The Ontario Securities Commission

OSC Bulletin

April 28, 2022

Volume 45, Issue 17

(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

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Printed in the United States by Thomson Reuters.

ISSN 0226-9325

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CSA STAFF NOTICE 25-303

2021 CSA ANNUAL ACTIVITIES REPORT ON THE OVERSIGHT OF SELF-REGULATORY ORGANIZATIONS AND INVESTOR PROTECTION FUNDS

April 28, 2022

INTRODUCTION

Self-regulatory organizations

Self-regulatory organizations (**SROs**) are entities that have been given the responsibility by securities regulators to govern the operations and business conduct of certain players in the investment industry, with a view to promoting the protection of investors and the public interest. In Canada, SROs operate under the authority and supervision of the Canadian Securities Administrators (**CSA** or **statutory regulators**). Applicable legislation in each province and territory provides each securities regulator within the CSA with the power to recognize an SRO through a Recognition Order. The Recognition Order also sets out the authority of an SRO to carry out certain regulatory functions and the terms and conditions that each SRO must comply with in carrying out their regulatory functions.

In Canada, the two SROs are the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**). IIROC is recognized by all thirteen provinces and territories, while the MFDA is recognized by eight provinces and three territories.[1]

The oversight of the SROs is coordinated through two separate memoranda of understanding (**MOUs**). Each MOU describes how the Recognizing Regulators (**RRs**) will oversee the SRO's performance of its self-regulatory activities and services to ensure that the SRO is acting in accordance with the public interest and complying with the terms and conditions of its Recognition Orders.[2]

Investor protection funds

Investor protection funds (**IPFs**) are authorized to provide coverage within prescribed limits for financial losses suffered by eligible clients in the event of the insolvency of an investment dealer or a mutual fund dealer. Analogous to the recognition and oversight of SROs, the statutory regulators have the power to approve an IPF through an Approval Order, and separate MOUs coordinate the oversight of the IPFs among the Approving Regulators (**ARs**). Currently, there are two approved or accepted IPFs - the Canadian Investor Protection Fund (**CIPF**) and the MFDA Investor Protection Corporation (**MFDA IPC**).[3] [4] [5]

Annual Activities Report

This report summarizes the key oversight activities of CSA staff (**Staff**) and their assessment of SRO and IPF compliance with securities legislation requirements, including the terms and conditions of recognition or approval/acceptance. As part of our continuing efforts to be transparent and foster public confidence in the regulatory framework, Staff intend to publish an activities report on the CSA's oversight of the new SRO and new IPF[6] on an annual basis, going forward.

1 Recognition Orders set out the authority of IIROC and the MFDA.
2 Two separate MOUs describe how the RRs will oversee IIROC and the MFDA.
3 Approval Orders provide CIPF and the MFDA IPC with the authority to carry out their mandates.
4 In Québec, CIPF is an accepted investor protection fund.
5 Two separate MOUs describe how the ARs will oversee CIPF and the MFDA IPC.
6 As described in CSA Position Paper 25-404 *New Self-Regulatory Organization Framework*

This report covers the period of January 1 – December 31, 2021 (the **Reporting Period**).

The remainder of this report follows the below structure:

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1. EXECUTIVE SUMMARY

Staff are of the view that, based on the oversight activities performed by Staff during the Reporting Period, the CSA continues to fulfill its obligations in overseeing SRO and IPF compliance with securities legislation and the Recognition/Approval Orders. Set out below are key highlights from CSA oversight activities performed during the Reporting Period.

- **New SRO Framework:** On June 25, 2020, the CSA working group published CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*. The paper sought public input on seven key issues identified through informal consultations conducted by the CSA working group in late 2019 and early 2020. During the public comment period, 67 letters were received from a broad range of stakeholders. The information and views provided by stakeholders were considered – along with other data and analysis, including dozens of academic publications pertaining to SRO design, operation and best practices, and their applicability to the Canadian capital markets – for the CSA working group to arrive at its recommendation.

  The overall recommendation for a new single enhanced SRO and, separately, a combined protection fund is described in CSA Position Paper 25-404 *New Self-Regulatory Organization Framework*, published on August 3, 2021 (**CSA Position Paper**). The new SRO will consolidate the functions of IIROC and the MFDA, while the new IPF will combine CIPF and the MFDA IPC into an integrated fund independent of the new SRO. The corporate transactions necessary for amalgamation (including obtaining the ministerial approvals) are expected to be completed by the end of 2022. All work is progressing on track in accordance with the timeline.

  A Special Joint Committee (**SJC**) has been formed, comprised of representatives from IIROC, the MFDA and the CSA. The mandate of the SJC is to identify and recommend candidates for the new SRO's chief executive officer, who would also be a voting member of the board, as well as six industry directors and eight independent directors, with one of the independent directors serving as the SRO's Chair. The SJC has retained Russell Reynolds, a global leadership advisory and search firm, to assist with recruitment.

  Since the publication of the CSA Position Paper, Staff have organized nine specific workstreams to lead and manage different aspects of the integration project. Comment letters about the framework have been reviewed by Staff and have been considered as the process moves forward, which includes continuing stakeholder engagement.

  To address the specific regulatory landscape in force in Québec to facilitate the transition, the Autorité des marchés financiers (**AMF**) has put together a forum with senior representatives of the Chambre de la sécurité financière, IIROC's Montreal Office and the Conseil des fonds d'investissement du Québec, which is the Investment Funds Institute of Canada's voice in Québec.

  IIROC and MFDA staff are also working together on the necessary operational components needed to combine their respective organizations and have retained an outside consultant, Deloitte, to serve as an integration manager.

The integration of the IPFs continues on a separate track, with the same completion date and subject to the same CSA oversight.

- **COVID-19 Update:** In response to the risks associated with the COVID-19 pandemic, the SROs and IPFs triggered business continuity plans in March 2020 and moved their staff to working remotely from the office. During the Reporting Period, the entities continued to operate with staff working from home and functions primarily being carried on remotely. Plans are being made for a return to the office in Spring 2022, in accordance with public health measures, and proposed pilots are being developed for expanded work-from-home arrangements after office re-openings. CSA staff have been receiving regular updates from the SROs and IPFs in terms of their own operations and their oversight of member operations. Other COVID-19 related information is contained within the body of this report.

- **Project to Streamline and Modernize Orders and MOUs:** In the first quarter of the Reporting Period, Staff completed a three-phased multi-year project, intended to improve harmonization and CSA oversight of SROs and IPFs to ultimately enhance investor protection. Brief details of each of the three phases are provided below:

  - Phase 1 project helped modernize reporting requirements for IIROC and the MFDA and was completed in April 2018.

  - Phase 2 project eliminated the regulatory gaps that existed with respect to the IPF approvals and oversight. Specifically, all jurisdictions recognizing IIROC have now also approved the CIPF as an IPF for investment dealers. Analogously, all jurisdictions recognizing the MFDA have now approved the MFDA IPC as an IPF for mutual fund dealers. As part of this project, IPF Approval Orders have been updated and harmonized and appropriate MOUs signed to better reflect CSA oversight expectations. All the proposed changes were published for comment; no comments were received, following which subsequent CSA approvals were obtained. This phase was completed in January 2021 when the amended Approval Orders and MOUs came into effect.

  - Phase 3 project harmonized, streamlined and modernized IIROC and MFDA Recognition Orders and MOUs to better reflect current CSA expectations and oversight practices. In addition, as part of Phase 3, the three territories recognized the MFDA in addition to eight provinces.[7] Analogous to Phase 2, the proposed changes to the Recognition Orders and MOUs were published; no comments were received, following which subsequent CSA approvals were obtained. Phase 3 was completed in April 2021 when the amended Recognition Orders and MOUs came into effect.

  - The SROs and IPFs were actively consulted by Staff throughout the applicable phases.

  This three-phased project was important not only for immediate enhancement of SRO and IPF oversight, but the project will also assist in the creation of a new single SRO and independent new IPF, which will require the consolidation of the existing Recognition/Approval Orders and MOUs. Having these documents largely harmonized and modernized will ease the continuing work related to the new SRO Framework.

- **Enhanced Methodology Project:** The purpose of the Enhanced Methodology Project was to identify and implement improvements to the CSA methodology for coordinated oversight of SROs and IPFs, while also formalizing many of the practices and processes already being followed by Staff. The main changes to the methodology included:

  - updates to the CSA risk assessment framework for SROs and IPFs to account for applicable advancements in best practices;

  - the introduction of different levels of participation (full, limited, and reliant) which define a jurisdiction's involvement in an oversight activity;

  - the introduction of the concept of "regulatory activities" that are core to the mandate of an SRO or IPF. The revised methodology recommends that each regulatory activity of an entity be examined at least once in a 5-year cycle, regardless of its net risk score;

  - the inclusion of a complaint handling process which sets out the manner by which RRs should receive, process and assess legitimate complaints made against an SRO or IPF; and

  - the inclusion of a process for Enforcement referrals, developed in consultation with CSA Enforcement staff and the SROs, and which sets out the key elements to define and administer enforcement referrals by SROs.

[7] In Québec, mutual fund dealers are directly regulated by the AMF and registered individuals in the category of mutual fund representatives must also be members the Chambre de la sécurité financière. Newfoundland and Labrador is considering the recognition of the MFDA.

The enhanced methodology was implemented by Staff on April 1, 2021.

- **Oversight Reviews:** Staff conducted a risk-based desk review of IIROC during the Reporting Period, targeting specific processes within IIROC's Equity Market Surveillance and Debt Market Surveillance functions. Although Staff did not identify overall concerns with IIROC's compliance with the relevant terms and conditions of the Recognition Order, one low priority finding was noted. The final CSA report discussing the results of the review was published on June 25, 2021.

  Based on the annual CSA risk assessments of the MFDA, CIPF and MFDA IPC, a determination was made that oversight reviews of these entities during the Reporting Period were not warranted, and that action items resulting from the risk assessments could be addressed by other oversight mechanisms. Staff continued to review filing requirements, hold meetings with the entities, review applicable rule proposals in the normal course, and follow-up with queries as necessary.

2. OVERSIGHT COMMITTEES

The CSA Market Regulation Steering Committee[8] is the forum for coordination and providing updates where issues relate to more than one SRO or IPF. There are also oversight sub-committees for each SRO and IPF to act as a forum to discuss issues, concerns and proposals related to the oversight of each SRO or IPF. The oversight sub-committees include representatives from each of the RRs and ARs, with the Principal Regulator serving as the lead.[9] The committees held scheduled quarterly meetings with each SRO and semi-annual meetings with each IPF during the Reporting Period.[10] The respective committees also held numerous ad hoc meetings with the respective entities throughout the Reporting Period as part of their oversight of specific issues, primarily related to the oversight review, proposed rule amendments and filing requirements.

3. OVERVIEW OF CSA OVERSIGHT PROGRAM

While the Enhanced Methodology Project made some improvements to the CSA oversight framework and methodology for SROs and IPFs, the core elements of the program remain the same. The RRs' oversight program for SROs, and the ARs' oversight program for IPFs include:

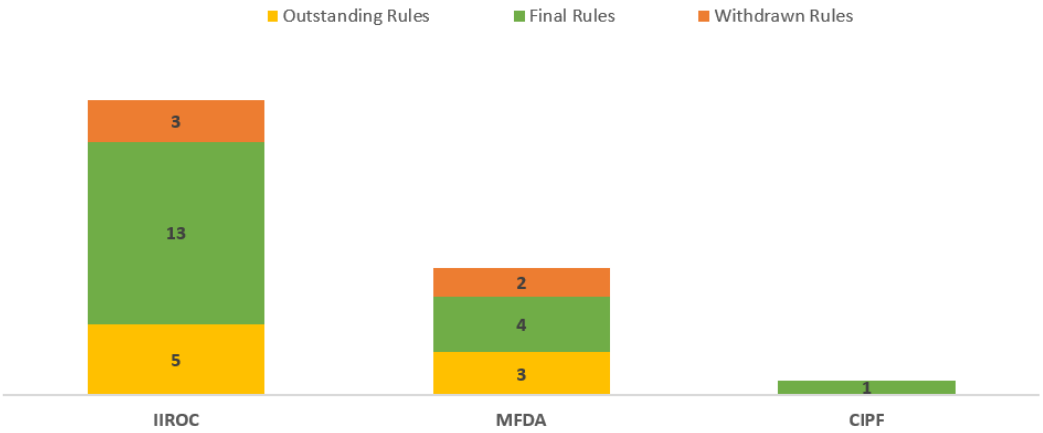
- **Annual Risk Assessment** – an evaluation of potential inherent risks and mitigating controls for each entity, to identify specific risks and control factors in each functional area of the entity. The evaluation can become the basis of future oversight activities as determined by the net adjusted risk attributed to each functional area.

- **Oversight Reviews** – a more in-depth process for Staff to make an independent assessment of whether and how the entity meets its regulatory obligations. For example, oversight reviews[11] provide an opportunity to validate the information received from the entity through interviewing staff, obtaining an understanding of the systems and processes in place, reviewing written policies, and examining files on a sample basis. The scope of an oversight review is determined by the results of the annual risk assessment and/or specific issues that arise on a periodic basis. During the Reporting Period, Staff conducted a desk review of IIROC and the final report was published on June 25, 2021.

- **Review and Approval of Proposed New and Amended Rules, Policies and Constating Documents (collectively, rules)** – Under their respective Recognition Orders and MOUs, SROs are required to seek RR approval for proposed new rules and by-laws, and any changes to existing rules and by-laws. Similarly, under their respective Approval Orders and MOUs, IPFs are required to seek AR approval or non-objection for any changes to certain policies (e.g. coverage policy) and their by-laws. Staff of all RRs/ARs are involved in the rule review process with the Principal Regulator coordinating communication with the entity. Staff coordinate their review of rule proposals and amendments, provide consolidated comments, and assess the entity's responses. Staff also consider if the entity's responses to public comments are adequate and reasonable. Only when satisfied that the public interest has been met, Staff recommend rule proposals and amendments for approval or non-objection to their decision makers. If Staff of all RRs/ARs are not prepared to support approval or non-objection, the entity generally withdraws the rule proposal or amendment, or makes revisions to address issues raised. The chart below reflects the number of rules approved or withdrawn during the Reporting Period and outstanding as of December 31, 2021.[12]

[8] More information about the current membership of the Committee and sub-committees (IIROC and MFDA) is provided in Appendix 2.
[9] The British Columbia Securities Commission (**BCSC**) is the Principal Regulator for the MFDA, and the Ontario Securities Commission (**OSC**) is the Principal Regulator for IIROC, CIPF and the MFDA IPC.
[10] The 2021 annual in-person meetings have been postponed due to the ongoing COVID-19 pandemic.
[11] Pre-pandemic oversight reviews could be desk or onsite reviews. Upon the return to the office, we expect oversight reviews to integrate both desk and onsite features (hybrid), leveraging technology as needed.
[12] Details of the approved/withdrawn/outstanding rules are provided in Appendix 2.

Rules[13] Approved or Withdrawn During the Reporting Period, and Outstanding as of December 31, 2021[14]



- **Review of Materials Filed** – SROs and IPFs are responsible for filing certain information (other than proposed rules or by-laws) with each RR/AR, as required by the Recognition/Approval Orders. This information includes, but is not limited to, reports on financial condition, regulatory self-assessments, risk management scorecards, systems integrity, market surveillance, internal audit, progress on compliance examination results and enforcement matters. Staff review the materials filed, and the Principal Regulator coordinates the necessary follow-up with the SRO or IPF on significant issues identified. Staff's review of issues and materials filed inform the annual risk assessment process.[15]

- **Meetings and Other Discussions with Entities**

  - **SROs** – Staff meet with IIROC and, separately, with the MFDA on a scheduled *quarterly* basis to discuss issues relating to each SRO's regulatory activities, the RRs oversight process, and to share information about emerging and/or ongoing regulatory issues and trends. In addition, Staff of certain RRs hold regular meetings with management of the SROs at regional offices to discuss regional issues. Staff also discuss key or escalated issues with each SRO's management as they arise.

  - **IPFs** – Staff meet with each IPF on a scheduled *semi-annual* basis to discuss issues relating to the IPFs' activities, the ARs oversight process, and to share information about emerging and/or ongoing regulatory issues and trends. Staff also discuss issues with each IPF's management as they arise.

4. SUMMARY OF KEY INFORMATION, OVERSIGHT ACTIVITIES AND OBSERVATIONS

(A) IIROC

i. Regulatory Status

IIROC as an SRO oversees all investment dealers and trading activity on debt and equity marketplaces in Canada[16] and has been approved as an information processor for corporate and government debt securities. IIROC's head office is in Toronto with regional offices in Montréal, Calgary and Vancouver.

