The Ontario Securities Commission

OSC Bulletin

April 14, 2022

Volume 45, Issue 15

(2022), 45 OSCB

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

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

Contact Centre – Inquiries, Complaints:
416-593-8314 or Toll Free 1-877-785-1555
Fax: 416-593-8122
Email: inquiries@osc.gov.on.ca

Office of the Secretary:
Fax: 416-593-2318

Published under the authority of the Commission by:
Thomson Reuters
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4
416-609-3800 or 1-800-387-5164

42953140

The OSC Bulletin is published weekly by Thomson Reuters Canada, under the authority of the Ontario Securities Commission.

Thomson Reuters Canada offers every issue of the Bulletin, from 1994 onwards, fully searchable on S*ecuritiesSource*™, Canada's pre-eminent web-based securities resource. *SecuritiesSource*™ also features comprehensive securities legislation, expert analysis, precedents and a weekly Newsletter. For more information on *SecuritiesSource*™, as well as ordering information, please go to:

https://www.westlawnextcanada.com/westlaw-products/securitiessource/

or call Thomson Reuters Canada Customer Support at 1-416-609-3800 (Toronto & International) or 1-800-387-5164 (Toll Free Canada & U.S.).

Claims from *bona fide* subscribers for missing issues will be honoured by Thomson Reuters Canada up to one month from publication date.

Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

The publisher is not engaged in rendering legal, accounting or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Printed in the United States by Thomson Reuters.

ISSN 0226-9325

THOMSON REUTERS®

Address

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Support

1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
Email CustomerSupport.LegalTaxCanada@TR.com

Table of Contents

Chapter 1

Notices

1.1 Notices

1.1.1 CSA Notice of Changes to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements Related to Financial Statement Requirements

Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

CSA NOTICE OF CHANGES TO
COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*
RELATED TO FINANCIAL STATEMENT REQUIREMENTS

April 14, 2022

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making changes (the **Changes**) to:

- Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* (**41-101CP**)

We are also making a consequential change to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations* (**51-102CP**) (the **Consequential Change**).

Provided all necessary ministerial approvals are obtained, the Changes and Consequential Change are effective on **April 14, 2022**.

Details of the Changes and Consequential Change are outlined in Annexes C through E of this notice and will also be available on websites of CSA jurisdictions, including:

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

Substance and Purpose

Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) requires an issuer that is not an investment fund to include certain financial statements in its long form prospectus. These required financial statements include the financial statements of the issuer and any business or businesses acquired, 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 (collectively, the **Primary Business Requirements**).

The purpose of the Primary Business Requirements is to provide investors with financial history of the business of the issuer even if this financial history spanned multiple legal entities over the relevant time period.

The Primary Business Requirements also apply to instances where securities legislation and exchange requirements refer to disclosure prepared in accordance with Form 41-101F1. An example of this would be the requirement in Form 51-102F5 *Information Circular* for an information circular relating to a restructuring transaction to contain prospectus-level disclosure.

In practice, when acquisitions are involved, issuers and their advisors often consult with CSA staff to consider what financial statements must be included in the prospectus and to confirm whether one or more businesses comprised part of the primary business of the issuer. Sometimes these discussions result in inconsistent interpretation that adds time, cost, and uncertainty for issuers.

The Changes aim to reduce the regulatory burden resulting from uncertainty about the interpretation of the Primary Business Requirements, without compromising investor protection.

Background

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the **Consultation Paper**) to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. While not specifically identified as an option in the Consultation Paper, commenters suggested that CSA staff revisit the interpretation of Item 32 in Form 41-101F1. These comments reflected a range of suggestions, including revisiting the requirements for an issuer to include 3 years of historical financial statements for each entity considered the primary business. Commenters also noted that inconsistent interpretation of these requirements across the CSA can lead to additional regulatory burden.

The Changes are informed by the comment letters received in response to the Consultation Paper and other stakeholder feedback. The comment letters were summarized in CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

The Changes are aimed at reducing the regulatory burden by harmonizing the approach taken by the CSA in assessing the Primary Business Requirements. We expect a reduction in the time, cost, and uncertainty of the many pre-file applications otherwise required in connection with the Primary Business Requirements, while maintaining investor protection.

In considering how best to address regulatory burden concerns related to the Primary Business Requirements without compromising investor protection, we considered a number of approaches to increase harmonization across the CSA, including amending the Primary Business Requirements. We also considered the implementation of a coverage model, whereby a certain percentage of an issuer's business would be required to have audited financial statements included in the issuer's long form prospectus or other disclosure prepared in accordance with Form 41-101F1. We also monitored and conducted a comparative analysis of the amendments to the financial disclosure requirements of Regulation S-X issued by the U.S. Securities and Exchange Commission (**SEC**).

Ultimately, through the Changes, the CSA was able to reach a consensus on a harmonized interpretation of the Primary Business Requirements. The Changes provide additional clarification and guidance for both IPO venture and non-venture issuers.

On August 12, 2021, the CSA published a Notice and Request for Comment proposing the Changes and the Consequential Change (the **Proposed Changes**). Based on the 7 comment letters responding to the Proposed Changes, the CSA is not making any material amendments to the Changes.

The CSA acknowledges that some commenters suggested amending the Primary Business Requirements. However, considering the consensus reached by the CSA and the fact that the harmonized interpretation of the Primary Business Requirements will bring a significant reduction in regulatory burden for issuers, we are not proposing to make amendments to the Primary Business Requirements at this time. We will continue to monitor the application and interpretation of the Primary Business Requirements.

Summary of Written Comments Received by the CSA

The comment period for the Proposed Changes ended on October 11, 2021. We considered all the comments received and thank the commenters for their input. The names of the commenters are contained in Annex A along with a summary of the comments received and our responses in Annex B.

The comment letters can be viewed on the website of each of:

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

Summary of Changes

We have revised the Changes to make some non-material changes as further described in Annex B. As these changes are not material, we are not publishing the Changes for a further comment period.

Local Matters

An annex to this notice outlines the consequential changes to local securities legislation and includes additional text, as required, to respond to local matters in a local jurisdiction. Each jurisdiction that is proposing local amendments or changes will publish an Annex E.

Contents of Annexes

This notice includes the following annexes:

- Annex A – List of Commenters
- Annex B – Summary of Comments and CSA Responses
- Annex C – Changes to 41-101CP
- Annex D – Consequential Change to 51-102CP
- Annex E – Local Matters

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission

Allan Lim
Manager, Corporate Finance
604 899-6780
alim@bcsc.bc.ca

Larissa M. Streu
Senior Legal Counsel, Corporate Finance
604 899-6888
lstreu@bcsc.bc.ca

Alberta Securities Commission

Roger Persaud
Senior Securities Analyst
403 297-4324
roger.persaud@asc.ca

Bhawani Sankaranarayanan
Senior Securities Analyst
403 297-6263
bhawani.sankaranarayanan@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Heather Kuchuran
Director, Corporate Finance
Securities Division
306 787-1009
heather.kuchuran@gov.sk.ca

Manitoba Securities Commission

Patrick Weeks
Corporate Finance Analyst
204 945-3326
patrick.weeks@gov.mb.ca

Ontario Securities Commission

Matthew Au
Senior Accountant, Corporate Finance
416 593-8132
mau@osc.gov.on.ca

Tamara Driscoll
Senior Accountant, Corporate Finance
416 596-4292
tdriscoll@osc.gov.on.ca

Michael Rizzuto
Accountant, Corporate Finance
416 263-7663
mrizzuto@osc.gov.on.ca

Autorité des marchés financiers

Nadine Gamelin
Senior Analyst,
Direction de l'information financière
514 395-0337, ext. 4417
nadine.gamelin@lautorite.qc.ca

Carolyne Lassonde
Senior Policy Advisor,
Direction du financement des sociétés
514 395-0337, ext. 4373
carolyne.lassonde2@lautorite.qc.ca

Financial Consumer Services Commission New Brunswick

Joseph Adair
Senior Securities Analyst
506 643-7435
Joe.adair@fcnb.ca

Nova Scotia Securities Commission

Jack Jiang
Securities Analyst, Corporate Finance
902 424-7059
jack.jiang@novascotia.ca

ANNEX A

LIST OF COMMENTERS

We received comment letters on the Proposed Changes from the following:

No.	Commenter	Date
1.	Fasken Martineau DuMoulin LLP	October 7, 2021
2.	PricewaterhouseCoopers LLP	October 7, 2021
3.	Torys LLP	October 8, 2021
4.	Osler, Hoskin & Harcourt LLP	October 11, 2021
5.	Stikeman Elliott LLP	October 11, 2021
6.	Goodmans LLP	October 11, 2021
7.	TMX Group Limited	October 18, 2021

ANNEX B

SUMMARY OF COMMENTS AND CSA RESPONSES

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

Introduction

The CSA acknowledge that some commenters suggested that we consider rule amendments related to the Primary Business Requirements such as revisiting Item 32 in Form 41-101F1. However, considering the consensus reached by the CSA and that the harmonized interpretation of the Primary Business Requirements will bring significant reduction of regulatory burden for issuers, we are not proposing to make amendments to the Primary Business Requirements at this time. We will continue to monitor the application and the interpretation of the Primary Business Requirements.

In this annex, we consolidated and summarized the comments received and our responses by the general themes of the comments. We have included section references to the Proposed Changes for convenience. We thank the commenters for their input.

Responses to Comments Received on the Proposed Changes

No.	Subject	Summarized Comment	CSA Response
1	General Support	All seven commenters indicated some level of support for the Proposed Changes.	We thank the commenters for their views.
2	General commentary on changes to guidance and rule amendments	One commenter recommended that the CSA revisit Items 32 and 35 of Form 41-101F1 and the related guidance (and not make changes solely to 41-101CP), with a view to streamlining, consolidating, harmonizing (where appropriate) and clarifying these requirements. One commenter suggested that additional guidance should not be subject to significant CSA staff discretion and interpretation which effectively reduces the benefit of any transparency and predictability to market participants. One commenter proposed the inclusion of a flowchart and certain additional examples to be incorporated into the proposed subsection 5.3(1) of 41-101CP.	At this time, considering the consensus reached by the CSA and that the harmonized interpretation of the Primary Business Requirements will bring a significant reduction in regulatory burden for issuers, we are not proposing to make amendments to the Primary Business Requirements. The intention of the Changes is to create and set out in 41-101CP a harmonized interpretation of the Primary Business Requirements across the CSA. We expect the Changes to eliminate any variation in the interpretation of the Primary Business Requirements. We note that the examples in the Changes represent the most common scenarios that staff encounter in prospectus reviews. Therefore, we do not propose to include a flowchart or additional examples at this time.
3	Align disclosure requirements with the SEC	One commenter encouraged the CSA to consider revising National Instrument 41-101 and Form 41-101F1 to include certain other changes to the disclosure regime for acquired businesses to align with the SEC's recently adopted amendments to the financial disclosure requirements for business acquisitions and dispositions. One commenter also encouraged the CSA to reduce the number of audited and interim periods for which historical financial statements must be presented if an acquisition is determined to be significant to a maximum of the two most recent fiscal years, similar to the SEC.	We think that the Changes appropriately address regulatory burden concerns identified relating to the interpretation of the Primary Business Requirements without compromising investor protection. The CSA also monitored and conducted a comparative analysis of requirements of Regulation S-X issued by the SEC and the Proposed Changes. We think we have reached the right balance of CSA harmonization on the interpretation of the Primary Business Requirements, which in some cases, resulted in less regulatory burden than Regulation S-X on our reporting issuer population. We will continue to monitor the application of the Changes.

No.	Subject	Summarized Comment	CSA Response
4	Remove or modify the "exceptional circumstances guidance" in section 5.7 of 41-101CP	Four commenters requested either the removal or the modification of the proposed guidance as to what would constitute an "exceptional circumstance" and require additional disclosure (other than financial statements) and/or a pre-file discussion with CSA staff.	We note that each prospectus filing encompasses unique facts and circumstances, and therefore it is not possible to provide guidance that will address all "exceptional circumstances" that issuers may experience when filing a prospectus. It is our expectation that these circumstances will be rare. The guidance provided in the Changes represents certain exceptional circumstances that we have encountered to date. Depending on the specific circumstances of a prospectus filing, these "exceptional circumstances" may require further financial information disclosure, other than financial statements, in the prospectus, such as property or business valuation reports, forecasted cash flow information, or additional disclosure about an acquired business.
5	Align the 100% trigger in section 5.3 of 41-101CP with the two-test Business Acquisition Report (**BAR**) rules	Three commenters recommended that the 100% trigger which is based on whether the acquisition meets *any* of the BAR significance tests[1] at the 100% or greater level, be aligned with the two-test trigger of the BAR rules.	The 100% trigger is meant to identify the primary business of the issuer and therefore we think that the single trigger test is appropriate. In the Changes we have clarified that the 100% trigger is based on whether the acquisition meets *any* of the BAR significance tests.
6	Modify or clarify the predecessor entity guidance in section 5.4 of 41-101CP and/or consider rule amendments related to predecessor entities	One commenter recommended clarifying when a predecessor entity would not be considered material. One commenter recommended aligning the predecessor entity rules with the Proposed Changes related to the guidance for primary business. One commenter recommended guidance for REITs and other roll-up issuers.	We refer the commenter to the general instructions of Form 41-101F1, which has additional clarity on materiality in the context of a long form prospectus. We note that requirements for financial statements of any predecessor entity within a prospectus are outlined in Item 32 of Form 41-101F1 and are not an interpretation of the CSA. Any changes relating to requirements for predecessor entities would require rule amendments and considering the consensus reached by the CSA on the interpretation of the Primary Business Requirements and the significant reduction of regulatory burden for issuers that it will bring, we are not proposing rule amendments at this time. We are not proposing guidance related to specific entities and/or industries in the context of the Primary Business Requirements as based on our experience, each prospectus filing encompasses unique facts and circumstances, and therefore it is not possible to provide guidance that will address all specific scenarios.
7	Modify or clarify the guidance for	One commenter recommended illustrative examples of when historical financial	An issuer is required to provide historical financial statements under the Primary Business

[1] As outlined in National Instrument 51-102 *Continuous Disclosure Obligations*.

No.	Subject	Summarized Comment	CSA Response
	acquired business(es) in section 5.3 of 41-101CP	statements of an acquired business would not be required in an IPO prospectus and additional guidance in 41-101CP with respect to the treatment of multiple acquisitions and related businesses. One commenter requested clarity that the disclosure requirements in Item 32 of Form 41-101F1 should apply only in respect of a proposed acquisition when it has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high. One commenter recommended clarification that the July 2015 Ontario Securities Commission (**OSC**) guidance[2] no longer applies (that issuers must include the financial history of acquired businesses that are in the same primary business as the issuer in the three-year financial history included in an IPO prospectus).	Requirements for a business, or related businesses that a reasonable investor would regard as the primary business of the issuer. We note that subsection 5.3(1) of the Changes outlines examples of when a reasonable investor would regard the acquired business or related businesses to be the primary business of the issuer, thereby triggering the application of the Primary Business Requirements. The examples provided are common scenarios that the CSA have encountered on past prospectus reviews. We do not propose to include additional examples at this time. The Primary Business Requirements apply to businesses proposed to be acquired "where a reasonable person would believe that the likelihood of the acquisition being completed is high", as determined by the factors outlined in subsection 5.9(3) of 41-101CP. We have revised section 5.3 to refer to the guidance in subsection 5.9(3). As a result of the Changes, the OSC will withdraw certain guidance related to Primary Business Requirements. Please refer to Annex E – Local Matters.
8	Provide more guidance as to what is required to satisfy the requirement for full, true and plain disclosure in section 5.3 of 41-101CP	Three commenters requested additional guidance with respect to how issuers may satisfy the requirement that a long form prospectus contain full, true and plain disclosure to reduce the instances in which an issuer will have to incur costs associated with a pre-filing application.	We note that subsection 5.3(1) of the Changes sets out the key examples where a reasonable investor would regard the acquired business or related businesses to be the primary business of the issuer. We expect scenarios requiring a pre-file application will be rare and, therefore, we have removed references in section 5.3 to utilizing the pre-filing procedures in National Policy 11-202 -*Process for Prospectus Reviews in Multiple Jurisdictions* (**National Policy 11-202**). We also note that we have not made any changes to the interpretation of what constitutes "full, true, and plain disclosure" within securities legislation.
9	Provide more guidance as to what would constitute a *change* in the primary business of the issuer in section 5.3 of 41-101CP	Three commenters requested additional clarity on what would constitute a change in the primary business of an issuer. Commenters recommended that this guidance should only apply to a fundamental change, size, or other factors to determine whether primary business disclosure is warranted. One commenter requested additional clarity that, when an acquisition does not change	In the Changes we have clarified that this guidance only applies to a "fundamental" change of the issuer's primary business, as further referenced within subsection 5.6(3) of 41-101CP. We confirm that when an acquisition does not change the issuer's historic business, the acquired business would not be considered the "primary business" unless the acquisition triggered any of the other factors identified in section 5.3 of the Changes.

[2] OSC Staff Notice 51-725 *Corporate Finance Branch 2014-2015 Annual Report* (July 14, 2015) at page 13.

No.	Subject	Summarized Comment	CSA Response
		the issuer's historic business, the acquired business would not be considered the "primary business" unless the acquisition triggered the 100% significance test. One commenter requested additional clarity that if an issuer already has a variety of businesses, it can be comfortable concluding that an acquisition will not be considered a "primary business" if it becomes one of many businesses owned by the issuer and does not trip the significance test at the 100% level.	We also confirm that if an issuer already has a variety of businesses, an acquisition will not be considered a "primary business" if it becomes one of many businesses owned by the issuer and does not trigger any of the 100% significance tests unless the acquisition triggered any of the other factors identified in section 5.3 of the Changes.
10	Broaden the use of the optional tests	Two commenters suggested that issuers should be allowed to *not* apply subsection 8.3(6) of National Instrument 51-102 - *Continuous Disclosure Obligations* (which requires that the business acquired must remain substantially intact) when calculating the significance of an acquisition under the optional tests.	At this time, we are not proposing any changes to how any of the significance tests, including optional tests, are applied in connection with the interpretation of the Primary Business Requirements. It is our view that the business(es) acquired must be substantially intact in order to apply the optional tests.
11	Broaden the mining assets guidance in section 5.11 of 41-101CP and expand the guidance in 41-101CP regarding the determination of what constitutes a business to other industry sectors	One commenter recommended not limiting an issuer's ability to utilize this guidance by allowing assets and liabilities directly related to the mining assets to be acquired. One commenter suggested the deletion of paragraph 5.11(a) of the Proposed Changes and questioned the relevance of whether the party from whom mining assets were acquired was non-arm's length to the issuer. The commenter is of the view that the key driver is whether the acquired mining assets had ongoing activities during the relevant period, and not based on whether those assets were acquired in an arm's length transaction or from a related party. One commenter suggested that paragraph 5.11(b) is an unnecessary condition in situations where there has been no recent exploration, development or activity on the mining assets acquired. Another commenter recommended applying the mining assets guidance to the acquisition of oil and gas assets and to consider whether it would be possible to expand the guidance in 41-101CP regarding the determination of what constitutes a business to other industry sectors.	In scenarios where assets and liabilities directly relate to mining assets that are acquired, we are of the view that audited financial statements contain useful and relevant information to investors in making investment decisions. Furthermore, we are of the view that paragraph 5.11(a) of the Changes is necessary, and we expect that the issuer would have access through the related party to the information necessary to prepare and audit financial statements for the mining assets. We are of the view that paragraph 5.11(b) of the Changes is necessary for the acquisition of mining assets. For example, a mining claim may have had no exploration, development or production activity in the last three years; however, it may have a significant asset retirement obligation outstanding. We think this is relevant information to investors in making investment decisions. We are not expanding the guidance in 41-101CP regarding the determination of what constitutes a business within the oil and gas industry, as section 1.3 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) already includes these properties within the definition of "business". Staff refer you to the guidance contained in section 8.1(4) of 51-102CP regarding the determination of what constitutes the acquisition of a business.

No.	Subject	Summarized Comment	CSA Response
12	Clarify the guidance on the pre-filings procedure	One commenter requested clarity on the type of information that would be expected to be included in a pre-filing, in the event that a pre-filing is necessary.	We note that each prospectus encompasses unique facts and circumstances, and therefore we cannot provide guidance on the type of information that would be expected to be included in connection with a pre-filing beyond what is set out in Part 8 of National Policy 11-202.
13	Clarify the meaning of certain terminology	One commenter recommended we consider whether additional guidance would be useful regarding the meaning of the terms “other liabilities”, “business” or “primary business” as applicable to NI 41-101 and Form 41-101F1. One commenter recommended we consider whether additional guidance would be useful regarding the meaning of the term “immaterial”.	For additional clarity on the term “primary business”, we refer to Item 32 of Form 41-101F1, as well as section 5.3 of the Changes. For additional clarity on the interpretation of what constitutes an acquired “business”, we refer to subsection 8.1(4) of 51-102CP. Furthermore, for additional clarity on the term “materiality”, we refer to the general instructions of Form 41-101F1.
14	Remove or modify the MD&A requirements	One commenter recommended that the CSA reconsider the requirements in Item 8.2 of Form 41-101F1 that MD&A be provided in respect of any acquired business whose financial statements the issuer is required to include in the prospectus under Item 32.	At this time, we are not proposing any changes to the MD&A requirements outlined in Item 8.2 of Form 41-101F1 because we are of the view that the MD&A enhances a readers’ understanding of the financial performance and financial condition of an acquisition that constitutes the issuer’s primary business.
15	Permit further use of foreign GAAP/GAAS	Two commenters suggested that foreign GAAP/ GAAS should be permitted in financial statements that are provided for primary business acquisitions.	At this time, we are not proposing amendments to any requirements in National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards*, because it would be beyond the scope of this project.

ANNEX C

CHANGES TO
COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements is changed by this Document.

2. Section 5.1 is changed by replacing "Request for exemptions***" with "***Requests for exemptions***".***

3. First paragraph of Section 5.2 is changed by adding "an***" immediately before "***interim financial report for periods that are more recent***"..***

4. Section 5.3 is changed by replacing the text with the following:

Interpretation of issuer – primary business

5.3 (1) An issuer is required to provide historical financial statements under Item 32 of Form 41-101F1 for a business or related businesses that a reasonable investor would regard as the primary business of the issuer. The issuer is also required to include the applicable MD&A for the primary business.

However, if the issuer is a reporting issuer whose principal assets are not cash, cash equivalents or an exchange listing, and the acquisition of the primary business represents a significant acquisition, the reporting issuer is subject to the requirements of Item 35 of Form 41-101F1, and not Item 32 of Form 41-101F1, in respect of the financial statements and other disclosure for that acquisition.

A reporting issuer cannot rely on the exemption in subsection 32.1(2) of Form 41-101F1 if the applicable transaction is a reverse takeover. In such circumstances, the reverse takeover acquirer would be considered the primary business under either paragraph 32.1(1)(a) or (b) of Form 41-101F1.

Examples of when a reasonable investor would regard the business or businesses acquired, or proposed to be acquired, to be the primary business of the issuer, thereby triggering the application of Item 32 of Form 41-101F1, are when the acquisition(s) was or will be

(a) a reverse takeover,

(b) a qualifying transaction for a capital pool company under the policies of the TSX Venture Exchange,

(c) a qualifying acquisition or qualification transaction by a special purpose acquisition corporation under the policies of a recognized exchange,

(d) an acquisition that satisfies any of the applicable significance tests set out in subsection 8.3(2) of NI 51-102 if "30 percent" is read as "100 percent (see example 1 below),

(e) an acquisition that results in a fundamental change in the primary business of the issuer, as disclosed in the prospectus (see example 2 below).

For paragraph (d), if the issuer qualifies as an IPO venture issuer, it should refer to paragraphs 8.3(2)(a) and (b) of NI 51-102 for the applicable significance tests.

An issuer may re-calculate the significance of a transaction using the optional significance tests set out in subsection 8.3(4) of NI 51-102, and should refer to paragraph 35.1(4)(b) of Form 41-101F1, except (i) and (ii), for the applicable financial periods and references.

For any proposed acquisition, the issuer should refer to the guidance in subsection 5.9(3) of this Policy to determine whether a reasonable person would believe that the likelihood of the acquisition being completed is high.

In addition to the above, the issuer should consider the facts of each situation, including the facts of the business or related businesses acquired or proposed to be acquired, and determine whether a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses.

The disclosure in the prospectus, including financial statements and applicable MD&A, must satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed.

Example 1: A non-venture issuer completed an acquisition exceeding the 100% threshold for any of the significance tests in the year prior to its most recently completed financial year

Facts:

- A non-venture issuer filed a preliminary IPO prospectus on April 1, 2021 that included audited annual financial statements for its financial year ended December 31, 2020.
- The issuer disclosed in the prospectus that it had completed Acquisition A on October 1, 2019.
- Both the issuer and Acquisition A have a December 31 year-end.

The initial determination of the significance of an acquisition would be calculated based on the financial statements of the issuer and the acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date. In this case, the significance tests would be based on the most recently completed financial year before the acquisition date (i.e., December 31, 2018) - applying paragraph 35.1(4)(b) of Form 41-101F1 for the purposes of the periods used for the calculation.

Initial tests: Significance tests results based on the most recently completed financial year before the acquisition date (i.e., December 31, 2018)

- The following is a summary of certain key information:

Entity	**Assets**	**Investments**	**Specified profit or loss**
Issuer	$ 100	n/a	$ 8
Acquisition A	$ 125	$ 80	$ 7
Significance tests results	*125%*	*80%*	*87.5%*

Acquisition A is regarded to be the primary business of the issuer because it exceeded the 100% threshold for the asset test.

In some circumstances, an issuer may have grown between the date on which the significance tests are calculated and the date of the IPO such that the acquisition is no longer significant enough for a reasonable investor to regard the acquisition as the primary business of the issuer. An issuer could demonstrate this by testing significance using optional significance tests as set out in subsection 8.3(4) of NI 51-102, for the periods set out in subparagraphs 35.1(4)(b)(iii) and (iv) of Form 41-101F1. In this specific example, the applicable time period for the optional significance tests is the year-ended December 31, 2020 for both the issuer and Acquisition A.

We note that financial statements for the year ended December 31, 2020 for Acquisition A are required for the issuer to use the optional significance tests, which can only be used by the issuer after the acquisition date if the business remained substantially intact and was not significantly reorganized, and no significant assets or liabilities were transferred to other entities, as set out in subsection 8.3(6) of NI 51-102.

Optional significance tests: Significance tests results based on the most recently completed financial year (i.e., as at December 31, 2020)

- The following is a summary of certain key information:

Entity	**Assets**	**Investments**	**Specified profit or loss**
Issuer (excluding Acquisition A)	$ 150	n/a	$ 15
Acquisition A	$ 117	$ 80	$ 7
Significance tests results	*78.0%*	*53.3%*	*46.7%*

Application of paragraph 32.1(1)(b) of Form 41-101F1:

- Although Acquisition A exceeds the 100% threshold for the asset test using the initial significance tests, by applying the optional significance tests, the issuer may be able to demonstrate that a reasonable investor would not regard Acquisition A to be the primary business of the issuer.
- In this circumstance, the issuer experienced growth subsequent to acquiring Acquisition A such that Acquisition A no longer exceeds the 100% threshold. As a result, a reasonable investor would not regard Acquisition A to be the primary business of the issuer. Therefore, the issuer would not be required to provide historical financial statements of Acquisition A under Item 32 of Form 41-101F1.
- However, if the issuer applied the optional significance tests and Acquisition A still exceeded the 100% threshold for any of the significance tests, the issuer would have been required to provide audited financial statements of Acquisition A for enough periods so that when those periods are added to the periods for which the issuer's financial statements are included in the prospectus, the results of the issuer and Acquisition A, either separately or on a consolidated basis, total 3 years. This means that the issuer would have been required to include in the IPO prospectus:
    - its audited consolidated financial statements for each of the 3 years ended December 31, 2020, 2019 and 2018, which include the results of Acquisition A from October 1, 2019 onwards, and
    - the audited standalone financial statements of Acquisition A for the period from January 1, 2019 to September 30, 2019, and for the year-ended December 31, 2018.

