must then be filed not later than 10 days following the lapse date of the previous prospectus and a receipt for the final prospectus must be obtained within 20 days following the lapse date of the previous prospectus.

For an annual prospectus renewal, investment funds in continuous distribution must file a prospectus, material contracts not previously filed, personal information forms where required, blacklines of the SP, AIF and Fund Facts from the latest filed versions, annual and interim financial statements with a signed auditor's report, an auditor's consent letter, and French translations of the SP, AIF, if the documents are also filed in Quebec. For conventional mutual funds, a Fund Facts must also be filed and for exchange-traded mutual funds (**ETFs**), an ETF Facts must also be filed.

(b) The Current 90-Day Prospectus Filing Requirement for Investment Funds

Investment funds are required under securities legislation to file a final prospectus no more than 90 days after the date of the receipt for the preliminary prospectus. If the investment fund issuer is unable to meet the 90-day filing deadline, then an exemptive relief application must be filed to seek an extension of the 90-day rule.

(c) Regulatory Burden

Given that the information in the annual prospectus and related documents generally does not change materially from year to year, the annual prospectus filing requirement is an unnecessary regulatory burden for investment funds in continuous distribution. Investment fund managers spend significant internal and external resources on the preparation and filing of annual prospectus and related documents.

The 90-day rule requirement is also an unnecessary regulatory burden for investment funds as an exemptive relief application needs to be filed in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. Such exemptive relief is routinely granted.

(d) The Proposed Amendments

The Proposed Amendments seek to modernize the prospectus filing model for investment funds without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The Proposed Amendments will also reduce the regulatory burden on investment funds.

The Proposed Amendments will extend the lapse date for investment funds in continuous distribution from 12 months to 24 months. As a result, the frequency of routine prospectus filings will be reduced as investment funds in continuous distribution would be allowed to file their prospectus every two years, or biennially, rather than annually. Shifting to a biennial prospectus filing model should allow investment funds in continuous distribution to save the time and effort associated with refiling prospectus and related documents every year. Biennial prospectus filing would not affect the currency or accuracy of the information available to investors as the material change reporting requirements would continue to apply. The filing and delivery requirements of the Fund Facts and the ETF Facts, which provide key information about a fund for investors to make an informed investment decision, will remain unchanged.

The Proposed Amendments will also repeal the 90-day rule for investments funds. The Proposed Amendments will help reduce regulatory burden as investment fund issuers would no longer be required to file an exemptive relief application in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. As preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days, eliminating the 90-day rule does not raise any investor protection issues.

3. Affected Stakeholders

The stakeholders who will be impacted by the Proposed Rule are investment fund managers and investors.

(a) Investment Fund Managers

There are 112 investment fund managers managing 3,459 prospectus-qualified mutual funds in Canada .[1] We estimate that all 112 of these investment fund managers could be impacted by the Proposed Amendments.

We anticipate that an extension of the lapse date for investment funds in continuous distribution from 12 months to 24 months would save the time, effort and costs associated with a prospectus filing, including external and internal resources, every other year.

With the repeal of the 90-day rule, investment fund managers will no longer be required to file exemptive relief applications in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt, which would save the time, effect and costs associated with filing an exemptive relief application. There is an average of 3 applications per year for exemptive relief from the 90-day rule.

The Proposed Amendments would not have any implications for investment fund managers with respect to competition and capital formation.

(b) Investors

Given the historical downward trend in management expense ratios (**MERs**) and management fees,[2] it is possible that cost savings from shifting to biennial prospectus filing may be passed onto investors so investors are expected to benefit from lower fund expenses as a result.

Investors would not be directly impacted by a lapse date extension to 24 months for prospectus renewals as the Fund Facts and the ETF Facts will continue to be delivered or sent to investors under current requirements.

The Prospectus Amendments would make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified as the investment funds would be required to file every prospectus amendment as an amended and restated prospectus, rather than “slip sheet” amendments.

The Proposed Amendments would not affect investor rights relating to liability for misrepresentation in a prospectus.

The Proposed Amendments would not have any implications for investors with respect to competition.