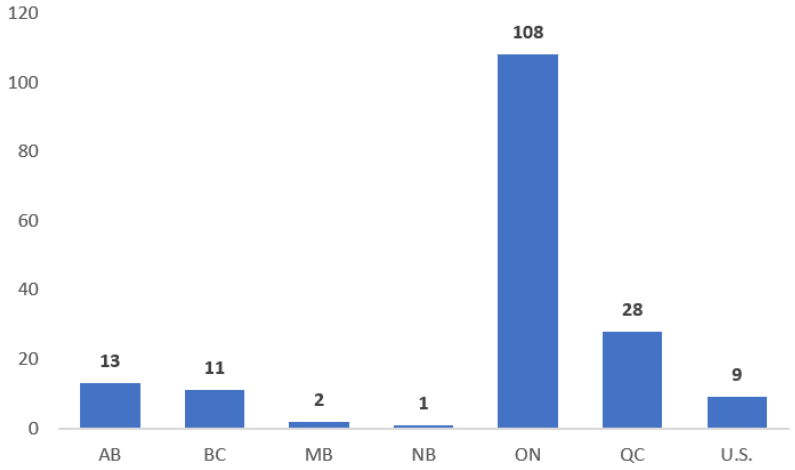
13 "Rules" in this chart also refers to amendments to IIROC and MFDA by-laws, and CIPF policies and procedures.
14 There were no outstanding or new proposed policies or by-law amendments pertaining to the MFDA IPC during the Reporting Period.
15 Further details of these materials filed are provided in Appendix 3.
16 IIROC is recognized by the Alberta Securities Commission (ASC), the AMF, the BCSC, the Financial and Consumer Affairs Authority of Saskatchewan (FCAA), the Financial and Consumer Services Commission of New Brunswick (FCNB), the Manitoba Securities Commission (MSC), the Nova Scotia Securities Commission (NSSC), the Office of the Superintendent of Securities Service Newfoundland and Labrador (NL), the OSC, the Prince Edward Island Office of the Superintendent of Securities Office (PEI), the Northwest Territories Office of the Superintendent of Securities, the Nunavut Securities Office, and the Office of the Yukon Superintendent of Securities (collectively, the IIROC RRs).

ii. Member Firm Statistics

As at December 31	2021	2020	Change	% Change
Assets Under Management	$4.1 Trillion	$3.4 Trillion	$0.7 Trillion	20.6%
Approved Persons	30,747	29,441	1,306	4.4%
Firms	172	169	3	1.8%

(Source: IIROC and National Registration Database (**NRD**))

iii. IIROC Member Firms by Head Office Location



(Source: NRD)

iv. Oversight Review

IIROC implemented an enhanced software for market surveillance (SMARTS) in March 2019. Using SMARTS, IIROC's Market Surveillance teams have improved their ability to: (i) quickly detect trading anomalies across multiple products, individual traders and firms; and (ii) identify and respond to emerging trends - for example, by monitoring daily message and trade volumes in a more efficient manner.

During the Review Period, Staff completed a risk-based desk review of IIROC. Based on the results of the annual risk assessment and in order to follow up on the implementation of the new market surveillance system, Staff determined that the following areas within IIROC's Equity and Debt Market Surveillance function would form the focus of the oversight review to assess the adequacy of those identified areas:

- *Equity Market Surveillance*
  - Development and review of equity market surveillance alerts
  - The Market Wide Circuit Breaker (**MWCB**) process
- *Debt Market Surveillance*
  - Development and review of debt market surveillance alerts
  - IIROC's review of triggered debt market surveillance alerts
  - Data integrity review of reported debt transaction data

Based on the work performed, Staff were satisfied that IIROC had adequate processes and procedures in place in the identified areas, except for a low priority finding pertaining to certain processes and procedures not being integrated into the Equity and Debt Market Surveillance written policies and procedures manuals. Staff have since reviewed the relevant manuals and are satisfied that they have been adequately updated to address the finding.

Staff acknowledge that IIROC has made recent enhancements to the MWCB process and, as part of IIROC's outreach to Canadian marketplaces, IIROC is currently assessing the need for any additional enhancements to the MWCB process (e.g., desirability to

automate the MWCB process). Staff have continued to follow up with IIROC regarding the development of any potential enhancement to the MWCB process.

The final report was published on June 25, 2021.

v. Rule Reviews

During the Reporting Period, thirteen IIROC rule amendments were approved or non-objected to by the IIROC RRs and three rule amendments were withdrawn by IIROC. Five rule amendments continue to be under CSA review as of December 31, 2021.[17]

vi. Materials Filed

IIROC is responsible for filing certain information with Staff on a regular or ad hoc basis. Required filings are outlined under the Recognition Orders and include, but are not limited to, items such as quarterly regulatory activities reports, quarterly and annual financial statements, internal audit and enterprise risk management reports, independent systems review reports, market activity statistics, exemptions granted from Universal Market Integrity Rules (**UMIR**), disclosure of members in financial difficulty, and terms and conditions on members.[18]

vii. Meetings and Other Discussions

During regular meetings held with IIROC, among other varied topics, the following key subjects were discussed and followed up on by CSA oversight staff:

- *COVID-19 Response* – IIROC continued to function primarily on a remote basis as its staff have the tools, equipment and support necessary to execute IIROC's regulatory responsibilities. Compliance examinations continued on a fully remote basis with no significant delays regarding timing to complete the examinations. Within Enforcement, hearings and investigative interviews continued to be held by teleconference or video conference.

  IIROC's market surveillance infrastructure continued to operate effectively. Pre-pandemic, system capacity and processing capability was set at 1 billion messages. In response to unprecedented market activity during the pandemic, which resulted in a significant increase in the daily average volume of trades and messages, and to ensure excess capacity during spikes in market activity, server and storage upgrades to the market surveillance system were completed. At the end of the Reporting Period, IIROC's SMARTS surveillance system had the ability to handle approximately 3 billion real-time messages per day and approximately 2 billion messages per day in the end-of-day processing.

  During the pandemic, IIROC also received applications for exemptive relief relating to hardships experienced by dealers due to pandemic measures in place. Working with the CSA, IIROC operationalized a delegated authority model which enabled IIROC dealers to obtain specific relief from a sub-set of rules with set terms. An oversight mechanism was put in place for IIROC to provide timely information to the CSA to ensure proper oversight for as long as relief was provided under the model. The IIROC Board of Directors authorized staff to provide extensions of existing exemptive relief until March 31, 2022, provided that the Dealer Member was able to demonstrate that continued relief was warranted in the particular circumstances. A special section of the IIROC website was created to maintain all COVID-19 pandemic related information for stakeholders, which includes summaries of the exemptive relief applications and the exemptions granted.

- *Order Execution Only (OEO) Service Levels* – As noted, there was a significant increase in trading volumes during the pandemic, including retail specific trading, partially attributable to the work-from-home environment and the ease of opening new trading accounts. Within the OEO platform, the impact of higher trading volumes and new account openings resulted in a corresponding increase in service level complaints from clients (e.g., delays in opening new accounts, system response times and service disruptions). Given the increasing importance of online trading services, IIROC collected quantitative and qualitative information from dealers with OEO trading platforms. A working group comprised of industry representatives and IIROC staff was also established to provide insight into key factors that could be considered as part of an appropriate regulatory response to this growing sector highly reliant on technology.

- *Crypto / Digital Assets* – A number of novel issues were identified during the review of applications for: (i) new membership from crypto-asset trading platforms; and (ii) business change from existing IIROC dealers planning on expanding into the distribution of crypto asset products and/or provision of service offerings. To better address these issues from an efficiency standpoint and to leverage knowledge and expertise of staff, IIROC created a Member Intake group in Summer 2021. This group is to be primarily responsible for the review and assessment of applications which are expected to increase in number. On November 17, 2021, Fidelity Clearing

[17] More information about IIROC rule approvals is provided in Appendix 2.
[18] Further details about materials filed by IIROC (other than rule amendments) is provided in Appendix 3.

Canada ULC became the first IIROC dealer to be approved to offer trading and custody of crypto assets, based on specific terms and conditions. Reviews continue of other applications and business change notices. New IIROC rules and guidance, as well as standardized compliance procedures, are expected to be developed in the future. In the interim, IIROC continues to be engaged with Staff at various levels on how IIROC rules and securities legislation apply to crypto-asset trading platforms, enabling targeted applications for exemption to be considered based on customized terms and conditions for each business model. A joint CSA/IIROC notice was published on March 29, 2021 providing guidance to crypto-asset trading platforms.

- *Cybersecurity Incidents* – Pre-pandemic, IIROC conducted dealer cybersecurity self-assessment surveys, hosted table-top exercises to help small and medium sized firms with cybersecurity preparedness and risk management practices, and engaged cybersecurity consultants to visit selected dealers whose cybersecurity self-assessments revealed maturity levels below the expected target of their industry peer group. Furthermore, IIROC established a specific cybersecurity section on its website and provided webinars and published guidance to help dealers protect themselves and their clients against cyber threats. In November 2019, amendments to IIROC's reporting requirements were approved and implemented, requiring dealer members to report certain cybersecurity incidents to IIROC.[19] During the pandemic, cyber attacks increased across all industries, including the financial sector. In response, IIROC issued further guidance on how to prevent, detect, respond to and recover from ransomware attacks, and the Board approved future table-top exercises to discuss plans in the event of a ransomware attack. CSA staff were kept apprised of the IIROC initiatives and engaged with IIROC staff to ensure proper oversight.

- *IIROC Information Processor Order* – During the Reporting Period, in conjunction with the CSA, a long-standing project to provide post-trade transparency to the Canadian debt markets was finally achieved. On September 1, 2020, the CSA expanded IIROC's role as debt information processor to include government debt securities, in addition to corporate debt securities. The implementation of the expanded requirements took place in two phases. The first phase took effect on September 1, 2020, when IIROC started publishing post-trade information for trades in corporate and government debt securities executed the day prior by: (i) dealers subject to the requirements in current IIROC Rule 7200 *Transaction Reporting for Debt Securities*; and (ii) banks that are already reporting their corporate and government debt securities to IIROC. The second phase commenced during the Reporting Period on May 31, 2021, when IIROC started publishing information about all trades in corporate and government debt securities executed by those banks that were not already reporting such trades to IIROC.

- *IIROC's Plain Language Rules (PLR)* – Several years ago, IIROC started a project to rewrite, reformat, rationalize, and reorganize its Dealer Member Rules in plain language. Subsequent to public comments, CSA review and necessary approvals, the implementation of PLR took place on December 31, 2021, coinciding with the effective date of the implementation of the CSA's Client Focused Reforms (CFR)[20]. As a result of the PLR project, the existing Dealer Member Rules, many of which originated in predecessor organizations[21], were rewritten in plain language resulting in rules that are more clear, concise, and organized. The new rules are now referred to as the IIROC Rules.

- *Client Focused Reforms* – With the implementation of the CFR conflicts of interest requirements on June 30, 2021, the CSA, IIROC and the MFDA discussed a CFR conflicts of interest coordinated review. As part of these discussions, the CSA and both SROs harmonized their compliance modules specific to the CFR conflicts of interest requirements. IIROC added specific questions to the annual request of information from firms, a mechanism used by IIROC for data collection to assist in the assessment of compliance risk. IIROC also incorporated the CFR conflicts of interest review into its regularly scheduled business conduct compliance exams, and fieldwork began in the Reporting Period. In parallel with IIROC's and the MFDA's examination of its members, the CSA will be conducting a targeted CFR conflicts of interest sweep of other registrants. Together, the CSA, IIROC and the MFDA plan to publish findings from the coordinated review and provide additional implementation guidance to the industry on the enhanced conflict requirements.

- *Other Initiatives* – Over the Reporting Period, Staff also engaged IIROC staff on other specific matters of regulatory concern such as:

    - the IIROC-sponsored test of the industry business continuity plan in October 2021;

    - IIROC staff's participation in the CIPF insolvency simulation exercise (discussed further in the CIPF section below); and

[19] In February 2022, IIROC issued further guidance to Dealer Members on how to demonstrate compliance with the cybersecurity incident reporting requirements.
[20] The new requirements under the Client Focused Reforms came into effect on December 31, 2021 (know your client, know your product, suitability, relationship disclosure information, and all other reforms). Amendments relating to the conflicts of interest requirements came into effect earlier on June 30, 2021.
[21] IIROC was recognized as an SRO effective June 1, 2008, combining the operations of the Investment Dealers Association and Market Regulation Services Inc.

- IIROC's specific investor protection initiatives, such as:
  - proposed changes to IIROC's arbitration program;
  - IIROC's research with past complainants;
  - the return of disgorged funds to investors; and
  - the development of the proposed Expert Investor Issues Panel.

(B) MFDA

i. Regulatory Status

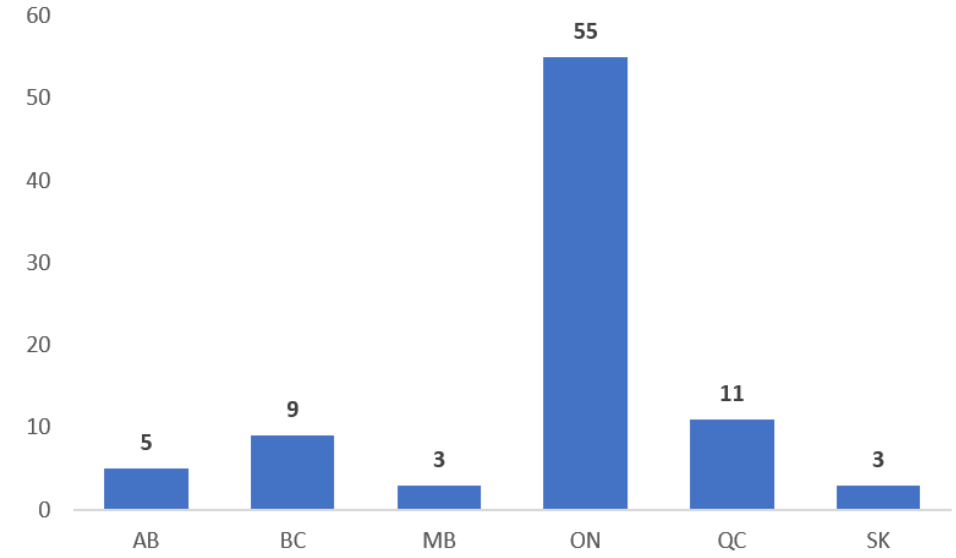
The MFDA is the SRO that oversees mutual fund dealers in Canada, except in Québec where mutual fund dealers operating only in the province are directly regulated by the AMF.[22] The MFDA head office is in Toronto, with regional offices in Calgary and Vancouver.

ii. Member Firm Statistics

As at December 31	2021	2020	Change	% Change
Total Mutual Fund Assets Under Administration	$729B	$627B	$102B	16.3%
Approved Persons	77,383	77,195	188	0.2%
Members	86	88	-2	-2.3%

(Source: MFDA and NRD)

iii. MFDA Member Firms by Head Office Location



(Source: NRD)

iv. Rule Approvals

During the Reporting Period, four MFDA rule amendments were approved or non-objected to by the RRs that recognized the MFDA at the time of approval and two rule amendments were withdrawn by the MFDA. Three rule amendments continue to be under CSA review as of December 31, 2021.[23]

[22] The MFDA is currently recognized by ASC, AMF, BCSC, FCAA, FCNB, MSC, NSSC, OSC, PEI, the Northwest Territories Office of the Superintendent of Securities, the Nunavut Securities Office, and the Office of the Yukon Superintendent of Securities.

[23] More information about MFDA rule approvals is provided in Appendix 2.

v. Materials Filed

The MFDA is also responsible for filing information with Staff on a regular and ad hoc basis. Required filings are outlined in the MFDA Recognition Orders and include (but are not limited to) annual and quarterly financial statements, disclosure of members in financial difficulty, and quarterly operations reports.[24]

vi. Oversight Review

Based on the annual risk assessment of the MFDA, Staff did not conduct an oversight review during the Reporting Period. Other CSA oversight activities are described below.

vii. Meetings and Other Discussions

During regular meetings with the MFDA, the following key topics, among other varied subjects, were discussed and followed up on:

- *COVID-19 Response* – Near the outset of the pandemic, Staff became aware of a process followed by the MFDA of granting regulatory relief to members as a result of disruptions in business operations caused by the COVID-19 pandemic. In reviewing the process, Staff focused their assessment on the MFDA's process in granting such relief, rather than questioning whether the particular relief granted was appropriate or necessary in the circumstances. In particular, Staff queried the MFDA's (i) characterization of the relief as an "administrative accommodation"; (ii) the delegation to MFDA staff of the ability to grant such relief; and (iii) the lack of public transparency regarding the availability or details of the relief. During the Reporting Period, Staff continued to follow up with the MFDA in terms of internal processes and procedures in place to ensure that, when MFDA staff engage in discussions with member(s) that result in the exercise of discretion on MFDA staff's part, those discussions and decisions are within the scope of their authority (i.e. not exercising exemptive relief), and that MFDA staff's reasons for providing administrative accommodations are properly documented.