Example 2: An issuer has recently changed its primary business through the acquisition of a new business and the acquisition does not meet the 100% threshold for any of the significance tests.

Facts:

- An IPO venture issuer filed a preliminary IPO prospectus on April 1, 2021.
- The issuer was incorporated on January 1, 2015 to operate a mining exploration and development business.
- On December 19, 2020, the issuer acquired a cannabis cultivation property and announced its intention to convert its existing business to a cannabis cultivation business in 2021.
- The year end of the issuer and the acquired cannabis cultivation business is December 31.

Application of paragraph 32.1(1)(b) of Form 41-101F1:

- To meet the requirements of paragraph 32.1(1)(b) of Form 41-101F1, the issuer must include in the prospectus its audited financial statements for the years ended December 31, 2020 and 2019.
- In addition, given that the issuer has fundamentally changed its primary business to cannabis cultivation activities, the pre-acquisition financial statements for the acquired cannabis cultivation business (along with the related MD&A) must also be included in the prospectus.
- This is because a reasonable investor reading the prospectus would regard the primary business of the issuer to be the cannabis cultivation business, as referenced in paragraph 32.1(1)(b) of Form 41-101F1.

(2) The periods for which the issuer must provide financial statements under Item 32 of Form 41-101F1 for an acquired business or related businesses that are regarded as the primary business of the issuer should be determined in reference to sections 32.2 and 32.3 of Form 41-101F1, and with the same exceptions, where applicable, set out in paragraphs 32.4(1)(a) through (e) of Form 41-101F1. For example, for an issuer that is a reporting issuer in at least one jurisdiction immediately before filing a long form prospectus, the reference to 3 years in paragraph 32.2(6)(a) of Form 41-101F1 should be read as 2 years under paragraphs 32.4(1)(a), (b), (d) and (e) of Form 41-101F1.

In addition, subsection 32.2(6) of Form 41-101F1 requires an issuer to include the financial statements for those entities or businesses set out in paragraphs 32.1(1)(a) and (b) of Form 41-101F1 for as many periods before the acquisition as may be necessary. This is so that when these periods are added to the periods for which the issuer's financial statements are included in the prospectus, the results of the entities or businesses, either

separately or on a consolidated basis, total the required number of annual periods (2 or 3 years). These financial statements must be audited.

The issuer must also consider the necessity of including pro forma financial statements pursuant to section 32.7 of Form 41-101F1 to illustrate the impact of the acquisition of the primary business on the issuer's financial position and results of operations. For additional guidance, an issuer should refer to section 5.10 of this Policy.

(3) Reporting issuers are reminded that an acquisition may constitute the acquisition of a business for securities legislation purposes, even if the acquired set of activities or assets does not meet the definition of a "business" for accounting purposes.*.*

5. Section 5.4 is changed by replacing the text with the following:

Interpretation of issuer – predecessor entity

5.4 (1) An issuer that has not existed for 3 years is required under paragraph 32.1(1)(a) of Form 41-101F1 to provide historical financial statements of any predecessor entity that forms or will form the basis of the business of the issuer (see example 3 below). This may include financial statements of predecessor entities that have been, or are contemplated to be, put together to form the basis of the business of the issuer. If an issuer is not able to provide financial statements of certain predecessor entities that are required in the prospectus to meet the requirements in paragraph 32.1(1)(a) of Form 41-101F1, or if the financial statements for certain predecessor entities are not considered material for an investment decision or otherwise necessary for the prospectus to contain full, true and plain disclosure, the issuer should utilize the pre-filing procedures in NP 11-202.

Example 3: A newly incorporated non-venture issuer with minimal operations will acquire several real estate properties immediately prior to, or concurrently with, the closing of an IPO

Facts:

- A non-venture issuer is a real estate investment trust incorporated on December 21, 2020 for the purpose of acquiring an initial portfolio of 4 real estate properties in order to generate rental income from the properties. The issuer filed a preliminary IPO prospectus on April 1, 2021.
- Concurrent with the closing of the IPO, the issuer will complete the acquisition of 4 real estate properties, which were previously operated as rental properties by the vendors, generating rental income. The year end of the issuer and each of the acquired businesses is December 31.

Application of paragraph 32.1(1)(a) of Form 41-101F1:

- The issuer must include in the prospectus its audited financial statements for the period from December 21, 2020 (incorporation) to December 31, 2020.
- In addition, the issuer would need to include audited financial statements in accordance with Item 32 of Form 41-101F1 (and related MD&A) for each of the real estate properties that form the basis of the business of the issuer.
- If either one or more of the rental properties is immaterial, or if the issuer is not able to provide financial statements for one or more of them, the issuer should utilize the pre-filing procedures in NP 11-202*.*

6. Subsection 5.5(3) is deleted.

7. Section 5.7 is changed by replacing the text with the following:

Additional information that may be required

5.7 (1) In order to meet the requirement for full, true and plain disclosure contained in securities legislation, an issuer may be required to include certain additional financial information in its long form prospectus. For instance, in exceptional circumstances, we may require separate financial statements of a subsidiary of the issuer, even if that subsidiary is included in the consolidated financial statements of the issuer. This exception may be necessary to help explain the risk profile and nature of the operations of the subsidiary.

(2) There may be other exceptional scenarios where issuers may be required to include additional financial information, other than financial statements, in a prospectus in order for the prospectus to meet the requirement for full, true and plain disclosure. An example would be where an issuer incurred significant growth through one

or more acquisitions prior to the IPO filing resulting in insufficient financial history of the primary business as disclosed in the prospectus and one of the following situations occurred:

- an IPO venture issuer acquired or proposes to acquire a business that would result in any of the applicable significance tests, as calculated in section 8.3 of NI 51-102, close to exceeding the 100% threshold;
- the issuer made or proposed to make one or more acquisitions during the relevant period, but financial disclosure was not triggered by Item 32 or 35 of Form 41-101F1;
- the issuer completed a relatively large number of unrelated and individually immaterial acquisitions (that are not predecessor entities) in the relevant periods prior to filing the prospectus.

The types of additional financial information that might be necessary to meet the full, true and plain disclosure standard will vary on a case-by-case basis but may include:

- property or business valuation reports;
- forecasted cash flow information;
- additional disclosure about an acquired business, such as key financial information that explains the financial performance and operations of that business prior to its acquisition.

While it is our expectation that these circumstances will be rare, if an issuer thinks that it might fall into an exceptional circumstance where additional financial information might be required, it could utilize the pre-filing procedures in NP 11-202.

(3) If the issuer cannot provide sufficient financial history reflected in the financial statements in a prospectus or the prospectus does not otherwise contain information concerning the business conducted or to be conducted by the issuer that is sufficient to enable an investor to make an informed investment decision, we would consider this important when determining whether the prospectus provides full, true and plain disclosure of all material facts relating to the securities being distributed.***.***

8. Subsection 5.8 (2) is changed by adding "that***" immediately before "***an issuer's comparative financial statements be accompanied by an auditors' report***"..***

9. Subsection 5.9 (2) is changed by replacing the text with the following:

Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer

(2) For an issuer that is not a reporting issuer in any jurisdiction immediately prior to filing the long form prospectus (a "non-reporting issuer"), the long form prospectus disclosure requirements for a significant acquisition are generally intended to mirror those for reporting issuers subject to Part 8 of NI 51-102. To determine whether an acquisition is significant, a non-reporting issuer would first look to the guidance under section 8.3 of NI 51-102.

The initial tests to determine significance of an acquisition would be calculated based on the financial statements of the issuer and the acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date.

To recognize the possible growth of an issuer between the date of its most recently completed financial year or interim period and the acquisition date, and the corresponding potential decline in significance of the acquisition relative to the issuer, an issuer could perform optional significance tests as set out in subsection 8.3(4) of NI 51-102, for the periods set out in subparagraphs 35.1(4)(b)(iii) and (iv) of Form 41-101F1. Specifically, for an issuer, the applicable time period for the optional significance tests is the most recently completed interim period or financial year for which financial statements of the issuer are included in the prospectus and, for the acquired business or related businesses, is the most recently completed interim period or financial year ended before the date of the long form prospectus.

For more information, see Chart 2 of Appendix A – Financial Statement Disclosure Requirements for Significant Acquisitions of this Policy.

The significance tests threshold for an IPO venture issuer is identical to the significance tests threshold for a venture issuer. For any business or related businesses acquired by an IPO venture issuer or venture issuer within 2 years before the date of the prospectus, or proposed to be acquired, which exceed any of the

significance tests thresholds, the issuer is required to include in a prospectus the financial statements referred to in subsection 5.3(1) of this Policy.

The timing of the disclosure requirements set out in subsection 35.3(1) of Form 41-101F1 are based on the principles under section 8.2 of NI 51-102. For reporting issuers, subsection 8.2(2) of NI 51-102 sets out the timing of disclosures for significant acquisitions where the acquisition occurs within 45 days after the year end of the acquired business. However, for IPO venture issuers, paragraph 35.3(1)(d) imposes a disclosure requirement for all significant acquisitions completed more than 90 days before the date of the long form prospectus, where the acquisition occurs within 45 days after the year end of the acquired business. This differs from the business acquisition report filing deadline for venture issuers under paragraph 8.2(2)(b) of NI 51-102 where the business acquisition report deadline for any significant acquisition where the acquisition occurs within 45 days after the year end of the acquired business is within 120 days after the acquisition date..

10. Part 5 is changed by adding the following section 5.11:

5.11. Determination of what constitutes a business – mining assets

While an acquisition of mining assets may constitute an acquisition of a business for securities legislation purposes even if the acquired assets do not meet the definition of a "business" for accounting purposes, we would not consider an acquisition of mining assets to be a business requiring financial statements under either Item 32 or Item 35 of Form 41-101F1 if all of the following apply:

(a) the acquisition of the mining assets was an arm's length transaction;

(b) no other assets were transferred and no other liabilities were assumed as part of the acquisition;

(c) there has been no exploration, development or production activity on the mining assets in the 3 years (2 years for an IPO venture issuer or a venture issuer) before the date of the preliminary prospectus..

11. These changes become effective on April 14, 2022.

ANNEX D

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

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

2. **Section 8.1 is changed by adding the following paragraph 4.1:**

(4.1) Determination of what constitutes a business – mining assets

While an acquisition of mining assets may constitute an acquisition of a business for securities legislation purposes even if the acquired assets do not meet the definition of a "business" for accounting purposes, we would not consider an acquisition of mining assets to be a business requiring a business acquisition report if all of the following apply:

(a) the acquisition of the mining assets was an arm's length transaction;

(b) no other assets were transferred and no other liabilities were assumed as part of the acquisition;

(c) there has been no exploration, development or production activity on the mining assets in the 2 years prior to the acquisition.

3. These changes become effective on April 14, 2022.

ANNEX E

LOCAL MATTERS
ONTARIO SECURITIES COMMISSION

On April 14, 2022, the Ontario Securities Commission (the **OSC**), adopted the Changes pursuant to section 143.8 of the *Securities Act* (Ontario) (the **Act**).

As a result of the Changes, the OSC is withdrawing the guidance noted below related to Primary Business Requirements.

The Changes will come into force on April 14, 2022.

Corporate Finance Branch Annual Report	**Withdrawn OSC Guidance Related to Primary Business Requirements**
OSC Staff Notice 51-725 – *Corporate Finance Branch – 2014-2015 Annual Report* (July 14, 2015)	Page 13 and 14: "**Primary business in an IPO** – An issuer doing an IPO must include in its prospectus a three-year financial history (two years for an IPO venture issuer) of the business an investor is investing in, even if this financial history spans multiple legal entities over the three-year period. This includes the financial history for those businesses acquired or that will likely be acquired if those businesses are in the same primary business of the issuer. This provides investors with information on the issuer's entire business, which is the subject of their investment. As a result, with one exception, there is no significance test for acquisitions that fall within the definition of an issuer under item 32.1 of Form 41-101F1 *Information Required in a Prospectus*. The only exception to the significance threshold is if the business is over 100% when compared to the primary business of the issuer, in which case, it is important for investors to have the financial history of this business even though it is not the same as that of the primary business of the issuer. In instances where there are multiple acquisitions in the same primary business of the issuer, we encourage issuers and their advisors to consult with staff on a pre-file basis as smaller acquisitions are also likely to form part of the primary business of the issuer."
OSC Staff Notice 51-727 – *Corporate Finance Branch – 2015-2016 Annual Report* (July 28, 2016)	Page 16: "**Primary business in an IPO** – An issuer doing an IPO must include in its prospectus a three-year financial history (two years for an IPO venture issuer) of the business an investor is investing in, even if this financial history spans multiple legal entities over the three-year period. This includes the financial history for those businesses acquired or that will likely be acquired if those businesses are in the same primary business of the issuer. This provides investors with information on the issuer's entire business, which is the subject of their investment. As a result, with one exception, there is no significance test for acquisitions that fall within the definition of an issuer under item 32.1 of Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**). The only exception to the significance threshold is if the business is over 100% when compared to the primary business of the issuer, in which case, it is important for investors to have the financial history

Corporate Finance Branch Annual Report	Withdrawn OSC Guidance Related to Primary Business Requirements
	of this business even though it is not the same as that of the primary business of the issuer. In instances where there are multiple acquisitions in the same primary business of the issuer, we encourage issuers and their advisors to consult with staff on a pre-file basis as smaller acquisitions are also likely to form part of the primary business of the issuer."
OSC Staff Notice 51-728 – *Corporate Finance Branch – 2016-2017 Annual Report* (September 21, 2017)	Page 18: **"Primary business in an initial public offering (IPO)** – An issuer filing an IPO prospectus must include in its prospectus a three-year financial history (two years for an IPO venture issuer) of the business that investors are investing in, even if this financial history spans across multiple legal entities over the three-year period. This includes the financial history for those businesses acquired or that will likely be acquired if those businesses are in the same primary business of the issuer. This provides investors with information on the issuer's entire business, which is the subject of their investment. In instances where there are multiple acquisitions in the same primary business of the issuer, we encourage issuers and their advisors to consult with staff on a pre-file basis to consider what financial statements of smaller immaterial acquisitions can be excluded from the prospectus. Results from applying the significance tests is not the only consideration when determining whether disclosure, including financial statements disclosure is necessary for the prospectus to contain full, true and plain disclosure. However, if the result from applying any of the significance tests is over 100% (i.e. the business represents more than half of the reporting issuer), it is important for investors to have the financial history of this business even though it is not in the same business as that of the primary business of the issuer."
OSC Staff Notice 51-729 - *Corporate Finance Branch 2017-2018 Annual Report* (October 4, 2018)	Page 24: "**Primary business in an initial public offering (IPO)** The requirements for an issuer's primary business are one of the areas currently under consideration as part of the policy initiative Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (see Part C for further details). Until this project is completed, the guidance issued for primary business in OSC Staff Notice 51-728 *Corporate Finance Branch 2016-2017 Annual Report* continues to apply."
OSC Staff Notice 51-730 - *Corporate Finance Branch 2019 Annual Report* (December 18, 2019)	Page 23: "**Primary business in an initial public offering (IPO)** The disclosure requirements for an issuer's primary business are one of the areas currently under consideration as part of the Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers policy initiative (see Part C for further details). Until this project is completed, the guidance issued for primary business in OSC Staff Notice 51-728 *Corporate Finance Branch 2016-2017 Annual Report* continues to apply."

Corporate Finance Branch Annual Report	Withdrawn OSC Guidance Related to Primary Business Requirements
OSC Staff Notice 51-731 - *Corporate Finance Branch 2020 Annual Report* (November 19, 2020)	Page 28: "**Primary business in an initial public offering (IPO)** The disclosure requirements for an issuer's primary business are one of the areas currently under consideration as part of the policy initiative to reduce regulatory burden for noninvestment fund reporting issuers. Until this project is completed, the guidance issued for primary business in OSC Staff Notice 51-728 *Corporate Finance Branch 2016-2017 Annual Report* continues to apply. For specific inquiries relating to primary business fact patterns, we encourage issuers to file a pre-filing prior to the filing of a prospectus."
OSC Staff Notice 51-732 *Corporate Finance Branch 2021 Annual Report* (November 25, 2021)	Page 27: "**Primary business in an IPO** Form 41-101F1 requires an Issuer that is not an investment fund to include certain financial statements in its long form prospectus. This includes the financial statements of the Issuer and any business or businesses acquired, 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. The purpose of the primary business requirements is to provide investors with financial history of the business of the Issuer even if this financial history spanned multiple legal entities over the relevant time period. On August 12, 2021, the CSA proposed changes to Companion Policy 41-101CP related to primary business requirements to harmonize the interpretation of the financial statement requirements for a long form prospectus in situations where an Issuer has acquired a business, or proposes to acquire a business, that a reasonable investor would regard as being the primary business of the Issuer.[1] The proposed changes provide additional guidance on the interpretation of primary business and predecessor entity including in what situations, and for which time periods, financial statements would be required. The proposed changes provide guidance in circumstances when additional information may be necessary for the prospectus to meet the requirement to contain full, true and plain disclosure of all material facts relating to the securities being distributed. The proposal also clarifies when an Issuer can use the optional tests to calculate the significance of an acquisition, and when an acquisition of mining assets would not be considered an acquisition of a business for securities legislation purposes. The comment period ended on October 11, 2021. Subject to the comment process and required approvals, the proposed changes are expected to become effective in July 2022."

[1] See CSA Notice and Request for Comment – Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* Related to Financial Statement Requirements.

1.1.2 CSA Consultation Paper 43-401 – Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA CONSULTATION PAPER 43-401

CONSULTATION ON NATIONAL INSTRUMENT 43-101 STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

April 14, 2022

Introduction

Canada plays a leading role in mining capital formation[1] and National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**) is recognized globally as the pre-eminent standard for mineral project disclosure.

The purpose of this consultation paper (**Consultation Paper**) is to obtain feedback from stakeholders about the efficacy of several key provisions of NI 43-101, priority areas for revision, and whether regulatory changes would address concerns expressed by certain stakeholders. The information we gather will assist the Canadian Securities Administrators (**CSA** or **we**) in considering ways to update and enhance the current mineral disclosure requirements, to provide investors with more relevant and improved disclosure, and to continue to foster fair and efficient capital markets for mining issuers.

This Consultation Paper should be read together with NI 43-101 and Form 43-101F1 Technical Report (the **Form**). Unless defined, terms used in this Consultation Paper have the meanings given to them in NI 43-101.

The CSA are publishing this Consultation Paper for a 90-day comment period. In addition to any general comments that you may have, we also invite comments on the specific questions set out in the Consultation Paper.

The comment period will end on July 13, 2022.

Current Framework

Summary

NI 43-101 governs disclosure of scientific and technical information concerning mineral exploration, development, and production activities by mining issuers for a mineral project on a property material to the issuer. The disclosure, whether oral or written, must be based on information provided by or under the supervision of a qualified person, and specified terminology is required when disclosing mineral resources and mineral reserves. NI 43-101 also requires a mining issuer to file a technical report at certain times, using the prescribed format of the Form, prepared by one or more qualified persons who may need to be independent of the issuer and the mineral property.

The intended audience of a technical report is the investing public and their advisors who, in most cases, will not be mining experts. The technical report should include sufficient context and cautionary language to allow a reasonable investor to understand the nature, importance and limitations of the data, interpretations and conclusions summarized in the report.

History

NI 43-101 was first adopted in 2001, and most recently amended in 2011 when the CSA adopted new versions of NI 43-101, the Form and the Companion Policy 43-101CP to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (the **Companion Policy**) that:

- eliminated or reduced the scope of certain requirements,
- reflected changes that had occurred in the mining industry,
- provided more flexibility to mining issuers and qualified persons in certain areas, including to accept new foreign professional associations and designations, and reporting codes as they arise or evolve, and
- clarified or corrected areas where the previous disclosure requirements were not having the effect we intended.

[1] In the year ended December 31, 2020, S&P Global Market Intelligence reported that over 50% of global mining capital formation by public mining issuers emanated from Canada.

Since NI 43-101 was last revised in 2011, the mining industry has experienced market highs and lows and has seen numerous changes, including:

- an update by the Canadian Institute of Mining, Metallurgy and Petroleum (**CIM**) of the CIM Definition Standards for Mineral Resources and Mineral Reserves (**CIM Definition Standards**) and the CIM Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines (**CIM Best Practice Guidelines**),
- emerging demand for commodities related to the growth in green energy and carbon neutral initiatives,
- increased investor awareness of the risks related to mineral project development, including demand for information about the environmental and social impacts, and
- an overhaul by other influential mining jurisdictions (including Australia and the United States) of their mineral resource/mineral reserve reporting codes and associated disclosure standards, including updates to the Committee for Mineral Reserves International Reporting Standards (**CRIRSCO**) template, which is the established international standard for the public reporting of exploration targets, exploration results, mineral resources and mineral reserves.

Since 2011, the CSA has continually monitored the mineral disclosure requirements in NI 43-101, and gathered data evidencing deficiencies identified through continuous disclosure reviews, prospectus reviews, and targeted issue-oriented reviews (collectively, **Mining Reviews**). These deficiencies include:

- qualified persons failing to properly assess their independence, competence, expertise or relevant experience related to the commodity, type of deposit or the items for which they take responsibility in technical reports,
- poor quality of scientific and technical disclosure in technical reports for early stage exploration properties for new stock exchange listings,
- inadequate mineral resource estimation disclosure, including disclosure related to reasonable prospects for eventual economic extraction,
- misuse of preliminary economic assessments, and
- inadequate disclosure of all business risks related to mineral projects.

Consultation Questions

A. Improvement and Modernization of NI 43-101

The disclosure items in the Form have generally remained unchanged since NI 43-101 was adopted in 2001, with some reorganization for advanced stage properties in 2011.

1. Do the disclosure requirements in the Form for a pre-mineral resource stage project provide information or context necessary to protect investors and fully inform investment decisions? Please explain.

2. a) Is there an alternate way to present relevant technical information that would be easier, clearer, and more accessible for investors to use than the Form? For example, would it be better to provide the necessary information in a condensed format in other continuous disclosure documents, such as a news release, annual information form or annual management's discussion and analysis, or, when required, in a prospectus?

   b) If so, for which stages of mineral projects could this alternative be appropriate, and why?

3. a) Should we consider greater alignment of NI 43-101 disclosure requirements with the disclosure requirements in other influential mining jurisdictions?

   b) If so, which jurisdictions and which aspects of the disclosure requirements in those jurisdictions should be aligned, and why?

4. Paragraph 4.2(5)(a) of NI 43-101 permits an issuer to delay up to 45 days the filing of a technical report to support the disclosure in circumstances outlined in paragraph 4.2(1)(j) of NI 43-101. Please explain whether this length of time is still necessary, or if we should consider reducing the 45-day period.

In recent years, CSA staff have observed mining issuers making use of new technologies to conduct exploration on their properties, including the use of drones. During the COVID-19 pandemic, we received inquiries from qualified persons about the possible use of remote technologies to conduct the current personal inspection.

5. a) Can the investor protection function of the current personal inspection requirement still be achieved through the application of innovative technologies without requiring the qualified person to conduct a physical visit to the project?

   b) If remote technologies are acceptable, what parameters need to be in place in order to maintain the integrity of the current personal inspection requirement?

B. Data Verification Disclosure Requirements

Mineral projects commonly pass through the hands of several property holders, each generating exploration and drilling data. Using data collected from former operators prior to the current issuer's involvement in the project (**legacy data**) may be legitimate, but this data needs to be carefully verified, and transparently documented in technical reports. CSA staff see inadequate data verification disclosure at every project stage, from early stage exploration properties to feasibility studies.

Describing sample preparation, security, analytical procedures, and quality assurance/quality control (**QA/QC**) measures is critical to an understandable mineral resource estimate. Qualified persons must state their professional opinion on those processes, explain the steps they took to verify the integrity of the data, and state their professional opinion whether the data suits the purpose of the technical report. CSA staff emphasized these requirements in both CSA Staff Notice 43-309 *Review of Website Investor Presentations by Mining Issuers* and CSA Staff Notice 43-311 *Review of Mineral Resource Estimates in Technical Reports* (**CSA Staff Notice 43-311**).

Data verification as defined in section 1.1 and outlined in section 3.2 of NI 43-101 applies to all scientific and technical disclosure made by the issuer on material properties. For example, data verification:

- requires accurate transcription from the original source, such as an original assay certificate,
- is not adequate when limited to transcribing data from a previous technical report,
- is not limited to technical reports but also to other disclosure such as websites, news releases, corporate presentations, and other investor relations material, and
- is not limited to the drill hole database and must be completed for all data in a technical report.

6. Is the current definition of data verification adequate, and are the disclosure requirements in section 3.2 of NI 43-101 sufficiently clear?

Item 12: Data Verification of the Form addresses a core principle of NI 43-101 and is a primary function of qualified persons. Mining Reviews demonstrate that disclosure in this item is often non-compliant. For example, we do not consider any of the following to be adequate data verification procedures by the qualified person:

- QA/QC measures conducted by the issuer or laboratory;
- database cross-checking to ensure the functionality of mining software;
- reliance on data verification by the issuer or other qualified persons related to previously filed technical reports; and
- unqualified acceptance of legacy data, such as disclosing that former operators followed "industry standards".

In addition, qualified persons frequently limit data verification procedures to the drill hole data set, resulting in a general failure to meet the disclosure requirements of Item 12 of the Form, which apply to all scientific and technical information in a technical report.

7. How can we improve the disclosure of data verification procedures in Item 12 of the Form to allow the investing public to better understand how the qualified person ascertained that the data was suitable for use in the technical report?

8. Given that the current personal inspection is integral to the data verification, should we consider integrating disclosure about the current personal inspection into Item 12 of the Form rather than Item 2(d) of the Form?

C. Historical Estimate Disclosure Requirements

In spite of extensive guidance in the Companion Policy, CSA staff see significant non-compliant disclosure of historical estimates. We remind issuers that non-compliance with section 2.4 of NI 43-101 can trigger the requirement to file a technical report under subsection 4.2(2) of NI 43-101. Examples of non-compliance include:

- failure to review and refer to the original source of the historical estimate,

- failure to include the cautionary statements required by paragraph 2.4(g) of NI 43-101, or inappropriate modification of such statements,
- failure to include required disclosure of key assumptions, parameters and methods used to prepare the historical estimate, and
- inappropriate disclosure by an issuer of a previous estimate.

9. Is the current definition of historical estimate sufficiently clear? If not, how could we modify the definition?

10. Do the disclosure requirements in section 2.4 of NI 43-101 sufficiently protect investors from misrepresentation of historical estimates? Please explain.

D. Preliminary Economic Assessments

The disclosure requirements for preliminary economic assessments were substantially modified in 2011, resulting in unintended consequences requiring additional guidance published in CSA Staff Notice 43-307 *Mining Technical Reports – Preliminary Economic Assessments* in August 2012.

Mining Reviews continue to show that preliminary economic assessment disclosure remains problematic for issuer compliance and, more importantly, is potentially harmful to investors. While the inclusion of inferred mineral resources is a recognized risk to the realization of the preliminary economic assessment, CSA staff's view is that the broad, undefined range of precision of a preliminary economic assessment also contributes to that risk. This range of precision is incongruent with one of the core principles of NI 43-101, which is that investors should be able to confidently compare the disclosure between different projects by the same or different issuers. In addition, CSA staff see evidence of modifications to cautionary language required by subsection 2.3(3) of NI 43-101 that render this provision less effective.