[1] IFIC 2020 Investment Funds Report, https://www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=26009&lang=en_CA.
[2] See page 1 of the Investor Economics Insight report June 2021.

4. Qualitative and Quantitative Analysis of the Anticipated Costs and Benefits of the Proposed Amendments

(a) Benefits of the Proposed Amendments

(i) Investment Fund Managers

The shift to a biennial prospectus filing model under the Proposed Amendments will benefit investment funds by reducing the unnecessary regulatory burden of filing a prospectus annually. We estimate that extending the lapse date from 12 months to 24 months will result in cost savings of $15,792,030 annually across all CSA jurisdictions.[3]

The Proposed Amendments will benefit investment funds by reducing the unnecessary regulatory burden of filing exemptive relief applications in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. We estimate that the repeal of the 90-day rule will result in cost savings of $15,201 annually across all CSA jurisdictions.[4]

(ii) Investors

It is possible that investors may benefit from lower fund expenses as a result of shifting to biennial prospectus filing. However, we do not have sufficient cost information, such as the allocation of prospectus filing costs to each fund in a prospectus, to provide an estimate of the cost savings for investors.

(b) Costs of the Proposed Amendments

(i) Investment Fund Managers

We do not expect investment fund managers will incur any material incremental costs to comply with the Proposed Amendments.

- ***Filing Fees***

  We do not anticipate any negative impact to filing fees for investment funds as a result of the Proposed Amendments. Local fee rules will be changed such that current filing fees for prospectuses for investment funds in continuous distribution will instead be replaced with filing fees for Fund Facts and ETF Facts.

  Concurrent with the adoption of the Proposed Amendments, Ontario Securities Commission Rule 13-502 *Fees* (**OSC Rule 13-502**) will be amended such that conventional mutual funds will pay an activity fee on the filing of a preliminary or pro forma Fund Facts or a preliminary or pro forma ETF Facts, as applicable, instead of an activity fee on the filing of a preliminary or pro forma prospectus. While the documents to which an activity fee is applicable will change, there will not be any changes to the frequency of the activity fees payable by conventional mutual funds and ETFs in OSC Rule 13-502. Also, while there will not be any changes to the amount of the activity fees payable by a conventional mutual fund, the amount activity fees payable by an ETF decreases from $650 for each ETF in a prospectus to $400 for each ETF in a prospectus, which is the same activity fee payable by a conventional mutual fund.

- ***IT Systems, Policies and Procedures Costs***

  We do not anticipate that investment fund managers will need to change their IT systems to comply with the Proposed Amendments. Investment Fund Managers may incur minimal one-time costs associated with updating their policies and procedures to comply with the Proposed Amendments but there should not be any incremental

[3] Estimated $15,792,030 cost savings per year = 207 pro forma filings per year x ($7,580 legal costs + $115,000 audit costs + $30,000 translation costs) ÷ 2 years. Hourly rates are based on information found in published fee surveys and compensation guides subject to certain adjustments (e.g., application of local market adjustments).

Average number of pro forma filings per year - The average number of pro forma annual simplified prospectus filings between 2016 and 2020 is 157. The average number of pro forma annual long form filings between 2016 and 2020 is 50. The average number of pro forma prospectus filings is 207 pro forma filings per year.

Legal costs – Assuming 40 hours of legal work by senior legal counsel at $89/hour and 60 hours of legal work by junior legal counsel at $67/hour, we estimate legal costs for preparing and filing a prospectus to be $7,580.

Audit costs – We estimate an average of $115,000 of audit costs per prospectus filing.

Translation costs – We estimate an average of $30,000 of translation costs per prospectus filing.

[4] Estimated $15,201 cost savings per year = 3 applications per year x ($267 legal costs + $4,800 filing fees)

Average number of exemptive relief applications per year - Between 2016 and 2020, there were 17 applications for relief from the 90-day deadline in s. 2.1(2) of NI 81-101 and 1 application for the same relief from s. 2.3(1) in NI 41-101. The average number of applications per year for relief from the 90-day rule is 3 applications per year.

Legal costs - Assuming 3 hours of legal work by senior legal counsel at $89/hour, we estimate legal costs for preparing and filing such an application to be $267.