  With respect to the impact of COVID-19 on operations, during the Reporting Period, the MFDA continued to primarily carry on its functions remotely, including its core compliance and enforcement functions. While the MFDA suspended its onsite compliance fieldwork during the Reporting Period, it continued to perform compliance examinations remotely. The MFDA also continued to conduct its enforcement activities remotely using virtual technologies and other means to facilitate the participation of relevant parties in the MFDA's enforcement processes, but it has indicated a willingness to facilitate in-person processes, as necessary and appropriate. The MFDA continued to accept, review and respond to complaints or inquiries from the public. The level of complaints received by the MFDA has returned to pre-pandemic levels after a temporary spike in late March and April 2020. The MFDA continued to monitor the pandemic and act in accordance with local government instructions to guide its plan for returning staff to the office.

- *Cybersecurity* – Cybersecurity for both the MFDA and its members continues to be an area of focus. The MFDA engaged external IT consultants to perform various tests of its own security controls and assess the maturity of its cybersecurity framework. The results of these tests were provided to Staff. In May 2021, the MFDA issued a mandatory cybersecurity survey to all its members. Preliminary results demonstrated that smaller members tended to have resource issues in dealing with cybersecurity; however, due to regulatory requirements and the high threat pressure on the financial services industry, even smaller MFDA members were deemed to be more prepared and invested in cyber protection than similar-sized entities in other sectors. The survey identified some key areas for which the MFDA intends to provide additional guidance and resources.

- *Client Research Project* – The 2016 and 2019 MFDA Client Research Project provided the MFDA with information and insight into members' business models, their approved persons and their clients. In the beginning of the Reporting Period, the MFDA, in collaboration with the AMF, issued a mandatory data request to all its members, requiring that client data be provided by June 30, 2021. The MFDA has assessed the accuracy and completeness of the data, and is now working with research consultants to perform an analysis and summarize the results in a report.

- *Client Focused Reforms* – As part of regular member examinations, the MFDA commenced its review of member firms' compliance with the enhanced CFR conflicts of interest requirements. As discussed above, the MFDA will use the information gathered from its examinations to participate with the CSA and IIROC in a coordinated review of the implementation of the new conflict requirements by firms. The group plans to publish its findings and provide additional implementation guidance to the industry.

- *Performance Reporting Targeted Review* – In 2020, the MFDA commenced a targeted review focused on performance data reported to clients by MFDA members. While the MFDA regularly tests performance reporting as part of routine compliance examinations, data obtained from the 2019 Client Research Project allowed the

[24] Further details about the materials filed by the MFDA (other than rule amendments) are provided in Appendix 3

MFDA to conduct a targeted review of performance reporting, specifically focused on accounts with highly unusual positive or negative returns. A report was issued in July 2021. Among the key recommendations in the report were: (i) for members to carefully review and test their annual performance reporting, as inaccurate reporting can impact their clients' investment decisions; and (ii) where members identify inaccurately reported performance returns, members should provide each affected client with a restated performance report for the time periods that were incorrectly reported.

- *Continuing Education* – In 2019, the CSA approved or non-objected to the introduction of Continuing Education (**CE**) requirements for mutual fund approved persons. In July 2021, the CSA also approved or non-objected to amendments to establish a CE accreditation process. The CE cycle commenced in December 2021. During the Reporting Period, to ensure the stability and adequacy of the CE system, the MFDA contracted third-party specialists to successively review, test, identify and remedy potential concerns with the new MFDA CE reporting and tracking system (CERTS) prior to launch. A separate section relating to Continuing Education has been added to the MFDA website to consolidate information for ease of reference.

(C) CIPF

i. Regulatory Status

CIPF is approved as an IPF to provide protection within prescribed limits to eligible clients of IIROC dealer member firms suffering losses, if client property held by a member firm is unavailable as a result of the insolvency of a dealer member.[25] CIPF's head office is in Toronto.

ii. Fund Statistics

As at December 31	2021	2020	Change	% Change
General Fund	$540M	$544M	-$4M	-0.7%
Insurance	$440M	$440M	-	-
Lines of Credit	$125M	$125M	-	-
Total	**$1,105M**	**$1,109M**	**-$4M**	**-0.4%**

(Source: 2021 CIPF Audited Annual Financial Statements)

iii. Oversight Review

Based on the 2021 annual risk assessment, Staff did not conduct a risk-based oversight review of CIPF during the Reporting Period. Other CSA oversight activities are described below.

iv. Policy and Procedures Amendments

During the Reporting Period, the CIPF ARs did not object to amendments to the CIPF Claims Procedures.

v. Meetings and Other Discussions

During the semi-annual meetings held with CIPF, the following key topics were discussed and followed up on:

- *COVID-19 Response* – During the Reporting Period, CIPF's office continued to operate remotely, and meetings of the CIPF Board and its Committees were carried on virtually.

- *Statement of Member Assets by Location (**SMAL**)* – While the filing of the annual SMAL was suspended in 2020 to accommodate the management and operational challenges faced by member firms due to the COVID-19 pandemic, the requirement to file resumed during the Reporting Period.

- *SRO Structure* – On March 31, 2021, CIPF published its discussion paper The Independence of Compensation Funds, which considered whether CIPF should remain an independent body or be integrated with a future SRO. Subsequently, the CSA Position Paper recommended the creation of a combined protection fund, separate from the new SRO. CIPF and MFDA IPC staff are working through the integration process and, given that many aspects of their operations are similar such as how liquidity resources are structured, CSA staff expect that this will facilitate the combination of the two entities into the new IPF.

[25] CIPF is deemed acceptable or approved as an IPF by the AMF, ASC, BCSC, FCAA, FCNB, MSC, NL, NSSC, OSC, PEI, the Northwest Territories Office of the Superintendent of Securities, the Nunavut Securities Office, and the Office of the Yukon Superintendent of Securities (collectively, the CIPF ARs).

- *Review of Adequacy of Level of Assets, Assessment Amounts and Assessment Methodology* – CIPF uses a credit-risk based fund model to project its liquidity resource requirement and assist in the setting of its fund size. During the Reporting Period, CIPF's Board reviewed the adequacy of the level of resources available in relation to the risk exposure of member firms. CIPF continued to implement enhancements to its model with: (i) the recalibration of a stress multiplier; and (ii) implementation of a five-year weighted average methodology, in order to mitigate potential volatility to the liquidity resource requirements.

- *Crypto Assets* – During the Reporting Period, staff from IIROC, CIPF and the CSA met regularly to discuss crypto asset developments, including the review by the CSA and IIROC of applications from crypto asset trading platforms for registration and membership and for exemptive relief from certain requirements in securities legislation and IIROC's rules. The primary areas of interest for CIPF were the custody, control and pricing of crypto assets.

- *Simulation Exercises* – Three simulation exercises were held during the Reporting Period. Two simulation exercises were held with regulatory and clearinghouse staff in February and October 2021. These simulations focused on the manner in which operational strategies, tools and regulatory processes changed during the pandemic (e.g., the use of virtual hearing panels), and how these changes could impact the handling of a member firm insolvency. The third simulation was organized by CIPF for trustees in April 2021. Since the pool of trustees and lawyers who specialize in financial institution bankruptcies is limited, the goal of this simulation was to expand industry knowledge. Future simulation exercises are being scheduled.

- *Insolvencies* – During the Reporting Period, there were no IIROC member insolvencies whereby CIPF was actively involved.

- *New Reporting Requirements* – As of January 2021, the new updated CIPF Approval Orders came into effect. Filings received under the new Approval Orders for the Reporting Period included the unaudited semi-annual financial statements as at June 30, 2021 and December 31, 2021, the annual and semi-annual operational reports, and 2022 financial budget.[26] Staff worked with CIPF staff to ensure a smooth transition to the updated reporting requirements.

(D) MFDA IPC

i. Regulatory Status

The MFDA IPC is approved as an IPF to provide protection within prescribed limits to eligible clients of MFDA mutual fund dealer member firms suffering losses as a result of the insolvency of a mutual fund dealer member.[27] The MFDA IPC's head office is in Toronto.

ii. Fund Statistics

As at June 30	2021	2020	Change	% Change
General Fund	$53M	$51M	$2M	3.9%
Insurance	$40M	$20M	$20M	100.0%
Lines of Credit	$30M	$30M	-	-
Total	**$123M**	**$101M**	**$22M**	**21.8%**

(Source: 2021 MFDA IPC Audited Annual Financial Statements)

iii. Oversight Review

Based on the 2021 annual risk assessment, Staff did not conduct a risk-based oversight review of the MFDA IPC during the Reporting Period. Other CSA oversight activities are described below.

[26] Further details about materials filed by CIPF (other than rule amendments) are provided in Appendix 3.

[27] The MFDA IPC is currently approved as an IPF by the ASC, BCSC, FCAA, FCNB, MSC, NSSC, OSC, PEI, the Northwest Territories Office of the Superintendent of Securities, the Nunavut Securities Office, and the Office of the Yukon Superintendent of Securities. The MFDA IPC operates in all provinces except Québec, which has its own compensation fund.

iv. Meetings and Other Discussions

During semi-annual meetings held with the MFDA IPC, the following key topics were discussed:

- *COVID-19 Response* – MFDA IPC staff continued to work and hold Board meetings remotely and remain equipped with the necessary access and tools to do so. The MFDA IPC relies on the MFDA (through the Services Agreement) for its continued support of certain MFDA IPC services and thus was in close coordination with MFDA during COVID-19.

- *Fund Size Target* – The Board of the MFDA IPC oversees the enhancement of the annual review of the general fund size and monitors the ongoing stability of this fund. The MFDA IPC has reached its general fund size target of $50 million. In 2021, the MFDA IPC added a secondary layer of insurance in the amount of $20M in respect of any losses to be paid by the MFDA IPC in excess of $50M. This is in addition to the original layer of insurance of $20M in respect of any losses to be paid by the MFDA IPC in excess of $30M.

- *Insolvencies* – There were no MFDA member insolvencies during the Reporting Period whereby the MFDA IPC was actively involved. Information related to the W.H. Stuart insolvency (2013) is still available on the MFDA IPC website as MFDA IPC staff received some queries during the Reporting Period.

- *Simulation Exercise* – During the Reporting Period, MFDA IPC staff conducted a simulation exercise for its Board to go through the key events that would take place in an insolvency and the key decisions requiring Board involvement. External legal counsel and third-party consultants helped to facilitate the exercise.

- *Governance* – Following the risk assessment in 2020 and with a view to further strengthen MFDA IPC's governance controls, Staff recommended and the MFDA IPC agreed to implement a code of conduct for the MFDA IPC staff, aimed to help mitigate any potential conflicts of interest. This is important given the MFDA IPC's integration with the MFDA (e.g., shared accounting resource). The new code of conduct was implemented during the Reporting Period.

- *New Reporting Requirements* – As of January 2021, the new updated MFDA IPC Approval Orders came into effect. Staff worked with the MFDA IPC to ensure a smooth transition to the updated reporting requirements.[28]

[28] Further details of the materials filed by the MFDA IPC is provided in Appendix 3.

APPENDIX 1 – COMPOSITION OF THE SRO OVERSIGHT COMMITTEES

MARKET REGULATION STEERING COMMITTEE

AMF	Elaine Lanouette	**FCNB**	David Shore
ASC	Lynn Tsutsumi	**NL**	Scott Jones
BCSC	Mark Wang	**NSSC**	Chris Pottie
FCAA	Liz Kutarna	**OSC**	Susan Greenglass
MSC	Paula White	**PEI**	Steve Dowling

IIROC OVERSIGHT COMMITTEE

AMF	Dominique Martin	Serge Boisvert	Jean-Simon Lemieux
	Catherine Lefebvre	Lucie Prince	Herman Tan
ASC	Rose Rotondo	Gerald Romanzin	
BCSC	Mark Wang	Michael Brady	Liz Coape-Arnold
	Michael Grecoff	Sylvia Lee	Joseph Lo
	Zach Masum	Meg Tassie	
FCAA	Liz Kutarna	Curtis Brezinski	
FCNB	David Shore	Amelie McDonald	
MSC	Paula White	Angela Duong	
NL	Scott Jones		
NSSC	Chris Pottie	Angela Scott	
NT	Matthew Yap		
NU	Shamus Armstrong		
OSC	Joseph Della Manna	Karin Hui	Stacey Barker
	Yuliya Khraplyva	Ruxandra Smith	Bryana Lee
	Felicia Tedesco		
PEI	Steve Dowling	Curtis Toombs	
YK	Rhonda Horte		

MFDA OVERSIGHT COMMITTEE

ASC	Rose Rotondo	Gerald Romanzin	
BCSC	Mark Wang	Michael Brady	Joseph Lo
	Liz-Coape-Arnold	Anne Hamilton	Lenworth Haye
	Zach Masum		
FCAA	Liz Kutarna	Curtis Brezinski	
FCNB	David Shore	Amelie McDonald	
MSC	Paula White	Angela Duong	
NSSC	Chris Pottie	Brian Murphy	
NT	Matthew Yap		
NU	Shamus Armstrong		

OSC	Joseph Della Manna	Yuliya Khraplyva	Karin Hui
	Stacey Barker	Felicia Tedesco	Dimitri Bollegala
PEI	Steve Dowling	Curtis Toombs	
YK	Fred Pretorius	Rhonda Horte	

CIPF OVERSIGHT COMMITTEE

AMF	Dominique Martin	Lucie Prince	
ASC	Rose Rotondo	Gerald Romanzin	
BCSC	Michael Brady	Sylvia Lee	Joseph Lo
	Meg Tassie		
FCAA	Liz Kutarna	Curtis Brezinski	
FCNB	David Shore		
MSC	Paula White	Angela Duong	
NL	Scott Jones		
NSSC	Chris Pottie	Angela Scott	
NT	Matthew Yap		
NU	Shamus Armstrong		
OSC	Joseph Della Manna	Stacey Barker	Karin Hui
	Yuliya Khraplyva		
PEI	Steve Dowling	Curtis Toombs	
YK	Fred Pretorius	Rhonda Horte	

MFDA IPC OVERSIGHT COMMITTEE

ASC	Rose Rotondo	Gerald Romanzin	
BCSC	Mark Wang	Michael Brady	Anne Hamilton
	Joseph Lo	Zach Masum	Meg Tassie
FCAA	Liz Kutarna	Curtis Brezinski	
FCNB	David Shore		
MSC	Paula White	Angela Duong	
NL	Scott Jones		
NSSC	Chris Pottie	Brian Murphy	
NT	Matthew Yap		
NU	Shamus Armstrong		
OSC	Joseph Della Manna	Stacey Barker	Karin Hui
	Yuliya Khraplyva		
PEI	Steve Dowling	Curtis Toombs	
YK	Fred Pretorius	Rhonda Horte	

APPENDIX 2 – RULE/BY-LAW/POLICY AND PROCEDURES AMENDMENTS

IIROC Rule/By-Law Amendments

Completed

1. Amendments to Dealer Member Rules and Form 1 Regarding the Securities Concentration Test and Designated Rating Organizations
2. Amendments to the Risk Component of IIROC's Dealer Member Fee Model
3. Amendments Regarding Exemptions for Bulk Account Movements
4. Housekeeping Amendments to Form 1 for Use In, and Consistency With, the IIROC Rules
5. Amendment to IIROC By-law No. 1 Regarding the Definition of "Marketplace"
6. Housekeeping Amendments to Dealer Member Rules and IIROC Rules as Related to IIROC Notices 19-0071 and 19-0101
7. Amendments to Swap Counterparty Margin Requirements
8. Client Focused Reforms Rule Amendments
9. Housekeeping Amendments to IIROC Rules to Enhance Protection of Older and Vulnerable Clients
10. Amendments to Form 1 and Corollary Amendments to the IIROC Rules
11. Housekeeping Rule Changes to the IIROC Rules
12. Housekeeping Amendments to the Universal Market Integrity Rules (UMIR) Regarding the Definition of "Marketplace"
13. Housekeeping Amendments to the Universal Market Integrity Rules (UMIR) to Update Reference to IIROC Rules

Withdrawn

1. Proposed Amendments Respecting Non-Clients
2. Proposed Amendments Respecting the Minor Contravention Program and Early Resolution Offers
3. Proposed Amendments Respecting Disclosure of Information by Ombudsman Service to IIROC