11. Should we consider modifying the definition of preliminary economic assessment to enhance the study's precision? If so, how? For example, should we introduce disclosure requirements related to cost estimation parameters or the amount of engineering completed?

12. Does the current cautionary statement disclosure required by subsection 2.3(3) of NI 43-101 adequately inform investors of the full extent of the risks associated with the disclosure of a preliminary economic assessment? Why or why not?

13. Subparagraph 5.3(1)(c)(ii) of NI 43-101 triggers an independence requirement that may not apply to significant changes to preliminary economic assessments. Should we introduce a specific independence requirement for significant changes to preliminary economic assessments that is unrelated to changes to the mineral resource estimate? If so, what would be a suitable significance threshold?

In 2011, we broadened the definition of preliminary economic assessment in NI 43-101 in response to industry concerns that issuers needed to be able to take a step back and re-scope advanced properties based on new information or alternative production scenarios. In this context, the revised definition was based on the premise that the issuer is contemplating a significant change in the existing or proposed operation that is materially different from the previous mining study.

CSA staff continue to see considerable evidence of preliminary economic assessment disclosure, subsequent to the disclosure of mineral reserves, which is potentially misleading and harmful to investors. In many cases, issuers continue to disclose an economic and technically viable mineral reserve case, while at the same time disclosing a conceptual alternative preliminary economic assessment with more optimistic assumptions and parameters. In many cases, the two are mutually exclusive options.

14. Should we preclude the disclosure of preliminary economic assessments on a mineral project if current mineral reserves have been established?

In some cases, issuers are disclosing the results of a preliminary economic assessment that includes projected cash flows for by-product commodities that are not included in the mineral resource estimate. This situation can arise where there is insufficient data for the grades of the by-products to be reasonably estimated or estimated to the level of confidence of the mineral resource. We consider the inclusion of such by-product commodities in the preliminary economic assessment to be misleading.

15. Should NI 43-101 prohibit including by-products in cash flow models used for the economic analysis component of a preliminary economic assessment that have not been categorized as measured, indicated, or inferred mineral resources? Please explain.

E. Qualified Person Definition

CSA staff have substantial evidence that the current qualified person definition is not well understood, and have seen an increase in practitioners with less than 5 years of experience as professional engineers or geoscientists acting as qualified persons in

technical reporting. CSA staff have directed many comments to issuers informing them that the qualified person does not meet the requirements of NI 43-101 in the circumstance under review.

16. Is there anything missing or unclear in the current qualified person definition? If so, please explain what changes could be made to enhance the definition.

Currently, the qualified person definition requires the individual to be an engineer or geoscientist with a university degree in an area of geoscience or engineering related to mineral exploration or mining.

17. Should paragraph (a) of the qualified person definition be broadened beyond engineers and geoscientists to include other professional disciplines? If so, what disciplines should be included and why?

Qualified person independence

The gatekeeping role of the qualified person is essential for the protection of the investing public. CSA staff see evidence of issuers and qualified persons failing to properly apply the objective test of independence set out in section 1.5 of NI 43-101. The Companion Policy provides certain examples of specific financial metrics to consider. This list is not exhaustive. There are multiple factors, beyond financial considerations, that must also be considered in determining objectivity, including the relationship of the qualified person to the issuer, the property vendor, and the mineral project itself.

18. Should the test for independence in section 1.5 of NI 43-101 be clarified? If so, what clarification would be helpful?

Named executive officers as qualified persons

CSA staff are concerned that the gatekeeping role of the qualified person conflicts with the fiduciary duties of directors and officers. We have seen situations where the self-interest of such individuals in promoting an attractive outcome for the mineral project overrides their professional public interest obligation as a gatekeeper.

19. Should directors and officers be disqualified from authoring any technical reports, even in circumstances where independence is not required?

F. Current Personal Inspections

The current personal inspection requirement in section 6.2 of NI 43-101 is a foundational element of the qualified person's role as a gatekeeper for the investing public. It enables the qualified person to become familiar with conditions on the property, to observe the property geology and mineralization, and to verify the work done on the property. Additionally, it provides the only opportunity to assess less tangible elements of the property, such as artisanal mining or access issues, and to consider social licence and environmental concerns. The current personal inspection is distinctly different from conducting exploration work on the property; it is a critical contributor to the design or review, and recommendation to the issuer, of an appropriate exploration or development program for the property.

20. Should we consider adopting a definition for a "current personal inspection"? If so, what elements are necessary or important to incorporate?

CSA staff's view is that qualified persons must consider their expertise and relevant experience in determining whether they are suitable to conduct the current personal inspection. For example, geoscientists are generally not qualified to conduct elements of the current personal inspection related to potential mining methods or mineral processing. Similarly, engineers may not be qualified with respect to elements of the geoscience. In such cases, more than one qualified person may be required to conduct a current personal inspection, particularly for an advanced property.

21. Should the qualified person accepting responsibility for the mineral resource estimate in a technical report be required to conduct a current personal inspection, regardless of whether another report author conducts a personal inspection? Why or why not?

22. In a technical report for an advanced property, should each qualified person accepting responsibility for Items 15-18 (inclusive) of the Form be required to conduct a current personal inspection? Why or why not?

We expect issuers to consider the current personal inspection requirement in developing the timing and structure of their transactions and capital raising. Subsection 6.2(2) of NI 43-101 does allow an issuer to defer a current personal inspection in limited circumstances related to seasonal weather, provided that the issuer refiles a new technical report once the current personal inspection has been completed. However, this provision has been used infrequently since it was adopted in 2005. In rare circumstances where issuers do rely on this provision, CSA staff see significant non-compliance with the refiling requirement.

23. Do you have any concerns if we remove subsection 6.2(2) of NI 43-101? If so, please explain.

G. Exploration Information

CSA staff continue to see significant non-compliant disclosure of exploration information, including inadequate disclosure of:

- the QA/QC measures applied during the execution of the work being reported on in the technical report,
- the summary description of the type of analytical or testing procedures utilized, and
- the relevant analytical values, widths and true widths of the mineralized zone.

24. Are the current requirements in section 3.3 of NI 43-101 sufficiently clear? If not, how could we improve them?

H. Mineral Resource / Mineral Reserve Estimation

In CSA Staff Notice 43-311 published in June 2020, a comprehensive review of disclosure in technical reports identified several areas of inadequate disclosure of mineral resource estimates.

Reasonable prospects for eventual economic extraction

CIM Definition Standards guidance states that a qualified person should clearly state the basis for determining the mineral resource estimate and that assumptions should include metallurgical recovery, smelter payments, commodity price or product value, mining and processing method, and mining, processing and general and administrative costs. Revisions to the CIM Definition Standards in 2014 and CIM Best Practices Guidelines in 2019 emphasized the requirement for the practitioner to clearly articulate these assumptions and how the estimate was developed.

Mining Reviews provide evidence of technical reports that lack adequate disclosure on metal recoveries, assumed mining and processing methods and costs, and constraints applied to prepare the mineral resource estimate to demonstrate that the mineralized material has reasonable prospects for eventual economic extraction.

25. Should Item 14: Mineral Resource Estimates of the Form require specific disclosure of reasonable prospects for eventual economic extraction? Why or why not? If so, please explain the critical elements that are necessary to be disclosed.

Data verification

Disclosure of a mineral resource estimate is a significant milestone for an issuer. CSA Staff Notice 43-311 noted that disclosure of data verification procedures and results was one of the weakest areas in the mineral resource estimate review, stating that in technical reports reviewed by CSA staff, more than 20% had incomplete disclosure concerning the qualified person's data verification procedures and results.

26. a) Should the qualified person responsible for the mineral resource estimate be required to conduct data verification and accept responsibility for the information used to support the mineral resource estimate? Why or why not?

    b) Should the qualified person responsible for the mineral resource estimate be required to conduct data verification and accept responsibility for legacy data used to support the mineral resource estimate? Specifically, should this be required if the sampling, analytical, and QA/QC information is no longer available to the current operator. Why or why not?

Risk factors with mineral resources and mineral reserves

Paragraph 3.4(d) of NI 43-101 requires issuers to identify any known legal, political, environmental and other risks that could materially affect the potential development of the mineral resources or mineral reserves. In addition, Items 14(d) and 15(d) of the Form require the qualified person to provide a general discussion on the extent to which the mineral resource or mineral reserve estimate could be materially affected by any known environmental, permitting, legal, title, taxation, socio-economic, marketing, political or other relevant factors.

Many technical reports only provided boilerplate disclosure about potential risks and uncertainties that are general to the mining industry. Failure to set out meaningful known risks specific to the mineral project make mineral resource and mineral reserve disclosure potentially misleading.

27. How can we enhance project specific risk disclosure for mining projects and estimation of mineral resources and mineral reserves?

I. Environmental and Social Disclosure

In recent years, CSA staff have seen an increase in public and investor awareness of environmental and social issues impacting mineral projects. Item 4: Property Description and Location and Item 20: Environmental Studies, Permitting and Social or Community Impact of the Form allow for disclosure of relevant environmental and social risk factors for the mineral project.

However, these disclosure requirements related to environmental and social issues have remained largely unchanged since NI 43-101 was adopted in 2001.

28. Do you think the current environmental disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?

29. Do you think the current social disclosure requirements under Items 4 and 20 of the Form are adequate to allow investors to make informed investment decisions? Why or why not?

30. Should disclosure of community consultations be required in all stages of technical reports, including reports for early stage exploration properties?

J. Rights of Indigenous Peoples

We recognize Indigenous Peoples to include First Nations, Inuit and Métis Peoples in Canada. We also recognize that issuers have projects in jurisdictions outside of Canada, and those jurisdictions will have Indigenous Peoples.

The unique legal status of Indigenous Peoples has received national and international recognition. For many projects, the rights of Indigenous Peoples overlap with legal tenure, property rights and governance issues. We believe that disclosure of these rights, and the Indigenous Peoples that hold them, forms an essential part of an issuer's continuous disclosure obligations.

Item 4 of the Form requires disclosure of the nature and extent of surface rights, legal access, the obligations that must be met to retain the property, and a discussion of any other significant factors and risks that may affect access, title, or the right or ability to perform work on the property. We are interested in hearing whether other disclosures should be included in the Form, or the issuer's other continuous disclosure documents, that relate to the relationship of the issuer with Indigenous Peoples whose traditional territories underlie the property.

31. What specific disclosures should be mandatory in a technical report in order for investors to fully understand and appreciate the risks and uncertainties that arise as a result of the rights of Indigenous Peoples with respect to a mineral project?

32. What specific disclosures should be mandatory in a technical report in order for investors to fully understand and appreciate all significant risks and uncertainties related to the relationship of the issuer with any Indigenous Peoples on whose traditional territory the mineral project lies?

33. Should we require the qualified person or other expert to validate the issuer's disclosure of significant risks and uncertainties related to its existing relationship with Indigenous Peoples with respect to a project? If so, how can a qualified person or other expert independently verify this information? Please explain.

K. Capital and Operating Costs, Economic Analysis

Capital and operating costs assumptions are integral to the financial and economic analysis of mineral projects. We see longstanding evidence, including industry-based case studies, of significant variance between disclosed cost estimates in technical reports and actual costs as projects are developed. This variance can have negative impacts on investors who rely on financial disclosure in technical reports.

Capital and operating costs

34. Are the current disclosure requirements for capital and operating costs estimates in Item 21 of the Form adequate? Why or why not?

35. Should the Form be more prescriptive with respect to the disclosure of the cost estimates, for example to require disclosure of the cost estimate classification system used, such as the classification system of the Association for the Advancement of Cost Engineering (AACE International)? Why or why not?

36. Is the disclosure requirement for risks specific to the capital and operating cost assumptions adequate? If not, how could it be improved?

Economic analysis

As stated above, a core principle of NI 43-101 is to require disclosure that will allow investors to be able to confidently compare the disclosure between different projects by the same or different issuers. Standardized disclosure is fundamental to this principle.

37. Are there better ways for Item 22 of the Form to require presentation of an economic analysis to facilitate this key requirement for the investing public? For example, should the Form require the disclosure of a range of standardized discount rates?

L. Other

38. Are there other disclosure requirements in NI 43-101 or the Form that we should consider removing or modifying because they do not assist investors in making decisions or serve to protect the integrity of the mining capital markets in Canada?

Comments and Submissions

We invite participants to provide input on the issues outlined in this Consultation Paper.

Please submit your comments in writing on or before July 13, 2022. Please send your comments by email in Microsoft Word format.

Please 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, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

Chris Collins
Chief Mining Advisor, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Fax: 604-899-6616
ccollins@bcsc.bc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2460, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-8381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission

Chris Collins
Chief Mining Advisor, Corporate Finance
604-899-6616
ccollins@bcsc.bc.ca

Victoria Yehl
Manager, Mining
604-899-6519
vyehl@bcsc.bc.ca

Darin Wasylik
Senior Geologist, Corporate Finance
604-899-6517
dwasylik@bcsc.bc.ca

Victoria Steeves
Senior Legal Counsel, Corporate Finance
604-899-6791
vsteeves@bcsc.bc.ca

Alberta Securities Commission

Mikale White
Senior Legal Counsel, Corporate Finance
403-355-4344
Mikale.White@asc.ca

Staci Rollefstad
Senior Evaluation Engineer
403-297-4225
staci.rollefstad@asc.ca

Ontario Securities Commission

Craig Waldie
Senior Geologist, Corporate Finance
416-593-8308
cwaldie@osc.gov.on.ca

James Whyte
Senior Geologist, Corporate Finance
416-593-2168
jwhyte@osc.gov.on.ca

Julius Jn-Baptiste
Senior Legal Counsel, Corporate Finance
416-595-8939
jjnbaptiste@osc.gov.on.ca

Autorité des marchés financiers

Marie-Claude Brunet-Ladrie
Directrice de l'information continue, Surintendance des marchés de valeurs
514-395-0337 ext. 4335
marie-claude.brunet-ladrie@lautorite.qc.ca

Erika Latourelle-Vigeant
Engineer, Direction de l'information continue
514 395-0337 ext. 4332
erika.latourelle-vigeant@lautorite.qc.ca

Michel Bourque
Senior Regulatory Advisor, Direction de l'information continue
514-395-0337 ext. 4466
michel.bourque@lautorite.qc.ca

Financial Consumer Services Commission New Brunswick

Joseph Adair
Senior Securities Analyst
866-933-2222
joe.adair@fcnb.ca

1.4 Notices from the Office of the Secretary

1.4.1 Amin Mohammed Ali

FOR IMMEDIATE RELEASE
April 7, 2022

AMIN MOHAMMED ALI,
File No. 2022-6

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

A copy of the Order dated April 7, 2022 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.2 Jonathan Cartu et al.

FOR IMMEDIATE RELEASE
April 8, 2022

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

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

A copy of the Reasons and Decision dated April 7, 2022 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.3 HRU Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
April 8, 2022

HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG,
File No. 2022-10

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

A copy of the Order dated April 8, 2022 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.4 Fraser Macdougall et al.

FOR IMMEDIATE RELEASE
April 11, 2022

FRASER MACDOUGALL AND
CHRIS BOGART AND
TRYP THERAPEUTICS INC.,
File No. 2022-4

TORONTO – The Applicants, Fraser Macdougall and Chris Bogart, filed a Notice of Withdrawal in the above-named matter.

Accordingly, the Application scheduled to be heard on April 11, 13, and 22, 2022 will not proceed.

A copy of the Notice of Withdrawal dated April 8, 2022 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.5 Fraser Macdougall et al.

FOR IMMEDIATE RELEASE
April 12, 2022

FRASER MACDOUGALL AND
CHRIS BOGART AND
TRYP THERAPEUTICS INC.,
File No. 2022-4

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

A copy of the Reasons for Decision dated April 11, 2022 is available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.6 Solar Income Fund Inc. et al.

FOR IMMEDIATE RELEASE
April 12, 2022

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

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on April 25, 2022 at 9:30 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.7 HRU Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
April 12, 2022

HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG,
File No. 2022-10

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

A copy of the Settlement Agreement dated March 30, 2022, and Reasons for Approval of a Settlement dated April 8, 2022 are available at www.osc.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

IN THE MATTER OF
HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. Mortgage investment entities (**MIEs**) must be registered to engage in the business of trading in securities with the public. For the past decade, the Commission has communicated this message to the MIE industry through news releases, industry outreach and enforcement actions. When MIEs fail to comply with the registration requirement or promote that they are registered when they are not, they undermine the important gate-keeping function served by registration to protect investors. This conduct is even more concerning when it involves former registrants.

2. Between September 2017 and November 2020 (the **Material Time**), HRU Mortgage Investment Corporation (**HRUMIC**), a MIE based in Ontario, and HRU Financials Ltd., a related Ontario company that acts as manager for HRUMIC (**HRUFL**, together with HRUMIC, **HRU**) raised approximately $13 million from 80 investors in the exempt market without being registered as a dealer. Despite not being registered, HRU promoted itself as being registered and/or recognized by the Commission, made untrue statements about the registration of one of its directors, and made misleading statements as to its regulation by other Canadian regulators and supervisory bodies. In doing so, HRU and its principals breached sections 25, 44 and 46 of the *Securities Act*, RSO 1990, c S.5 (the **Act**).

3. Yau Ling (Patrick) Lam (**Lam**), Qingyang (Michael) Xia (**Xia**) and Zichao (Marshall) Liang (**Liang**) are directors and officers of HRU. Lam, Xia and Liang engaged in the business of trading, were involved in the misleading and prohibited representations in HRU's marketing materials, and authorized and permitted HRU's breaches of Ontario securities law. As former registrants, Lam, Xia and Liang knew or ought to have known the importance of registration and the requirement to provide accurate and truthful information to investors.

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

PART II – JOINT SETTLEMENT RECOMMENDATION

5. Staff of the Commission (**Staff**) recommend settlement of the proceeding (the **Proceeding**) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondents consent to the making of an order (the **Order**) substantially in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out herein.

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

PART III – AGREED FACTS

A. DIRECTING MINDS OF HRU ARE FORMER REGISTRANTS

7. HRUMIC and HRUFL have three principal directing minds – Lam, Xia and Liang – who are all former registrants:

   (a) Lam, an Ontario resident, is the Chief Executive Officer of HRUMIC and Managing Director of HRUFL. Lam has been a director and officer of HRUMIC and HRUFL since October 17, 2018. Lam was previously registered in Ontario as a salesperson with two different registered scholarship plan dealers. He is not presently registered and was not registered during the Material Time.

   (b) Xia, an Ontario resident, is the Chief Information Officer and Managing Director of HRUMIC and the President of HRUFL. Xia has been a director and officer of HRUFL since May 1, 2017 and an officer and director of HRUMIC since October 17, 2018 and June 1, 2017, respectively. Xia was previously registered in Ontario as a dealing representative for a Mutual Fund Dealer. He is not presently registered and was not registered during the Material Time.

   (c) Liang, an Ontario resident, is the Treasurer of both HRUMIC and HRUFL, the Managing Director of HRUFL, as well as the Chief Operating Officer and Chief Compliance Officer of HRUMIC. Liang has been a director and officer of HRUFL and HRUMIC since May 1, 2017 and June 1, 2017, respectively. Liang was previously

registered in Ontario as a dealing representative for an Exempt Market Dealer (**EMD**). He is not presently registered and was not registered during the Material Time.

B. UNREGISTERED TRADING

8. During the Material Time, the Respondents engaged in the business of trading in securities without being registered under Ontario securities law.

9. HRU raised approximately $13 million from the sale of HRUMIC Class B preferred shares to 80 investors primarily located in Ontario and invested those funds in mortgages secured by Ontario real estate.

10. HRU raised capital on a regular and continuous basis. Over 100 distributions took place in approximately 30 of the 40 months of the Material Time. Distributions of HRUMIC preferred shares were conducted, at a minimum, quarterly until November 2020.

11. HRU conducted its own sales and did not use a registered EMD.

12. HRU promoted itself and its investment offerings in multiple ways: through its website, on Facebook, flyers, local Chinese-language radio commercials, at least three Offering Memoranda (**OMs**) and through a referral network. In addition to Lam, Xia and Liang, HRU also employed a dedicated Director of Sales and an Officer of Sales and Revenue.

13. Lam, Xia and Liang engaged in acts in furtherance of the sale of HRUMIC preferred shares by, among other things, soliciting investments, answering investor questions, providing investors with agreements or forms, distributing promotional materials concerning potential investments, issuing and signing share certificates, receiving, handling or depositing funds from investors and approving content for HRU OMs, brochures, website pages, radio advertisements and flyers.

C. PROHIBITED REPRESENTATIONS

(1) Prohibited Untrue Statements Regarding Registration

14. On its website, HRU made representations that the HRUMIC securities and Liang were registered with the Commission when this was not true.

(2) Prohibited Misleading and/or Untrue Statements

15. On its website and in its marketing materials, HRU made a variety of representations that were misleading and/or untrue, including that HRU filed monthly and quarterly compliance reports with the Commission, that HRU was in full compliance with Canadian securities laws and regulatory standards, and that HRU was regulated by other Canadian regulatory entities such as the “Federal Securities Commission”, “OSFI, CDIC, CMHC, and Insurance Compliances”.

(3) Prohibited Statements Regarding Commission Approval

16. On its website and in its marketing materials, including radio station advertisements and presentations to investors, HRU made a variety of prohibited representations that the Commission approved of HRU or its product. For example, HRU stated that HRU was recognized by the Commission as a “Qualified Investment”, that HRU offered a “OSC regulated and recognized investment solution,” and used the Commission’s logo in its marketing materials.

D. MITIGATING FACTORS

17. The Respondents cooperated with Staff during its investigation, including by:

(a) voluntarily providing Staff with information and documents relevant to Staff’s investigation;

(b) voluntarily agreeing to take down statements identified by Staff in HRU’s marketing materials and website;

(c) voluntarily conducting a review of HRU’s compliance with the prospectus regime and advising that HRU would put in place protocols to facilitate avoiding late exempt distribution filings going forward; and

(d) advising Staff in May 2021 that HRU had voluntarily ceased all securities trading activities as of November 2020 that did not involve a registered firm authorized to trade exempt securities.

PART IV – NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

18. The Respondents acknowledge and admit that, during the Material Time:

(a) the Respondents engaged in the business of trading in securities without being registered, contrary to subsection 25(1) of the Act;

(b) the Respondents made untrue representations regarding registration contrary to subsection 44(1) of the Act;

(c) the Respondents made prohibited misleading or untrue statements, contrary to subsection 44(2) of the Act;

(d) the Respondents made prohibited statements regarding Commission approval, contrary to section 46 of the Act;

(e) Lam, Xia and Liang authorized, permitted or acquiesced in HRU's non-compliance set out in sub-paragraphs (a) to (d) above, contrary to section 129.2 of the Act; and

(f) as set out in sub-paragraphs (a) to (e) above, the Respondents engaged in conduct contrary to the public interest.

PART V – RESPONDENTS' POSITION

19. The Respondents request that the Settlement Hearing panel consider the following circumstances. Staff do not object to the Respondents putting forward the circumstances set out below.

(a) HRUMIC has provided positive returns to investors during the Material Time;

(b) HRU has not received any complaints from investors; and

(c) HRUFL earned management fees from managing HRUMIC but received no direct compensation from the sale of preferred shares in HRUMIC. HRU paid no commissions or other incentives in connection with the sale of preferred shares in HRUMIC.

PART VI – TERMS OF SETTLEMENT

20. The Respondents agree to the terms of settlement set forth below.

21. The Respondents consent to the Order substantially in the form attached as Schedule "A", pursuant to which it is ordered that:

(a) the Settlement Agreement is approved;

(b) each of the Respondents is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

(c) HRUFL, Lam, Xia and Liang shall pay an administrative penalty in the amount of $400,000, on a joint and several basis, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b) of the Act;

(d) HRUFL, Lam, Xia and Liang shall pay costs in the amount of $25,000, pursuant to section 127.1 of the Act;

(e) Lam, Xia and Liang immediately resign any position that they hold as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(f) Lam, Xia and Liang immediately resign any position that they hold as a director or officer of a registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;

(g) Lam, Xia and Liang be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act, subject to paragraph (j) below;

(h) Lam, Xia and Liang be prohibited from becoming or acting as a director or officer of any registrant for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8.2 of subsection 127(1) of the Act, subject to paragraph (j) below;

(i) Lam, Xia and Liang be prohibited from becoming or acting as a registrant or a promoter for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act, subject to paragraph (j) below;

(j) following the periods set out in sub-paragraphs (g), (h) and (i) above, Lam, Xia and Liang shall each successfully complete the Ethics and Professional Conduct Course (EPC) and the Partners, Directors & Senior Officers Course provided by the IFSE Institute (the **Required Courses**), as well as meeting all proficiency requirements, before applying to become a registrant or an officer and/or director of a registrant with the Commission. Pending:

(i) the successful completion of the Required Courses by Lam, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Lam will be prohibited from becoming or acting as a director or officer of

any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Lam will be prohibited from becoming or acting as a registrant or promoter;

(ii) the successful completion of the Required Courses by Xia, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Xia will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Xia will be prohibited from becoming or acting as a registrant or promoter; and

(iii) the successful completion of the Required Courses by Liang, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Liang will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Liang will be prohibited from becoming or acting as a registrant or promoter;

(k) the amounts set out in sub-paragraphs (c) and (d) be paid in full to the Commission by wire transfer prior to the commencement of the Settlement Hearing.

22. The Respondents consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 21, other than sub-paragraphs 21(c) and 21(d). These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

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

24. HRUMIC and HRUFL have given an undertaking (the **Undertaking**) to the Commission in the form attached as Schedule "B" to this Settlement Agreement, which includes an undertaking to, among other things, retain an EMD to conduct a know-your-client (**KYC**) and suitability review and to amend investor materials to address discrepancies in descriptions of loan-to-value ratios and investor returns.

PART VII – FURTHER PROCEEDINGS

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

26. The Respondents acknowledge that, if the Commission approves this Settlement Agreement and the Respondents fail to comply with any term in it or the Undertaking, Staff or the Commission are entitled to bring any proceedings necessary to, among other things, recover the amounts set out in sub-paragraphs 21(c) and 21(d), above.

27. The Respondents waive any defences to a proceeding referenced in paragraph 25 or 26 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement or the Undertaking.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

28. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure and Forms*.

29. The Respondents will attend the Settlement Hearing in person or by video-conference.

30. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

31. If the Commission approves this Settlement Agreement:

(a) the Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and

(b) no parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

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

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

33. If the Commission does not make the Order:

(a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and

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

34. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

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

36. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 25 day of March, 2022.

HRU MORTGAGE INVESTMENT CORPORATION
By: "Patrick Lam"
Name: Patrick Lam
Title: CEO

DATED at Toronto, Ontario this 25 day of March, 2022.

HRU FINANCIALS LTD.
By: "Qingyang Xia"
Name: Qingyang Xia
Title: CIO

DATED at Toronto, Ontario this 25 day of March, 2022.

"Winnie Law"
Witness: Winnie Law

"Patrick Lam"
YAU LING (PATRICK) LAM

DATED at Toronto, Ontario this 25 day of March, 2022.

"Winnie Law"
Witness: Winnie Law

"Qingyang Xia"
QINGYANG (MICHAEL) XIA

DATED at Toronto, Ontario this 25 day of March, 2022.