Filing fees – The filing fee for an exemptive relief application is $4,800.

costs relative to the costs that investment fund managers currently incur in complying with current regulatory requirements.

- ***Fund Facts, ETF Facts, Prospectus and Related Disclosure Costs***

We do not anticipate any direct ongoing costs associated with the Proposed Amendments relating to the Fund Facts, ETF Facts, prospectus, and related disclosure. The Prospectus Amendments would require every prospectus amendment to be filed as an amended and restated prospectus. The investment funds that currently file prospectus amendments by way of an amended and restated prospectus would not be affected. However, investment funds that currently file by way of "slip sheet" amendments would need to alter their processes, which may result in non-material incremental costs. We have included a consultation question asking stakeholders to identify costs and to provide supporting data regarding slip sheet amendments in Annex E *Specific Consultation Questions Relating to the Lapse Date Extension*.

(ii) Investors

As the Proposed Amendments do not affect investor protection, we do not expect investors will incur any costs or experience any negative impact as a result of the Proposed Amendments.

5. Alternatives Considered

The Commission considered maintaining the status quo.

We are of the view that it is important to modernize the prospectus filing model for investment funds rather than maintain the status quo. The Proposed Amendments will reduce the regulatory burden on investment funds without affecting the currency or accuracy of the information available to investors to make an informed investment decision. We are of the view that the Proposed Amendments would reduce regulatory burden for investment fund managers while ensuring investor protection.

6. Reliance on Unpublished Studies

The Commission is not relying on any unpublished study, report, or other written material in proposing the Proposed Amendments.

7. Rule-Making Authority

The following provisions of the Act provide the Commission with authority to make the Proposed Amendments:

Paragraph 143(1)16 of the Act authorizes the Commission to make rules regulating in respect of, or varying the Act to facilitate, expedite or regulate in respect of, the distribution of securities, or the issuing of receipts;

Paragraph 143(1)39 of the Act authorizes the Commission to make rules requiring or respecting the filing of all documents, among other things, required under or governed by the Act, including preliminary prospectuses;

Paragraph 143(1)52 of the Act authorizes the Commission to vary the requirements under the Act in respect of amendments to prospectuses, among other things; and

Paragraph 143(1)53 of the Act authorizes the Commission to provide for exemptions from or varying the requirements of section 62, 65 or 71.

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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:
Power Sustainable China Ascent Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 17, 2022
NP 11-202 Final Receipt dated Jan 18, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3307763

Issuer Name:
Dynamic Short Term Credit PLUS Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 18, 2022
NP 11-202 Final Receipt dated Jan 18, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3319312

Issuer Name:
Hamilton Enhanced Canadian Financials ETF
Hamilton Enhanced U.S. Covered Call ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Jan 19, 2022
NP 11-202 Final Receipt dated Jan 20, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3322875

Issuer Name:
Purpose Bitcoin ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Jan 19, 2022
NP 11-202 Preliminary Receipt dated Jan 20, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3328021

Issuer Name:
Ninepoint Carbon Credit ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 21, 2022
NP 11-202 Preliminary Receipt dated Jan 24, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3328870

Issuer Name:
IG Climate Action Portfolios - Betterworld Canada I
IG Climate Action Portfolios - Betterworld Canada II
IG Climate Action Portfolios - Betterworld Canada III
IG Climate Action Portfolios - Betterworld Canada IV
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 17, 2022
NP 11-202 Final Receipt dated Jan 18, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3307741