In Progress

1. Proposed Derivatives Rule Modernization, Stage 1
2. Proposed Amendments Respecting the Trading of Derivatives on a Marketplace
3. Proposed Margin Requirements for Structured Products
4. Proposed Amendments to the IIROC Rules and Form 1 Relating to the Futures Segregation and Portability Customer Protection Regime
5. Proposed Amendments Respecting Reporting, Internal Investigation and Client Complaint Requirements

MFDA Rule/By-Law Amendments

Completed

1. Amendments to MFDA Rule 1.1.1(a) (Business Structures – Members)
2. Amendments to MFDA Policy No. 9 *Continuing Education ("CE") Requirements*
3. Client Focused Reforms Rule Amendments
4. Housekeeping Amendments to MFDA Rules to Enhance Protection of Older and Vulnerable Clients

Withdrawn

1. Proposed Amendments to MFDA Rule 1.2.5 (Misleading Business Titles Prohibited)

2. Proposed Amendments to MFDA Rule 2.3.1(b) (Discretionary Trading) and Rule 2.2.5 (Relationship Disclosure)

In Progress

1. Proposed Amendments to MFDA Rule 1.1.2 (Compliance by Approved Persons)

2. Proposed Amendments to MFDA Rule 2.3.2 (Limited Trading Authorization) and Rule 2.3.3 (Designation)

3. Proposed New MFDA Policy No. 11 *Proficiency Standards for the Sale of Alternative Mutual Funds*

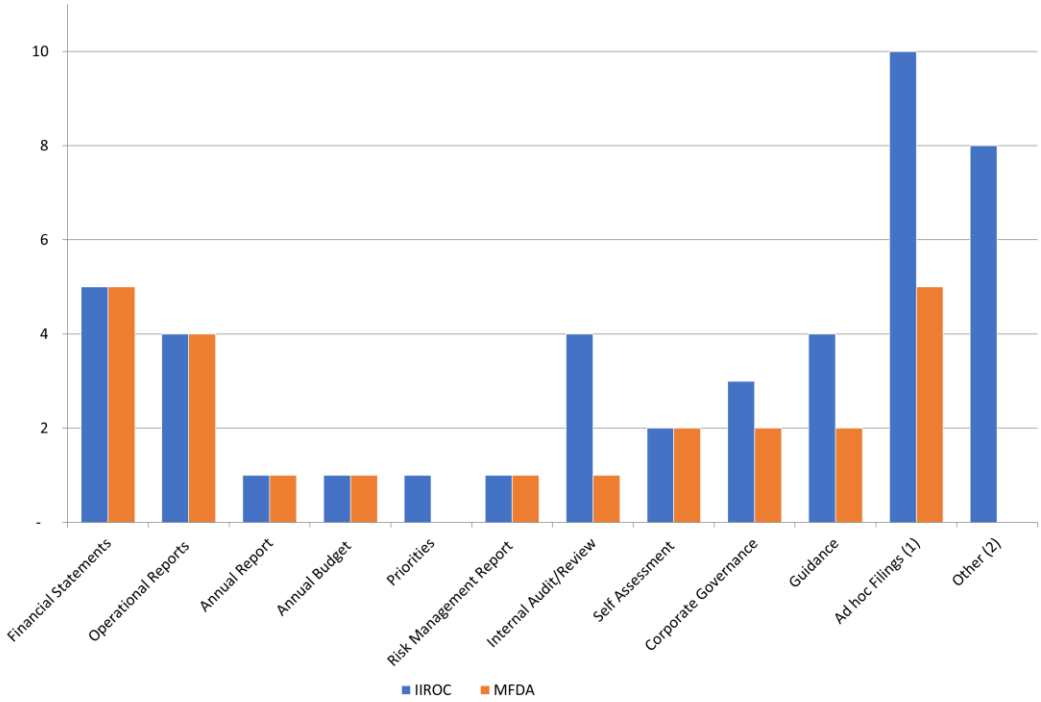
CIPF Policies and Procedures/By- Law Amendments

Completed

1. Housekeeping Amendments to CIPF Claims Procedures.

APPENDIX 3 – OTHER MATERIALS FILED

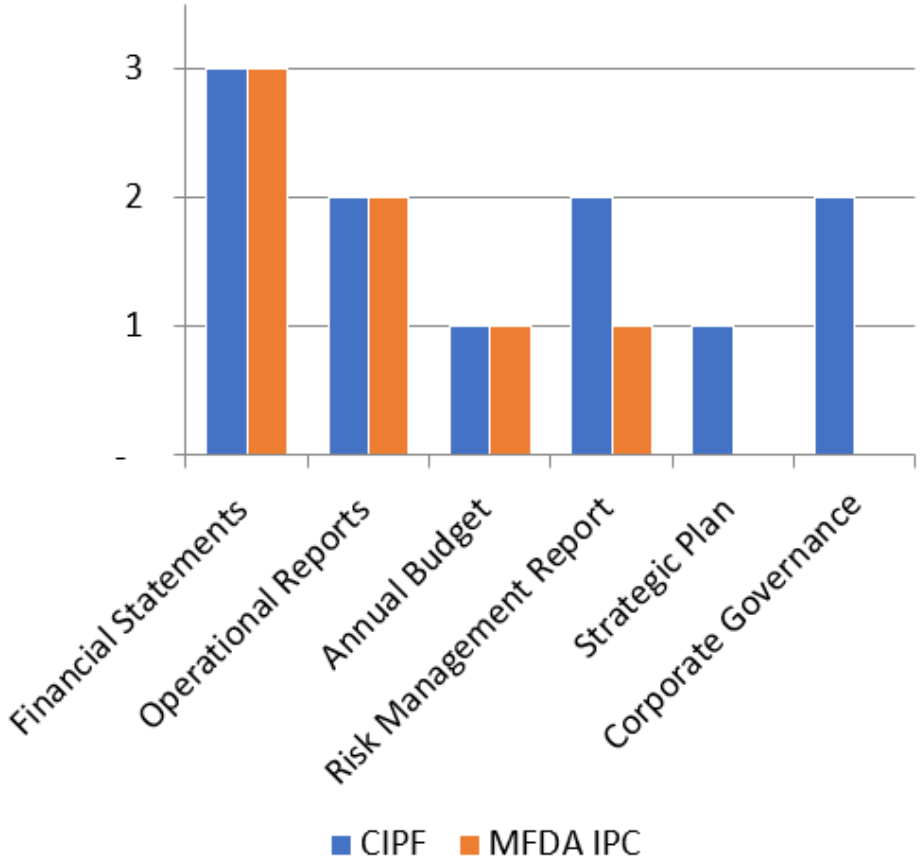
SRO Filings During the Reporting Period



(1) Ad hoc filings include, for example, notifications about dealer members in financial distress, cybersecurity breaches and significant exemption requests.

(2) Other filings include, for example, publications and miscellaneous reports.

IPF Filings During the Reporting Period



Questions

If you have any questions or comments about this CSA Staff Notice, please contact any of the following:

Sasha Cekerevac
Manager, Market Oversight
Alberta Securities Commission
403-297-7764
sasha.cekerevac@asc.ca

Dominique Martin
Director, Oversight of Trading Activities
Autorité des marchés financiers
514-395-0337, ext. 4351 or
1-877-395-0337, ext. 4351
dominique.martin@lautorite.qc.ca

Jean-Simon Lemieux
Senior Analyst
Autorité des marchés financiers
514-395-0337, ext. 4366 or
1-877-395-0337, ext. 4366
jean-simon.lemieux@lautorite.qc.ca

Michael Brady
Deputy Director, Capital Markets Regulation
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca

Curtis Brezinski
Compliance Auditor, Capital Markets Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
306-787-5876
curtis.brezinski@gov.sk.ca

David Shore
Senior Legal Counsel
Financial and Consumer Services
Commission (New Brunswick)
506-658-3038
david.shore@fcnb.ca

Paula White
Deputy Director, Compliance and Oversight
Manitoba Securities Commission
204-945-5195
paula.white@gov.mb.ca

Chris Pottie
Deputy Director, Registration & Compliance
Nova Scotia Securities Commission
902-424-5393
chris.pottie@novascotia.ca

Joseph Della Manna
Manager, Market Regulation
Ontario Securities Commission
416-204-8984
jdellamanna@osc.gov.on.ca

Stacey Barker
Senior Accountant, Market Regulation
Ontario Securities Commission
416-593-2391
sbarker@osc.gov.on.ca

1.1.2 Ontario Securities Commission Staff Notice 11-795 – Notice of Withdrawal of Ontario Securities Commission Staff Notices

ONTARIO SECURITIES COMMISSION STAFF NOTICE 11-795

NOTICE OF WITHDRAWAL OF
ONTARIO SECURITIES COMMISSION STAFF NOTICES

Staff of the Ontario Securities Commission has determined that the following Notices are no longer required and therefore will be withdrawn in Ontario, effective on the day the *Securities Commission Act, 2021* is proclaimed into force:

- Ontario Securities Commission Staff Notice 11-722 *Recommendations of the Committee on Staff Communications*; and
- Ontario Securities Commission Staff Notice 15-701 *Meetings with a Commissioner Regarding a Prospectus or an Application for Exemption or Registration*.

Questions

If you have questions, please contact:

Robert Galea
Acting Associate General Counsel
General Counsel's Office
Ontario Securities Commission
rgalea@osc.gov.on.ca

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

1.1.3 Notice of Ministerial Approval of OSC Rule 81-507 Extension to Ontario Instrument 81-506 Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds

NOTICE OF MINISTERIAL APPROVAL OF
OSC RULE 81-507
EXTENSION TO ONTARIO INSTRUMENT 81-506 TEMPORARY EXEMPTIONS FROM NATIONAL INSTRUMENT 81-104 ALTERNATIVE MUTUAL FUNDS

Ministerial Approval

On January 18, 2022, the Ontario Securities Commission made as a rule under the *Securities Act* (Ontario) local OSC Rule 81-507 *Extension to Ontario Instrument 81-506 Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds* in Ontario (the **Rule**).

The above material was published on February 24, 2022 in the Bulletin. See **(2022), 45 OSCB 1815**.

On April 20, 2022, the Minister of Finance approved the Rule.

The text of the Rule is published in **Chapter 5** of this Bulletin.

Effective Date

The Rule has an effective date of July 29, 2022.

1.4 Notices from the Office of the Secretary

1.4.1 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
April 20, 2022

GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO,
File No. 2022-8

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

A copy of the Order dated April 20, 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 Mark Edward Valentine

FOR IMMEDIATE RELEASE
April 21, 2022

MARK EDWARD VALENTINE,
File No. 2022-7

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

A copy of the Order dated April 21, 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 Solar Income Fund Inc. et al.

FOR IMMEDIATE RELEASE
April 25, 2022

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

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

A copy of the Order dated April 25, 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 Polo Digital Assets, Ltd.

FOR IMMEDIATE RELEASE
April 25, 2022

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

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

A copy of the Order dated April 25, 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 Amin Mohammed Ali

FOR IMMEDIATE RELEASE
April 25, 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 25, 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 Paramount Equity Financial Corporation et al.

FOR IMMEDIATE RELEASE
April 26, 2022

PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
TRILOGY MORTGAGE GROUP INC.,
MARC RUTTENBERG,
RONALD BRADLEY BURDON AND
MATTHEW LAVERTY,
File No. 2019-12

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

A copy of the Reasons and Decision dated April 25, 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

1.4.7 Trilogy Mortgage Group Inc. and Trilogy Equities Group Limited Partnership

FOR IMMEDIATE RELEASE
April 26, 2022

TRILOGY MORTGAGE GROUP INC. AND
TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP,
File No. 2018-21

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

A copy of the Reasons and Decision and Order dated April 25, 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 investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Franklin Templeton Investments Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future investment funds granted exemption to invest up to 10% of net assets, in aggregate, in securities of Irish mutual funds subject to UCITS rules governed by the Central Bank of Ireland and Luxembourg mutual funds authorized by the Commission de Surveillance du Secteur Financier – subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), (c), and 19.1.

April 21, 2022

IN THE MATTER OF
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
FRANKLIN TEMPLETON INVESTMENTS CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each investment fund subject to the provisions of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of which the Filer is, or in the future will be, the manager (collectively, the **Funds**), for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**):

(a) Revoking the Third Decision (as defined below); and

(b) providing an exemption from paragraphs 2.5(2)(a)(i) and (c) of NI 81-102 to permit each Fund to invest up to 10 percent of its net asset value in securities of (i) investment funds formed under Franklin Templeton Investment Funds, a Luxembourg collective asset-management vehicle constituted as an umbrella fund with segregated liability between sub-funds and authorized by the Commission de Surveillance du Secteur Financier (Belgium) pursuant to the UCITS Regulations, and (ii) investment funds formed under either Legg Mason Global Funds Plc, Legg Mason Global Solutions Plc, or Western Asset Liquidity Funds Plc, each an Irish collective asset-management vehicle constituted as an umbrella fund with segregated liability between sub-funds and authorized by the Central Bank of Ireland pursuant to the UCITS Regulations (as defined below), (the **Exemption Sought**).

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

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

(b) The Filer has provided notice that Sub-section 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 Ontario, the **Jurisdictions**),

Interpretation

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

Companies Act means the Companies Act 2014 (Ireland) as amended, all enactments which are to be read as one with, or construed or read together with, or as one with, the Companies Act 2014 (Ireland) and every statutory modification and re-enactment thereof for the time being in force.

CSSF means Commission de Surveillance du Secteur Financier.

EU Directives means *EU Council Directive 2009/65/EC of 13 July 2009 on the Coordination of Laws, Regulations and Administrative Provisions relating to UCITS,* as amended, including but not limited to, Commission Directive 2010/43/EC, Commission Directive 2010/44/EC, and Commission Directive 2014/91/EC.

FTIF means Franklin Templeton Investment Funds, an umbrella SICAV with UCITS status under the laws of Luxembourg.

KIID means a Key Investor Information Document prepared by the UCITS Corporations, FTIF and Western Asset LF for each of the Underlying Funds which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101.

LM Funds means Legg Mason Global Funds Plc, an investment company with variable capital, incorporated in Ireland pursuant to the Companies Act and the UCITS Regulation.

LM Solutions means Legg Mason Global Solutions Plc, an investment company with variable capital, incorporated in Ireland pursuant to the Companies Act and the UCITS Regulation.

Original Underlying Fund means a SICAV Fund or a UCITS Fund.

SICAV means Société d'Investissement à Capital Variable, an open-end company, governed by the laws of Luxembourg.

SICAV Funds means each of the existing sub-funds of FTIF and other FTIF sub-funds established in the future under FTIF.

UCITS means *Undertaking for Collective Investments in Transferable Securities* and refers to the investment funds authorized by the European Union as investment funds suitable to be distributed in more than one country in Europe.

UCITS Corporations means LM Funds and LM Solutions.

UCITS Funds means each of the existing sub-funds of the UCITS Corporations and other sub-funds of the UCITS Corporations established in the future under one of the UCITS Corporations.

UCITS Notices means the series of UCITS notices, memorandums, guidelines and letters issued by the Central Bank of Ireland or the CSSF, as the case may be.

UCITS Regulations means the regulations issued by European Union member states that implement the EU Directives.

Underlying Fund means a SICAV Fund, a UCITS Fund or a Western Asset UCITS Fund.

Underlying Fund Manager means Franklin Templeton International Services S.à.r.l, which serves as the promoter, investment manager and distributor to each sub-fund of the UCITS Corporations and FTIF and as promoter and manager of each sub-fund of Western Asset LF. The Underlying Fund Manager is an affiliate of the Filer.

Western Asset LF means Western Asset Liquidity Funds plc.

Western Asset UCITS Funds means each of the existing sub-funds of Western Asset LF and each other sub-fund of Western Asset LF established in the future.

FACTS

The Filer and the Funds

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

2. The Filer is a wholly-owned subsidiary of Templeton International, Inc., a Delaware corporation, which is an indirect wholly-owned subsidiary of Franklin Resources, Inc. (**FRI**). FRI is a global investment management organization operating as Franklin Templeton. In addition to Canada, FRI and its subsidiaries maintain offices in 33 other countries.

3. The Filer is registered as an investment fund manager in British Columbia, Alberta, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland & Labrador. The Filer is registered as a portfolio manager, mutual fund dealer and exempt market dealer in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland & Labrador and Yukon. The Filer is also registered as a Commodity Trading Manager in Ontario.

4. The Filer is, or will be, the manager of each of the Funds.

5. Each Fund is, or will be, an investment fund established under the laws of a Jurisdiction of Canada and a reporting issuer under the laws of some or all of the Jurisdictions.

6. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

7. The securities of each Fund are, or will be, qualified for distribution in some or all of the Jurisdictions under a simplified prospectus prepared in accordance with National Instrument 81-101 - *Mutual Fund Prospectus Disclosure* (**NI 81-101**) or a prospectus prepared in accordance with National Instrument 41-101 – *General Prospectus Requirements* (**NI 41-101**).

8. Neither the Filer nor any of the Funds are, or will be, in default of securities legislation in any of the Jurisdictions.

The Underlying Funds

9. A Fund may, from time to time, invest up to 10% of its net asset value in securities of an Underlying Fund.

10. The UCITS Funds are sub-funds of a UCITS Corporation and are subject to the UCITS Regulations. LM Solutions was incorporated on January 29, 2014 under registration number 538674. LM Funds was incorporated on January 13, 1998 under registration number 278601. The objective of each UCITS Corporation is the collective investment in transferable securities and other liquid financial assets of capital raised from the public and which operates on the basis of risk spreading.

11. The SICAV Funds are sub-funds of FTIF and are subject to UCITS Regulations. FTIF is a wholly-owned subsidiary of Franklin Templeton Management Luxembourg S.A., a Luxembourg corporation, which is an indirect wholly owned subsidiary of FRI.

12. The Western Asset UCITS Funds are sub-funds of Western Asset LF and are subject to the UCITS Regulations. Western Asset LF was incorporated on February 19, 1996 under registration number 244870. The objective of Western Asset LF is the collective investment in transferable securities and/or other liquid financial assets of capital raised from the public operating on the principle of risk spreading in accordance with the UCITS Regulations.

13. The Underlying Funds are conventional mutual funds subject to investment restrictions and practices that are substantially similar to those applicable to the Funds. The Underlying Funds are available for purchase by the public and are generally not considered hedge funds. Each of the Underlying Funds is considered to be an “investment fund” and a “mutual fund” within the meaning of applicable Canadian securities legislation.

14. The Underlying Funds qualify as UCITS and the securities of the Underlying Funds are distributed in accordance with the UCITS Regulations. Each of the UCITS Funds and Western Asset UCITS Funds is regulated by the Central Bank of Ireland and each SICAV Fund is regulated by the CSSF.

15. The Underlying Funds are qualified for purchase by way of a prospectus, relating to the UCITS Corporations, FTIF and Western Asset LF, and an individual prospectus supplement pertaining to each sub-fund of the UCITS Corporations, FTIF, and Western Asset LF, including each of the Underlying Funds. In addition to the prospectus and prospectus supplement, the UCITS Corporations, FTIF and Western Asset LF prepare a KIID for each of the Underlying Funds.

16. The Underlying Fund Manager serves as the promoter, investment manager and distributor to each sub-fund of the UCITS Corporations and FTIF, including the Original Underlying Funds. The Underlying Fund Manager, subject to the supervision of the directors of the UCITS Corporations or FTIF, as the case may be, is responsible for the investment management, distribution and marketing of the UCITS Funds and SICAV Funds. The Underlying Fund Manager provides an investment program for the Underlying Funds and manages the investment of the UCITS Funds and SICAV Funds assets.

17. The Underlying Fund Manager serves as the manager and promoter of each sub-fund of Western Asset LF, including the Western Asset UCITS Funds. Western Asset Management Company, LLC, an indirect wholly-owned subsidiary of FRI acts as the investment manager of the Western Asset UCITS Funds and Western Asset Management Company Limited, also an indirect wholly-owned subsidiary of FRI acts as the distributor of the Western Asset UCITS Funds.

18. The Underlying Fund Manager, being subject to regulatory oversight by the CSSF, is subject to substantially equivalent regulatory oversight as the Filer, which is principally regulated by the OSC. In discharging its duties, the Underlying Fund Manager must conduct its business with due skill, care and diligence.

19. The Filer, the Underlying Fund Manager, and other affiliates of the Filer, make up the asset management business of Franklin Templeton. The Underlying Fund Manager is an indirect wholly-owned subsidiary of FRI. The Underlying Fund Manager is authorized by the CSSF and its investment management business includes management of other Irish and Luxembourg, authorized collective investment schemes, as well as collective investment schemes in the United Kingdom, Delaware (U.S.), Cayman Islands and Romania. Western Asset Management Company LLC is regulated as an investment adviser with the US Securities and Exchange Commission under the Investment Advisers Act of 1940. Western Asset Management Company Limited is authorized and regulated in the United Kingdom by the Financial Conduct Authority and carries out regulated activities as permitted under the Financial Services and Markets Act 2000. Western Asset Management Company Limited is also regulated as an investment adviser with the US Securities and Exchange Commission and by the UK Financial Conduct Authority.

20. The following third parties are involved in providing services in respect of the UCITS Corporations and Western Asset LF:

    (a) BNY Mellon Fund Services (Ireland) Designated Activity Company (the **Administrator**) acts as its administrator, registrar and transfer agent, pursuant to an administration agreement. The Administrator is a designated activity company limited by shares incorporated in Ireland. The Administrator's main business activity is the provision of administrative services to collective investment schemes and other portfolios. The Administrator is a wholly-owned indirect subsidiary of The Bank of New York Mellon Corporation (**BNY Mellon**).

    (b) The Bank of New York Mellon SA/NV, Dublin Branch acts as depositary of the UCITS Corporations. The Bank of New York Mellon SA/NV is a limited liability company established in Belgium. The principal activity of The Bank of New York Mellon SA/NV is asset servicing, which is provided to both third-party and internal clients within The Bank of New York Mellon group. The Bank of New York Mellon SA/NV is regulated and supervised as a significant credit institution by the European Central Bank and the National Bank of Belgium for prudential matters and under the supervision of the Belgian Financial Services and Markets Authority for conduct of business rules. The Depositary is also regulated by certain Irish regulators including the Central Bank for conduct of business rules as well as the Belgian supervision discussed above. The Bank of New York Mellon SA/NV is a wholly-owned subsidiary of BNY Mellon.

    (c) PricewaterhouseCoopers LLP (**PwC**) serves as auditor.

21. The following third parties are involved in providing services in respect of the SICAV Funds:

    (a) J.P. Morgan Bank Luxembourg S.A. is the administrative agent of FTIF. J.P. Morgan Bank Luxembourg S.A. provides administration services to FTIF and the Underlying Funds. The administrative agent is a limited liability company incorporated in Luxembourg and is an indirect wholly-owned subsidiary of J.P. Morgan Bank. The administrative agent is regulated by the CSSF.

    (b) J.P. Morgan Bank Luxembourg S.A. is the depositary of all of FTIF's assets. The principal activity of the depositary is to act as trustee/depositary of the assets of collective investment schemes. Some of the depositary's main functions are to ensure that the sale, issue, repurchase, redemption and cancellation of shares of FTIF's sub-funds are carried out in accordance with applicable law.

    (c) PwC serves as the auditor of FTIF.

22. The Underlying Funds are subject to the following regulatory requirements and restrictions pursuant to, and among others, the EU Directives, which are substantially similar to the requirements and restrictions set forth in NI 81-102:

    (a) Each Underlying Fund is subject to a robust risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets.

    (b) Each Underlying Fund is restricted to investing a maximum of 10% of its net assets in a single issuer.

    (c) Each Underlying Fund is subject to investment restrictions designed to limit its holdings of illiquid securities to 10% or less of its net asset value.

    (d) Each Underlying Fund holds no more than 10% of its net asset value in securities of other investment funds, including other collective investment undertakings.

(e) Each Underlying Fund is subject to investment restrictions designed to limit holdings of transferrable securities which are not listed on a stock exchange or regulated market to 10% or less of the Underlying Fund's net asset value.

(f) Each Underlying Fund that is a money market fund is subject to investment restrictions and liquidity provisions substantially similar to, if not more onerous than, those that would apply to money market funds subject to NI 81-102.

(g) The rules governing the use of derivatives by the Underlying Funds are comparable to the rules regarding the use of derivatives under NI 81-102 with respect to the types of derivatives allowed to be used, issuer concentration, risk exposure in connection with mark to market value, the disclosure required in offering documents and the monitoring requirements, and with only a slight difference between the two regimes in connection with counterparty credit ratings (A-1 under NI 81-102 versus an effective rating requirement of A-2 for counterparties which are not regulated as credit institutions under the UCITS Regulations).

(h) The rules governing securities lending by the Underlying Funds are comparable to the rules regarding securities lending under NI 81-102 including an overall securities lending limit of 50% of the net assets of the Underlying Fund, the requirement to receive collateral of at least 102%, the inability to sell, reinvest or pledge non-cash collateral, and the right to immediately recall the securities loaned. While collateral received by the Underlying Funds is limited to cash or sovereign debt, the minimum credit rating of the latter is AA-, which is slightly lower than the designated rating under NI 81-102. Furthermore, the borrower under a securities lending transaction involving the Underlying Funds must be subject to prudential supervision rules equivalent to those prescribed under EU law.

(i) Each Underlying Fund makes its net asset value available to the public at the close of business each day.

(j) Each Underlying Fund is required to prepare a prospectus and prospectus supplement that discloses material facts pertaining to each Underlying Fund. The prospectus, together with the corresponding prospectus supplement, provide disclosure that is similar to the disclosure required to be included in a simplified prospectus under NI 81-101 or in a prospectus under NI 41-101.

(k) Each Underlying Fund publishes a KIID which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101 or an ETF facts document under NI 41-101.

(l) Each Underlying Fund is subject to continuous disclosure obligations which are similar to the disclosure obligations of the Funds under National Instrument 81-106 *Investment Funds Continuous Disclosure*.

(m) Any change in the investment objective or material change to the investment policy of an Underlying Fund will only be effected following the written approval of all shareholders of the Underlying Fund or a resolution of a majority of the voting shareholders of that Underlying Fund at a general meeting.

(n) The Underlying Fund Manager is subject to approval by the CSSF to permit it to manage and provide portfolio management advice to each Original Underlying Fund and is subject to an investment management agreement which sets out a duty of care and a standard of care requiring the Underlying Fund Manager to act in the best interest of each Original Underlying Fund and the shareholders of each Original Underlying Fund.

(o) Western Asset Management Company LLC, the investment adviser to the Western Asset UCITS Funds, is regulated by the Securities and Exchange Commission (U.S.) and is subject to an investment management agreement which sets out a duty of care and a standard of care requiring it to act in the best interest of each Western Asset UCITS Fund. Western Asset Management Company Limited is regulated by the Financial Conduct Authority (U.K.) and is subject to regulatory standards applicable to a distributor of funds.

(p) All activities of the Underlying Fund Manager and Western Asset Management Company Limited must be conducted at all times in accordance with the UCITS Regulations, the UCITS Notices and the investment policy of each Underlying Fund and are at all times subject to the supervision of the board of directors of the UCITS Corporations, FTIF and Western Asset LF.

(q) PwC, as auditor of each Underlying Fund is required to prepare an audited set of accounts for each Underlying Fund at least annually.

Investment by Funds in the Underlying Funds

23. The investment objective and strategies of each Fund are, or will be, disclosed in each Fund's prospectus or simplified prospectus and any Fund that invests in an Underlying Fund will be permitted to do so in accordance with its investment objectives and strategies.

24. In particular, the investment strategies of each Fund stipulate, or will stipulate, that the Fund may invest a portion of its assets in other investment funds, domestic and foreign, which will permit each Fund to invest in an Underlying Fund.

25. The prospectus or simplified prospectus of each Fund provides, or will provide, all disclosure mandated for investment funds investing in other investment funds.

26. There will be no duplication of management fees or incentive fees as a result of an investment by a Fund in an Underlying Fund.

27. The amount of loss that could result from an investment by a Fund in an Underlying Fund will be limited to the amount invested by the Fund in such Underlying Fund.

28. No sales charges or redemption fees will be paid by a Fund relating to a subscription for, or redemption of, securities of an Underlying Fund.

29. On February 13, 2009, the Filer was issued the First Decision and on February 21, 2012, the Filer was issued the Second Decision pursuant to which the list of funds permitted to invest in SICAV Funds was expanded to include all Funds that invest in global/international equities or in foreign fixed income securities and the eligible SICAV Funds were extended to include all equity and fixed income SICAV Funds.

30. On July 31, 2020, FRI announced the acquisition of Legg Mason, Inc., which includes Western Asset LF, and the Underlying Fund Manager subsequently became the manager of the UCITS Funds and the Western Asset UCITS Funds on February 1, 2021. On October 27, 2021, the Filer was issued the Third Decision to expand the list of Original Underlying Funds to include the UCITS Funds. As the Filer was still getting familiar with its newly acquired funds, it did not contemplate that the Funds may wish to invest in a Western Asset UCITS Fund. Such an investment is now contemplated. Accordingly, the Third Decision is no longer sufficient to cover the universe of Underlying Funds in which the Funds may wish to invest.

Rationale for Investment in the Underlying Fund

31. The Filer believes that it is in the best interests of the Funds that they be permitted to invest in the Underlying Funds, because such investment would provide an efficient and cost-effective way for the Funds to achieve diversification and obtain unique exposures to the markets in which the Underlying Funds invest.

32. The investment objectives and strategies of the Funds, which contemplate or will contemplate investment in global or international securities, permit or will permit the allocation of assets to global or international securities. As economic conditions change, the Funds may reallocate assets, including on the basis of asset class or geographic region. A Fund will invest in an Underlying Fund to gain exposure to certain unique strategies in global or international markets in circumstances where it would be in the best interests of the Fund to do so through an investment in an investment fund offered elsewhere rather than through investments in individual securities. For example, a Fund will invest in the Underlying Funds in circumstances where certain investment strategies preferred by the Funds are either not available or not cost effective to be implemented through investments in individual securities.

33. By investing in the Underlying Funds, the Funds will obtain the benefits of diversification, which would be more expensive and difficult to replicate using individual securities. This will reduce single issuer risk.

34. Investment by a Fund in an Underlying Fund meets, or will meet, the investment objectives of such Fund.

35. An investment by a Fund in securities of each Underlying Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

36. Absent the Requested Relief, the investment restriction in paragraph 2.5(2)(a)(i) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of an Underlying Fund because the Underlying Fund is not subject to NI 81-102.

37. Absent the Requested Relief, the investment restriction in paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of an Underlying Fund because the Underlying Fund is not a reporting issuer in the local jurisdiction.

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 Third Decision is hereby revoked and replaced with this Decision; and

(b) the Exemption Sought is granted provided that:

a. the Underlying Funds qualify as UCITS and are distributed in accordance with the UCITS Regulations, which subject the Underlying Funds to investment restrictions and practices that are substantially similar to those that govern the Funds;

b. the investment of the Funds in the Underlying Funds otherwise complies with section 2.5 of NI 81-102 when investing in the Underlying Funds, and the simplified prospectus will provide all applicable disclosure mandated for investment funds investing in other investment funds;

c. a Fund does not invest in an Underlying Fund if, immediately after the investment, more than 10% of its net assets, taken at market value at the time of the investment, would consist of investments in Underlying Funds; and

d. a Fund shall not acquire any additional securities of an Underlying Fund and shall dispose of any securities of an Underlying Fund then held in the event the regulatory regime applicable to the Underlying Funds is changed in any material way.

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

Application File #: 2022/0121
SEDAR #: 3349580

2.1.2 Fidelity Clearing Canada ULC

Headnote

Application for time-limited relief from prospectus requirement and trade reporting requirements – relief to allow the Filer to distribute Crypto Contracts to permitted clients – relief revokes prior decision and allow Filer to use other liquidity providers - relief granted subject to certain conditions set out in the decision, including disclosure and reporting requirements – relief is time-limited – relief will expire upon two (2) years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

Applicable Legislative Provisions

Statute Cited

Securities Act , R.S.O. 1990, c. S.5, as am., ss. 1(1), 53 & 74.