"Winnie Law"
Witness: Winnie Law

"Zichao Liang"
ZICHAO (MARSHALL) LIANG

DATED at Toronto, Ontario, this 30 day of March, 2022

ONTARIO SECURITIES COMMISSION
By: "Jeff Kehoe"
Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A"

FORM OF ORDER

IN THE MATTER OF
HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG

File No. ___

[*Name(s) of Commissioner(s) comprising the panel*]

[*Day and date Order made*]

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

WHEREAS on **[date]**, the Ontario Securities Commission (the **Commission**) held a hearing by video-conference to consider the request jointly made by HRU Mortgage Investment Corporation (**HRUMIC**), HRU Financials Ltd. (**HRUFL**), Yau Ling (Patrick) Lam (**Lam**), Qingyang (Michael) Xia (**Xia**) and Zichao (Marshall) Liang (**Liang**) (collectively, the **Respondents**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated **[date]** (the **Settlement Agreement**);**AND WHEREAS** pursuant to the Settlement Agreement, HRUMIC and HRUFL have given an undertaking (the **Undertaking**) to the Commission, in the form attached as Schedule "A" to this Order;

ON READING the Joint Application for Settlement Hearing, including the Settlement Agreement, the Statement of Allegations dated **[date]**, and the Memorandum of Fact and Law and Brief of Authorities provided by Staff and on hearing the submissions of the representatives for the Respondents and Staff, each appearing by video-conference, and on considering HRUFL, Lam, Xia and Liang jointly having made payment of the $400,000 administrative penalty and a payment of $25,000 on account of costs to the Commission in accordance with the terms of the Settlement Agreement, and on considering the Undertaking dated **[date]** attached as Schedule "A" to this Order;

IT IS ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) each of the Respondents is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

(c) HRUFL, Lam, Xia and Liang shall pay an administrative penalty in the amount of $400,000, on a joint and several basis, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b) of the Act;

(d) HRUFL, Lam, Xia and Liang shall pay costs in the amount of $25,000, pursuant to section 127.1 of the Act;

(e) Lam, Xia and Liang immediately resign any position that they hold as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(f) Lam, Xia and Liang immediately resign any position that they hold as a director or officer of a registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;

(g) Lam, Xia and Liang be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act, subject to paragraph (j) below;

(h) Lam, Xia and Liang be prohibited from becoming or acting as a director or officer of any registrant for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8.2 of subsection 127(1) of the Act, subject to paragraph (j) below;

(i) Lam, Xia and Liang be prohibited from becoming or acting as a registrant or a promoter for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act, and subject to paragraph (j) below;

(j) following the periods set out in sub-paragraphs (g), (h) and (i) above, Lam, Xia and Liang shall each successfully complete the Ethics and Professional Conduct Course (EPC) and the Partners, Directors & Senior Officers Course provided by the IFSE Institute (the **Required Courses**), as well as meeting all proficiency requirements, before applying to become a registrant or an officer and/or director of a registrant with the Commission. Pending:

(i) the successful completion of the Required Courses by Lam, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Lam will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Lam will be prohibited from becoming or acting as a registrant or promoter;

(ii) the successful completion of the Required Courses by Xia, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Xia will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Xia will be prohibited from becoming or acting as a registrant or promoter; and

(iii) the successful completion of the Required Courses by Liang, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Liang will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Liang will be prohibited from becoming or acting as a registrant or promoter.

_____

[Commissioner]

_____ _____

[Commissioner] [Commissioner]

SCHEDULE "B"

FORM OF UNDERTAKING

IN THE MATTER OF THE *SECURITIES ACT,* RSO 1990, c S.5

IN THE MATTER OF
HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated **[date]** (the **Settlement Agreement**) between HRU Mortgage Investment Corporation (**HRUMIC**), HRU Financials Ltd. (**HRUFL**), Yau Ling (Patrick) Lam, Qingyang (Michael) Xia, and Zichao (Marshall) Liang and Staff (**Staff**) of the Commission. All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. HRUMIC and HRUFL (together **HRU**) undertake to the Commission to:

   (a) conduct any subsequent trades of securities of HRUMIC through or to a firm registered under Ontario securities law in a category that permits such trade, or by HRU directly only if and when registered to conduct such trades.

   (b) provide to any dealer registered under Ontario securities law engaged by HRU a copy of the Settlement Agreement and the Order approving the Settlement Agreement.

   (c) retain an exempt market dealer (**EMD**) to:

      (i) conduct a full review of all HRU marketing materials and investor statements, including any Offering Memoranda and any online marketing or online portals, in order to: (1) remove or clarify any potential inconsistent or confusing statements regarding investor returns and/or dividends; and (2) clarify statements made regarding loan-to-value (**LTV**) ratios to be consistent across all investor materials;

      (ii) conduct a review of the adequacy of the know-your-client (**KYC**) and suitability documentation obtained by HRU with respect to its current existing investors who did not purchase securities of HRUMIC through a registered dealer, to be completed within four months from the date of the Order approving the Settlement Agreement;

      (iii) obtain such additional KYC and suitability information as required for a suitability assessment where the EMD deems that the existing documentation at HRU for a client is inadequate pursuant to paragraph 2(c)(ii) above and conduct a suitability analysis in relation to that client;

      (iv) conduct a suitability analysis in accordance with sections 13.2 and 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) for a random sample of 20 current existing investors, selected by the EMD, who did not purchase securities of HRUMIC through a registered dealer, to be completed within four months from the date of the Settlement Hearing;

      (v) if five or more of the 20 investors are identified by the EMD to have made unsuitable investments in HRUMIC, conduct a suitability analysis in accordance with sections 13.2 and 13.3 of NI 31-103 for all current existing investors who did not purchase securities of HRUMIC through a registered dealer; and

      (vi) report the results of the reviews to HRU and Staff.

   (d) once an EMD has been retained, HRU shall immediately provide Staff with a written authorization granting Staff free and unfettered access to communicate with the EMD with respect to the retainer; and

   (e) redeem the shares held by all investors identified by the EMD to have made an unsuitable investment in HRUMIC at the issue price of $1 per share, unless the investor(s) confirm to HRU and the EMD in writing that they wish to retain their investments and provided the EMD has first informed the investor(s) in writing of the EMD's determination that the shares are not a suitable investment for them along with the basis for that determination, and has recommended to the investor(s) an alternative investment action that is suitable in accordance with subsection 13.3(2.1) of NI 31-103.

DATED at Toronto, Ontario this 25 day of March, 2022.

HRU MORTGAGE INVESTMENT CORPORATION

"Patrick Lam"
CEO

DATED at Toronto, Ontario this 25 day of March, 2022.

HRU FINANCIALS LTD.

"Qingyang Xia"
CIO

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Liquidnet Canada, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from subsection 7.1(1) of National Instrument 21-101 Marketplace Operation to permit Liquidnet Canada Inc. to update terminology and functionality of its one-to-one negotiation process and dark order book in connection to pre-trade transparency requirements.

Applicable Legislative Provisions

National Instrument 21-101 Marketplace Operation, ss. 7.1 and 15.1.
National Instrument 14-101 Definitions, s. 1.1.
Multilateral Instrument 11-102 Passport System, s. 4.7.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, ss. 3.2 and 3.6.

April 7, 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
LIQUIDNET CANADA, INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (**Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption pursuant to section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from the pre-trade transparency requirements of s. 7.1(1) of NI 21-101 relating to (1) firm order information "displayed" to subscribers participating in the Filer's one-to-one negotiation functionality, including interaction between a manual contra on one side and a firm or conditional order on the other side, and (2) a firm resting order generating a firm-up request when matched with a conditional order, outside of a one-to-one negotiation process (the **Exemption Sought**). In connection with the grant of the Exemption Sought, the Filer also requests revocation pursuant to s. 144 of the Securities Act, R.S.O. 1990 (**the Act**), of the Filer's prior exemption from s. 7.1(1) of NI 21-101 for the Filer's one-to-one negotiation system, granted on or about June 29, 2012 (**the 2012 Transparency Exemption**).

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 the Application, and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, National Policy 11-203 *Process for Exemptive Relief in Multiple Jurisdictions* (**NP 11-203**), NI 21-101, MI 11-102 or the *Securities Act* (Ontario) have the same meaning if used in this decision, unless otherwise defined. Additional capitalized terms are to be interpreted as defined below.

Representations

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

1. The Filer is a federal corporation formed under the laws of Canada and is a wholly owned subsidiary of Liquidnet Holdings, Inc., a corporation formed under the laws of the State of Delaware.

2. The Filer operates an alternative trading system (the **ATS**) as that term is defined in NI 21-101 that is registered as an investment dealer (or equivalent) with the OSC, the Autorité des Marchés Financiers of Quebec and the British Columbia, Alberta, Saskatchewan, Manitoba and New Brunswick Securities Commissions. The Filer is also a member of and regulated by the Investment Industry Regulatory Organization of Canada (**IIROC**).

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

4. The Filer, as an ATS, facilitates the execution of orders in Canadian equity securities by its subscribers, as defined in NI 21-101 and described in its Form 21-101F2 *Information Statement Alternative Trading System* (F2).

5. On June 29, 2012, the OSC granted the Filer's application for the 2012 Transparency Exemption, which covered the Filer's one-to-one negotiation system, including interaction between a manual contra on one side and a firm order on the other side. As stated in the 2012 Transparency Exemption, "[t]he manual negotiation system also can involve one trader manually negotiating against a firm order submitted for manual negotiation."

6. On September 21, 2012, the OSC approved the Filer's proposed broker blocks functionality, which involved interaction between a manual contra on one side, and a firm order submitted by a broker participant (a **broker block order**) on the other side. At that time, (i) the Filer did not distinguish between broker matches from other buy-side matches when notifying manual contras (buy-side traders) of block trading opportunities, (ii) the minimum order size for a broker block order was 50 standard trading units, and (iii) all orders, if executed, would be executed at the mid-price.

7. On June 23, 2017, the OSC approved the Filer's proposal to introduce conditional order functionality for broker block orders and approved an increase in the minimum order size for broker block orders to the lesser of 10,000 shares and Cdn$100,000 in value. In the case of a conditional broker block order, prior to execution against a manual contra, an automated firm-up request would be sent to the broker's systems to fully commit the shares to the Filer's ATS (if available).

8. On December 13, 2018, the OSC approved the Filer's proposal to begin distinguishing broker matches from buy-side matches when notifying manual contras (buy-side traders) of block trading opportunities.

9. As approved, and in its current state, the Filer's manual negotiation system, inclusive of broker blocks functionality, meets the three requirements specified in the 2012 Transparency Exemption (and the guidance set forth in subsection 5.1(4) of Companion Policy 21-101CP (**CP 21-101**)):

    (a) Order details are shown only to the negotiating parties (which may include one manual contra, and one automated);

    (b) Other than as provided in (a) above, no actionable indication of interest (**IOI**) or order is displayed by either party or the marketplace; and

    (c) Each order meets the size threshold set by a regulation services provider as set out in subsection 7.1(2) of NI 21-101.

10. The Filer is seeking to update its existing exemption from subsection 7.1(1) of NI 21-101 to update terminology and better describe its current functionality, including: (1) firm order information "displayed" to subscribers participating in the Filer's one-to-one negotiation functionality (inclusive of broker blocks functionality), including interaction between a manual contra on one side and a firm or conditional order on the other side, and (2) a firm, dark order generating a firm-up request when matched with a conditional, dark order outside of a one-to-one negotiation process.

One-to-One Negotiation Functionality

11. The Filer's ATS offers subscribers the ability to enter into negotiations for the purchase and sale of large blocks of equity securities ("one-to-one negotiation functionality"). All negotiations on the Filer's ATS are on an anonymous basis. Communication between subscribers during a negotiation occurs through the Filer's ATS.

12. A key feature of the Filer's negotiation functionality is that communication of one party's trading interest to a contra party through the marketplace is conditioned on both sides communicating a bona fide intention to trade on the marketplace, with the bona fide intentions to trade being in the same symbol and on opposite sides. A negotiation may involve two manual traders or a manual trader on one side, and a firm or conditional resting order configured to interact with a manual contra on the other side.

13. The Filer interfaces with the order management systems of its subscribers, and receives indications from them. Two indications will be matched for negotiation on the Filer's ATS if certain conditions are met. An indication may also be matched for negotiation with a firm or conditional resting order configured to interact with manual contras utilizing the one-to-one negotiation functionality.

14. The Filer has disclosed to its subscribers that any subscriber who elects to utilize the Filer's negotiation functionality may interact with other manual contras as well as firm or conditional resting orders configured to interact with manual contras. By electing to utilize the Filer's negotiation functionality and actively respond to a trading opportunity, a subscriber has taken an affirmative action confirming his or her agreement to share his or her firm order information with negotiation contras, including both manual contras and conditional resting orders submitted by other subscribers. In this scenario, it is important to note that a subscriber does not create a firm order until *after* the subscriber has been matched with a negotiation contra. At that point, the subscriber takes an affirmative action to share his or her firm order information within the one-to-one negotiation functionality by electing to either submit or accept a negotiation proposal.

Negotiation between two manual traders

15. When the ATS's matching engine determines that a match for negotiation has occurred between two manual traders, it notifies those two manual traders of the match. This notification is communicated through the Filer's ATS software. The manual traders may then commence the negotiation process, which takes places on an anonymous basis through the Filer's ATS software.

16. When submitting a bid or offer in a negotiation, the subscriber specifies a price and quantity. The price can be a fixed price or a mid-peg price where the trade will execute at the mid-point of the protected national best bid and offer (**PNBBO**).

17. The quantity of shares during a negotiation is not displayed to the other side. The only information that a subscriber knows regarding a contra's quantity of shares is whether it is above or below the subscriber's minimum volume tolerance and above a minimum matching quantity for negotiation, as determined by Filer and approved by the applicable regulator, from time to time. As of the effective date of this Order, an order submitted by a manual trader during a negotiation must meet a minimum order size of either (i) greater than 50 standard trading units and greater than Cdn$30,000 in value, or (ii) greater than Cdn$100,000 in value (the **Minimum Size Threshold**).

Negotiation involving a manual trader and a firm or conditional order

18. When the Liquidnet Canada ATS's matching engine determines that a match for negotiation has occurred between a manual trader and a firm or conditional resting order created by another subscriber (a **contra order**), it notifies the manual trader of the match. This notification is communicated through the Filer's ATS software. The contra order may be a broker block order or an order created by a buy-side subscriber.

19. Upon receipt of the match notification, the manual trader may accept the opportunity to trade against the contra order at a price within that manual trader's specified price constraint, e.g., a mid-peg price. The quantity of shares is not displayed to either side. The manual trader knows only that the quantity of the contra order is above or below the subscriber's minimum volume tolerance and above the Minimum Size Threshold.

20. In the case of a firm contra order, a trade is executed upon acceptance of the proposal by the manual trader, provided that the firm contra order was not executed prior to the manual trader's acceptance of the proposal.

21. In the case of a conditional contra order, an automated firm-up request is sent to the submitting subscriber's systems to fully commit the shares to the Filer's ATS (if still available). The firm-up request sent to the submitting subscriber only provides symbol and side (i.e., buy or sell), while size and price are only inferable without precision (i.e., the submitting subscriber will be able to infer that the manual trader meets the Minimum Size Threshold set forth above and that the price is within any specified price constraint, e.g., at or better than the mid-point of the PNBBO).

22. When the manual trader offers contra-side liquidity to a conditional contra order, the firm-up request sent to the submitting subscriber will not allow the subscriber to determine whether the contra-side liquidity is immediately actionable (i.e., the subscriber will be blind as to whether the contra-side order is a firm order or another conditional order).

23. The final step required to achieve an execution, (i.e., the firm-up by the subscriber that submitted the conditional), is not guaranteed and, therefore, execution is not a mere formality.

The Filer's negotiation functionality facilitates large-sized trades

24. If a negotiation on the Filer's ATS is successful, a trade is executed for the lesser of the quantities submitted by each side. The Minimum Size Threshold specified above for one-to-one negotiation facilitates large-sized trades and, consistent with the guidance set forth in subsection 5.1(4)(c) of CP 21-101 applicable to facilities that allow for negotiation between two parties, meets the minimum size requirement specified by a regulation services provider as set out in subsection 7.1(2) of NI 21-101.

Order details only displayed to the negotiating parties

25. In all cases, order details are displayed only to the two negotiating parties and limited information is provided to the Filer's employees involved in the operation of the Filer's ATS, as permitted under subsection 7.1(2) of NI 21-101. In the case of a manual trader interacting with a firm order submitted for negotiation, order details are displayed only to the manual trader, as there is no need to send a firm-up request to a subscriber who submits a firm order.

No actionable IOI or order is displayed by either negotiating party (other than to each other) or the marketplace

26. No actionable IOI or order is displayed by either negotiating party (other than to each other) or the marketplace.

Interaction between a firm resting order on one side and a conditional resting order on the other side, outside of a one-to-one negotiation process

27. A subscriber may also elect to create a firm or conditional dark resting order that may match and execute with other firm or conditional dark resting orders on the Filer's ATS, outside of a one-to-one negotiation process.

28. The Filer has disclosed to its subscribers that firm or conditional dark orders resting on its ATS will, by default, interact with other firm and/or conditional dark resting orders on its ATS. But a subscriber may elect a configuration whereby, outside of a one-to-one negotiation process, its firm dark orders will only interact with other firm dark orders, and not interact with dark conditional orders (the **Firm Only Configuration**). A subscriber who has declined to elect the Firm Only Configuration and actively chooses to submit a firm dark order to the Filer's ATS has affirmatively consented to display its firm order information to dark conditional resting orders submitted by other subscribers.

29. When a firm order matches with a conditional contra order submitted by another subscriber (the **Conditional Subscriber**), an automated firm-up request is sent to the Conditional Subscriber's systems to fully commit the shares to the Filer's ATS (if still available). In this circumstance, the firm-up request may be interpreted as a display of a firm order. The Conditional Subscriber will only receive a firm-up request if both the firm order and the matching conditional order meet the Minimum Size Threshold (greater than 50 standard trading units and $30,000, or greater than $100,000).

30. The firm-up request sent to the Conditional Subscriber's systems will only provide symbol and side (i.e., buy or sell), while size and price will only be inferable without precision, i.e., the Conditional Subscriber will be able to infer that the contra-side's price is within any specified price constraint (e.g., at or better than the mid-point of the PNBBO).

31. The firm-up request sent to the Conditional Subscriber will not allow that subscriber to determine whether the contra-side liquidity is immediately actionable (i.e., the subscriber will be blind as to whether the contra-side order is a firm order or another conditional order).

32. The final step required to achieve an execution, (i.e., the firm-up by the Conditional Subscriber), is not guaranteed and, therefore, execution is not a mere formality.

33. The Filer's existing compliance mechanism applicable to conditional orders includes periodic reviews of subscriber firm-up rates, with appropriate follow-up to subscribers to address any issues. In deciding what steps, if any, to take, the Filer will consider a subscriber's firm-up rate relative to all subscribers, whether there is adverse price movement to contra-side participants as a result of the failure to firm-up, potential frustration to other participants, the relative firm-up rates compared against different categories of contra interaction, and other relevant factors. This process provides an additional measure of protection in favour of the policy objective underlying section 7.1(1) of NI 21-101, i.e., fair access to pre-trade information, by allowing the Filer to monitor and combat abusive order-cancellation behaviour, which could indicate a Subscriber's attempt to gain an unfair informational advantage. Changes to the Filer's compliance mechanism

are subject to notice to or approval by the OSC through filing an amendment to the relevant information provided in the Filer's F2.

Policy Rationale

34. Consistent with the 2012 Transparency Exemption, the orders executed in the Filer's one-to-one negotiation system, as described herein, are the culmination of a negotiation process. Because of the unique nature of the Filer's business, this decision will not impact the objective of the pre-trade transparency requirements of section 7.1 of NI 21- 101.

35. This decision also remains consistent with the guidance provided in subsection 5.1(4) of CP 21-101, which provides that, in granting an exemption, the securities regulatory authority may consider whether each order entered on the marketplace meets the size threshold set by a regulation services provider, as provided in subsection 7.1(2) of NI 21-101. As of the date of this Order, no size threshold has been set. However, the Filer believes that the Minimum Size Threshold is an appropriate size threshold for an exemption contemplated in subsection 5.1(4) of 21-101CP.

36. While the transparency requirements are fundamental to the marketplace framework in NI 21-101, there is a benefit for Canadian capital markets from the facilitation of large block-size trades, including those resulting from conditional orders. The Filer acknowledges that the impact of the approved functionality on the Canadian capital markets will be monitored over time, and any unanticipated negative impact will be addressed.

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 2012 Transparency Exemption is revoked and the Exemption Sought is granted provided that:

1) For orders displayed within the Filer's one-to-one negotiation process (as described herein),

   (a) order details in the manual negotiation system of the Filer's ATS are shown only to the two negotiating parties;

   (b) no actionable IOI or order is displayed by any negotiating party or by the marketplace, except that each party to a negotiation may communicate its bid or offer to the other negotiating party, as permitted under condition (a);

   (c) all orders to which the Exemption Sought apply must meet the Minimum Size Threshold.

2) For a firm dark order sending a firm-up request to a conditional dark order outside of a one-to-one negotiation process,

   (a) the firm dark order must meet the Minimum Size Threshold;

   (b) the firm-up request conveys only symbol and side as known order elements, however information about price and quantity is not conveyed and may only be inferable without precision;

   (c) the firm-up request does not enable the conditional recipient to determine whether the contra-side liquidity is immediately actionable;

   (d) the Filer has disclosed to its subscribers that firm orders may, by default, interact with both firm and conditional orders on the Filer's ATS, but subscribers may elect a configuration whereby their firm dark orders will only interact with other firm dark orders, and not interact with dark conditional orders; by declining this available configuration and actively electing to submit a firm order to the Filer's ATS, a subscriber has affirmatively consented to also interact with conditional orders submitted by other subscribers.

   (e) the Filer will analyze the impact of the approved functionality and will share the results with the OSC. The manner and format of the analysis will be agreed to with OSC staff no later than 90 days after the signing of this decision.

"Susan Greenglass"
Director, Market Regulation
Ontario Securities Commission

2.1.2 Aardvark Capital Corp.

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 a predecessor entity that ire 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.

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
AARDVARK CAPITAL CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an exemption from the requirements of 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* (**Form 51-102F3**) to file all of the financial statements of 2766604 Ontario Ltd. (the **Target**) (being, the 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 (as defined below) (the **Requested Relief**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (**NP 11-203**) (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, New Brunswick, and Nova Scotia (collectively with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on January 29, 2021. The Filer is a capital pool company whose common shares are listed on the TSX Venture Exchange (the **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 – *Capital Pool Companies* of the Corporate Finance Manual of the TSXV (**TSXV Policy 2.4**).

2. The head office of the Filer is located at Suite 400 - 77 King Street West, Toronto, Ontario, M5K 0A1.

3. The Filer is a reporting issuer in the Jurisdictions, and to the knowledge of the Filer, it is not in default of any of its obligations as a reporting issuer under the securities laws of the Jurisdictions.

4. The common shares of the Filer are listed and posted for trading on the TSXV under the trading symbol "ACCA.P". The common shares of the Filer have been halted since July 16, 2021, and are intended to remain halted until the completion of the Proposed Transaction (as defined below).

5. The Target is a private company incorporated under the *Business Corporations Act* (Ontario) on July 16, 2020, with its head and registered offices located at Suite 200 - 1100 Russell Street, Thunder Bay, Ontario, P7B 5N2.

6. The Target is not a reporting issuer in any province or territory of Canada and no securities of the Target are listed or posted for trading on any stock exchange.

7. The Target's principal business activity to date has been the entering into of the Option Agreement (as defined below) in respect of the FAD Property (as defined below) and conducting certain exploration work thereon since mid-2021, in accordance with the terms of the Option Agreement.

8. The financial year end of the Target is December 31.

9. On December 24, 2021, the Filer and the Target entered into a business combination agreement pursuant to which the Filer agreed to acquire all of the issued and outstanding common shares of the Target, by way of an amalgamation of the Target and a wholly-owned subsidiary of the Filer pursuant to the *Business Corporations Act* (Ontario) (the **Proposed Transaction**).

10. On December 29, 2021, in connection with the Proposed Transaction, the Target closed a private placement of subscription receipts of the Target, (the **Subscription Receipts**) at a price of C$2.10 per Subscription Receipt for aggregate gross proceeds of C$15,660,779.40.

11. The Proposed Transaction will constitute a "reverse takeover" as defined in NI 51-102 and will serve as the Filer's "Qualifying Transaction" under TSXV Policy 2.4. In connection with the Proposed 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 the Target prescribed by National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) 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 also applied to the TSXV for a waiver from the equivalent financial statement requirements in TSXV Form 3B2.

12. As of the date hereof, the Target, through its indirect, wholly owned subsidiary, Golden Hill Mining LLC (**Golden Hill**), holds an option (the **FAD Property Option**) to acquire a 100% ownership interest in the "FAD Property" (the **FAD Property**) located on the Eureka-Battle Mountain trend in Nevada, USA. The FAD Property consists of 156 unpatented lode mining claims, and 110 fee land parcels (also called patented claims), totaling approximately 3,627 acres.

13. The FAD Property is currently 100%-owned by Waterton Nevada Splitter, LLC, Waterton Nevada Splitter II, LLC, and FAD Mining Company LLC (collectively, **Waterton**). Waterton purchased the FAD mineral concessions, the Spring Valley project, and the Ruby Hill Mine from a third party in 2015. Following the acquisition, Waterton separated the acquired project into two different claim packages: the northern package (which was subsequently sold to another third party in 2021) and the FAD Property (which forms the subject matter of the FAD Property Option).

14. Concurrently with the completion of the Proposed Transaction, the Target intends to exercise the FAD Property Option and acquire a 100% ownership interest in the FAD Property from Waterton, in accordance with the terms of the master transaction agreement dated March 31, 2021 (as amended from time to time, the **Option Agreement**) between Waterton, Golden Hill and the Target. Upon completion of the exercise of the FAD Property Option, the FAD Property will become 100%-owned by the entity resulting from the Proposed Transaction (the **Resulting Issuer**), through Golden Hill, and will constitute the Resulting Issuer's "material property" for purposes of applicable Canadian securities laws.

15. The FAD Property has been dormant for a number of years, including from 2015, when Waterton acquired the FAD mineral concessions, until mid-2021, when the Target undertook and completed certain exploration work on the FAD Property in connection with the Option Agreement.

16. The relevant expenditures incurred by the Target in respect of the FAD Property have been included in the notes to the audited financial statements of the Target for the period from incorporation on July 16, 2020 to December 31, 2020 (the **Target 2020 Audited Financial Statements**) and will be reflected in the audited financial statements of the Target for the year ended December 31, 2021 (the **Target 2021 Audited Financial Statements**).

17. 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 the Target.

18. In addition to the required financial statements and management's discussion and analysis (**MD&A**) of the Filer, the Filing Statement will include the following financial statements and MD&A of the Target:

    (a) the Target 2020 Audited Financial Statements;

    (b) the MD&A of the Target for the period from incorporation on July 16, 2020 to December 31, 2020;

    (c) the Target 2021 Audited Financial Statements; and

    (d) the MD&A of the Target for the year ended December 31, 2021

    (collectively, the **Target Financial Information**).

19. The Target Financial Information includes financial information in respect of the FAD Property and provides capitalized exploration expenditures in respect of the FAD Property. In addition, the Target Financial Information, 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, the Target and the FAD Property and will contain sufficient information to permit investors to make a reasoned assessment of the Resulting Issuer's business following completion of the Proposed Transaction.

20. The financial statement requirements for a prospectus (which TSXV Form 3B2 references and relies upon) 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) ...

21. 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.

22. Accordingly, to the extent that the FAD Property is deemed to constitute the primary business of the Filer upon completion of the Proposed Transaction, the Filing Statement would also have to include, in addition to the Target 2020 Audited Financial Statements and the Target 2021 Audited Financial Statements, audited carve-out financial statements for the FAD Property (the **FAD Property Carve-Out Financial Statements**) for the period from January 1, 2019 to March 30, 2021.