Issuer Name:
BMO Aggregate Bond Index ETF
BMO All-Equity ETF
BMO Balanced ESG ETF
BMO Balanced ETF
BMO BBB Corporate Bond Index ETF
BMO Canadian Bank Income Index ETF
BMO Canadian Dividend ETF
BMO Canadian High Dividend Covered Call ETF
BMO Canadian MBS Index ETF
BMO China Equity Index ETF
BMO Clean Energy Index ETF
BMO Conservative ETF
BMO Corporate Bond Index ETF
BMO Corporate Discount Bond ETF
BMO Covered Call Canadian Banks ETF
BMO Covered Call Dow Jones Industrial Average Hedged to CAD ETF
BMO Covered Call Technology ETF
BMO Covered Call US Banks ETF
BMO Covered Call Utilities ETF
BMO Discount Bond Index ETF
BMO Dow Jones Industrial Average Hedged to CAD Index ETF
BMO Emerging Markets Bond Hedged to CAD Index ETF
BMO Equal Weight Banks Index ETF
BMO Equal Weight Global Base Metals Hedged to CAD Index ETF
BMO Equal Weight Global Gold Index ETF
BMO Equal Weight Industrials Index ETF
BMO Equal Weight Oil & Gas Index ETF
BMO Equal Weight REITs Index ETF
BMO Equal Weight US Banks Hedged to CAD Index ETF
BMO Equal Weight US Banks Index ETF
BMO Equal Weight US Health Care Hedged to CAD Index ETF
BMO Equal Weight US Health Care Index ETF
BMO Equal Weight Utilities Index ETF
BMO ESG Corporate Bond Index ETF
BMO ESG High Yield US Corporate Bond Index ETF
BMO ESG US Corporate Bond Hedged to CAD Index ETF
BMO Europe High Dividend Covered Call ETF
BMO Europe High Dividend Covered Call Hedged to CAD ETF
BMO Floating Rate High Yield ETF
BMO Global Communications Index ETF
BMO Global Consumer Discretionary Hedged to CAD Index ETF
BMO Global Consumer Staples Hedged to CAD Index ETF
BMO Global High Dividend Covered Call ETF
BMO Global Infrastructure Index ETF
BMO Government Bond Index ETF
BMO Growth ETF
BMO High Quality Corporate Bond Index ETF
BMO High Yield US Corporate Bond Hedged to CAD Index ETF
BMO High Yield US Corporate Bond Index ETF
BMO India Equity Index ETF
BMO International Dividend ETF
BMO International Dividend Hedged to CAD ETF
BMO Japan Index ETF
BMO Junior Gold Index ETF
BMO Laddered Preferred Share Index ETF
BMO Long Corporate Bond Index ETF
BMO Long Federal Bond Index ETF
BMO Long Provincial Bond Index ETF
BMO Long-Term US Treasury Bond Index ETF
BMO Low Volatility Canadian Equity ETF
BMO Low Volatility Emerging Markets Equity ETF
BMO Low Volatility International Equity ETF
BMO Low Volatility International Equity Hedged to CAD ETF
BMO Low Volatility US Equity ETF
BMO Low Volatility US Equity Hedged to CAD ETF
BMO Mid Corporate Bond Index ETF
BMO Mid Federal Bond Index ETF
BMO Mid Provincial Bond Index ETF
BMO Mid-Term US IG Corporate Bond Hedged to CAD Index ETF
BMO Mid-Term US IG Corporate Bond Index ETF
BMO Mid-Term US Treasury Bond Index ETF
BMO Monthly Income ETF
BMO MSCI ACWI Paris Aligned Climate Equity Index ETF
BMO MSCI All Country World High Quality Index ETF
BMO MSCI Canada ESG Leaders Index ETF
BMO MSCI Canada Value Index ETF
BMO MSCI EAFE ESG Leaders Index ETF
BMO MSCI EAFE Hedged to CAD Index ETF
BMO MSCI EAFE Index ETF
BMO MSCI Emerging Markets Index ETF
BMO MSCI Europe High Quality Hedged to CAD Index ETF
BMO MSCI Fintech Innovation Index ETF
BMO MSCI Genomic Innovation Index ETF
BMO MSCI Global ESG Leaders Index ETF
BMO MSCI Innovation Index ETF
BMO MSCI Next Gen Internet Innovation Index ETF
BMO MSCI Tech & Industrial Innovation Index ETF
BMO MSCI USA ESG Leaders Index ETF
BMO MSCI USA High Quality Index ETF
BMO MSCI USA Value Index ETF
BMO Nasdaq 100 Equity Hedged to CAD Index ETF
BMO Nasdaq 100 Equity Index ETF
BMO Premium Yield ETF
BMO Real Return Bond Index ETF
BMO S&P 500 Hedged to CAD Index ETF
BMO S&P 500 Index ETF
BMO S&P US Mid Cap Index ETF
BMO S&P US Small Cap Index ETF
BMO S&P/TSX Capped Composite Index ETF
BMO Short Corporate Bond Index ETF
BMO Short Federal Bond Index ETF
BMO Short Provincial Bond Index ETF
BMO Short-Term Bond Index ETF
BMO Short-Term Discount Bond ETF
BMO Short-Term US IG Corporate Bond Hedged to CAD Index ETF
BMO Short-Term US TIPS Index ETF
BMO Short-Term US Treasury Bond Index ETF
BMO Ultra Short-Term Bond ETF
BMO Ultra Short-Term US Bond ETF
BMO US Dividend ETF
BMO US Dividend Hedged to CAD ETF
BMO US High Dividend Covered Call ETF
BMO US High Dividend Covered Call Hedged to CAD ETF
BMO US Preferred Share Hedged to CAD Index ETF