Instrument, Rule or Policy Cited

Multilateral Instrument 11-102 Passport System , s. 4.7.
OSC Rule 91-506 Derivatives: Product Determination , ss. 2 & 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

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

AND

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

AND

IN THE MATTER OF
FIDELITY CLEARING CANADA ULC
(the Filer)

DECISION

Background

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**CSA SN 21-327**), if crypto assets that are securities or derivatives are traded on a platform, such platform would be subject to securities legislation. In addition, securities and/or derivatives legislation may apply to platforms that facilitate the buying and selling of crypto assets, including crypto assets that are commodities, because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered time-limited relief from certain securities law requirements that would allow crypto asset platforms to operate within a regulated environment, with regulatory requirements tailored to the crypto asset platform's operations. The overall goal of the regulatory framework is to ensure there is a balance

between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer is currently registered as an investment dealer and is a member of IIROC (as defined below). On November 16, 2021, the Filer obtained a decision (the **Initial Decision**) that exempted the Filer from (i) the prospectus requirements under the securities legislation of the Jurisdiction (the **Legislation**) in respect of the Filer entering into Crypto Contracts with Clients (as defined below) to purchase, custody and sell bitcoin, ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that itself is not a security or derivative (collectively, **Crypto Assets**) and (ii) certain reporting requirements under the Local Trade Reporting Rules (as defined below) in respect of Crypto Contracts. The Filer has now filed an application to revoke and replace the Initial Decision in order to be able to rely upon Additional Liquidity Providers (as defined below) for purposes of fulfilling its obligations under Crypto Contracts. This decision (the **Decision**) has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Applicable Jurisdictions (as defined below) will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction has received an application from the Filer (the **Passport Application**) for a decision under the Legislation exempting the Filer from the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with Clients to purchase, custody and sell Crypto Assets (the **Prospectus Relief**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions referred to in the definition of Local Trade Reporting Rules (the **Coordinated Review Decision Makers**) have received an application from the Filer (collectively with the Passport Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from certain reporting requirements under the Local Trade Reporting Rules in respect of Crypto Contracts (the **Trade Reporting Relief**, and together with the Prospectus Relief, the **Requested Relief**).

The Filer has applied for the revocation of the exemptive relief in the Initial Decision effective as of the date of this Decision.

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

(a) the Ontario Securities Commission is the principal regulator (the **Principal Regulator**) for the Application;

(b) the Filer has provided notice that, in the jurisdictions where required, section 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 (the **Non-Principal Jurisdictions**, together with Ontario, the **Applicable Jurisdictions**) in respect of the Prospectus Relief; and

(c) the decision in respect of the Trade Reporting Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this Decision, unless otherwise defined. In addition to the terms defined above, the following terms shall have the following meanings:

Act means the *Securities Act* (Ontario).

Additional Liquidity Providers means a crypto asset trading firm or marketplace that the Filer will use, other than FDAS.

Clients means the clients described in representation 6.

Crypto Asset Statement means the statement described in representations 13(v) and 16.

FCC Digital Assets Custody Account means the portion of FDAS' books and records system that records the amount of Crypto Assets held by FDAS in the name of the Filer on behalf of the Filer's Clients.

FCC Sub-Account means the portion of the FDAS Bank Account that is segregated on FDAS' books and records in the name of the Filer.

FDAS means Fidelity Digital Asset Services, LLC.

FDAS Bank Account means the omnibus bank account at a depository institution in the name of FDAS, for the benefit of the FDAS' clients, holding FDAS' clients' cash.

FDAS Custody Service means the service provided by FDAS comprised of the custody of Crypto Assets for its clients.

FDAS Wallets means the FDAS omnibus digital wallets holding FDAS clients' Crypto Assets.

IIROC means the Investment Industry Regulatory Organization of Canada.

Local Trade Reporting Rules means: (i) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; (ii) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; and (iii) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon.

NI 31-103 means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

New FCC Service means the two services that the Filer offers to Clients: the custody of Clients' Crypto Assets and the ability to enter into Crypto Contracts with the Filer to purchase and sell Crypto Assets, which services include the delivery by the Filer to Clients of Crypto Asset account statements and trade confirmations in compliance with IIROC rules.

Notice 21-329 means Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements*.

Risk Statement means a statement of risks as described in representation 13.

Specified Foreign Jurisdiction means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, Republic of Korea, New Zealand, Singapore, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Representations

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

1. The Filer is registered as an investment dealer in each of the provinces and territories of Canada, a futures commission merchant in Ontario, a dealer (futures commission merchant) in Manitoba and a derivatives dealer in Québec. As an investment dealer, the Filer is a member of IIROC. The Filer is also approved by IIROC to act as a carrying broker.

2. FDAS is a limited liability trust company organized under New York law authorized pursuant to Section 102-a of the New York Banking Law to engage in all activities described in Sections 96 and 100 of the New York Banking Law, with the exception of accepting deposits and making loans (other than pursuant to the exercise of its fiduciary powers). FDAS provides custody and trade execution services for digital assets. As a New York State-chartered trust company, FDAS is regulated by the New York State Department of Financial Services. In addition, FDAS is registered as a "money services business" with Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury. FDAS is not registered in any capacity in Canada.

3. Both the Filer and FDAS are part of the Fidelity group of companies known globally as Fidelity Investments®. The Filer is a client of FDAS and is the only Canadian client of FDAS. FDAS has other non-Canadian clients.

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

New FCC Service

5. In addition to its current services and in accordance with the terms and conditions of the Initial Decision, the Filer offers Clients the New FCC Service, which consists of two services: the custody of the Clients' Crypto Assets and the ability of Clients to enter into Crypto Contracts with the Filer to buy and sell Crypto Assets.

6. The Filer offers the New FCC Service to Clients who are: (i) IIROC investment dealers for whom the Filer acts as carrying broker (**Introducing Brokers**); (ii) financial institutions, pension plans, governmental entities, corporations, trusts and partnerships; and (iii) portfolio managers acting on behalf of managed accounts. Each Client is (i) an Institutional Customer (as defined under the IIROC rules) and (ii) a Permitted Client (as defined in NI 31-103).

7. A Crypto Contract is a bilateral contract or arrangement between a Client and the Filer. Accordingly, the Filer is the counterparty to each buy or sell transaction initiated by a Client. To fulfil its obligations under each Crypto Contract, the Filer, in turn, is currently a counterparty to a corresponding buy or sell transaction through FDAS. However, given Client demand for the New FCC Service, the Filer now would like the ability to be able to fulfil its obligations under Crypto Contracts with one or more Additional Liquidity Providers. In connection with each Crypto Contract that involves a purchase by a Client, the Filer arranges for such applicable Crypto Assets to be custodied by FDAS.

8. All trading by Clients with the Filer in Crypto Contracts is done on a suitability exempt basis in accordance with IIROC rules.

9. The Filer's trading of Crypto Contracts is consistent with activities described in CSA SN 21-327 and constitutes the trading of securities and/or derivatives.

10. The Filer does not hold any proprietary position in Crypto Assets for itself other than in connection with the Crypto Contracts; it does not take a long or short position in a Crypto Asset with any party, including Clients.

11. The Filer does not have any authority to act on a discretionary basis on behalf of Clients and does not, and will not, manage any discretionary accounts.

12. In addition to any other agreement that a Client may have with the Filer, each Client that accesses the New FCC Service has a written agreement with the Filer that provides, among other things, that the Filer custodies the cash and Crypto Assets of the Client deposited with the Filer. This agreement clearly states that with respect to the custody of any Crypto Asset, the Filer has retained FDAS as a foreign custodian. The agreement further provides that a Client may enter into Crypto Contracts to purchase and/or sell Crypto Assets from or to the Filer through the New FCC Service. For these services, the Filer charges Clients a fee based on the amount of Crypto Assets held and a transaction fee for each Crypto Contract to purchase or sell Crypto Assets. The Filer may also charge other fees related to the crypto business. All fees for the New FCC Service are agreed to with each Client.

13. The agreement with the Client includes a Risk Statement that clearly explains, in plain language:

    (i) the Crypto Contracts;

    (ii) the risks associated with the Crypto Contracts;

    (iii) prominently, that no securities regulatory authority has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the New FCC Service, including any opinion that the Crypto Assets are not themselves securities and/or derivatives;

    (iv) the due diligence performed by the Filer before making a Crypto Asset available through the New FCC Service, including the due diligence taken by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities and derivatives laws of each of the jurisdictions of Canada and the jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;

    (v) that the Filer has prepared a plain language description of each Crypto Asset made available through the New FCC Service, with instructions as to where the Client may obtain the descriptions (a **Crypto Asset Statement**);

    (vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading through the New FCC Service, including criteria that would be considered by the Filer, options available to Clients holding such a Crypto Asset, any notification periods and any risks to Clients;

    (vii) the location and manner in which Crypto Assets are held for the Client, and the risks and benefits to the Client of the Crypto Assets being held in that manner;

    (viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the Client arising from the Filer having access to the Crypto Assets in that manner;

    (ix) that the Filer is a member of the Canadian Investor Protection Fund (**CIPF**), but the Crypto Assets held by the Filer (directly or indirectly) do not qualify for CIPF protection; and

    (x) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision.

14. Each Client is required to acknowledge that the Client has received, read and understood the Risk Statement before opening an account with the Filer for Crypto Contracts. Such acknowledgement is prominent and separate from other acknowledgements provided by the prospective Client as part of the account opening process. A copy of the Risk Statement acknowledged by a Client and each Crypto Asset Statement delivered in the manner contemplated below to a Client is made available to the Client in the same place as the Client's other statements.

15. Before a Client enters into a Crypto Contract to buy a Crypto Asset for the first time, the Filer provides instructions for the Client to read the Crypto Asset Statement for the Crypto Asset, which includes a link to the Crypto Asset Statement on the Filer's website.

16. Each Crypto Asset Statement includes:

    (i) a prominent statement that no securities regulatory authority in Canada has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the New FCC Service, including an opinion that the Crypto Assets are not themselves securities and/or derivatives;

    (ii) a description of the Crypto Asset, including the background of the team that first created the Crypto Asset, if applicable;

    (iii) a description of the due diligence performed by the Filer with respect to the Crypto Asset;

    (iv) any risks specific to the Crypto Asset;

    (v) a direction to the Client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the New FCC Service;

    (vi) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

    (vii) the date on which the information was last updated.

17. The Filer has policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material change to the disclosure or include any material risk that may develop with respect to the Crypto Contracts, Crypto Assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, Clients will be promptly notified and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, existing Clients of the Filer with Crypto Contracts in respect of that Crypto Asset will be promptly notified, with links provided to the updated Crypto Asset Statement.

18. The Filer does not maintain its own hot or cold storage for Crypto Assets. The Filer has retained FDAS as a foreign custodian in respect of the custody of Crypto Assets and in order to execute some of the trades with the Filer that relate to the Filer's obligations regarding the purchase and sale of Crypto Assets pursuant to the Crypto Contracts. In that regard, the Filer has entered into a services agreement with FDAS for, among other things, the FDAS Custody Service. While FDAS provides services to the Filer, FDAS has no contractual relationship with the Clients and the only direct interaction that FDAS has with the Clients relates solely to the actual transfer of Crypto Assets for custody purposes, as described below. The Filer is responsible for all applicable "know your client" account opening requirements and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations.

19. The Filer has verified that FDAS is appropriately registered and/or licensed to trade in the Crypto Assets in its home jurisdiction and that it is not in default of securities and banking legislation in any Applicable Jurisdiction.

20. The Filer now wishes to rely upon Additional Liquidity Providers to execute some of the trades with the Filer that relate to the Filer's obligations regarding the purchase and sale of Crypto Assets pursuant to the Crypto Contracts. None of these Additional Liquidity Providers will be affiliated or associated with the Filer or FDAS. All Crypto Assets purchased by the Filer from these Additional Liquidity Providers will be delivered immediately into the FDAS Wallet in the name of the Filer that custodies the Crypto Assets held by the Filer on behalf of Clients.

21. The Filer has taken or will take reasonable steps to verify that each Additional Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in its home jurisdiction, or that its activities do not require registration in its home jurisdiction, and that it is not in default of securities legislation in any Applicable Jurisdiction.

22. Currently, Clients are not able to negotiate the price of the Crypto Assets. However, the Filer will evaluate the price obtained from FDAS and each Additional Liquidity Provider on an ongoing basis. The Filer is subject to and will remain in compliance with the best execution obligations under IIROC rules, which, for greater certainty, require fair pricing.

23. The Filer has verified that FDAS and each Additional Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation in connection with its trading activities in Crypto Assets.

24. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow Clients to enter into Crypto Contracts to buy and sell the Crypto Asset through the New FCC Service. Such review includes, but is not limited to:

    (i) the creation, governance, usage and design of the Crypto Asset, including the source code relating to the Crypto Asset, the security protocols connected to the Crypto Asset, any plan for growth in the developer community

that is connected to the Crypto Assets and, if applicable, the background of the developer(s) that created the Crypto Asset;

(ii) the supply, demand, maturity, utility and liquidity of the Crypto Asset;

(iii) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

(iv) legal and regulatory risks associated with the Crypto Asset, including any pending, potential, or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the Crypto Asset.

25. The Filer only offers and allows Clients to enter into Crypto Contracts to buy and sell Crypto Assets that are not each themselves a security and/or a derivative.

26. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset or affiliates or associates of such person.

27. The Filer has established and applies policies and procedures to determine whether a Crypto Asset is a security and/or a derivative and is being offered in compliance with securities laws, which include, but are not limited to:

(i) consideration of statements made by any regulators or securities regulatory authorities of the Applicable Jurisdictions, other regulators in IOSCO-member jurisdictions, or the regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or a derivative; and

(ii) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under Canadian securities legislation.

28. The Filer monitors ongoing developments related to the Crypto Assets available through the New FCC Service that may cause a Crypto Asset's legal status or the assessment conducted by the Filer described in representations 24 and 27 above to change.

29. The Filer acknowledges that any determination made by the Filer as set out in representations 24 to 27 of this Decision does not prejudice the ability of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a Client may enter into a Crypto Contract to buy or sell is, in fact, a security or a derivative.

30. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available through the New FCC Service, except to allow Clients to liquidate their positions in Crypto Contracts, with underlying Crypto Assets that the Filer ceases to make available through the New FCC Service.

Trading Crypto Assets with FDAS and Additional Liquidity Providers

31. Under FDAS' purchase and sale execution and order fulfillment service, client trade orders are either (a) matched internally between clients of FDAS or (b) failing that, routed away and filled based on prices provided by FDAS' approved counterparties. FDAS attempts to provide its clients with the best price for trade orders that is available from its internal order books and its network of approved counterparties through its order handling process. For this purpose, "best price" means the highest available price for sell orders and the lowest available price for buy orders.

32. FDAS facilitates trade execution and settlement between its clients and its counterparties in the manner described in paragraph 33 below and by recording appropriate transfers between the FDAS Wallets and the FDAS Bank Account.

33. In fulfilling its trade execution and settlement services and to the extent that a trade order cannot be matched internally between clients, FDAS engages in riskless principal trading, insofar as it trades as principal with the applicable counterparty, and then immediately executes the offsetting trade with the applicable client. Each transaction of purchase and sale is fully settled, as FDAS does not currently permit the use of margin or leverage.

34. Each Additional Liquidity Provider also facilitates trade execution and settlement services in connection with Crypto Assets.

35. If a Client decides to enter into a Crypto Contract to buy Crypto Assets through the New FCC Service, the Client enters into a Crypto Contract with the Filer for the purchase. The Filer itself, in turn, will obtain pricing data for the Crypto Assets from one or more of FDAS and the Additional Liquidity Providers, and will purchase the requested amount of Crypto Assets from FDAS or one of the Additional Liquidity Providers. The Filer then sells the Crypto Assets to the Client and

deducts the amount of the purchase price, which includes all applicable transaction fees, from the Client's account. The Filer records the Client's purchase transaction in its books and records, for display back to the Client.

36. If a Client decides to enter into a Crypto Contract to sell some of the Client's Crypto Assets through the New FCC Service, the Client enters into a Crypto Contract with the Filer for the sale. The Filer itself, in turn, will obtain pricing data for the Crypto Assets from one or more of FDAS and the Additional Liquidity Providers, and will sell the applicable amount of Crypto Assets to FDAS or one of the Additional Liquidity Providers. The Filer then purchases the requested amount of Crypto Assets from the Client, deducts any transaction fee and transfers the remaining cash proceeds, at the direction of the Client, to the Client's bank account or to the Client's custody account with the Filer. The Filer records the Client's sale transaction in its books and records, for display back to the Client.

37. The Filer maintains books and records that show, among other things, as at the end of each business day, the particulars of each trade that occurred during that business day. Clients have access to their own accounts and records in accordance with IIROC rules. The Filer and FDAS perform, and the Filer and the Additional Liquidity Providers will perform, reconciliations of all relevant accounts on each business day.

38. The Filer does not and will not extend margin, credit or other forms of leverage to Clients, and it does not and will not offer derivatives based on Crypto Assets to Clients other than Crypto Contracts.

FDAS Custody Service

39. FDAS acts as foreign custodian of the Crypto Assets, which are held in the FDAS Wallets. Other than the equity requirement, FDAS satisfies the criteria of a "qualified custodian" as defined in NI 31-103.

40. The Crypto Assets held by FDAS for the Filer on behalf of the Filer's Clients are held by FDAS in the FDAS Wallets with the Crypto Assets owned by other custody clients of FDAS. FDAS' books and records system records the amount of Crypto Assets held by FDAS in the name of the Filer on behalf of the Filer's Clients, which record is referred to as the "FCC Digital Assets Custody Account".