23. 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:

    (a) 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

    (b) 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. [emphasis added]

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

25. Provided the Requested Relief is granted, the Filing Statement will not include the FAD Property Carve-Out Financial Statements.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

(a) the Filing Statement includes the Target Financial Information; and

(b) the Filing Statement is filed on SEDAR forthwith following acceptance by the TSXV.

DATED at Toronto, Ontario on this 31st day of March, 2022.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0112

2.1.3 I.G. Investment Management, Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from subsection 5.1(4) of NI 81-101 to permit simplified prospectus of alternative mutual funds to be consolidated with simplified prospectus of mutual funds that are not alternative mutual funds.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 5.1(4) and 6.1.

April 4, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
MANITOBA AND
ONTARIO

AND

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

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(the Filer)

DECISION

Background

The securities regulatory authority in each of Manitoba and Ontario (the **Decision Maker**) has received an application from the Filer on behalf of the iProfile Alternatives Private Pool (the **iProfile Pool**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that grants relief to the iProfile Pool and any alternative mutual fund established or restructured in the future and managed by the Filer (collectively with the iProfile Pool, the **Alternative Funds**) from the requirement in subsection 5.1(4) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) which states that a simplified prospectus for an alternative mutual fund must not be consolidated with a simplified prospectus of another mutual fund if the other mutual fund is not an alternative mutual fund (the **Requested Relief**).

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

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

(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 each of the other provinces and territories of Canada (together with Manitoba and Ontario, the **Jurisdictions**); and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, and National Instrument 81-102 *Investment Funds* (**NI 81-102**) 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 continued under the laws of Ontario and its head office is in Winnipeg, Manitoba.

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

3. The Filer is or will be the manager, trustee and portfolio manager of each of the Alternative Funds.

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

5. Each Alternative Fund is or will be an alternative mutual fund trust established under the laws of Manitoba and is or will be a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

6. The iProfile Pool is not in default of securities legislation in any of the Jurisdictions.

7. The securities of each Alternative Fund are, or will be, qualified for distribution in one or more of the Jurisdictions using a simplified prospectus, annual information form and fund facts documents prepared and filed in accordance with the securities legislation of such Jurisdictions. Each Alternative Fund is, or will be, subject to the requirements of NI 81-101 and NI 81-102.

8. The Filer wishes to combine the simplified prospectus and annual information form of the Alternative Funds with the simplified prospectus of certain other mutual funds existing today or created in the future (i) that are reporting issuers to which NI 81-101 and NI 81-102 apply, (ii) that are not alternative mutual funds, and (iii) for which the Filer acts as the investment fund manager (the **IG Funds**), in order to reduce renewal, printing and related costs. Offering the Alternative Funds using the same simplified prospectus and annual information form as the IG Funds would facilitate the distribution of the Alternative Funds in the Jurisdictions under the same prospectus disclosure and enable the Filer to streamline disclosure across the Filer's fund platform.

9. Even though the Alternative Funds are, or will be, alternative mutual funds, they share, or will share, many common operational and administrative features with the IG Funds and combining them in the same simplified prospectus will allow investors to compare the features of the Alternative Funds and the IG Funds more easily.

10. Investors will continue to receive the fund facts document(s) when purchasing securities of the Alternative Funds and IG Funds as required by applicable securities legislation. The form and content of the fund facts document of the Alternative Funds and IG Funds will not change as a result of the Requested Relief.

11. The simplified prospectus and annual information form of the Alternative Funds will continue to be provided to investors, upon request, as required by applicable securities legislation.

12. National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) does not contain a provision which is equivalent to subsection 5.1(4) of NI 81-101. Accordingly, an investment fund manager that manages exchange-traded funds (**ETFs**) is permitted to consolidate a prospectus under NI 41-101 for its ETFs that are alternative mutual funds with a prospectus for its ETFs that are conventional mutual funds. The Filer submits that there is no reason why mutual funds filing a prospectus under NI 81-101 should be treated differently from ETFs filing a prospectus under NI 41-101.

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 Requested Relief is granted.

“Christopher Besko”
Director, General Counsel
The Manitoba Securities Commission

2.1.4 Common Wealth Pension Services Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation and replacement of decision granting relief from the dealer registration and prospectus requirements under the Legislation to capital accumulation plan sponsors, portfolio manager providing non-discretionary advice to plan sponsors, and mutual funds, in respect of trades in mutual fund securities to tax-assisted and non-tax assisted capital accumulation plans, subject to conditions – Definition of "Fund" expanded to include exchange-traded fund – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1)(a), 53, 74(1) and 144.

April 8, 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
COMMON WEALTH PENSION SERVICES INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision, on behalf of the Filer (including its respective directors, officers, representatives and employees acting on its behalf), any Plan Sponsor (as defined herein) and any Fund (as defined herein), under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for a ruling that:

(a) The Original Decision (as defined herein) is revoked and replaced by this Decision (the **Revocation Relief**);

(b) the dealer registration requirements contained in the Legislation shall not apply to the Filer (including its respective directors, officers, representatives and employees acting on its behalf) or any Plan Sponsor of a CAP (as defined herein) or a Non-Tax Assisted CAP (as defined herein) that uses the services of the Filer in respect of its CAP or Non-Tax Assisted CAP in respect of trades in the securities of the Funds to a CAP or a Non-Tax Assisted CAP sponsored by the Plan Sponsor, subject to certain terms and conditions (the **Dealer Registration Relief**); and

(c) the prospectus requirements contained in the Legislation shall not apply in respect of the distribution of securities of Funds to CAPs or Non-Tax Assisted CAPs sponsored by the Plan Sponsor for which the Filer provides services (the **Prospectus Relief**, together with the Dealer Registration Relief, the **Exemption Sought**),

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

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

(b) the 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 the jurisdictions of (i) Quebec, Newfoundland and Labrador, the Yukon Territory and Nunavut in respect of CAPs and (ii) Alberta, British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Yukon Territory and the Northwest Territories in respect of Non-Tax Assisted CAPs.

Interpretation

Terms defined in MI 11-102 and National Instrument 14-101 *Definitions* and NI 81-102 have the same meaning if used in this Decision, unless otherwise defined. Capitalized terms used in this Decision, have the following meanings:

(a) **CAP** has the meaning given to the term "capital accumulation plan" as defined in section 1.1 of the CAP Guidelines (as defined herein), namely, a tax assisted investment or savings plan that permits the members of the CAP to make investment decisions among two or more options offered within the plan. CAPs include a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, a group tax-free savings plan or a deferred profit sharing plan, and in Quebec and Manitoba, include a simplified pension plan.

(b) **CAP Guidelines** means the *Guidelines for Capital Accumulation Plans* published in May 2004 by the Joint Forum of Financial Market Regulators, as updated in 2009 and 2010.

(c) **Fund** means a mutual fund as defined in section 1 of the Legislation, whether offered by prospectus or pursuant to prospectus exemptions in the Legislation, and which in both cases, comply with Part 2 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), which for greater certainty includes exchange-traded fund.

(d) **Member** means a current or former employee, or a person who belongs, or did belong, to a trade union or association, or

(i) his or her spouse;

(ii) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of or for the benefit of, his or her spouse; or

(iii) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a CAP or a Non-Tax Assisted CAP and also includes any person who is eligible to participate in a CAP or Non-Tax Assisted CAP

(e) **Non-Tax Assisted CAP** means an investment or savings plan that meets the definition of CAP in the CAP Guidelines and that is administered in accordance with the CAP Guidelines, but for the fact that it is an investment or savings plan that is non-tax assisted.

(f) **Plan** means, depending on the context in which it is used, a CAP or a Non-Tax Assisted CAP or both of them.

(g) **Plan Sponsor** means any employer, trustee, trade union or association or a combination of them that establishes a CAP or a Non-Tax Assisted CAP and uses the services of the Filer in respect of such CAP or Non-Tax Assisted CAP, and includes the Filer to the extent that the Plan Sponsor has delegated some or all of its responsibilities to the Filer.

Representations

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

1. The Filer is a corporation organized under the laws of Ontario. Its head office is in Toronto, Ontario. The Filer is not registered as a dealer, adviser or investment fund manager under the securities regulation of any Jurisdiction.

2. The Filer provides pensions and retirement plan advisory services to clients including pension plans, pension asset managers, associations, labour unions, and governments.

3. Among other things related to its principal business of pensions and retirement plan advisory services, the Filer provides consulting services related to the design, implementation, and ongoing administration and governance of pension and retirement savings arrangements. The Filer has expertise in:

(i) Design of pension and retirement plans, including defined benefit pension plans and capital accumulation plans;

(ii) Set up of new pension and retirement plans, including defined benefit pension plans and capital accumulation plans;

(iii) Pension and retirement plan governance;

(iv) Pension and retirement plan administration and ongoing operations, including member service and communication;

(v) Pension and retirement plan investments;

(vi) Organizational design and effectiveness of pension and retirement institutions and functions;

(vii) Pension and retirement plan public policy and regulation; and

(viii) Pension and retirement plan strategy.

4. The Filer intends to assist Plan Sponsors in initial Plan design and set up, including providing consulting services to Plan Sponsors on investment choices for the Plan. The investment choices for the Members of the Plans may include Funds, which may be publicly offered mutual funds and exchange-traded funds or mutual funds distributed under private placements that are managed by various investment fund managers registered in one or more Canadian Jurisdictions. The investment choices for the Plans may also be segregated funds managed by insurance companies. Where the investment choices are Funds, the Funds comply with Part 2 of NI 81-102 in respect of their investment restrictions and practices.

5. The services that the Filer provides to Plan Sponsors also involve recordkeeping of Member data, transactions processing in respect of Member accounts, provision of Member statements as required under pension standards legislation and/or the applicable recordkeeping agreement and processing changes to Member accounts such as termination, death, retirement or a change in marital status. The Filer will also allow Members to call for information about a Plan through its call centre and will facilitate access to a variety of self-help tools that allow Members to make investment decisions regarding their investments held through the Plans.

6. The Filer does not engage in discretionary decision-making with respect to the Plans or Member accounts and does not select investments for the Plans or provide investment advice to Members. The Filer does not manage or administer any of the Funds, nor does it provide custodial services in respect of the Plans or the Funds.

7. Members will make initial investment decisions to invest in Funds chosen by a Plan Sponsor, although the Plan Sponsor may establish a default option if the Member fails to make an investment choice, and subsequent changes to those investment decisions, with or without the assistance of a registered dealer selected by the Member. Plan Sponsors may facilitate access to a registrant for advice to Members. Member instructions are transmitted to the Filer using electronic systems provided by the Filer. The Filer will process the trades in the Funds as instructed and will establish and maintain the records reflecting the interest of each Member or Plan Sponsor, as the case may be, in each Fund and for each Plan.

8. The Filer, the Plan Sponsors and the Funds trade or will trade with the Plans or the Members in accordance with the conditions set out in proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* related to CAPs, which were published by the Canadian Securities Administrators (the **CSA**) on October 21, 2005 (the **Proposed CAP Exemption**) and adopted in the form of a blanket exemption in all Jurisdictions, other than in Ontario, Québec, Newfoundland and Labrador and the Yukon Territory and Nunavut Territory (the **CAP Blanket Exemption**). The Proposed CAP Exemption and the CAP Blanket Exemption contemplate both dealer registration and prospectus exemptions, where required.

9. Although no equivalent to the CAP Blanket Exemption has been adopted in the Jurisdictions of Ontario, Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut Territory, CSA Notice 81-405 *Request for Comment on Proposed Exemptions for Certain Capital Accumulation Plans* published on May 28, 2004 (the **CAP Staff Notice**) states that, in Ontario, the conditions described in the Proposed CAP Exemption will form the basis of the circumstances in which staff of the Ontario Securities Commission expects that they could recommend that the Ontario Securities Commission grant discretionary relief to an applicant. The Jurisdictions in which no equivalent to the CAP Blanket Exemption was adopted made it clear that they would be prepared to grant discretionary relief on terms similar to those contained in the Proposed CAP Exemption. The CAP Staff Notice stated that the purpose of the Proposed CAP Exemption was to remove existing barriers to trading mutual fund securities with members of CAPs where there is no valid regulatory reason for having such barriers.

10. As Plan Sponsors will typically approach retirement consultants, such as the Filer, for assistance with respect to securities regulatory issues (when the investment choices are Funds), the Filer is seeking an exemption on behalf of itself, the Plan Sponsors and the Funds, as applicable, from the dealer and the prospectus requirements, including the obligation to deliver a prospectus, where required, subject to the conditions as described in this Decision.

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

12. The Filer may be requested by a Plan Sponsor to provide services to a Non-Tax Assisted CAP established by the Plan Sponsor for the benefit of individual Members. These Non-Tax Assisted CAPs would not constitute CAPs, as defined in the CAP Guidelines, the Proposed CAP Exemption or the CAP Blanket Exemption, since they are not “tax-assisted” under applicable legislation. Non-Tax Assisted CAPs are intended as non-registered employee savings plans to which

excess contributions of Members that cannot be invested in a CAP because of legislative limits for such CAP investments will be invested on behalf of the Members.

13. Non-Tax Assisted CAPs are established in conjunction with CAPs because Canadian tax legislation imposes a limit on the amounts that may be contributed to a CAP. The benefit formula under a Plan Sponsor's benefit program sometimes results in contributions that exceed that tax limit. A Plan Sponsor may establish a Non-Tax Assisted CAP to allow for those excess contributions to be invested in the same manner as the tax assisted contributions. These excess contributions to Non-Tax Assisted CAPs are not expected to be significant and in any event, will be limited by the calculation set out in the conditions to this Decision and subject to the remaining conditions set out in this Decision.

14. Non-Tax Assisted CAPs will operate in the same manner as CAPs in terms of the relationship between Members and Plan Sponsors, and the duties, rights and responsibilities of Members and Plan Sponsors. The only significant difference between the two types of plans is the tax-assisted nature of one and not the other.

15. Each Member of a Non-Tax Assisted CAP of a Plan Sponsor that is administered by the Filer will also be a member of the Plan Sponsor's CAP.

16. The Filer will administer the Non-Tax Assisted CAPs in accordance with the CAP Guidelines and, in the case of the Non-Tax Assisted CAPs, in a similar manner to the related CAPs for the applicable Members. The Filer will only administer Non-Tax Assisted CAPs which originate out of CAPs of a Plan Sponsor also serviced by the Filer.

17. On February 24, 2017, the principal regulator issued a decision granting Dealer Registration Relief and Prospectus Relief to the Filer, or any Plan Sponsor of a CAP or a Non-Tax Assisted CAP that uses the services of the Filer in respect of its Plan, in respect of trades in securities of mutual funds other than exchange-traded funds to a CAP or a Non-Tax Assisted CAP sponsored by the Plan Sponsor (the **Original Decision**).

18. Given the number and prominence of exchange-traded funds, and their low-cost and degree of diversification, the Filer wishes to include exchange-traded funds that comply with Part 2 of NI 81-102 as a possible investment choice for the members of the Plans, and for that purpose, wishes to revoke and replace the Original Decision with this Decision.

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:

A. The Revocation Relief is granted; and

B. The Exemption Sought is granted provided that:

1. for the **Dealer Registration Relief;**

(a) the Plan Sponsor selects the Funds that Members will be able to invest in under the Plans;

(b) the Plan Sponsor establishes a policy, and provides Members with a copy of the policy and any amendments to it, describing what happens if a Member does not make an investment decision;

(c) in addition to any other information that the Plan Sponsor believes is reasonably necessary for a Member to make an investment decision within the Plan, and unless that information has previously been provided, the Plan Sponsor provides the Member with the following information about each Fund the Member may invest in:

(i) the name of the Fund;

(ii) the name of the manager of the Fund and its portfolio adviser;

(iii) the fundamental investment objective of the Fund;

(iv) the investment strategies of the Fund or the types of investments the Fund may hold;

(v) a description of the risks associated with investing in the Fund;

(vi) where a Member can obtain more information about each Fund's portfolio holdings; and

(vii) where a Member can obtain more information generally about each Fund, including any continuous disclosure;

(d) the Plan Sponsor provides Members with a description and amount of any fees, expenses and penalties relating to the Plan, as the case may be, that are borne by Members, including:

(i) any costs that must be paid when a Fund is bought or sold;

(ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the Plan Sponsor;

(iii) the management fees paid by the Funds;

(iv) the operating expenses paid by the Funds;

(v) record keeping fees;

(vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences;

(vii) account fees; and

(viii) fees for services provided by the Filer,

provided that the Plan Sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the Plan Sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular Member;

(e) the Plan Sponsor has, within the past year, provided the Members with performance information about each Fund the Members may invest in, including:

(i) the name of the Fund for which the performance is being reported;

(ii) the performance of the Fund, including historical performance for one, three, five and ten years if available;

(iii) a performance calculation that is net of investment management fees and mutual fund expenses;

(iv) the method used to calculate the Fund's performance return calculation, and information about where a Member could obtain a more detailed explanation of that method;

(v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, for the Fund, and corresponding performance information for that index; and

(vi) a statement that past performance of the Fund is not necessarily an indication of future performance;

(f) the Plan Sponsor has, within the past year, informed Members if there were any changes in the choice of Funds that Members could invest in and where there was a change, provided information about what Members needed to do to change their investment decision, or make a new investment;

(g) the Plan Sponsor provides Members with investment decision-making tools that the Plan Sponsor reasonably believes are sufficient to assist them in making an investment decision within the Plan;

(h) the Plan Sponsor must provide the information required by paragraphs (b), (c), (d) and (g) prior to the Member making an investment decision under the Plan;

(i) if the Plan Sponsor makes investment advice from a registrant available to Members, the Plan Sponsor must provide Members with information about how they can contact the registrant;

(j) the maximum amount that may be contributed in respect of a Member to a Non-Tax Assisted CAP in a given year is limited to any positive difference between:

(i) the maximum amount that the Member and the Plan Sponsor would have been able to contribute for that year to the applicable CAP under the terms of the applicable CAP if contributions to the applicable CAP were not restricted to the maximum dollar limit provided in the Income Tax Act (Canada) (the **ITA**); and

(ii) the maximum dollar limit provided in the ITA for the applicable CAP,

provided that this maximum amount that may be contributed in respect of a Member to the Non-Tax Assisted CAP in a given year shall not exceed an amount equal to the "money purchase limit", as defined in the ITA, for the year.

In this paragraph (j), the amount determined under (i) shall be no more than 18% of the Member's "earned income" as defined in the ITA and the "maximum dollar limit" means the "RRSP dollar limit" as defined in the ITA (in the case where the applicable CAP is an RRSP), the "money purchase limit" as defined in the ITA (in the case where the applicable CAP is a DCPP), one-half of the "money purchase limit" (in the case where the applicable CAP is a DPSP) or any applicable maximum fixed dollar contribution prescribed under the ITA (in the case of any other type of CAP);

2. for the **Prospectus Relief;**

(a) the conditions set forth in paragraph 1 above are met;

(b) the Funds comply with Part 2 of NI 81-102; and

(c) where a Member chooses to invest in a publicly available Fund selected by the Plan Sponsor as an investment option for a Non-Tax Assisted Plan, the current prospectus of the Fund and/or Fund Facts as permitted by the Legislation, will be made available, upon demand, to the Member;

3. before the first time a Fund relies on this Decision, the Fund files a notice in the form found in Appendix C of the Proposed CAP Exemption in each Jurisdiction in which the Fund expects to distribute its securities;

4. this Decision, as it relates to the jurisdiction of a securities regulatory authority or regulator (a **Decision Maker**) with respect to the Dealer Registration Relief will terminate upon the coming into force in securities rules of a registration exemption for trades in a security of a mutual fund to a CAP or 90 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to make such a rule;

5. this Decision, as it relates to the jurisdiction of a Decision Maker with respect to the Prospectus Relief will terminate upon the coming into force in securities rules of a prospectus exemption for the distribution of a security of a mutual fund to a CAP or 90 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to make such a rule.

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

"Cathy Singer"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Amin Mohammed Ali

File No. 2022-6

IN THE MATTER OF
AMIN MOHAMMED ALI

M. Cecilia Williams, Commissioner and Chair of the Panel

April 7, 2022

ORDER

WHEREAS on April 7, 2022, the Ontario Securities Commission held a hearing by teleconference in relation to the application brought by Amin Mohammed Ali to review the decision of the Mutual Fund Dealers Association (**MFDA**) dated February 11, 2022;

AND WHEREAS Mr. Ali requested an adjournment of this hearing;

ON HEARING the submissions of the representatives of Mr. Ali, Staff of MFDA and Staff of the Commission and on considering that Staff of MFDA and Staff of the Commission do not object to the adjournment request;

IT IS ORDERED THAT this hearing is adjourned to April 25, 2022 at 2:00 p.m., by teleconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"M. Cecilia Williams"

2.2.2 Engagement Labs Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

April 11, 2022

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

AND

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

AND

IN THE MATTER OF
ENGAGEMENT LABS INC.
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Manitoba, and Quebec.

Interpretation

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

Representations

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

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

2. the outstanding securities of the Filer, including debt securities are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

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

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

Order

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Erin O'Donovan"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0129

2.3 Orders with Related Settlement Agreements

2.3.1 HRU Mortgage Investment Corporation et al. – ss. 127, 127.1

File No. 2022-10

IN THE MATTER OF
HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG

M. Cecilia Williams, Commissioner and Chair of the Panel

April 8, 2022

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

WHEREAS on April 8, 2022 the Ontario Securities Commission (the **Commission**) held a hearing by video-conference to consider the request jointly made by HRU Mortgage Investment Corporation (**HRUMIC**), HRU Financials Ltd. (**HRUFL**), Yau Ling (Patrick) Lam (**Lam**), Qingyang (Michael) Xia (**Xia**) and Zichao (Marshall) Liang (**Liang**) (collectively, the **Respondents**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated March 30, 2022 (the **Settlement Agreement**);

AND WHEREAS pursuant to the Settlement Agreement, HRUMIC and HRUFL have given an undertaking (the **Undertaking**) to the Commission, in the form attached as Schedule "A" to this Order;

ON READING the Joint Application for Settlement Hearing, including the Settlement Agreement, the Statement of Allegations dated March 30, 2022, and the Memorandum of Fact and Law and Brief of Authorities provided by Staff and on hearing the submissions of the representatives for the Respondents and Staff, each appearing by video-conference, and on considering HRUFL, Lam, Xia and Liang jointly having made payment of the $400,000 administrative penalty and a payment of $25,000 on account of costs to the Commission in accordance with the terms of the Settlement Agreement, and on considering the Undertaking dated March 25, 2022 attached as Schedule "A" to this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

2. each of the Respondents is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

3. HRUFL, Lam, Xia and Liang shall pay an administrative penalty in the amount of $400,000, on a joint and several basis, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b) of the Act;

4. HRUFL, Lam, Xia and Liang shall pay costs in the amount of $25,000, pursuant to section 127.1 of the Act;

5. Lam, Xia and Liang immediately resign any position that they hold as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

6. Lam, Xia and Liang immediately resign any position that they hold as a director or officer of a registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;

7. Lam, Xia and Liang are prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act, subject to paragraph 10 below;

8. Lam, Xia and Liang are prohibited from becoming or acting as a director or officer of any registrant for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8.2 of subsection 127(1) of the Act, subject to paragraph 10 below;

9. Lam, Xia and Liang are prohibited from becoming or acting as a registrant or a promoter for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act, and subject to paragraph 10 below;

10. following the periods set out in sub-paragraphs 7, 8 and 9 above, Lam, Xia and Liang shall each successfully complete the Ethics and Professional Conduct Course (EPC) and the Partners, Directors & Senior Officers Course provided by the IFSE Institute (the **Required Courses**), as well as meeting all proficiency requirements, before applying to become a registrant or an officer and/or director of a registrant with the Commission. Pending:

    i. the successful completion of the Required Courses by Lam, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Lam will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Lam will be prohibited from becoming or acting as a registrant or promoter;

    ii. the successful completion of the Required Courses by Xia, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Xia will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Xia will be prohibited from becoming or acting as a registrant or promoter; and

    iii. the successful completion of the Required Courses by Liang, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Liang will be prohibited from becoming or acting as a director or officer of any reporting issuer or registrant, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Liang will be prohibited from becoming or acting as a registrant or promoter.

“M. Cecilia Williams”

SCHEDULE "A"

UNDERTAKING OF
HRU MORTGAGE INVESTMENT CORPORATION AND
HRU FINANCIALS LTD.

IN THE MATTER OF
HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated March 30, 2022 (the **Settlement Agreement**) between HRU Mortgage Investment Corporation (**HRUMIC**), HRU Financials Ltd. (**HRUFL**), Yau Ling (Patrick) Lam, Qingyang (Michael) Xia, and Zichao (Marshall) Liang and Staff (**Staff**) of the Commission. All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. HRUMIC and HRUFL (together **HRU**) undertake to the Commission to:

   (a) conduct any subsequent trades of securities of HRUMIC through or to a firm registered under Ontario securities law in a category that permits such trade, or by HRU directly only if and when registered to conduct such trades.

   (b) provide to any dealer registered under Ontario securities law engaged by HRU a copy of the Settlement Agreement and the Order approving the Settlement Agreement.

   (c) retain an exempt market dealer (**EMD**) to:

      (i) conduct a full review of all HRU marketing materials and investor statements, including any Offering Memoranda and any online marketing or online portals, in order to: (1) remove or clarify any potential inconsistent or confusing statements regarding investor returns and/or dividends; and (2) clarify statements made regarding loan-to-value (**LTV**) ratios to be consistent across all investor materials;

      (ii) conduct a review of the adequacy of the know-your-client (**KYC**) and suitability documentation obtained by HRU with respect to its current existing investors who did not purchase securities of HRUMIC through a registered dealer, to be completed within four months from the date of the Order approving the Settlement Agreement;

      (iii) obtain such additional KYC and suitability information as required for a suitability assessment where the EMD deems that the existing documentation at HRU for a client is inadequate pursuant to paragraph 2(c)(ii) above and conduct a suitability analysis in relation to that client;

      (iv) conduct a suitability analysis in accordance with sections 13.2 and 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) for a random sample of 20 current existing investors, selected by the EMD, who did not purchase securities of HRUMIC through a registered dealer, to be completed within four months from the date of the Settlement Hearing;

      (v) if five or more of the 20 investors are identified by the EMD to have made unsuitable investments in HRUMIC, conduct a suitability analysis in accordance with sections 13.2 and 13.3 of NI 31-103 for all current existing investors who did not purchase securities of HRUMIC through a registered dealer; and

      (vi) report the results of the reviews to HRU and Staff.

   (d) once an EMD has been retained, HRU shall immediately provide Staff with a written authorization granting Staff free and unfettered access to communicate with the EMD with respect to the retainer; and

(e) redeem the shares held by all investors identified by the EMD to have made an unsuitable investment in HRUMIC at the issue price of $1 per share, unless the investor(s) confirm to HRU and the EMD in writing that they wish to retain their investments and provided the EMD has first informed the investor(s) in writing of the EMD's determination that the shares are not a suitable investment for them along with the basis for that determination, and has recommended to the investor(s) an alternative investment action that is suitable in accordance with subsection 13.3(2.1) of NI 31-103.

DATED at Toronto, Ontario this 25 day of March, 2022.

HRU MORTGAGE INVESTMENT CORPORATION

"Patrick Lam"
CEO

DATED at Toronto, Ontario this 25 day of March, 2022.

HRU FINANCIALS LTD.