BMO US Preferred Share Index ETF
BMO US Put Write ETF
BMO US Put Write Hedged to CAD ETF
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Jan 17, 2022
NP 11-202 Final Receipt dated Jan 20, 2022
Received on January 14, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3316404

Issuer Name:
TruX Exogenous Risk Pool
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 14, 2022
NP 11-202 Final Receipt dated Jan 18, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3278743

Issuer Name:
1832 AM Canadian Dividend LP
1832 AM Canadian Growth LP
1832 AM Global Completion LP
1832 AM Global Low Volatility Equity LP (formerly Scotia Global Low Volatility Equity LP0
1832 AM International Equity LP
1832 AM Tactical Asset Allocation LP
1832 AM Total Return Bond LP (formerly Scotia Total Return Bond LP)
1832 AM U.S. Dividend Growers LP (formerly Scotia U.S. Dividend Growers LP)
1832 AM U.S. Low Volatility Equity LP (formerly Scotia U.S. Low Volatility Equity LP)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 20, 2022
NP 11-202 Final Receipt dated Jan 21, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3317228

Issuer Name:
Mackenzie North American Balanced Fund
Mackenzie North American Equity Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 17, 2022
NP 11-202 Final Receipt dated Jan 18, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3307523

Issuer Name:
Dynamic Global Fixed Income Fund
Dynamic Sustainable Credit Private Pool
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jan 18, 2022
NP 11-202 Final Receipt dated Jan 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3319309

Issuer Name:
CI Energy Giants Covered Call ETF
CI Gold+ Giants Covered Call ETF
CI Health Care Giants Covered Call ETF
CI Tech Giants Covered Call ETF
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated January 17, 2022
NP 11-202 Final Receipt dated Jan 20, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3189746

Issuer Name:
Fidelity All-in-One Balanced ETF
Fidelity All-in-One Growth ETF
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated January 12, 2022
NP 11-202 Final Receipt dated Jan 18, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3250218

Issuer Name:
Mackenzie Global Growth Fund
Mackenzie US Small-Mid Cap Growth Fund
Mackenzie Emerging Markets Fund II
Mackenzie Ivy European Fund
Mackenzie Precious Metals Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated January 12, 2022
NP 11-202 Final Receipt dated Jan 18, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3229156

Issuer Name:
Franklin Bissett Core Plus Bond Fund
Franklin Bissett Corporate Bond Fund
Franklin Quotential Balanced Growth Portfolio
Franklin Quotential Balanced Income Portfolio
Franklin Quotential Diversified Equity Portfolio
Franklin Quotential Diversified Income Portfolio
Franklin Quotential Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus and Amendment #5 to AIF dated January 14, 2022
NP 11-202 Final Receipt dated Jan 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3203753

Issuer Name:
RBC BlueBay Global Diversified Income (CAD Hedged) ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 18, 2022
NP 11-202 Final Receipt dated Jan 21, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3186608

Issuer Name:
Longevity Pension Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated January 18, 2022
NP 11-202 Final Receipt dated Jan 24, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3226704

Issuer Name:
Fidelity All-in-One Balanced ETF Fund
Fidelity All-in-One Growth ETF Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #3 to AIF dated January 12, 2022
NP 11-202 Final Receipt dated Jan 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3281899