41. If a Client decides to deposit Crypto Assets for custody, the Client contacts the Filer to request, and receive, deposit instructions. The Filer then requests the applicable deposit instruction from FDAS. FDAS generates the deposit instruction and communicates this instruction to the Filer, which the Filer then makes available to its Client. The Client then transfers the Crypto Assets from his, her or its existing digital asset account to the FDAS Wallets in accordance with the FDAS deposit instruction provided to the Client by the Filer. Upon appropriate confirmation of the deposit by FDAS, FDAS notifies the Filer of the updated balance in the FCC Digital Assets Custody Account, and the Filer records the Client's deposit transaction in its books and records, for display back to the Client.

42. If a Client decides to withdraw Crypto Assets from custody, the Client contacts the Filer to initiate a withdrawal transaction by indicating the type, quantity and destination instruction for the Crypto Assets. The Filer relays that information to FDAS to initiate a withdrawal transaction. FDAS promptly debits the Crypto Asset balance in the FCC Digital Assets Custody Account and processes the withdrawal transaction pursuant to the terms agreed to between FDAS and the Filer and in accordance with the instructions provided to the Filer by the Client and to FDAS by the Filer. FDAS provides transaction confirmation to the Filer and, in turn, the Filer reflects the Client's transaction on its books and records, for display back to the Client.

43. The Filer maintains books and records that show, among other things, as at the end of each business day, the allocation among its Clients of the Crypto Assets recorded in the FCC Digital Assets Custody Account and the amount of the Filer's cash held in the FCC Sub-Account. Clients have access to their own accounts and records in accordance with IIROC rules. The Filer and FDAS perform reconciliations of all relevant accounts on each business day.

44. FDAS has obtained a SOC 1 Type 2 examination report and a SOC 2 Type 1 examination report of its internal controls, which includes relevant technology general controls, logistical and physical security controls, and cryptographic key management controls. The Filer has conducted due diligence on FDAS, including a review of these reports, and has not identified any material concern. FDAS is currently working towards obtaining a SOC 2 Type 2 examination report before December 31, 2022.

45. The Filer and FDAS operate independently of each other and have different directors, officers and employees. The FDAS Custody Service is performed by FDAS's personnel, who are not employees, contractors, agents or officers of the Filer.

46. FDAS operates one or more custody accounts, or FDAS Wallets, for the purpose of holding FDAS clients' Crypto Assets. Pursuant to the services agreement between the Filer and FDAS, FDAS is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets held for the Filer in the course of its business.

47. FDAS has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

48. The Filer has assessed the risks and benefits of using FDAS and has determined that, in comparison to a Canadian custodian (as that term is defined in NI 31-103), it is more beneficial to use FDAS, a U.S. custodian.

49. FDAS currently maintains, or is insured under, professional liability insurance, with coverage for loss of digital assets, including the Crypto Assets held for the Filer.

Marketplace and Clearing Agency

50. The Filer does not operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* and, in Ontario, subsection 1(1) of the Act.

51. The Filer does not operate a "clearing agency" or a "clearing house" as the terms are defined or referred to in securities or commodities futures legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of entering into Crypto Contracts with its Clients. Any activities of the Filer that may be considered the activities of a clearing agency or clearing house are related to the Filer arranging or providing for settlement of obligations resulting from agreements entered into on a bilateral basis and without a central counterparty.

Decision

The Principal Regulator is satisfied that the Decision satisfies the test set out in the Legislation for the Principal Regulator to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief satisfies the test set out in the securities legislation of that jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief.

The Decision of the Principal Regulator under the Legislation is that the Initial Decision is revoked and the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation of its jurisdiction is that Initial Decision is revoked and the Trade Reporting Relief is granted, provided that:

(a) with respect to Clients resident in an Applicable Jurisdiction, the Filer remains registered as a dealer in the category of investment dealer with the Principal Regulator and the securities regulators or securities regulatory authority in such Applicable Jurisdiction and a member of IIROC;

(b) all Crypto Contracts with Clients resident in the Applicable Jurisdictions are conducted pursuant to IIROC rules imposed on members seeking to trade in Crypto Contracts and in accordance with any acceptable practices established by IIROC, as amended from time to time;

(c) the Filer provides the New FCC Services only to Clients as described in representation 6 and before offering the New FCC Services to an Introducing Broker, the Filer takes reasonable steps to verify that the Introducing Broker has received the prior written approval of IIROC to offer Crypto Contracts to the Introducing Broker's clients;

(d) the Filer does not operate a "marketplace" as the term is defined in National Instrument 21-101 *Marketplace Operation* and, in Ontario, in subsection 1(1) of the Act or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities or commodities futures legislation;

(e) except as set out in condition (f), at all times, the Filer retains FDAS as its foreign custodian and custodies all of its Clients' Crypto Assets with FDAS;

(f) the Filer will promptly cease using FDAS as the custodian for the Crypto Assets of its Clients at any time that FDAS ceases to be regulated by the New York State Department of Financial Services as a New York State-chartered trust company, in which case:

    (i) the Filer will hold the Crypto Assets of its Clients with a custodian that meets the definition of a qualified custodian under NI 31-103;

    (ii) before the Filer holds Crypto Assets of its Clients with a custodian referred to in (i) above, the Filer will take reasonable steps to verify that the custodian:

        (A) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;

        (B) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian; and

(C) has obtained a SOC 2 Type 2 report within the last 12 months, unless the Filer has obtained the prior written approval of the Principal Regulator to alternatively verify that the custodian has obtained a SOC 1 Type 1 or Type 2 report or a SOC 2 Type 1 report within the last 12 months;

(g) the Filer has taken reasonable steps to verify that FDAS:

(i) has appropriate insurance to cover the loss of Crypto Assets held by it;

(ii) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian; and

(iii) on or before December 31, 2022, has obtained a SOC 2 Type 2 report**;**

(h) the Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, or the New York State Department of Financial Services makes a determination that the Filer's custodian for its Clients' Crypto Assets is not permitted by that regulatory authority to hold client Crypto Assets;

(i) the Filer will only use FDAS or an Additional Liquidity Provider if the Filer has verified it is registered and/or licensed, to the extent required in its home jurisdiction, to execute trades in the Crypto Assets and is not in default of securities legislation in any of the Applicable Jurisdictions, and will promptly stop using FDAS or an Additional Liquidity Provider if (i) the Filer is made aware that either FDAS or the Additional Liquidity Provider, as the case may be, is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined FDAS or the Additional Liquidity Provider, as the case may be, to be, not in compliance with securities legislation in any of the Applicable Jurisdictions;

(j) before a Client enters into his, her or its first Crypto Contract, the Filer delivers to the Client a Risk Statement and requires the Client to provide electronic or written acknowledgement of having received, read and understood the Risk Statement;

(k) the disclosure in condition (j) is prominent and separate from other disclosures given to the Client at that time, and the acknowledgement is separate from other acknowledgements by the Client at that time;

(l) a copy of the Risk Statement acknowledged by a Client is made available to the Client in the same place as the Client's other statements;

(m) before a Client enters into a Crypto Contract to buy a Crypto Asset for the first time, the Filer provides instructions for the Client to read the Crypto Asset Statement for the Crypto Asset, which includes a link to the Crypto Asset Statement and includes the information set out in representation 16;

(n) the Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or to include any material risk that may develop with respect to the Crypto Contracts and/or Crypto Asset and:

(i) in the event of any update to the Risk Statement, will promptly notify each Client of the update and deliver to them a copy of the updated Risk Statement, and

(ii) in the event of any update to a Crypto Asset Statement, will promptly notify each Client through website disclosures, with links provided to the updated Crypto Asset Statement;

(o) prior to the Filer delivering a Risk Statement to a Client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement to the Principal Regulator;

(p) in each Applicable Jurisdiction, the first trade of a Crypto Contract is deemed to be a distribution under the securities legislation of that jurisdiction;

(q) the Filer only trades Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives;

(r) the Filer evaluates Crypto Assets as set out in representations 24 and 27;

(s) the Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a customer in a Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of AML laws, conspiracy, breach of trust, breach of

fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct;

(t) except to allow Clients to liquidate their positions in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the Client, the Filer will promptly stop trading Crypto Contracts where the underlying is a Crypto Asset if (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, a security and/or derivative;

(u) the Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:

(i) change of or use of a new custodian; and

(ii) material changes to the Filer's ownership, its business operations, including its systems, or its business model;

(v) the Filer will notify the Principal Regulator, promptly, of any material breach or failure in the provision of the New FCC Service, including any material cybersecurity breach of FDAS's or other custodian's systems of controls or supervision that impact the Crypto Assets of a Client held by the custodian, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets in the FCC Digital Asset Custody Account will be considered a material breach or failure in the provision of the New FCC Service;

(w) upon request by the Principal Regulator, the Filer will provide, on a timely basis, reports to the Principal Regulator setting out, on an aggregate basis, the Client accounts where activity in connection with Crypto Contracts has occurred since the date of the last report, if any, the aggregate number of trades during that period, and the average value of the trades during that period;

(x) the Filer will provide the following reports to the Principal Regulator, and to the securities regulatory authority or regulator in each of the Non-Principal Jurisdictions with respect to clients in those jurisdictions individually, within 30 days of the end of each March, June, September and December:

(i) aggregate reporting of activity conducted pursuant to Crypto Contracts that will include the following:

1. number of Client accounts opened each month in the quarter;

2. number of Client accounts closed each month in the quarter;

3. number of trades in each month of the quarter;

4. average value of the trades in each month of the quarter;

5. number of Client accounts with no trades during the quarter;

6. number of Client accounts that have not been funded at the end of each month in the quarter; and

7. number of Client accounts that hold a positive amount of Crypto Assets at the end of each month in the quarter;

(ii) the details of any Client complaint received by the Filer during the calendar quarter related to Crypto Contracts and how such complaint was addressed;

(iii) the details of any fraudulent activity or cybersecurity incident incurred by the Filer during the calendar quarter, any resulting harm and effect on Clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future; and

(iv) the details of the transaction volume implemented through FDAS and each Additional Liquidity Provider, per Crypto Asset during the quarter;

(y) the Filer will deliver to the regulator or the securities regulatory authority in each of the Applicable Jurisdictions, in a form and format acceptable to the regulator or the securities regulatory authority, a report that includes the following anonymized account-level data for activity conducted pursuant to a Crypto Contract for each Client within 30 days of the end of each March June, September and December:

(i) unique account number and unique client identifier, as applicable;

(ii) jurisdiction where the Client is located;

(iii) the date the account was opened;

(iv) the amount of fiat held with the Filer at the beginning of the reporting period and at the end of the reporting period;

(v) cumulative realized gains/losses since account opening in CAD;

(vi) unrealized gains/losses as of the report end date in CAD;

(vii) quantity traded, deposited or withdrawn by Crypto Asset during the quarter in number of units;

(viii) Crypto Asset traded by the Client;

(ix) quantity held of each Crypto Asset by the Client as of the report end date in units;

(x) CAD equivalent aggregate value for each Crypto Asset traded by the Client, calculated as the amount in (ix) multiplied by the market price of the asset in (viii) as of the report end date; and

(xi) age of account in months;

(z) in addition to any other reporting required by Legislation, the Filer will provide, on a timely basis, any report, data, document or information about the New FCC Service to the Principal Regulator, including any information about the Filer's custodian and the Crypto Assets held by the Filer's custodian, that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in this Decision, in a format acceptable to the Principal Regulator;

(aa) upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the Non-Principal Jurisdictions with aggregated and/or anonymized data concerning Client demographics and activity that may be useful to advance the development of the Canadian regulatory framework for trading Crypto Assets;

(bb) the Filer will promptly make any change to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer or by the Principal Regulator, in consultation with IIROC, arising from the New FCC Services;

(cc) this Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation; and

(dd) this Decision shall expire two years from the date of this Decision.

In respect of the Prospectus Relief

Date: **April 5, 2022**

"Tim Moseley"
Vice Chair
Ontario Securities Commission

"Frances Kordyback"
Commissioner
Ontario Securities Commission

In respect of the Trade Reporting Relief

Date: **April 18, 2022**

"Kevin Fine"
Director, Derivatives
Ontario Securities Commission

Application File #: 2022/0002

2.1.3 Blackheath Fund Management Inc. and Foster & Associates Financial Services Inc.

Headnote

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

Applicable Legislative Provisions

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

April 25, 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
BLACKHEATH FUND MANAGEMENT INC.
(BFM)

AND

FOSTER & ASSOCIATES FINANCIAL SERVICES INC.
(F&A, and together with BFM, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for relief from the restriction under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (such restriction, the **Dual-Registration Restriction**), pursuant to section 15.1 of NI 31-103, to permit Mr. Christopher Foster (the **Representative**) to be registered as a dealing representative of F&A and as an advising representative (portfolio manager) of BFM (the **Relief Sought**).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta and British Columbia (collectively with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 31-103 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 Filers:

1. BFM is presently registered as a commodity trading manager in Ontario. BFM is also registered as a portfolio manager Ontario, Alberta and British Columbia. BFM presently carries on business in Ontario, Alberta and British Columbia. The head office of BFM is in Toronto, Ontario.

2. BFM currently engages in the business of managing trading in commodity futures contracts and options on behalf of its clients through discretionary authority granted by such clients. BFM engages in advising on and managing investment strategies for high net worth, corporate and institutional clients.

3. F&A is registered (i) in the category of investment dealer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, and Québec and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**); and (ii) as a derivatives dealer in Québec. F&A carries on business in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, and Québec. The head office of F&A is in Toronto, Ontario.

4. F&A provides the full range of dealer services that IIROC member firms are authorized to provide to retail clients in the above-noted jurisdictions.

5. The principal regulator of both Filers is the OSC.

6. BFM and F&A are wholly-owned subsidiaries of FAFS Holding Corporation, and are therefore affiliates. A majority of the shares of FAFS Holding Corporation are controlled by the Representative's family holding company.

7. Neither Filer is in default of any requirement of securities legislation in any jurisdiction of Canada.

8. There is no overlap in the businesses of the Filers. The Filers have different client bases, and the investment strategies and portfolio of securities of each Filer are different.
9. F&A exclusively trades in traditional investments such as stocks, bonds, funds, and ETFs. F&A caters to retail clients and its investment strategy typically involves the use of registered plans such as RSPs, TFSAs, RRIFs etc.

10. BFM provides portfolio management services to its clients and has historically offered speculative strategies in futures and future options to high-net-worth clients who are accredited investors or permitted clients. BFM does not offer any traditional investment services or investment in registered plans such as RESPs, RSPs, TFSAs etc.

11. The Representative is registered as an advising representative (commodity trading manager) and as the Ultimate Designated Person of BFM in Ontario. Subject to the Relief Sought being granted, the Representative will be registered as an advising representative of BFM. He has been registered with BFM since 2009.

12. The Representative is also registered as a dealing representative (investment dealer) of F&A in Ontario, and as the Ultimate Designated Person of F&A in Alberta, British Columbia, Nova Scotia, Ontario, and Québec. The Representative has been registered with F&A since 2016.

13. It is proposed that the Representative, as an advising representative of BFM, will provide portfolio management services to clients of BFM. He will also continue to provide services in his capacities as a dealing representative of F&A.

14. The Filers wish to leverage the Representative's knowledge, expertise and experience for the benefit of their respective clients, and to permit the Representative to support the business activities and interests of both Filers. The Representative's dual registration will also help optimize the Filers' resources and will increase their operational efficiency.

15. The Filers are affiliates and are both wholly-owned by FAFS Holding Corporation. The Representative will be overseeing two different business lines with no or minimal overlap. Accordingly, the dual registration of the Representative will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned in conjunction with the services provided to their respective clients and therefore the potential for conflicts of interest arising from the dual registration is mitigated.

16. The Filers do not expect that the dual registration of the Representative will create significant additional work and are confident that he will have sufficient time to adequately serve both firms, especially given the current roles that the Representative currently performs.

17. The Representative is subject to supervision by each of the Filers and come under the applicable compliance requirements of both Filers.

18. The Chief Compliance Officer and Ultimate Designated Person of each Filer will ensure that the Representative has sufficient time and resources to adequately serve each Filer and its clients.

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

20. Disclosure regarding the dual employment of the Representative will be disclosed in writing to clients of both BFM and F&A in the form of an updated Relationship Disclosure Information form, which will detail the potential for conflicts of interest. The updated form will be sent to the clients of both BFM and F&A upon the Relief Sought being granted.