"Qingyang Xia"
CIO

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Jonathan Cartu et al. – s. 127(1)

Citation: *Cartu (Re)*, 2022 ONSEC 4
Date: 2022-04-07
File No. 2020-14

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

REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	September 21, 22, and October 15, 2021	
Decision:	April 7, 2022	
Panel:	M. Cecilia Williams	Commissioner and Chair of the Panel
	Frances Kordyback	Commissioner
	Mary Anne De Monte-Whelan	Commissioner
Appearances:	Rikin Morzaria	For Staff of the Commission
		No one appearing on behalf of Jonathan Cartu or Joshua Cartu

REASONS AND DECISION

I. OVERVIEW

[1] This case is about alleged unregistered trading and illegal distributions of binary options.

[2] Staff alleges that from July 2013 to April 2017 (**Material Time**) more than 700 Ontario residents traded over $1.4 million in binary options through entities that were operated by Jonathan Cartu (**Jonathan**), David Cartu (**David**) and Joshua Cartu (**Joshua**).[1]

[3] Staff alleges that the Cartus:

a. engaged in unregistered trading of securities without an available exemption contrary to s. 25(1) of the *Securities Act (Ontario)*[2] (the **Act**);

b. engaged in distributions of securities without a prospectus and without an available exemption contrary to s. 53(1) of the Act;

c. engaged in deceptive behaviour by lying about the location of their operations, using aliases and obscuring their connection to the companies they owned and operated through the use of nominees, and that behaviour is not in the public interest; and

d. authorized, permitted and/or acquiesced in the conduct of the companies they operated.

[1] Throughout these reasons, we refer to Messrs. Cartu by their first names, solely for convenience in distinguishing between them. We mean no disrespect nor informality in doing so.
[2] RSO 1990, c. S.5

[4] On May 26, 2021, David entered into a settlement agreement with the Commission with respect to these allegations. This matter proceeded against Jonathan and Joshua (collectively the **Respondents**). We refer to David throughout these reasons wherever it is necessary to understand the facts and the allegations as they relate to the Respondents.

[5] For the reasons set out below, we find that on a balance of probabilities:

a. Jonathan and Joshua engaged in the business of trading securities without being registered and without an available exemption contrary to s. 25(1) of the Act;

b. Jonathan and Joshua distributed securities without a prospectus and without an available exemption contrary to s. 53(1) of the Act;

c. Jonathan engaged in the deceptive practices of lying about the location of their operations and the use of aliases and that behaviour engages the animating principle of the Act of restricting unfair market practices and procedures; and

d. Joshua acquiesced in the deceptive practice of the use of aliases, however that acquiescence alone, in one of three alleged deceptive practices, is insufficient to prove Staff's allegation that Joshua's behaviour is not in the public interest.

II. BACKGROUND

[6] Jonathan, Joshua and David are brothers with dual Canadian and Israeli citizenship. Staff alleges that the brothers operated an interconnected business operation to promote, sell and process binary options transactions from headquarters in Israel. In particular, Staff alleges that the brothers operated two online platforms for trading in binary options, www.beeoptions.com (for the **Beeoptions** brand of binary options) and www.glenridgecaptial.com (for the **Glenridge Capital** binary option brand). Staff alleges that these websites, through which investors deposited money and engaged in binary options trading, were accessible to Ontario investors.

[7] The following is a list of the entities through which Staff alleges Jonathan, Joshua and David operated the interconnected binary options business operation:

a. **Tracy PAI Management Limited** (**Tracy PAI**) – Staff alleges that Tracy PAI operated a call centre to solicit deposits from investors into Beeoptions.

b. **Call4All Kft** (**Call4All**) – Staff alleges that Call4All operated a call centre to solicit deposits from investors into Glenridge Capital.

c. **UKTVM Ltd.** (**UKTVM**) – Staff alleges that UKTVM facilitated payment processing and provided "white label solutions" for Beeoptions binary options trades, from July 2013 until approximately December 2014.

d. **Greymountain Management Limited** (**Greymountain**) – Staff alleges that, from May 2015 until April 2017, Greymountain facilitated payment processing and provided "white label solutions" for Beeoptions and Glenridge Capital and for twelve third-party binary options platforms.

III. PRELIMINARY ISSUES

1. Service on the Respondents

[8] As Jonathan and Joshua were unrepresented at the merits hearing and did not attend, the Panel asked Staff to confirm that the Respondents had been properly served with notice of the merits hearing.

[9] Staff filed an affidavit of service of Jamie Stuart, confirming that on March 25, 2021, Jonathan and Joshua were served with notice of the merits hearing by email. Staff used email addresses for Jonathan and Joshua that were the same as those used by their former counsel who represented them prior to the commencement of this enforcement proceeding.

[10] The Panel was therefore satisfied that the Respondents had been properly served in accordance with rule 6 of the Commission's *Rules of Procedure and Forms*.[3]

[11] Subsection 6(1) of the *Statutory Powers and Procedures Act* (**SPPA**)[4] requires that "reasonable notice" be given to the parties to a proceeding. Section 7 of the SPPA authorizes a tribunal to proceed in the absence of a party when that party

[3] (2019) 42 OSCB 9714
[4] RSO 1990, c. S.22

has been given notice of the hearing. Given the above, the Panel was satisfied that the merits hearing could proceed in the absence of the Respondents.

2. Admission of transcripts of voluntary interviews

[12] Staff sought to introduce transcripts of voluntary interviews that had been conducted with three Ontario-resident binary options investors. The interviews were not conducted under oath. Staff advised it had been operating on the understanding that each of the investors would provide affidavit evidence reflecting the contents of their voluntary interview. However, none of the investors attended to swear their affidavit. Since Staff had expected to be filing affidavit evidence of these individuals, Staff had not issued summons for any of the individuals to attend to give oral evidence.

[13] Staff submits that the Panel has authority under s. 15(1) of the SPPA to admit as evidence at a hearing, whether or not given under oath, any oral testimony or any document or other thing. Hearsay evidence is admissible before most administrative tribunals, including the Commission, if it is relevant, subject to the tribunal's determination as to its weight.

[14] Staff further submits that the Commission has admitted transcripts of voluntary interviews where the evidence included in those transcripts was relevant to the allegations.[5] In each of the cases cited by Staff, the panels admitted into evidence transcript(s) of voluntary interviews.

[15] In *Pogachar,* the Commission admitted 30 volumes of documents and transcripts, including transcripts of voluntary interviews with investors, and relied on the transcripts to conclude that the potential for dividends was a significant reason for investors to invest in the venture in question.[6] In *FactorCorp,* Staff was permitted to file the transcript of a voluntary interview of a witness who had died prior to the start of the hearing.[7] In *Sulja Bros.*, the compendium of documents admitted into evidence by the Commission, subject to the weight to be given to any included hearsay evidence, included transcript excerpts from compelled and voluntary interviews.[8] In *Moncasa Capital Corp*, a hearing that proceeded in the absence of the respondents, the panel permitted Staff to file transcripts of voluntary interviews of a former salesperson of a respondent and cited those transcripts throughout its reasons.[9]

[16] Staff also submits that, unlike *Moncasa* which involved the voluntary interview of a former salesperson of a respondent which contained arguably more contentious information, the voluntary statements Staff seeks to enter in this case are akin to standard investor questionnaires that go to the nature of the commercial practices that were presented to outside investors. By their nature, Staff submits, they are less controversial than the former salesperson's transcript admitted in *Moncasa.*

[17] We asked Staff to comment on the Commission's decision in *Norshield Asset Management (Canada) Ltd et al*,[10] a decision Staff had not referred to in its submissions on this issue. In *Norshield*, the Commission admitted into evidence transcripts of examinations under oath of five witnesses conducted by a court-appointed Receiver, using its discretion under s. 15(1) of the SPPA. However, the Commission commented that a panel should be careful not to place too much weight on the evidence if it is uncorroborated,[11]

[18] Staff submits that *Norshield* is consistent with its position on the admissibility of the voluntary statements. In *Norshield,* the respondents objected to the statements being admitted in part on the basis that they would be denied the opportunity to cross-examine the witnesses. The panel in that case, stated that while parties are entitled to a reasonable opportunity to comment on and contradict evidence, hearsay evidence need not be tested by cross-examination in all circumstances.[12] Staff submits that in the case before us, that issue was irrelevant given the Respondents failure to participate in the hearing. Staff also submits that it would be introducing evidence corroborating the voluntary statements.

[19] The transcripts of the voluntary interviews are a form of hearsay. We have discretion under s. 15(1) of the SPPA to admit hearsay evidence. The evidence of Ontario investors is relevant to the issues before us of whether trading in binary options through Beeoptions and Glenridge Capital was accessible to Ontario residents and what representations, if any, were made to Ontario investors about the location and operations of those entities. We therefore admit the voluntary statements into evidence. What weight, if any, we give to the voluntary statements will depend on whether there is corroborating evidence, and if the statements are consistent with the other evidence in this matter, which we address in our analysis.

---

5 *Pogachar (Re),* 2012 ONSEC 9 (***Pogachar***); *Pyasetsky (Re),* 2013 ONSEC 14; *FactorCorp (Re),* 2013 ONSEC 6 (***FactorCorp***); *Sulja Bros. Building Supplies Ltd,* 2011 ONSEC 16 (***Sulja Bros.***); *Moncasa Capital Corp,* 2013 ONSEC 20 (***Moncasa***)

6 *Pogachar* at paras 41, 42, 59, 76 and 84

7 *FactorCorp* at paras 55 and 212-214

8 *Sulja Bros.* at paras 16, 17, 19 and 20

9 *Moncasa Capital Corp* at paras 68, 84, 98, 108 and 153

10 2010 ONSEC 4 (***Norshield***)

11 *Norshield* at paras 87-91

12 *Norshield* at para 88

IV. ISSUES AND ANALYSIS

[20] The issues we need to decide are:

a. were Jonathan and Joshua in the business of trading securities without being registered and without an available exemption, contrary to s. 25(1) of the Act?

b. were Jonathan and Joshua engaged in the distribution of securities without a prospectus and without an available exemption, contrary to s. 53(1) of the Act?

c. did Jonathan and Joshua engage in, or authorize, permit or acquiesce in, deceptive behavior thereby engaging the animating principles of the Act?

[21] The Panel heard oral evidence from Staff's two investigator witnesses, Greg Ljubic (**Ljubic**) and Christine George (**George**). The Panel also considered affidavit evidence from Ljubic, George, three former employees of various of the Cartu entities, and three Ontario-resident binary options investors. Staff also filed transcripts of voluntary interviews of three other Ontario-resident binary options investors, as discussed above.

[22] Before turning to our analysis of the issues, we set out the basis for our conclusion that Jonathan, Joshua and David operated Beeoptions, Glenridge Capital, Tracy PAI, UKTVM, Greymountain and Call4All as an interconnected business operation as alleged by Staff.

1. Interconnected business operation

[23] We find that Beeoptions, Glenridge Capital, Tracy PAI, Call4All, UKTVM and Greymountain were an interconnected business operation, based on the following evidence:

a. Jonathan initially used a Beeoptions' email when communicating with Tracy PAI employees and then subsequently switched to a Tracy PAI email address, which he announced to all Tracey PAI employees.

b. When Nick Papa (**Papa**) was hired by Jonathan, Papa understood he was working for Beeoptions, as he was providing support for Beeoptions investors, but subsequently learned he was formally employed by Tracy PAI.

c. Olivier Omar (**Omar**), who was employed by Tracy PAI from November 2013 to April 2015, worked exclusively for Beeoptions, which he understood to be a division of Tracy PAI.

d. In a Merchant Application filed with payment card acquirer Credorax, UKTVM represented that its business name was "Beeoptions" and its "Business Model Overview" was "Binary Options". UKTVM also represented that it owned the domain name http://www.beeoptions and the Merchant Name "Beeoptions."

e. Jonathan sent an email to all Tracy PAI employees suggesting that UKTVM and Greymountain were Tracy PAI's only customers at the time.

f. In response to a request from Credorax for Greymountain documentation, Jonathan, who had no apparent title or ownership interest in Greymountain, responded "We'll provide you with everything you need right away."[13]

g. Ana Schmitman, who was identified on Tracy PAI's website as the Risk and Fraud Manager, writing as "Ana Schmitman, Tracy PAI Management," sent an undated letter on Greymountain letterhead to Credorax stating that "we are doing the best [sic] keep the integrity of the channel, Greymountain Management Limited."[14]

h. Papa was paid by Greymountain for work he performed for Jonathan on a separate venture, and for travel expenses and a laptop purchased for work he was conducting at Tracy PAI.

i. McCartan & Burke, a law firm in Dublin, Ireland, wrote a letter that it had been retained by Greymountain to express an opinion "about whether [Greymountain]'s primary activity as a Binary Options broker under the name Bee Options using URL: www.beeoptions.com requires a financial services license or a gambling license under the laws of Ireland."[15]

j. In an agreement between Greymountain and Wirecard Bank, David was listed as the Proprietor while Jonathan was listed as the "General Contact," "Accounts Department," "Contact for Transaction Processing" and the "Recipient of the Payout Information." Jonathan's contact information was listed as jonathan@tracypai.com.

[13] Exhibit 2, Ljubic Affidavit, Email exchange between Mark Creizman and Jonathan Cartu, November 5, 2014: DocID 9343-0001401
[14] Exhibit 2, Ljubic Affidavit, Letter from Ana Schmitman, Tracy PAI Management on behalf of Greymountain to Credorax, undated: DocID 9343-0001402
[15] Exhibit 2, Ljubic Affidavit, Letter from McCartan & Burke dated June 25, 2015: DocID 9343-0001430

Tracy PAI's then head of marketing was listed as the "Contact for Technical Matters" with the email tech@beeoptions.com.

k. In a Credorax Merchant Application Form, David signed on behalf of Greymountain, David described the "Business Model Overview" as "Binary Options," listed the domain name as www.beeoptions.com and the merchant name as "Greymountain Management Ltd."

l. Credorax wrote to the Malta Financial Services Authority and provided Credorax's understanding of Greymountain's operations. It described Greymountain as a "Binary Options Merchant" and noted that Greymountain owned the following URLs:

i. Glenridge Capital – glenridgecapital.com

ii. Bee Options – beeoptions.com

m. Omar recalls hearing from one or more people on the Tracy PAI management team (which he described as Jonathan, Leeav Peretz (**Leeav**) and Natanel Peretz (**Natanel**)) that Tracy PAI was putting together another binary options brand and website called Glenridge Capital.

n. Papa's evidence is that Jonathan told him that he, Joshua and David had established a call centre, Call4All, in Budapest to do sales or conversion work for Glenridge Capital, Beeoptions and another binary options brand. Jonathan told Papa that Call4All was co-owned by him, his brothers and Leeav and Natanel.

o. Papa had observed the Call4All logo being designed in the marketing room of the Beeoptions / Tracy PAI offices.

p. During his tenure at Tracy PAI, Papa saw work being done for the Greymountain website, including the logo, and observed website design activity taking place for Glenridge Capital.

q. Lurie recalls seeing binders for UKTVM and Greymountain in Sandbox Media's (also known as Sandstorm Research & Development) (**Sandbox**) accounting offices. Sandbox is a business run by Joshua with offices at the Moshe Aviv Tower in Tel Aviv.

r. Papa recalls seeing references to "white label solutions provided by" in reference to Greymountain and UKTVM, or both, on the Beeoptions website.

s. In a tripartite settlement agreement among UKTVM, Credorax and Greymountain, signed by David for UKTVM, Greymountain assumed responsibility for any financial obligation on behalf of UKTVM to Credorax.

t. AG, who is shown as the 100% shareholder of Greymountain at the date of incorporation, declared in a Declaration of Trust that he held those shares "for and on behalf of Mr. David Cartu (hereinafter called the Beneficial Owner."

u. In an affidavit relating to Greymountain's petition to the High Court of Ireland to wind up because it could not pay its debts, David swore that he was the sole beneficial owner of Greymountain, and that a large part of Greymountain's revenue was from offering "IT solution services to binary options merchants."

2. Jonathan's and Joshua's involvement in the interconnected business operation

[24] We conclude, based on the evidence below, that Jonathan and Joshua were involved in the interconnected business operation.

[25] Beeoptions operated out of the Sandbox offices. Omar's evidence is that Joshua occupied the larger office at that location, which had the Sandbox name on its wall.

[26] In an online video, Joshua appears with a racing car that bears the Beeoptions logo.

[27] Cara Lurie (**Lurie**), who was hired in 2011 as Sandbox's office manager, gave evidence that:

a. Joshua and David were in charge of Sandbox.

b. Jonathan started the Beeoptions business in the Sandbox boardroom.

c. Joshua was aware of the Beeoptions operations in the Sandbox boardroom and did not object to that activity, was "on top of the business," and "absolutely aware of everything that went on in the Sandbox office" and "ran the business from afar."[16]

d. Joshua maintained an office at Sandbox.

e. Jonathan worked from the Sandbox boardroom, as he did not have his own office.

f. There was a large "Beeoptions" sign hanging on the wall in the Sandbox boardroom, visible to anyone in the office.

[28] Papa's evidence is that there was a general awareness that Jonathan, Joshua and David were in charge of Beeoptions, but that on a day-to-day basis, Jonathan was in charge of the office. Papa states that everyone at Beeoptions/Tracy PAI reported to Jonathan, who was very hands on.

[29] According to Papa, there was a locked office at the Tracy PAI location that Jonathan identified as "Josh's office." Papa observed some of Joshua's personal belongings in that office. Papa also observed that Joshua would occasionally come to the Tracy PAI office in the evening, sometimes with David, for meetings with Jonathan. Evidence from Papa, Lurie and Omar was that Tracy PAI's sales teams worked evenings to align with regular European and North American business hours.

[30] Jonathan offered Lurie a job in payroll at Tracy PAI in November 2014, and she worked for Tracy PAI until September 2015 as an office manager and personal assistant for Jonathan. Her functions included payroll and human resources work.

[31] In 2014, Papa received an email from Jonathan to all Tracy PAI employees, and to Joshua and David, confirming that Jonathan would be changing his email from jon@beeoptions.com to jonathan@tracypai.com.

[32] A month later in 2014, Jonathan sent an office-wide message to Tracy PAI employees that stated, "This October is the month when I want all of you to understand who we are an [sic] what we are working for. All of you work for Tracy PAI (Tracy)."[17]

[33] Jonathan led monthly company meetings for all Tracy PAI employees. According to Omar who was hired by Jonathan as an account manager, Jonathan, Leeav and Natanel set sales targets for Tracy PAI's employees and led regular Tracy PAI team meetings to let employees know about significant events that might influence the markets so that the information could be discussed with investors.

[34] Regarding Call4All, Lurie observed that Joshua was most frequently in Budapest, where Call4All was located, particularly after the launch of Beeoptions. Corporate documentation for Call4All lists Joshua as "Managing Director (senior officer)" from September 15, 2016, until April 16, 2019, Jonathan as "Managing Director (senior officer)" from August 10, 2015 to September 15, 2016, and Natanel as "Managing Director (senior officer)" from September 15, 2016, until March 1, 2017, lending credence to Papa's evidence about the Call4All operations.

[35] Before turning to the issue of whether Jonathan and Joshua, through their interconnected business operation, were engaged in the business of trading contrary to the Act, we address the law regarding the legal presumption under s.129.2 of the Act.

3. Directors and officers who authorize, permit or acquiesce in a company's non-compliance are deemed by s.129.2 of the Act to have breached Ontario securities laws

[36] Section 129.2 of the Act deems directors and officers who authorize, permit or acquiesce in a company's non-compliance with Ontario securities law to have also not complied with the laws, regardless of whether any proceeding has been initiated or order has been made against the company in question.

[37] No proceeding has been brought against any of Tracy PAI, UKTVM, Greymountain and Call4All. Staff submits that in the event that we find that Jonathan or Joshua did not directly engage in the breaches alleged by Staff, we should rely on the deeming provisions of s. 129.2 of the Act to find that Jonathan and Joshua, as directors and/or officers of those companies, authorized, permitted or acquiesced in the companies' conduct and therefore Jonathan and Joshua have not complied with Ontario securities law.

[16] Exhibit 10, Affidavit of Cara Lurie, sworn September 14, 2021 (**Lurie Affidavit**) at paras 16-17
[17] Exhibit 4, Jonathan Cartu Tracy PAI email, October 2, 2014

[38] The threshold for s. 129.2 is low, "as merely acquiescing in the conduct or activity in question will satisfy the requirement of liability."[18]

[39] In *Rex Diamond Mining Corp,*[19] the Commission found that the respondent authorized, permitted or acquiesced in the breaches of Ontario securities law, and thereby, in the language used in that decision "acted contrary to the public interest". The respondent in that case had limited knowledge of some of the events, but the Commission found that "he ought to have known about and should have made further inquiries" given his position as CFO of the company he "occupied a position of authority, responsibility and trust within the company."[20]

[40] We consider the application of s. 129.2 where appropriate in our analysis and findings below.

4. Did Jonathan and Joshua engage in, or hold themselves out as engaging in, the business of trading in securities?

[41] Staff alleges that the Respondents breached s. 25(1) of the Act, which provides that no person or company shall engage in, or hold themselves out as engaging in, the business of trading in securities, unless the person or company is registered to do so. Neither Jonathan nor Joshua has ever been registered.

[42] The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.

[43] Therefore, we must determine whether the Respondents engaged in "the business of trading in securities" or held themselves out as doing so.

[44] Before turning to that issue, we address whether binary options are securities.

(a) Are binary options a security?

[45] A binary option is a financial product where the investor receives a payout or loses their investment based on whether a reference asset, such as a share, commodity or currency, meets one or more predetermined conditions at a specified time; for example, if the price of a share of a particular issuer will be above a specified amount on a certain date. Binary options depend on the outcome of a "yes or no" proposition, hence the name "binary". Binary options have an expiry date and/or time. Whether a certain price of the underlying asset has been met at the time of expiry, determines whether the investor earns a profit or loses the investment.

[46] Staff submits, and we agree, that binary options meet the definition of a "security" in s.1(1) of the Act. That definition includes, in paragraph (n) of s.1(1), an "investment contract". The Supreme Court of Canada held in *Pacific Coast Coin Exchange* that an "investment contract" will be found where:

a. there has been an investment of money with a view to profit;

b. in a common enterprise; and

c. the profits are to be derived solely from the efforts from others.[21]

[47] The Commission concluded, in *TCM Investments Ltd (Re)*,[22] that binary options met the definition of "investment contract and are, therefore, securities.[23] The panel in *TCM*, in coming to this decision, described binary options as all-or-nothing bets by the investor, where typically the bet is successful if a reference asset meets one or more predetermined conditions at a specified time. They settle in cash and do not provide for delivery of the reference asset.[24]

[48] In an affidavit sworn for the Irish High Court, David Cartu provided a definition of the binary options from which Greymountain earned its revenue like that accepted by the Commission in *TCM*:

> Binary options are financial options which allow a purchaser to make a bet as to the future price of a stock. The payoff is either some fixed monetary amount, where the future price has been met by a certain date, or nothing at all, if this price has not been reached by this date.

---

18 *Momentas Corp (Re),* 2006 ONSEC 15 at para 118
19 2008 ONSEC 18
20 *Rex Diamond Mining Corp* at para 241
21 1977 CanLII 37 (SCC), [1978] 2 SCR 122 at para 128
22 2017 ONSEC 35 (***TCM***) at para 24
23 *TCM* at para 24
24 *TCM* at para 24

[49] As the panel in *TCM* did, we conclude that binary options meet the established test for determining if a product is a security as we find there was an investment of funds with a view to profit, in a common enterprise, where the profits are to be derived solely from the efforts of others.

(b) Business trigger

i. The test

[50] For the registration requirement to apply to a person or company, the business of trading in securities need not be the only business in which that person or company is engaged. As the Commission has previously held, we "must determine whether the activities in this case cross the line between permissible solicitation and the business of trading."[25]

[51] The Commission has adopted Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**), which, among other things, sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.

[52] While 31-103CP is not part of Ontario securities law, and therefore is not directly binding on the Respondents, the "business purpose" test in s. 1.3 (also referred to as the "business trigger") includes the following factors, on which Staff relies and which the Commission has adopted in other proceedings.[26] We consider it appropriate to apply these factors in assessing the Respondents' conduct in this case:

a. directly or indirectly soliciting securities transactions;

b. trading with repetition, regularity, or continuity, whether that activity is the sole or even primary endeavour. Regularly trading in any way that produces or is intended to produce profits is considered to be for a business purpose;

c. receiving or expecting to receive compensation for trading; and

d. engaging in activities like those of a registrant, including by setting up a company to sell securities, or by promoting the sale of securities.

[53] We now review each of these factors in turn. Due to the evidence supporting the analysis on factors a., b. and d. overlapping, we consider those factors together.

ii. Directly or indirectly soliciting securities transactions, trading with repetition, regularity or continuity and engaging in activities like those of a registrant

[54] We conclude for the reasons below, that Jonathan and Joshua solicited securities transactions, traded with repetition, regularity and continuity and engaged in activities like those of a registrant.

[55] The homepage of Beeoptions' website offered individuals the opportunity to trade binary options "NOW," with "no hassle withdrawals," "guaranteed – up to 85% profit per trade," "cash rewards for referrals" and "risk-free trading."[27]

[56] Beeoptions' website also promoted the ease of trading, stating "BEEOPTIONS IS THE SIMPLEST AND MOST STRAIGHTFORWARD WAY TO TRADE BINARY OPTIONS ONLINE." The services provided to Beeoptions' investors are described as follows:

- "We give you the important information, in the plainest terms, so you can make the best choices regarding your binary options trades. We believe this is the best way for you to maximize your profits."
- "Our team of trading consultants are available to guide you through your first binary options trades. As you become more advanced, we are here to advise you in making informed investment decisions. We will work with you to increase your returns."[28]

Similar statements are made on the "Terms and Conditions" page of the Beeoptions' website.

[57] Papa's evidence is that, as of the fall of 2015, in addition to Beeoptions, Glenridge Capital and three other binary options brands were operating out of Tracy PAI's offices. According to Papa, the conversion and retention departments at Tracy PAI, whose roles were to obtain new clients and elicit further deposits from existing clients, were involved in the sale of

[25] *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (***Money Gate***) at para 143
[26] *Meharchand (Re)*, 2018 ONSEC 51 at para 111; *Money Gate* at paras 144-145
[27] Exhibit 3, Web Archives – beeoptions.com, December 6, 2013
[28] Exhibit 7, Web Archives – beeoptions.com, March 16, 2016

binary options for Glenridge Capital, and Call4All was also doing conversions for Glenridge Capital, Beeoptions and another third-party binary options brand.

[58] Lurie's, Papa's and Omar's evidence is that during their time with Tracy PAI their activities were focused on Beeoptions' binary options business. Their evidence about the Beeoptions' operations is consistent. There was a sales, or conversion, team lead by Natanel and a retention team lead by Leeav. The evidence from Lurie, Papa and Omar was that the teams worked Monday to Friday from 3:00 pm to 11:00 pm to correspond with a typical European and North American schedule.

[59] Lurie's and Omar's evidence is that the sales office contained a whiteboard which provided commission and bonus amounts for the sales team members. It was updated daily and also contained information regarding sales targets the team members tried to meet in order to win prizes such as trips.

[60] When Papa joined Beeoptions, Jonathan assigned him to customer support to learn the business. Originally, there were two customer support employees, but the number grew to 6 by October 2015. In customer support, Papa answered calls from Beeoptions investors and redirected their calls. The calls were primarily to arrange withdrawals or to speak with account managers. According to Papa, the account managers' role was to solicit further deposits from existing investors and to grow the investors' Beeoptions' account. Papa's evidence is that most of the calls came from the United States but that there were also calls from Canada and the United Kingdom.

[61] This is consistent with Omar's evidence. He was employed as an account manager in the retention department, working with existing Beeoptions investors. He was initially assigned a list of 200 customers and the list was regularly refreshed. He typically spoke with six to ten investors per shift. Omar had access to a dashboard for each client showing the investor's name, country of residence, phone number, email address, trades they had made and the amount of money in their Beeoptions account.