Issuer Name:
MRF 2022 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 21, 2022
NP 11-202 Receipt dated January 21, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Manulife Securities Incorporated
Richardson Wealth Limited
IA Private Wealth Inc.
Canaccord Genuity Corp.
Middlefield Capital Corporation
Echelon Wealth Partners Inc.
Hampton Securities Limited
Raymond James Ltd.
Promoter(s):
N/A
Project #3318805

Issuer Name:
Partners Value Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated January 21, 2022
NP 11-202 Receipt dated January 24, 2022
Offering Price and Description:
$750,000,000
Class AA Preferred Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3324780

NON-INVESTMENT FUNDS

Issuer Name:
Agrinam Acquisition Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 21, 2022
NP 11-202 Preliminary Receipt dated January 21, 2022
Offering Price and Description:
U.S.$150,000,000.00
15,000,000 CLASS A RESTRICTED VOTING UNITS
Price: U.S.$10.00 per Class A Restricted Voting Unit
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
Promoter(s):
AGRINAM INVESTMENTS, LLC
Project #3328834

Issuer Name:
Alaris Equity Partners Income Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 21, 2022
NP 11-202 Preliminary Receipt dated January 21, 2022
Offering Price and Description:
$65,000,000.00 - 6.25% Senior Unsecured Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3327051

Issuer Name:
BlockchainK2 Corp. (formerly Africa Hydrocarbons Inc.)
Principal Regulator - British Columbia
Type and Date:
Amendment dated January 18, 2022 to Preliminary Shelf Prospectus dated October 19, 2021
NP 11-202 Preliminary Receipt dated January 21, 2022
Offering Price and Description:
$20,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3290057

Issuer Name:
Calidus Resources Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated January 14, 2022
NP 11-202 Preliminary Receipt dated January 20, 2022
Offering Price and Description:
977,000 Common Shares and 4,614,251 Units Issuable on Exercise of Outstanding Special Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
Kyle Hookey
Project #3326818

Issuer Name:
Canadian North Resources Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 20, 2022
NP 11-202 Preliminary Receipt dated January 21, 2022
Offering Price and Description:
2,223,698 Common Shares on deemed exercise of 2,223,698 Special Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3328579

Issuer Name:
Cypress Development Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 19, 2022
NP 11-202 Preliminary Receipt dated January 20, 2022
Offering Price and Description:
$16,000,000.00 - 8,000,000 Units
Price: $2.00 per Unit
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
Promoter(s):
-
Project #3326445

Issuer Name:
E3 Metals Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated January 17, 2022
NP 11-202 Preliminary Receipt dated January 21, 2022
Offering Price and Description:
$100,000,000.00 - COMMON SHARES WARRANTS SUBSCRIPTION RECEIPTS UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3327284

Issuer Name:
GIGA Metals Corporation
Principal Regulator - British Columbia
Type and Date:
Amendment dated January 19, 2022 to Preliminary Shelf Prospectus dated November 8, 2021
NP 11-202 Preliminary Receipt dated January 21, 2022
Offering Price and Description:
$50,000,000 Common Shares Preferred Shares Warrants Subscription Receipts Units Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3298028

Issuer Name:
Kua Investment Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated January 18, 2022
NP 11-202 Preliminary Receipt dated January 18, 2022
Offering Price and Description:
$225,000.00 - 2,250,000 Common Shares
Price: $0.10 per share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #3327547

Issuer Name:
Libero Copper & Gold Corporation (Formerly Libero Copper Corporation)
Principal Regulator - British Columbia
Type and Date:
Amendment dated January 19, 2022 to Preliminary Shelf Prospectus dated October 20, 2021
NP 11-202 Preliminary Receipt dated January 19, 2022
Offering Price and Description:
$100,000,000.00 - Common Shares Warrants Subscription Receipts Units Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3290117

Issuer Name:
Nanalysis Scientific Corp.(formerly Canvass Ventures Ltd.)
Principal Regulator - Alberta (ASC)
Type and Date:
Preliminary Short Form Prospectus dated January 20, 2022
NP 11-202 Preliminary Receipt dated January 20, 2022
Offering Price and Description:
Up to $8,000,080.00 Up to 7,272,800 Common Shares
Price: $1.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3328402