[62] Omar spoke with French clients in several locations, including Quebec and English-speaking clients in other countries. His role was to tell investors what was happening in the market and to advise them to pay attention to particular assets that might be moving in value. He also advised investors of different promotions being offered.

[63] While Omar did not recommend trades to investors, his evidence is that the culture of the office was to get investors to add larger deposits because of whatever event was going on or giving specific trading instructions. Omar's evidence is based on conversations he heard other employees have with investors and among other employees over lunch. He believed that management was aware of this practice and he never saw or heard anyone from management ask account managers to stop directing investors to make specific trades.

[64] According to Papa, Tracy PAI received customer leads for Beeoptions through affiliate entities that would be paid from $250 to $600 per referral. New affiliate campaigns resulted in a significant increase in emails to conversion and customer support departments. Papa states that, in some cases, there would be over 2,000 unanswered customer support emails. In the fall, 2014, Papa recalls Jonathan asked Leeav to notify an affiliate to stop sending leads because they could not handle the volume.

[65] Lurie's evidence is that there were regular sales meetings where the leader on the sales board would be cheered.

[66] Luke Chmilenko (**Chmilenko**), a resident of Burlington, Ontario, invested in binary options through the Beeoptions website and trading platform after coming across the name and conducting his own research on the company.

[67] Chmilenko signed up for a Beeoptions account on the Beeoptions' website. He had a brief conversation with someone at Beeoptions and received a welcome email from Jon Cartier (an alias used by Jonathan, as discussed further below in the section dealing with the alleged deceptive practices). The email contained account login details and advised that the account was being referred to a senior account manager who would be Chmilenko's "personal trading consultant," "introduce the platform," "help with first trades" and provide advice for "developing the most profitable investment strategy."[29] Chmilenko also received an email from a Beeoptions Senior Account Manager. Chmilenko made 2 deposits to his Beeoptions account from his credit card and made a number of small trades through the Beeoptions website.

[68] We conclude that:

a. Jonathan:

i. was directly or indirectly involved in the solicitation of transactions for Beeoptions and Glenridge Capital;

ii. traded in binary options through Beeoptions and Glenridge Capital with repetition, regularity and continuity; and

[29] Exhibit 14, Affidavit of Luke Chmilenko, sworn September 14, 2021 at para 14

iii. engaged in activities like a registrant by his involvement in the interconnected business operation that included establishing the Beeoptions and Glenridge Capital binary options trading brands, promoting the sale of binary options under those brands, operating the call centres to solicit investors in binary options and establishing UKTVM and Greymountain to process payments for their binary options trading activities; and

b. Joshua:

i. was directly or indirectly involved in the solicitation of transactions for Glenridge Capital and authorized, permitted or acquiesced in the solicitation of transactions for Beeoptions;

ii. traded in binary options through Glenridge Capital with repetition, regularity and continuity and authorized, permitted or acquiesced in the trading of binary options through Beeoptions; and

iii. given the deeming provisions of s. 129.2 of the Act, authorized, permitted or acquiesced in activities like a registrant through his involvement in the interconnected business operation that included establishing the Beeoptions and Glenridge Capital binary options trading brands, promoting the sale of binary options under those brands, operating the call centres to solicit investors in binary options and establishing UKTVM and Greymountain to process payments for their binary options trading activities.

iii. Receiving or expecting to receive compensation for trading

[69] Staff submits that the flow of funds from UKTVM and Greymountain to companies owned or controlled by Jonathan and Joshua demonstrates that they received compensation for trading in binary options.

[70] UKTVM was incorporated on October 8, 2012 in the UK and was the payment processor for Beeoptions from July 2013 until December 2014. Thereafter, Greymountain became the payment processor for Beeoptions from December 2014 and for Glenridge Capital when it started operations in the fall of 2015.

[71] We found earlier that UKTVM and Greymountain were part of the interconnected business operated by Jonathan, Joshua and David.

[72] In various correspondence referred to above in our analysis leading to the conclusion that the Respondents were involved in an interconnected business operation, the primary business of UKTVM and Greymountain is stated to be binary options. In addition, Jonathan's email to all Tracy PAI employees of October 2, 2014 states that UKTVM and Greymountain were, then, Tracy PAI's only clients.

[73] We therefore conclude that the monies earned by UKTVM and Greymountain were from their activities as payment processors for the interconnected binary options businesses Jonathan, Joshua and David operated and from the "white label solutions" offered by UKTVM and Greymountain to third-party binary options companies.

[74] George's evidence is that $54.8 million dollars from UKTVM's and Greymountain's binary options payment processing activities was paid to six companies, two of which appear from the evidence to be companies controlled by David. As this proceeding is with respect to the activities of Jonathan and Joshua only, we have removed from our analysis the entities solely connected to David and the $12.5 million paid by UKTVM and Greymountain to those entities.

[75] We therefore consider the $45.9 million paid by UKTVM and Greymountain to the following companies, which Staff allege are connected to Jonathan and Joshua:

a. $13.4 million to Blue Moon Investments Limited (**Blue Moon**);

b. $13 million to Orlando Union Inc. (**Orlando Union**);

c. $900,000 to Call4All; and

d. $15 million to Tracy PAI.

[76] We now turn to consider the connection between Jonathan and Joshua and these companies. Based on the following evidence, we find that the Respondents were beneficiaries of the $45.9 million paid to these four companies by UKTVM and Greymountain.

Blue Moon

[77] We find that Jonathan was the beneficial owner of Blue Moon based on the following evidence:

a. Blue Moon was incorporated on January 12, 2012 and dissolved on March 27, 2017.

b. The sole director, listed on the Register of Directors, from June 12, 2012 until March 17, 2015 was HNT who, in turn, declared in a Declaration of Trust dated February 6, 2013 that he held all the outstanding issued shares of Blue Moon as nominee and Trustee for Jonathan.

c. Blue Moon appointed Jonathan as the true and lawful attorney of Blue Moon to conduct the company's business and affairs in a January 17, 2014 Power of Attorney.

d. In various account documents filed by Blue Moon with an Austrian bank in 2014 and 2016, Jonathan was referred to as the "authorized signatory" and "beneficial owner".

e. On January 24, 2017, Jonathan wrote to that bank requesting that the bank close Blue Moon's account and transfer the outstanding balance to Jonathan's personal account at the bank.

Orlando Union

[78] We find that Joshua was the beneficial owner of Orlando Union because a Register of Beneficial Owners for Orlando Union shows Joshua as the 100% beneficial owner "held via trust declaration" effective October 18, 2010.

Tracy PAI

[79] Jonathan held himself out, on LinkedIn and in documents he provided to a bank in Cyprus, as the beneficial owner of and managing director of Tracy PAI.

Call4All

[80] We find that Joshua was a senior officer of Call4All because corporate documentation listed Joshua as its "Managing Director (Senior Officer) from September 15, 2016 to April 16, 2019.

[81] Papa's evidence is that Call4All was established by Jonathan, Joshua and David with Leeav and Natanel as co-owners.

[82] Joshua is also listed in the Call4All corporate documentation as a "member". However, Staff provided us with no evidence about the meaning or relevance of being a "member" of the type of Hungarian company Call4All was registered as.

(c) Conclusion regarding the allegation that Jonathan and Joshua traded securities in breach of s. 25(1) of the Act

[83] We conclude that during the Material Time Jonathan and Joshua were in the business of trading securities, based on our findings above that:

a. they directly and indirectly solicited transactions in Beeoptions and Glenridge Capital through the websites for those brands and through the Tracy PAI and Call4All call centres;

b. binary options were regularly traded by investors through the Beeoptions and Glenridge Capital websites;

c. they offered binary options for sale through the Beeoptions and Glenridge Capital websites and the Tracy PAI and Call4All call centres; and

d. they were remunerated for these activities through the payments made to entities owned or controlled by them from UKTVM and Greymountain, entities that acted as the payment processors for their binary options trading activities.

[84] We further conclude that Jonathan and Joshua were in the business of trading in Ontario based on the following evidence:

a. Chmilenko, a resident of Burlington, Ontario provided evidence that he opened a binary options trading account with Beeoptions on March 24, 2014 and actively traded in that account for several months in 2014 before losing all his invested funds;

b. Jacqueline Amable, a resident of Mississauga, Ontario provided evidence that she received an unsolicited call from a representative at Edgehill Capital soliciting trading in binary options and subsequently had five attempts for charges against her credit card listing "Greymountain" as the merchant attempting to process the charges;

c. Stephen McGurn a resident of Barrie, Ontario provided evidence that he traded binary options with Edgehill Capital and that his account manager at Edgehill told McGurn that charges against his credit cards for his binary options trades would be processed by Greymountain. Charges against McGurn's credit card for binary options trades were by "Greymountain Mgmt Ltd" and "GreymountainManagement Dublin"; and

d. The evidence from the transcripts of three Ontario residents who gave voluntary statements as part of Staff's investigation, which evidence we accept because of its consistency with the other evidence, namely:

i. Mohamed Shukry, a resident of Ontario, traded binary options with two or three companies, including Beeoptions, and received credit card charges for three binary options' transactions from Greymountain;

ii. Edward Philips, a resident of Wasaga Beach, Ontario, deposited money in a third-party binary options trading account which was charged on his credit card to Greymountain in Dublin; and

iii. Nandraj Somaroo, a resident of Brampton, Ontario, traded binary options with two companies and had nine transactions on her credit card statements charged to "Greymountain Management Ltd." between January 26, 2017 and April 24, 2017.

[85] There is no record in the National Registration Database of Jonathan or Joshua being registered with the Commission during the Material Time. Nor is there any record of either of them having been registered with the Commission in the records of the Compliance and Registrant Regulation Branch of the Commission. We also have no evidence of either Jonathan or Joshua relying on an exemption from the requirement to be registered.

[86] We therefore find that Jonathan and Joshua breached s. 25(1) of the Act by engaging in unregistered trading of securities.

5. Did Jonathan and Joshua engage in the distribution of securities without a prospectus

[87] Staff submits that each sale of Beeoptions and Glenridge Capital binary options constituted a distribution of securities, that those sales were conducted without a prospectus being filed or receipted and, therefore, Jonathan and Joshua breached s. 53(1) of the Act.

[88] Subsection 53(1) of the Act provides that unless a prospectus has been properly filed and receipted, no person or company shall trade in a security on their own account or on behalf of any other person or company if the trade would be a distribution of the security.

[89] A "distribution" is defined in s. 1(1) of the Act as a trade by or on behalf of an issuer in previously unissued securities of that issuer.

[90] Staff submits that in *TCM* the Commission held that each trade in binary options was a distribution as the binary options had not been previously issued.[30] We adopt this conclusion.

[91] Ljubic's evidence is that there is no record in the System for Electronic Document Analysis and Retrieval of a prospectus or preliminary prospectus having been filed for Beeoptions or Glenridge Capital or for names like "Beeoptions" or "Glenridge Capital".

[92] In addition, Ljubic's evidence is that there was no record of either Beeoptions or Glenridge Capital having been a reporting issuer during the Material Time or of either filing a prospectus, an offering memorandum, or any reports of exempt distributions as required under the applicable prospectus exemption provisions, and no record of exemptive relief from any of the requirements to file these documents having been granted to Beeoptions or Glenridge Capital.

[93] The prospectus requirement is another cornerstone of Ontario's securities regulatory regime. It is essential as it seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.[31]

[94] We find that Jonathan and Joshua breached s. 53(1) of the Act by distributing binary options without a prospectus, with no applicable exemptions, because:

a. we found that they were engaged in the business of trading binary options under the Beeoptions and Glenridge Capital brands;

b. we find each Beeoptions and Glenridge Capital binary options sold were previously unissued securities;

30 *TCM* at para 27
31 *Money Gate* at para 168

c. we find that the trades in the previously unissued binary options meet the definition of a "distribution"; and

d. no preliminary prospectus or prospectus was filed for Beeoptions or Glenridge Capital, and consequently no prospectus was receipted for either issuer.

6. Did Jonathan and Joshua engage in deceptive behavior that is not in the public interest

[95] Staff submit that Jonathan and Joshua engaged in conduct "contrary to the public interest" by engaging in deceptive practices in the solicitation of binary options investments, including:

a. making misrepresentations to investors about their identities and the identities of their representatives;

b. concealing the true location of their operations; and

c. using nominees to obscure their involvement in binary options trading activities.

Staff submits each of these deceptive practices independently amounts to conduct contrary to the public interest.

[96] The phrase "conduct contrary to the public interest" does not appear in the Act. The concept arises from the opening words of s. 127 of the Act, which gives the Commission broad authority to make "orders if in its opinion it is in the public interest to make the…orders".

[97] The Commission may exercise its jurisdiction to find that conduct, which does not constitute a breach of Ontario Securities Law, is nevertheless not in the public interest. The Commission has done so where it finds that the conduct is abusive of the capital markets or engages an animating principle of the Act.[32]

[98] The fundamental animating principles of securities regulation, set out in s. 2.1 of the Act, include:

a. requirements for timely, accurate and efficient disclosure of information;

b. restrictions on fraudulent and unfair market practices and procedures; and

c. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[99] Staff cites several cases where the Commission has exercised its public interest jurisdiction in the absence of a specific breach of the Act, none of which are directly on point and all of which are decisions approving settlement agreements. However, these settlement approval decisions illustrate that the Commission has exercised its jurisdiction in a broad range of situations including failure to adequately know clients and ensure investments were suitable, failure to take appropriate steps to determine conflicts of interest before investing a client's money; participating in and facilitating manipulative trading in shares; failure to take necessary steps to provide for timely delivery of exchange traded fund disclosure documents; and failure to comply with a firm's trade pre-clearance policy.[33]

[100] We find, for the reasons set out below, that Jonathan engaged in the deceptive practices of using aliases and concealing the true location of their operations and that Joshua authorized, permitted or acquiesced in the deceptive practice of using aliases. We find that Jonathan's conduct engages the animating principles of the Act and is not in the public interest. However, we do not find that Joshua's lesser conduct of acquiescing in the use of aliases in these circumstances is sufficient to engage the animating principles of the Act. We address the allegations of deceptive practices with respect to each of the Respondents in turn.

(a) Jonathan

i. Misrepresenting his identity and the identity of his representatives

[101] We find that Jonathan used the alias "Jon Cartier," based on the following evidence:

a. a welcome email from Beeoptions to investor Chmilenko was from "Jon Cartier, Managing Director, Beeoptions";

b. Omar, Papa and Lurie all stated in their evidence that Jonathan used the alias "Jon Cartier"; and

[32] *Augeci (Re)*, 2015 ONSEC 2 at paras 121-126, 174-175 and 715-717

[33] *CoinLaunch Corp (Re)*, 2019 ONSEC 26 at para 21; *eToro (Europe) Limited*, 2018 ONSEC 49 at para 18; *Clifton Blake Asset Management Ltd (Re)*, 2019 ONSEC 12 at para 4; *Questrade Wealth Management Inc.*, 2018 ONSEC 58 at para 15; *Seemann (Re)*, 2018 ONSEC 27 at para 4(d); *National Bank Financial Inc (Re)*, 2018 ONSEC 4 at para 2; and *Neher, Jorge*, 2017 ONSEC 18

c. in an email exchange between Nicole Smith, Director of Customer Support for Beeoptions, and Stephanie Hodes, a job recruiter, Smith provided a signed and stamped signature of "Jonathan Cartu, our Managing Director." The signature provided is "Jonathan Carter." Hodes asks if it is a real name and whether there is a corporate stamp with the name. Smith responds, "He's the Managing Director but that's his 'stage name'" and indicated that she would provide a "fresh one tomorrow (with his real name)."[34]

[102] We also find that aliases were used by representatives of Beeoptions and Tracy PAI and that Jonathan was aware of this practice, based on the following evidence:

a. Omar's evidence is that:

i. he was instructed to adopt an alias by either Jonathan or another Tracy PAI management staff;

ii. Omar adopted the alias "Oliver Jones", was given an email address with that name and identified himself as such when speaking with investors;

iii. Jonathan sat beside Omar in the Tracy PAI offices and would have been aware of how he identified himself to investors;

iv. Omar was aware that other account managers also used aliases and he provided the aliases he was aware were used by Tracy PAI management, including Jonathan, Leeav and Natanel;

b. Papa's evidence is that:

i. everyone at Beeoptions was assigned an alias;

ii. Papa's alias was "Anthony Edwards";

iii. he prepared a table of the aliases used by Beeoptions personnel, including management personnel Jonathan, Leeav, Natanel, Smith and others;

iv. Smith used the alias "Sara Smith";

v. Smith, using her "Sara Smith" alias, sent an email to the customer support team introducing a new team member, Phoebe, and advised that Phoebe "is in the system as Regina Young."[35]

c. Lurie's evidence is that:

i. Staff involved in sales at Tracy PAI used aliases;

ii. this included management personnel such as Jonathan, Leeav and Natanel;

iii. the decision to use aliases was a "top-down decision";[36] and

iv. aliases had been used at Sandbox when dealing with customers and it was known throughout Tracy PAI that Tracy PAI/Beeoptions was using the same approach.

ii. Concealing true location of their operations

[103] We find that it was the practice of Beeoptions and Tracy PAI to conceal from investors that they operated in Israel, and that Jonathan was aware of this practice, based on the following evidence:

a. Papa's evidence is that, while working in Customer Support at Tracy PAI, he was instructed by Smith not to disclose Beeoptions/Tracy PAI's Israeli location to callers;

b. Omar's evidence is that:

i. the procedure at Tracy PAI, confirmed by both Jonathan and Leeav, was to not tell Beeoptions investors that they were located in Israel;

[34] Exhibit 2, Ljubic Affidavit, Email thread between Nicole Smith and Stephanie Hoads from November 9, 2014 to November 10, 2014: DocID Nicole Smith-01-0000000109

[35] Exhibit 11, Affidavit of Nick Papa, sworn September 14, 2021 at para 38

[36] Exhibit 10, Lurie Affidavit at para 59

ii. if asked by an investor about their location he would try to divert the question but, if pressed, would refer the investor to the Beeoptions website contact page, which listed a London, UK address;

iii. if asked by an investor, he would confirm that he was calling from London, England; and

iv. as Jonathan was seated at the desk beside him, Omar believed that Jonathan was aware of what Omar was telling investors about the location.

c. Shukry, an Ontario resident who invested in binary options with two or three platforms, including Beeoptions, stated during his voluntary interview with Staff that he was told by his Beeoptions contact that Beeoptions was located in Canada. We accept Shukry's evidence given its consistency with the evidence from Papa and Omar that Beeoptions employees were instructed to conceal the true location of Beeoptions.

iii. Using nominees to obscure their involvement in binary options trading activities

[104] Staff alleges that Jonathan used nominees to obscure his involvement in the binary options trading activities.

[105] The use of nominees is a common corporate practice that may not be, in and of itself, deceptive. Staff's evidence is that Jonathan used a nominee for his corporate entity Blue Moon and that nominee directors and shareholders were used by David for UKTVM and Greymountain.

[106] Although we have found that Jonathan was part of the interconnected business operations that included UKTVM's and Greymountain's payment processing functions, we do not consider Jonathan's personal use of a nominee and David's use of nominees for UKTVM and Greymountain sufficient to conclude that Jonathan was using nominees to obscure his involvement in the interconnected business operation and was, therefore, a deceptive practice.

iv. Conclusion regarding the allegations against Jonathan of engaging in deceptive practices

[107] We conclude that Jonathan engaged in the deceptive practices of using aliases and concealing the true location of the binary trading operations.

[108] We find that these deceptive practices engage the animating principle of the Act of restricting unfair market practices and procedures. Investors in binary options sold under the Beeoptions and Glenridge Capital brands did not know who they were dealing with when they communicated by telephone or email, or where the business operated. Such unfair and improper practices undermine the capital markets and the public's confidence in those markets. We therefore find that Jonathan's conduct is not in the public interest.

(b) Joshua

i. Misrepresenting his identity and the identify of his representatives

[109] There is no evidence that Joshua used an alias. We find that Joshua was aware that Jonathan used an alias. Jonathan's email about changing from a Beeoptions email address to a Tracy PAI email address was sent from "Jon Cartier (jon@beeoptions.com)" and was sent to Joshua, among others.

[110] Papa's evidence is that Leeav and Natanel used aliases at Beeoptions/Tracy PAI. Leeav's alias was "Lee Cole" and Natanel's alias was "Steven Grey". We conclude that it is more likely than not that Leeav and Natanel did not cease using aliases when they moved to Call4All as the co-owners. Lurie's evidence is that aliases were used at Sandbox, Joshua's business. Joshua was a Managing Director and senior officer of Call4All and, given that position of authority and responsibility in Call4All, ought to have known about these practices.

[111] The bar for relying on the deeming provisions of s. 129.2 of the Act is low. Given our finding that Jonathan, Joshua and David operated the binary trading business as an interconnected business operation, combined with the evidence that Joshua knew Jonathan used an alias, the use of aliases at Sandbox, Joshua's position of authority with Call4All, and that it is more likely than not that Leeav and Natanel continued the practice of using aliases at Call4All, we find that Joshua acquiesced in the misrepresenting of identities.

ii. Concealing the true location of the operations

[112] There is insufficient evidence, in our view, to conclude that Joshua engaged in concealing the true location of the Cartu's interconnected business operation or that he authorized, permitted or acquiesced in that activity. Therefore, Staff has not established this allegation.

iii. Use of nominees to obscure their involvement in the binary options trading activities

[113] Staff's evidence is that Joshua used a nominee shareholder for his company Orlando Union and that David used director and shareholder nominees for UKTVM and Greymountain. As we concluded with respect to Jonathan, we find this is insufficient evidence to conclude that the use of nominees by Joshua was intended to obscure his involvement in the interconnected business operation and was, therefore, a deceptive practice.

iv. Conclusion of the allegations against Joshua of engaging in deceptive practices

[114] We find that Joshua acquiesced in the deceptive practice of the use of aliases in the Cartu's interconnected business operation. However, we conclude that this acquiescence in one of three alleged deceptive practices is not sufficient to find that Joshua's conduct engaged the animating principle of the Act of restricting unfair market practices and procedures.

CONCLUSION

[115] We therefore conclude, on a balance of probabilities, that:

a. Jonathan and Joshua were in the business of trading securities without being registered and without an available exemption, contrary to s. 25(1) of the Act;

b. Jonathan and Joshua were engaged in the distribution of securities without a prospectus and without an available exemption, contrary to s. 53(1) of the Act; and

c. Jonathan engaged in deceptive behavior that is not in the public interest.

[116] The parties shall contact the Registrar on or before April 21, 2022, to arrange an attendance for a hearing regarding sanctions and costs. That attendance is to take place on a date that is mutually convenient, that is fixed by the secretary and that is no later than May 13, 2022.

[117] 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, a one-page written submission regarding a date for an attendance. Any such submission shall be submitted by 4:30 pm on or before April 21, 2022.

Dated at Toronto this 7th day of April, 2022.

"M. Cecilia Williams"

"Frances Kordyback"

"Mary Anne De Monte-Whelan"

3.1.2 Fraser Macdougall et al. – s. 3.5(2)

Citation: *Macdougall (Re)*, 2022 ONSEC 5
Date: 2022-04-11
File No. 2022-4

IN THE MATTER OF
FRASER MACDOUGALL AND
CHRIS BOGART

AND

IN THE MATTER OF
TRYP THERAPEUTICS INC.

REASONS FOR DECISION
(Subsection 3.5(2) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	In writing	
Decision:	April 11, 2022	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
Submissions:	Hein Poulus, QC Joseph Ensom	For the Applicants, Fraser Macdougall and Chris Bogart
	Jennifer L. Whately Gordon Smith Nazma Lee	For the Executive Director, British Columbia Securities Commission
	Alexandra Matushenko Jason Koskela David Mendicino Mariko Rivers Vivian Lee Tegan Raco Troy Hilson	For Staff of the Ontario Securities Commission

REASONS FOR DECISION

I. OVERVIEW

[1] Fraser Macdougall and Chris Bogart (the **Applicants**) applied to both the Ontario Securities Commission (**OSC**) and the British Columbia Securities Commission (**BCSC**) for relief with respect to a proposed financing transaction.

[2] The Applicants requested preliminarily that their application be heard jointly by the OSC and the BCSC, so that the two panels would, at the same time, hear all the evidence and submissions.

[3] The Applicants filed written submissions in support of the request for a joint hearing, as did Staff of the OSC and the Executive Director of the BCSC. The respondent Tryp Therapeutics Inc. (**Tryp**) advised that it did not oppose the request. On March 10, 2022, I ordered, for reasons to follow, that the hearing proceed jointly as requested.[1] These are the reasons for that order.

II. NATURE AND STATUS OF THE MAIN APPLICATION

[4] The Applicants are minority shareholders of Tryp, which is a reporting issuer in British Columbia, Alberta and Ontario. Tryp's principal regulator is the BCSC. The Applicants alleged that Tryp contravened securities legislation by entering into a related party transaction without minority shareholder approval and without an available exemption from such approval. Their allegation relied on Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**),[2] which has been implemented in Ontario but not in British Columbia.

1 (2022), 45 OSCB 2762
2 (2008), 31 OSCB 1321

[5] The Applicants also alleged that the transaction is an inappropriate defensive tactic.

[6] The hearing on the merits of the main application was scheduled to begin on April 11, 2022. On April 8, after I issued the order for a joint hearing, but before the merits hearing began, the Applicants withdrew the main application. That withdrawal was a subsequent event that had no bearing on my decision to allow a joint hearing and has no bearing on the substance of these reasons. However, for editorial accuracy, I have adopted language throughout that reflects the fact that the application is no longer pending at the time of issuance of these reasons.

III. ANALYSIS OF THE REQUEST FOR A JOINT HEARING

A. Introduction

[7] The request for a joint hearing raised two issues. First, does the OSC have the authority to conduct a hearing jointly with the BCSC in this case? If yes, should the OSC exercise its discretion to do so?

[8] In issuing the order for a joint hearing, I concluded that the answer is yes to both questions. I will address each of them in turn.

B. Authority to conduct a joint hearing

[9] Ontario's *Securities Act* (the **Ontario Act**) allows the OSC to hold a joint hearing with another body authorized by statute to regulate trading in securities, commodities or derivatives.[3] The OSC and the other body must have concurrent jurisdiction to hear the application.

[10] In this case, the OSC has both the subject matter jurisdiction to decide the issues raised in the main application and the remedial jurisdiction to make most of the orders requested by the Applicants.

[11] The Applicants sought relief under paragraphs 127(1)2, 2.1 and 3 of the Ontario Act, including orders from the OSC to cease trading and prohibit purchasing of securities related to Tryp's proposed financing until Tryp obtained shareholder approval. While the appropriateness and sufficiency of the requested relief would have been a question to be determined at the merits stage of the main application, for the purposes of this request for a joint hearing, it is sufficient to note that the relief requested on the main application is within the OSC's jurisdiction.

[12] In addition, because Tryp is a reporting issuer in Ontario, it is subject to MI 61-101. One of the Applicants' central allegations was that Tryp improperly relied on an MI 61-101 exemption, thereby inappropriately circumventing the requirement to obtain minority shareholder approval for the related party transaction. Because the OSC has adopted MI 61-101, it has jurisdiction to determine whether exemptions contained in that instrument are in fact available to Tryp.

[13] Accordingly, the OSC has jurisdiction over the subject matter of the main application, and may grant the requested relief. The OSC has authority to conduct the hearing jointly if it considers it appropriate to do so.

[14] I turn now to my reasons for exercising my discretion to make that order.

C. Discretion to order that the hearing be conducted jointly

[15] Generally, issuer-related matters that touch on multiple jurisdictions are addressed by the issuer's principal regulator. Joint hearings are an exception and should be held only in compelling circumstances that justify the OSC involving itself in a dispute being addressed by another securities commission.[4] Differences in rules or public policy can meet the standard of compelling and non-routine circumstances.[5]

[16] In this case, the main application has a clear and strong connection with British Columbia, Tryp's principal regulator. However, that connection does not preclude the OSC from exercising its jurisdiction. I concluded that the important differences in applicable regulatory requirements warrant a joint hearing. That conclusion is reinforced by the novel issues raised on this application and the efficiencies that would be gained by proceeding jointly.

[17] The regulatory differences arise because MI 61-101 has not been adopted in British Columbia. As a result, only the OSC can make a decision relating to MI 61-101 in this case, including:

a. whether any MI 61-101 exemptions were available to Tryp;

b. whether it would be in the public interest to deny Tryp an exemption that would otherwise be available, even if Tryp did not violate Ontario securities law; and

---

3 RSO 1990, c S.5, s 3.5(2)
4 *AbitibiBowater Inc (Resolute Forest Products) (Re)*, 2012 ONSEC 12, (2012) 35 OSCB 3645 at para 56
5 *Mangrove Partners (Re)*, 2019 ONSEC 18, (2019) 42 OSCB 5057 (***Mangrove***) at para 40

c. if there were any breaches of MI 61-101, what the appropriate remedies would be.

[18] British Columbia has no rules or instruments similar to MI 61-101 that address related party transactions in the same way, and more specifically, that require an issuer to obtain shareholder approval of a proposed related party transaction in advance of a transaction, absent proper reliance on an enumerated exemption.[6] Accordingly, Ontario's participation is essential.

[19] Even though British Columbia has not adopted MI 61-101, the related issues might still have been of interest to the BCSC. The evidence and submissions that the OSC would have heard may well have been relevant to the BCSC's public interest authority. That possibility supports the conclusion that it would have been appropriate to conduct the merits hearing jointly, had it proceeded.[7]

[20] In addition, the main application appeared to raise a novel question as to whether the subject transaction was an inappropriate defensive tactic that might have engaged the underlying policy concerns set out in National Policy 62-202 – *Take-Over Bids – Defensive Tactics*, even though outside the context of a take-over bid. In the specific circumstances of the main application, a joint hearing would have promoted sound and responsible harmonization and co-ordination of securities regulation regimes, a goal enshrined in principles contained in the Ontario Act.[8]

[21] Finally, a joint hearing would have realized efficiencies, particularly because the issues and arguments before the two regulators were likely to have been substantially the same and because it appeared at the time that there was some urgency to resolving the dispute due to the pending transaction and an associated conditional undertaking.

IV. CONCLUSION

[22] For the above reasons, I concluded that the main application should be heard jointly by the BCSC and the OSC.

[23] Any order to that effect must be premised on the BCSC having reached the same conclusion.[9] After confirming that the BCSC panel that considered the request for a joint hearing had indeed reached that conclusion, I issued my order.

Dated at Toronto this 11th day of April, 2022.

"Timothy Moseley"

6 MI 61-101, ss 5.6 and 5.7
7 *Aurora Cannabis Inc (Re),* 2018 ONSEC 10, (2018) 41 OSCB 2325 at para 58
8 Ontario Act, s 2.1
9 *Mangrove* at para 41

3.1.3 HRU Mortgage Investment Corporation et al. – ss. 127, 127.1

Citation: *HRU Mortgage Investment Corporation (Re)*, 2022 ONSEC 6
Date: 2022-04-08
File No. 2022-10

IN THE MATTER OF
HRU MORTGAGE INVESTMENT CORPORATION,
HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM,
QINGYANG (MICHAEL) XIA, AND
ZICHAO (MARSHALL) LIANG

REASONS FOR APPROVAL OF A SETTLEMENT
(Section(s) 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	April 8, 2022	
Decision:	April 8, 2022	
Panel:	M. Cecilia Williams	Commissioner and Chair of the Panel
Appearances:	Sarah McLeod	For Staff of the Commission
	Adrienne Wong	For HRU Mortgage Investment Corporation, HRU Financials Ltd., Yau Ling (Patrick) Lam, Qingyang (Michael) Xia, Zichao (Marshall) Liang

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

REASONS FOR APPROVAL OF A SETTLEMENT

[1] Enforcement Staff of the Ontario Securities Commission (**Staff**), HRU Mortgage Investment Corporation (**HRUMIC**), HRU Financials Ltd. (**HRUFL**, jointly with HRUMIC, **HRU**), Yau Ling (Patrick) Lam (**Lam**), Qingyang (Michael) Xia (**Xia**) and Zichao (Marshall) Liang (**Liang**) (HRU, Lam, Xia and Liang are collectively the **Respondents**) have jointly submitted it is in the public interest to approve a settlement agreement among the parties dated March 30, 2022 (the **Settlement Agreement**).

[2] I agree. These are my reasons for approving the Settlement Agreement.

[3] The relevant facts and admissions, which are set out in detail in the Settlement Agreement, are:

a. Between September 2017 and November 2020, HRUMIC, a mortgage investment entity (**MIE**) based in Ontario, and HRUFL, a related Ontario company that acts as manager for HRUMIC, raised approximately $13 million CAD from 80 investors in the exempt market without being registered as a dealer.

b. Despite not being registered, HRU promoted itself as being registered and/or recognized by the Commission, made untrue statements about the registration of one of its directors, and made misleading statements as to its regulation by other Canadian regulators and supervisory bodies.

c. Lam, Xia and Liang are directors and officers of HRU and former registrants with the Commission. Lam, Xia and Liang engaged in the business of trading, were involved in the misleading and prohibited representations in HRU's marketing materials, and authorized and permitted HRU's breaches of Ontario securities law.

[4] The breaches of Ontario securities law here are serious. The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.

[5] MIEs must be registered to engage in the business of trading in securities with the public. The Commission has communicated this message to the MIE industry for the past decade, through news releases, industry outreach and enforcement actions. When MIEs fail to comply with the registration requirement or promote that they are registered when they are not, they undermine this important gate-keeper function. When this conduct involves former registrants it is even more concerning.

[6] I have considered, as a mitigating factor, that the Respondents cooperated with Staff during its investigation, the details of which are included in the Settlement Agreement.

[7] I have also taken into consideration the fact that HRUMIC provided positive returns to investors during the Material Time, and HRU has received no complaints from investors. While HRUFL earned management fees from managing HRUMIC, it received no direct compensation from the sale of HRUMIC's preferred shares, and HRU paid no commission or other incentives in connection with the sale of HRUMIC's preferred shares.

[8] The terms under which Staff and the Respondents have agreed to settle this matter are detailed in the Settlement Agreement and need not be repeated here. They include:

a. a reprimand of all Respondents;

b. payment of an administrative penalty and costs by HRUFL and the individual respondents;

c. immediate resignation by the individual respondents from the director or officer positions they hold with a reporting issuer or registrant;

d. a 3-year ban on the individual respondents from acting as a director or officer of a reporting issuer or registrant, or becoming a promoter or a registrant; and

e. a requirement that, after the 3-year ban, the individual respondents successfully complete specified courses prior to applying to become a registrant, promoter, or an officer and/or director of a registrant or reporting issuer.

[9] I have reviewed the Settlement Agreement in detail and have had the benefit of a confidential settlement conference, held by teleconference, with the parties' counsel. I asked questions of counsel and heard their submissions.

[10] My obligation at this hearing is to determine whether the negotiated result reflected in the Settlement Agreement falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the Settlement Agreement.

[11] The Settlement Agreement is the product of negotiations between Staff and the Respondents. When considering settlements for approval, the Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.

[12] Approval of the Settlement Agreement would resolve the matter promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a lengthy, contested merits hearing. Further, the Respondents' payment of the costs of the investigation appropriately recognizes that Staff were required to expend resources investigating and prosecuting this matter.

[13] All of these factors weigh in favour of approving the Settlement Agreement. However, I must still be satisfied that doing so would have the necessary deterrent effect, both generally to all those who participate in Ontario's capital markets, and specifically to the Respondents.

[14] The parties submit that the proposed financial sanctions, bans and reprimand reflect the misconduct of the individual respondents. Given their roles and responsibilities as the directing minds of HRU and the aggravating factor of being former registrants, I agree.

[15] Staff and the Respondents have agreed that HRUFL, Lam, Xia and Liang pay an administrative penalty of $400,000, on a joint and several basis. This administrative penalty is consistent with the penalty in *Kuber Mortgage Investment Corporation (Re)*[1] and *Moskowitz Capital Management Inc. (Re)*[2]. The Respondents in those cases were involved in unregistered trading within an MIE where there was no loss to investors. The total capital raised by HRU was smaller than the amounts raised in those cases, however, the proposed administrative penalty also reflects the additional breaches of the Act in this case and the aggravating factor of the directing minds of HRU being former registrants.

[16] The Commission noted in *MRS Sciences Inc.*[3] that former registrants are expected to have a high level of awareness of securities law requirements and their importance to the capital markets. In *MRS* the Commission also noted that the status of respondents as former registrants is an important consideration when imposing sanctions.

1 2020 ONSEC 10 (***Kuber***)
2 2021 ONSEC 6 (***Moskowitz***)
3 2014 ONSEC 14 (***MRS***)

[17] I find a reprimand of all the Respondents is appropriate, particularly considering that all the individual respondents are former registrants, and it is consistent with the recent MIE cases of *Kuber*, *Moskowitz* and *Clifton Black Asset Management Ltd.*[4]

[18] I find the director/officer bans appropriate given that the individual Respondents are all former registrants. There were no bans in the previous MIE cases cited by Staff, but those cases did not involve former registrants or misrepresentations regarding registration.

[19] I find that the duration of the bans and the requirement to meet additional proficiency requirements prior to seeking registration in the future reflects the seriousness of the misconduct and recognizes the mitigating factors. While the Respondents' misconduct was serious, there have been no major issues with the management and operation of the MIE, and no loss to investors. These bans allow the Respondents to continue to operate HRU by distributing shares or raising additional capital through a third party registered dealer.

[20] I find the undertaking from HRU to complete an exempt market dealer suitability review and redemption of shares appropriate. This will protect investors who did not buy their shares through a registered dealer and it is consistent with the suitability reviews agreed to in *Kuber* and *Moskowitz*, and the share redemption provisions in *Kuber* and *Clifton Black*.

[21] I further find that the costs amount the Respondents have agreed to pay recognizes that Staff was required to expend resources investigating and prosecuting this matter and is consistent with the approach to costs taken in *Kuber* and *Moskowitz*.

[22] I agree that a disgorgement order is not appropriate or necessary in this matter as no investor lost money.

[23] In my view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances. The Settlement Agreement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.

[24] For these reasons, I conclude that it is in the public interest to approve the settlement. I will therefore issue an Order substantially in the form attached to the Settlement Agreement.

[25] Each of HRUMIC, HRUFL, Lam, Xia and Liang is hereby reprimanded.

Dated at Toronto this 8th day of April, 2022.

"M. Cecilia Williams"

[4] 2019 ONSEC 12 (***Clifton Black***)

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
ManifestSeven Holdings Corporation	April 5, 2022	
Net Zero Renewable Energy Inc.	April 5, 2022	
Pontus Protein Ltd.	April 5, 2022	
Sprout AI Inc.	April 5, 2022	
Silver Bear Resources Plc	April 6, 2022	
Verisante Technology Inc.	May 4, 2018	April 6, 2022

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Gatos Silver, Inc.	April 1, 2022	
NextPoint Financial Inc.	April 1, 2022	

This page intentionally left blank

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:
Dividend 15 Split Corp. II
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 7, 2022 to Final Shelf Prospectus (NI 44-102) dated May 6, 2021
Received on April 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3207532

Issuer Name:
Dividend 15 Split Corp. II
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 7, 2022 to Final Shelf Prospectus (NI 44-102) dated May 6, 2021
NP 11-202 Receipt dated April 8, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3207532

Issuer Name:
North American Financial 15 Split Corp.
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 5, 2022 to Final Shelf Prospectus (NI 44-102) dated July 3, 2021
Received on April 5, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3073792

Issuer Name:
Income Financial Trust
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 6, 2022 to Final Shelf Prospectus (NI 44-102) dated July 23, 2021
NP 11-202 Receipt dated April 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3241234

Issuer Name:
Brompton Oil Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated April 5, 2022
NP 11-202 Receipt dated April 6, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3358529

Issuer Name:
North American Financial 15 Split Corp.
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 5, 2022 to Final Shelf Prospectus (NI 44-102) dated July 3, 2021
NP 11-202 Receipt dated April 8, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3073792

Issuer Name:
Invesco Global Balanced ESG ETF Fund
Invesco Global Select Balanced Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Apr 1, 2022
NP 11-202 Final Receipt dated Apr 5, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3339828

Issuer Name:
First Trust AlphaDEX Emerging Market Dividend ETF (CAD-Hedged)
First Trust Canadian Capital Strength ETF
First Trust International Capital Strength ETF
First Trust JFL Fixed Income Core Plus ETF
First Trust JFL Global Equity ETF
First Trust Senior Loan ETF (CAD-Hedged)
First Trust Value Line® Dividend Index ETF (CAD-Hedged)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Apr 8, 2022
NP 11-202 Final Receipt dated Apr 11, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3348232

Issuer Name:
First Trust AlphaDEX European Dividend Index ETF (CAD-Hedged)
First Trust AlphaDEX U.S. Health Care Sector Index ETF
First Trust AlphaDEX U.S. Industrials Sector Index ETF
First Trust AlphaDEX U.S. Technology Sector Index ETF
First Trust Cloud Computing ETF
First Trust Dow Jones Internet ETF
First Trust Global Risk Managed Income Index ETF
First Trust Indxx Innovative Transaction and Process ETF
First Trust Indxx NextG ETF
First Trust Morningstar Dividend Leaders ETF (CAD-Hedged)
First Trust Nasdaq Cybersecurity ETF
First Trust NASDAQ® Clean Edge® Green Energy ETF
First Trust NYSE Arca Biotechnology ETF
First Trust Tactical Bond Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Apr 8, 2022
NP 11-202 Final Receipt dated Apr 11, 2022
Received on January 14, 2021
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3348230

Issuer Name:
Franklin Innovation Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus and Amendment #3 to AIF dated April 1, 2022
NP 11-202 Final Receipt dated Apr 11, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3139143

Issuer Name:
TruX Exogenous Risk Pool
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated March 30, 2022
NP 11-202 Final Receipt dated Apr 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3278743

Issuer Name:
CIBC Canadian T-Bill Fund
CIBC Money Market Fund
CIBC U.S. Dollar Money Market Fund
CIBC Short-Term Income Fund
CIBC Canadian Bond Fund
CIBC Monthly Income Fund
CIBC Global Bond Fund
CIBC Global Monthly Income Fund
CIBC Balanced Fund
CIBC Dividend Income Fund
CIBC Dividend Growth Fund
CIBC Canadian Equity Fund
CIBC Canadian Equity Value Fund
CIBC Canadian Small-Cap Fund
CIBC U.S. Equity Fund
CIBC U.S. Small Companies Fund
CIBC Global Equity Fund
CIBC International Equity Fund
CIBC European Equity Fund
CIBC Emerging Markets Fund
CIBC Asia Pacific Fund
CIBC International Small Companies Fund
CIBC Financial Companies Fund
CIBC Canadian Resources Fund
CIBC Energy Fund
CIBC Canadian Real Estate Fund
CIBC Precious Metals Fund
CIBC Global Technology Fund
CIBC Canadian Short-Term Bond Index Fund
CIBC Canadian Bond Index Fund
CIBC Global Bond Index Fund
CIBC Balanced Index Fund
CIBC Canadian Index Fund
CIBC U.S. Broad Market Index Fund
CIBC U.S. Index Fund
CIBC International Index Fund
CIBC European Index Fund
CIBC Emerging Markets Index Fund
CIBC Asia Pacific Index Fund
CIBC Nasdaq Index Fund
CIBC Sustainable Canadian Core Plus Bond Fund
CIBC Sustainable Canadian Equity Fund
CIBC Sustainable Global Equity Fund
CIBC Sustainable Conservative Balanced Solution
CIBC Sustainable Balanced Solution
CIBC Sustainable Balanced Growth Solution
CIBC Smart Income Solution
CIBC Smart Balanced Income Solution
CIBC Smart Balanced Solution
CIBC Smart Balanced Growth Solution
CIBC Smart Growth Solution
CIBC Managed Income Portfolio
CIBC Managed Income Plus Portfolio
CIBC Managed Balanced Portfolio
CIBC Managed Monthly Income Balanced Portfolio
CIBC Managed Balanced Growth Portfolio
CIBC Managed Growth Portfolio
CIBC Managed Aggressive Growth Portfolio
CIBC U.S. Dollar Managed Income Portfolio
CIBC U.S. Dollar Managed Balanced Portfolio
CIBC U.S. Dollar Managed Growth Portfolio
CIBC Conservative Passive Portfolio
CIBC Balanced Passive Portfolio
CIBC Balanced Growth Passive Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated March 25, 2022
NP 11-202 Final Receipt dated Apr 6, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3206951

Issuer Name:
Desjardins Low Volatility Global Equity Fund
Desjardins Global Equity Growth Fund
Desjardins SocieTerra Diversity Fund
Principal Regulator – Quebec
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 30, 2022
NP 11-202 Final Receipt dated Apr 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3302763

Issuer Name:
Franklin ClearBridge Sustainable Global Infrastructure Income Fund
Franklin Martin Currie Sustainable Emerging Markets Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated April 1, 2022
NP 11-202 Final Receipt dated Apr 11, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3218448

Issuer Name:
Franklin Bissett Money Market Fund
Franklin Bissett Canadian Bond Fund
Franklin Bissett Canadian Government Bond Fund
Franklin Bissett Core Plus Bond Fund
Franklin Bissett Corporate Bond Fund
Franklin Bissett Short Duration Bond Fund
Franklin Brandywine Global Sustainable Income Optimiser Fund
Franklin Global Aggregate Bond Fund
Franklin High Income Fund
Templeton Global Bond Fund
Franklin Bissett Canadian Balanced Fund
Franklin Bissett Dividend Income Fund
Franklin Bissett Monthly Income and Growth Fund
Franklin U.S. Monthly Income Fund
Templeton Global Balanced Fund
Franklin ActiveQuant Canadian Fund
Franklin Bissett Canada Plus Equity Fund
Franklin Bissett Canadian Dividend Fund
Franklin Bissett Canadian Equity Fund
Franklin Bissett Small Cap Fund
Franklin ActiveQuant U.S. Fund
Franklin U.S. Opportunities Fund
Franklin U.S. Rising Dividends Fund
Franklin Clearbridge Sustainable International Growth Fund
Franklin Global Growth Fund
Franklin Martin Currie Sustainable Global Equity Fund
Franklin Royce Global Small Cap Premier Fund
Templeton Emerging Markets Fund
Templeton Growth Fund
Franklin Conservative Income ETF Portfolio
Franklin Core ETF Portfolio
Franklin Growth ETF Portfolio
Franklin Quotential Balanced Growth Portfolio
Franklin Quotential Balanced Income Portfolio
Franklin Quotential Diversified Equity Portfolio
Franklin Quotential Diversified Income Portfolio
Franklin Quotential Growth Portfolio
FT Balanced Growth Private Wealth Pool
FT Balanced Income Private Wealth Pool
FT Growth Private Wealth Pool
Principal Regulator - Ontario
Type and Date:
Amendment #6 to Final Simplified Prospectus and Amendment #7 dated April 1, 2022
NP 11-202 Final Receipt dated Apr 8, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3203753

Issuer Name:
RBC European Dividend Fund
Principal Regulator - Ontario
Type and Date:
Amendment #6 to Final Simplified Prospectus dated April 1, 2022
NP 11-202 Final Receipt dated Apr 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3226001

Issuer Name:
Franklin Western Asset Core Plus Bond Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated April 1, 2022
NP 11-202 Final Receipt dated Apr 11, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3287678

Issuer Name:
CI Global Equity Income Private Pool Class
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated March 31, 2022
NP 11-202 Final Receipt dated Apr 6, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3225323

NON-INVESTMENT FUNDS

Issuer Name:
Cathedral Energy Services Ltd.
Principal Regulator - Alberta
Type and Date:
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Acumen Capital Finance Partners Limited
Promoter(s):
-
Project #3366449

Issuer Name:
Dream Residential Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 4, 2022
Preliminary Receipt dated April 5, 2022
Offering Price and Description:
US$160,000,000 • Units The price per Unit is stated in U.S. dollars
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
CORMARK SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
IA PRIVATE WEALTH INC.
LAURENTIAN BANK SECURITIES INC.
RAYMOND JAMES LTD
Promoter(s):
DREAM DRR ASSET MANAGEMENT LLC
PAULS REALTY SERVICES, LLC
Project #3364478

Issuer Name:
Element79 Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated April 4, 2022
Preliminary Receipt dated April 6, 2022
Offering Price and Description:
$50,000,000.00 - Common Shares, Preferred Shares, Warrants, Subscription Receipts, Units, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3347132

Issuer Name:
General Assembly Holdings Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 11, 2022
Preliminary Receipt dated April 11, 2022
Offering Price and Description:
$2,500,000.00 - 4,807,692 Units
$0.52 per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3366644

Issuer Name:
MariMed Inc.
Type and Date:
Preliminary Long Form Prospectus dated April 7, 2022
(Preliminary) Receipted on April 7, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3365624

Issuer Name:
MustGrow Biologics Corp.
Principal Regulator - Saskatchewan
Type and Date:
Preliminary Shelf Prospectus dated April 4, 2022
Preliminary Receipt dated April 5, 2022
Offering Price and Description:
$40,000,000.00 - Common Shares, Warrants, Units, Debt Securities, Subscription Receipts
$3.88 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3364435

Issuer Name:
Triple Flag Precious Metals Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated April 6, 2022
Preliminary Receipt dated April 7, 2022
Offering Price and Description:
US$1,000,000,000.00 Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
TRIPLE FLAG MINING ELLIOTT AND MANAGEMENT CO-INVEST GP LTD., in its capacity as general partner of TRIPLE FLAG MINING ELLIOTT AND MANAGEMENT CO-INVEST LP
TRIPLE FLAG MINING AGGREGATOR S.À R.L.
Project #3365186

Issuer Name:
Velocity Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated April 7, 2022
Preliminary Receipt dated April 8, 2022
Offering Price and Description:
Up to $50,000,000.00 - Common Shares, Warrants, Debt Securities, Subscriptions, Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3365939

Issuer Name:
Vitalhub Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 6, 2022
Preliminary Receipt dated April 7, 2022
Offering Price and Description:
$17,500,120.00 - 5,645,200 Common Shares
Price: $3.10 per Common Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
EIGHT CAPITAL
BEACON SECURITIES LIMITED
CANACCORD GENUITY CORP.
ROTH CANADA, INC.
Promoter(s):
-
Project #3363064

Issuer Name:
Alexco Resource Corp.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated April 8, 2022
Receipt dated April 8, 2022
Offering Price and Description:
CDN$100,000,000.00 - COMMON SHARES, WARRANTS, SUBSCRIPTION RECEIPTS, UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3356370

Issuer Name:
Atlas One Capital Corporation
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated April 5, 2022
Receipt dated April 7, 2022
Offering Price and Description:
$266,000.00 - 2,660,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
M Partners Inc.
Promoter(s):
Ilana Prussky
Project #3335991

Issuer Name:
CarbonTech Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated April 7, 2022
Receipt dated April 11, 2022
Offering Price and Description:
$500,000.00 - 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3333990

Issuer Name:
Carmanah Minerals Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated April 4, 2022
Receipt dated April 5, 2022
Offering Price and Description:
MINIMUM OFFERING: $400,000.00 (4,000,000 COMMON SHARES)
MAXIMUM OFFERING: $500,000.00 (5,000,000 COMMON SHARES)
Price: $0.10 per Offered Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3325126

Issuer Name:
Emerge Commerce Ltd.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated April 8, 2022
Receipt dated April 8, 2022
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants, Debt Securities, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3326556

Issuer Name:
FABLED SILVER GOLD CORP.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated April 4, 2022
Receipt dated April 5, 2022
Offering Price and Description:
$100,000,000.00
Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3340739

Issuer Name:
iA Financial Corporation Inc.
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated April 5, 2022
Receipt dated April 5, 2022
Offering Price and Description:
$3,000,000,000.00 - Debt Securities, Class A Preferred Shares, Common Shares, Subscription Receipts, Warrants, Share Purchase Contracts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3348417

Issuer Name:
Income Financial Trust
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 6, 2022 to Final Shelf Prospectus dated July 23, 2021
Receipt dated April 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3241234

Issuer Name:
St Charles Resources Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated April 7, 2022 to Final CPC Prospectus dated February 8, 2022
Receipt dated April 11, 2022
Offering Price and Description:
Minimum Offering: $500,000.00 - 5,000,000 Common Shares
Maximum Offering: $2,000,000.00 - 20,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
iA Private Wealth Inc.
Promoter(s):
-
Project #3312798

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Onex Credit Partners, LLC	Portfolio Manager, Exempt Market Dealer, Investment Fund Manager	April 1, 2022
New Registration	Keele Street Partners Inc.	Portfolio Manager	April 6, 2022
Voluntary Surrender	Bombardier Global Pension Asset Management Inc./Bombardier Gestion Mondiale D'actifs Retraite Inc.	Portfolio Manager, Investment Fund Manager	April 7, 2022
Change in Registration Category	Patrimonica Gestion D'actifs Inc. / Patrimonica Asset Managements Inc.	From: Portfolio Manager To: Portfolio Manager and Exempt Market Dealer	April 5, 2022

This page intentionally left blank

Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 Investment Industry Regulatory Organization of Canada (IIROC) – Republication of Proposed Amendments Respecting the Derivatives Rule Modernization, Stage 1 – Request for Comment

REQUEST FOR COMMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

REPUBLICATION OF
PROPOSED AMENDMENTS
RESPECTING THE DERIVATIVES RULE MODERNIZATION, STAGE 1

IIROC is republishing for public comment proposed amendments to the IIROC Rules (previously published in IIROC Rules Notice 19-0200) to modernize and simplify its derivatives-related requirements (the Initial publication).

IIROC has made revisions to the proposed amendments set out in the Initial publication which are designed to:

- reproduce most of the proposed amendments using the updated version of the IIROC Rules which was implemented on December 31, 2021, and
- propose changes to some of the proposed amendments to address issues raised and suggestions made in the comment letters received on the Initial publication, as well as comments from the Canadian Securities Administrators.

IIROC has aligned the revisions to the proposed amendments with the objectives and considerations outlined in the Initial publication.

A copy of the IIROC Notice, including the text of the proposed amendments, is also published on our website at www.osc.ca. The comment period will end on June 13, 2022.

13.1.2 Investment Industry Regulatory Organization of Canada (IIROC) – Proposed Amendments Respecting the Codification of Certain Universal Market Integrity Rules (UMIR) Exemptions – Request for Comment

REQUEST FOR COMMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

PROPOSED AMENDMENTS RESPECTING
THE CODIFICATION OF CERTAIN UNIVERSAL MARKET INTEGRITY RULES (UMIR) EXEMPTIONS

IIROC is publishing for comment proposed amendments to UMIR that would codify new exemptions to allow Participants to trade a listed security:

- off-marketplace during a statutory resale restriction where the trading is permitted pursuant to a prospectus exemption
- on a foreign organized regulated market during a regulatory halt where a cease trade order (CTO) is in effect and the trading is permitted pursuant to meeting specified conditions set out in the CTO.

A copy of the IIROC Notice including the text of the proposed amendments is also published on our website at www.osc.ca. The comment period ends on July 13, 2022.

Index