Issuer Name:
SmartCentres Real Estate Investment Trust (formerly, Smart Real Estate Investment Trust)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 21, 2022
NP 11-202 Preliminary Receipt dated January 21, 2022
Offering Price and Description:
$3,000,000,000.00 - Variable Voting Units, Subscription Receipts, Warrants, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3328726

Issuer Name:
WonderFi Technologies Inc. (formerly "Austpro Energy Corporation")
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 18, 2022
NP 11-202 Preliminary Receipt dated January 18, 2022
Offering Price and Description:
C$45,000,000.00 - 18,750,000 Units
Price: C$2.40 per Offered Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
HAYWOOD SECURITIES INC.
PI FINANCIAL CORP.
Promoter(s):
Ben Samaroo
Dean Sutton
Cong Ly
Project #3326059

Issuer Name:
Cullinan Metals Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated January 21, 2022
NP 11-202 Receipt dated January 21, 2022
Offering Price and Description:
Minimum: $400,000.00 - 4,000,000 Common Shares
Maximum: $460,000.00 - 4,600,000 Common Shares
$0.10 per Common Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
Mark Ferguson
Project #3291769

Issuer Name:
good natured Products Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated January 19, 2022
NP 11-202 Receipt dated January 20, 2022
Offering Price and Description:
$200,000,000.00 - COMMON SHARES PREFERRED SHARES SUBSCRIPTION RECEIPTS DEBT SECURITIES WARRANTS UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3321315

Issuer Name:
MRF 2022 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 21, 2022
NP 11-202 Receipt dated January 21, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
RICHARDSON WEALTH LIMITED
IA PRIVATE WEALTH INC.
CANACCORD GENUITY CORP.
MIDDLEFIELD CAPITAL CORPORATION
ECHELON WEALTH PARTNERS INC.
HAMPTON SECURITIES LIMITED
RAYMOND JAMES LTD.
Promoter(s):
-
Project #3318805

Issuer Name:
Nouveau Monde Graphite Inc. (auparavant Nouveau Monde Mining Enterprises Inc.)
Principal Regulator - Quebec
Type and Date:
Amendment #1 dated January 19, 2022 to Final Shelf Prospectus (NI 44-102) dated May 19, 2021
NP 11-202 Receipt dated January 21, 2022
Offering Price and Description:
CAD$500,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3193995

Issuer Name:
NowVertical Group Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated January 21, 2022
NP 11-202 Receipt dated January 24, 2022
Offering Price and Description:
$65,000,000.00 - Subordinate Voting Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3324822

Issuer Name:
Partners Value Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated January 21, 2022
NP 11-202 Receipt dated January 24, 2022
Offering Price and Description:
$750,000,000 - Class AA Preferred Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3324780

Issuer Name:
Zacapa Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated January 17, 2022
NP 11-202 Receipt dated January 18, 2022
Offering Price and Description:
1,660,000 Common Shares on Deemed Exercise of
1,660,000 Outstanding Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
Ian Slater
Project #3252229

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Portfolio Stewards Inc.	From: Portfolio Manager and Exempt Market Dealer To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	January 21, 2022
New Registration	Walter Public Investments Inc./Investissements Publics Walter Inc.	Portfolio Manager and Investment Fund Manager	January 21, 2022
New Registration	Impact and Inc./Impact et Inc.	Exempt Market Dealer	January 21, 2022

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Carta Capital Markets, LLC (Carta) – Application for Exemptive Relief – Notice of Commission Order

NOTICE OF COMMISSION ORDER

APPLICATION FOR EXEMPTIVE RELIEF

CARTA CAPITAL MARKETS, LLC (CARTA)

On January 21, 2022, 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 Carta from the application of all provisions of the Marketplace Rules in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut, 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*[1] that outlines an exemption approach that is based on a substituted compliance model of ATS oversight.

The Order also incorporates Carta's relief from the dealer registration requirement, which was granted on January 10, 2022 by the Commission as principal regulator in accordance with Multilateral Instrument 11-102 *Passport System*.

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

The Commission published Carta's application and draft Order for comment on November 23, 2021 on the OSC website. No comments were received.

[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.

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