21. The Representative will deal fairly, honestly and in good faith with all clients of each Filer.

22. In the absence of the Relief Sought, the Filers would be prohibited by the Dual-Registration Restriction from permitting the Representative to be registered as an advising representative of BFM under its portfolio manager registration while the individual is registered as a dealing representative of F&A, even though the Filers are affiliates and have controls and compliance procedures in place to deal with the Representative's advising and dealing activities.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. The decision of the principal regulator under the Legislation is that the Relief Sought is granted on the following conditions:

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

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

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

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

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

OSC File #: 2021/0486

2.1.4 Bitvo Inc.

Headnote

Application for time-limited relief from suitability requirement, prospectus requirement and trade reporting requirements – relief to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, disclosure and reporting requirements – relief is time-limited to allow the Filer to operate while seeking registration as an investment dealer and membership with IIROC – relief will expire upon two (2) years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

Applicable Legislative Provisions

Statute Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 53 & 74.

Instrument, Rule or Policy Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 21-101 Marketplace Operation, s. 1.1.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 13.3.
OSC Rule 91-506 Derivatives: Product Determination, ss. 2 & 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

Citation: *Re Bitvo Inc.*, 2022 ABASC 35

April 25, 2022

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

AND

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

AND

IN THE MATTER OF
BITVO INC.
(the Filer)

DECISION

Background

As set out in Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**Staff Notice 21-329**) and CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**Staff Notice 21-327**), securities legislation applies to crypto asset trading platforms

(**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving crypto assets, because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered an interim, time-limited regulatory framework that would allow CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTP's operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer operates a CTP and has applied for registration as a restricted dealer in accordance with Staff Notice 21-329 in the Jurisdictions. While registered as a restricted dealer, the Filer intends to seek membership with the Investment Industry Regulatory Organization of Canada (**IIROC**). This decision (**Decision**) has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Jurisdictions will not consider this Decision as constituting a precedent for other filers.

Relief requested

The securities regulatory authority or regulator in Alberta and Ontario (the **Dual Exemption Decision Makers**) have received an application from the Filer (the **Dual Application**) for a decision under the securities legislation of those jurisdictions (the **Legislation**) exempting the Filer from:

(a) the prospectus requirements of the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold and sell Crypto Assets (as defined below) (the **Prospectus Relief**);

(b) the requirement in subsection 12.10(2) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to deliver annual audited financial statements to the regulator (the **Audited Financial Statements Relief**); and,

(c) the requirement in section 13.3 of NI 31-103 that, before it opens an account, takes investment action for a client, or makes a recommendation or exercises discretion to take investment action, to determine on a reasonable basis that the action is suitable for the client (the **Suitability Relief** and, together with the Prospectus Relief and the Audited Financial Statements Relief, the **Dual Relief**).

The securities regulatory authority or regulator in the jurisdictions referred to in Appendix A (the **Coordinated Review Decision Makers**) has received an application from the Filer (collectively, with the Dual Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**).

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

(a) the Alberta Securities Commission is the principal regulator for this Application (the **Principal Regulator**),

(b) the Decision in respect of the Dual Relief is the decision of the Principal Regulator and the decision evidences the decision of the securities regulatory authority or regulator in Ontario,

(c) in respect of the Dual Relief, the Filer has provided notice that, in the jurisdictions where required, 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, and

(d) the Decision in respect of the Trade Reporting Relief is the decision of each Coordinated Review Decision Maker.

Interpretation

For the purposes of this Decision, 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:

The Filer

1. The Filer is a corporation incorporated under the laws of the Province of Alberta with its principal and head office located in Calgary, Alberta.

2. The Filer operates under the business name of **Bitvo**.

3. The Filer is a wholly-owned subsidiary of Pateno Payments Inc. (**Pateno**), a payment services provider that provides payment processing services to the Filer, CTPs domiciled in Canada and other online businesses in various industry sectors. The Filer is also an affiliate of Digital Commerce Bank, a Schedule I Canadian chartered bank with its head office in Calgary, Alberta.

4. The Filer and Pateno do not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.

5. The Filer's personnel consist of financial professionals, software engineers, compliance professionals and client support representatives who each have experience operating in a regulated environment as a money services business (**MSB**) and expertise in blockchain technology. All of the Filer's personnel have passed, and new personnel will have passed, criminal records checks.

6. The Filer is not in default of securities legislation of any of the Jurisdictions, except in respect of the Filer's trading of Crypto Contracts prior to the date of this Decision.

Bitvo Platform

7. The Filer operates a proprietary and fully automated internet-based platform for the trading of crypto assets in Canada (the **Bitvo Platform**) that enables clients to buy, sell, hold, deposit and withdraw crypto assets such as Bitcoin, Ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that are not themselves securities or derivatives (the **Crypto Assets**) through the Filer.

8. The Filer's role under the Crypto Contract is to buy or sell Crypto Assets and to provide custodial services for all Crypto Assets held in accounts on the Bitvo Platform.

9. The Filer is registered as an MSB under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (**Canadian AML/ATF Law**).

10. To use the Bitvo Platform, each client must open an account (a **Client Account**) using the Filer's website or mobile application. Client Accounts are governed by a user agreement (the **User Agreement**) that is accepted by clients at the time of account opening. The User Agreement governs all activities in Client Accounts, including with respect to all Crypto Assets purchased on, or transferred to, the Bitvo Platform (**Client Assets**). While clients are entitled to transfer Client Assets out of their Client Accounts immediately after purchase, many clients choose to leave their Client Assets in their Client Accounts.

11. Under the User Agreement, the Filer maintains certain controls over Client Accounts to ensure compliance with applicable law and provide secure custody of Client Assets.

12. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.

13. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not offer or provide discretionary investment management services relating to Crypto Assets.

14. The Filer is not a member firm of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets in the Filer's custody on the Bitvo Platform do not qualify for CIPF coverage. The Risk Statement (as defined below) includes disclosure that there is no CIPF coverage for the Crypto Assets and clients must acknowledge that they have received, read and understood the Risk Statement before opening a Client Account.

15. The Filer has unaudited financial statements and is working with the auditor to prepare audited unconsolidated financial statements. The Filer anticipates that it will be able to obtain audited financial statements for the Filer's 2022 financial year end.

OTC Trading

16. In addition to the Bitvo Platform, the Filer operates an over-the-counter (**OTC**) trading desk for orders of a minimum size of C$25,000. The OTC trading desk allows clients to purchase or sell Crypto Assets from or to the Filer. The Filer immediately delivers, as described in Staff Notice 21-327, any purchased Crypto Assets to the purchaser at a blockchain wallet address specified by the purchaser which is not under the ownership, possession or control of the Filer.

Know-Your-Product (KYP) Policy

17. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on the Bitvo Platform to enter into Crypto Contracts to buy and sell the Crypto Assets on the Bitvo Platform (**KYP Policy**). Such review includes, but is not limited to, publicly available information concerning:

    (a) the creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;

    (b) the supply, demand, maturity, utility and liquidity of the Crypto Asset;

    (c) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

    (d) legal and regulatory risks associated with the Crypto Asset, including any pending, potential, or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the Crypto Asset.

18. The Filer does not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps to:

    (a) assess the relevant aspects of the Crypto Asset pursuant to the KYP Policy and as described in representation 17 to determine whether it is appropriate for its clients;

    (b) approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients; and

    (c) monitor the Crypto Asset for significant changes and review its approval under (b) if a significant change occurs.

19. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset or affiliates or associates of such persons.

20. As set out in the KYP Policy, the Filer determines whether a Crypto Asset available to be bought and sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:

    (a) consideration of statements made by any regulators or securities regulatory authorities in Canada, other regulators of the International Organization of Securities Commissions jurisdictions, or the regulator with the most significant connection to a Crypto Asset, about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or derivative; and

    (b) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of any of the Jurisdictions.

21. The Filer monitors ongoing developments related to Crypto Assets available on the Bitvo Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYP Policy and as described in representations 17 and 20 above to change.

22. The Filer acknowledges that any determination made by the Filer does not prejudice the ability of any of the regulators or securities regulatory authorities of any of the Jurisdictions to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell that Crypto Asset is a security and/or derivative.

23. As set out in the KYP Policy, the Filer applies policies and procedures to promptly stop the trading of any Crypto Asset available on the Bitvo Platform and to allow clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on the Bitvo Platform.

KYC and Account Appropriateness Assessment

24. The Filer has adopted eligibility criteria for its clients. All clients on the Bitvo Platform must: (a) successfully complete Bitvo's know-your-client (**KYC**) process which satisfies the identity verification requirements applicable to reporting entities under Canadian AML/ATF Law; and (b) hold an account with a Canadian financial institution. Each client who is an individual, and each individual who is authorized to give instructions for a client that is a legal entity, must: (c) be a Canadian citizen or permanent resident; and (d) be 19 years of age or older.

25. The Filer does not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but rather performs product assessments pursuant to the KYP Policy and account assessments taking into account the following factors (the **Account Appropriateness Factors**):

    (a) the client's experience and knowledge in investing in Crypto Assets;

    (b) the client's financial assets and income;

    (c) the client's risk tolerance; and

    (d) the Crypto Assets approved to be made available to a client by entering into Crypto Contracts on the Bitvo Platform.

26. The Filer will apply policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client that is not a permitted client (as defined in NI 31-103) can incur and what net realized loss limits will apply to such client. After completion of the assessment, the Filer will implement controls to monitor such limits.

27. The Account Appropriateness Factors are used by the Filer to evaluate whether entering into Crypto Contracts with the Filer is appropriate for a prospective client before the opening of a Client Account.

28. After completion of the account appropriateness assessment, a prospective client receives appropriate messaging about using the Bitvo Platform to enter into Crypto Contracts, which, in circumstances where the Filer has evaluated that entering into Crypto Contracts with the Filer is not appropriate for the client, will include prominent messaging to the client that this is the case and that the client will not be permitted to open an account with the Filer.

29. Additionally, the Filer monitors and will continue to monitor Client Accounts after opening to identify activity inconsistent with the client's account and Crypto Asset assessment. If warranted, the client may receive further messaging about the Bitvo Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer will monitor compliance with the loss limits established in representation 26. If warranted, the client will receive messaging when their account is approaching its loss limit and receive instructions on how to implement a stop loss order to prevent further losses.

30. As part of the account opening process:

    (a) the Filer collects the KYC information specified in representation 24 from the prospective client;

    (b) the Filer provides a prospective client with a statement of risks (the **Risk Statement**) that clearly explains the following in plain language:

        (i) the Crypto Contracts;

        (ii) risks associated with the Crypto Contracts;

        (iii) prominently, a statement that no securities regulatory authority in Canada has expressed an opinion about any of the Crypto Contracts or Crypto Assets made available through the Bitvo Platform, including any opinion that the Crypto Assets are not securities and/or derivatives;

        (iv) the due diligence performed by the Filer before making a Crypto Asset available through the Bitvo Platform, including the due diligence performed to assess whether the Crypto Asset is a security and/or derivative under the securities legislation of each of the jurisdictions of Canada and the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;

        (v) that the Filer has prepared a plain language description of each Crypto Asset made available through the Bitvo Platform, with instructions as to where on the Bitvo Platform the client may obtain the descriptions (each, a **Crypto Asset Statement**);

        (vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Bitvo Platform, including criteria that would be considered by the Filer, options available to clients holding such a Crypto Asset, any notification periods and any risks to clients;

        (vii) the location and manner in which Crypto Assets are held for the client and the risks and benefits to the client of the Crypto Assets being held in that manner;

(viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner;

(ix) that the Filer is not a member of CIPF and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection;

(x) a statement that the statutory rights in s. 204(1) of the *Securities Act* (Alberta) (the **Act**), and if applicable, similar statutory rights under securities legislation of the other Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

(xi) the date on which the information was last updated.

31. In order for a prospective client to open and operate an account with the Filer, the Filer will obtain an electronic acknowledgement from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective client as part of the account opening process.

32. The Filer has policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, crypto assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, existing clients of the Filer will be promptly notified and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, existing clients of the Filer will be promptly notified through website and mobile application disclosures, with links provided to the updated Crypto Asset Statement.

33. For clients with pre-existing Client Accounts with the Filer at the time of this Decision, the Filer will:

(a) conduct the account appropriateness assessment and establish the appropriate loss limit for the client as set out in representations 25 to 28 above, and

(b) deliver to the client the Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement, at the earlier of (i) before placing their next trade or deposit of Crypto Assets and (ii) the next time they log in to their Client Account. The Risk Statement must be prominent and separate from other disclosures given to the client at that time, and the acknowledgement must be separate from other acknowledgements by the client at that time.

34. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Bitvo Platform.

35. Before a client enters a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Filer's website or mobile application.

36. Each Crypto Asset Statement will include:

(a) a prominent statement that no securities regulatory authority in Canada has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the Bitvo Platform, including an opinion that the Crypto Assets are not themselves securities and/or derivatives;

(b) a description of the Crypto Asset, including the background of the developer(s) that created the Crypto Asset, if applicable;

(c) a description of the due diligence performed by the Filer with respect to the Crypto Asset;

(d) any risks specific to the Crypto Asset;

(e) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the Bitvo Platform;

(f) a statement that the statutory rights in s. 204(1) of the Act, and if applicable, similar statutory rights under securities legislation of the other Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

(g) the date on which the information was last updated.

Operation of the Bitvo Platform

37. Trading pairs available on the Bitvo Platform include Crypto Asset-for-fiat and Crypto Asset-for-Crypto Asset.

38. The Bitvo Platform operates 24 hours a day, seven days a week.

39. The Filer does not, and will not, offer margin or other forms of leverage to clients in connection with trading of Crypto Assets on the Bitvo Platform and will not offer derivatives based on Crypto Assets to clients, other than Crypto Contracts.

40. The Filer only offers and only allows clients to enter into Crypto Contracts to buy and sell Crypto Assets that are not each themselves a security and/or a derivative**.**

41. The Filer relies upon multiple CTPs (**Liquidity Providers**) to act as sellers of Crypto Assets that may be purchased by the Filer for its clients. Liquidity Providers also buy any Crypto Assets from the Filer that a client has purchased using the Bitvo Platform and wishes to sell.

42. A Crypto Contract is a bilateral contract between a client and the Filer. Accordingly, the Filer is the counterparty to all trades entered by clients on the Bitvo Platform. For each client transaction, the Filer will also be a counterparty on a corresponding Crypto Asset buy or sell transaction with a Liquidity Provider.

43. The Filer evaluates the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to its clients.

44. The Filer has verified that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in any of the Jurisdictions.

45. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.

46. The Filer does not charge fees for depositing Crypto Assets and fiat currency to the Bitvo Platform. The Filer charges 1% for withdrawals and earns a spread, as discussed below, on trades.

47. All fees earned by the Filer are clearly disclosed on the Bitvo Platform.

48. The Filer obtains buy and sell prices for Crypto Assets from its Liquidity Providers, after which the Filer incorporates a "spread" to compensate the Filer, and presents these adjusted prices as open buy and sell orders on the Bitvo Platform (**Bitvo Offers**). Bitvo Offers are automatically generated using a simple algorithm operated by the Filer based on prices available from the Filer's Liquidity Providers.

49. The only orders available for clients to trade against on the Bitvo Platform are Bitvo Offers. The Filer will disclose to clients that all buy and sell orders on the Bitvo Platform are the Filer's orders.

50. Clients can enter orders to the Bitvo Platform in two ways: (i) the Buy & Sell Menu allows a client to enter a market order which specifies the desired trading pair and quantity; (ii) Advanced Trading allows a client to enter more advanced order types, including a limit order or market order.

51. When a client enters a market order using the Buy & Sell Menu or Advanced Trading, the Filer presents an average price calculated based on available Bitvo Offers required to fill the client order and the prices of such Bitvo Offers. If the client finds the price agreeable, the client will then agree to the entry of an order to the Bitvo Platform to execute against the available Bitvo Offers.

52. When a client enters a limit order using Advanced Trading, the limit order is partially or completely filled if there is one or more Bitvo Offers at or better than the price of the limit order. If there are no Bitvo Offers at or better than the price of the limit order, the limit order remains open in the Client Account until it is modified or cancelled by the client or filled by one or more Bitvo Offers entered subsequently. If a limit order is partially filled, the rest of the order remains open in the Client Account. Open limit orders entered by clients are neither displayed on the Bitvo Platform nor are they available to trade against other client orders.

53. After each trade entered into with a client, the Filer executes an offsetting trade against the applicable Liquidity Provider.

54. The Filer will be compensated by the spread on trades and a fee charged for Crypto Asset withdrawals.

55. The Filer will record in its books and records the particulars of each trade.

56. The Filer will promptly, and no later than two business days after the trade, settle transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets, the Filer will arrange for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer will arrange for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider.

57. Clients can fund their Client Account by transferring in fiat currency or Crypto Assets. Clients can transfer in fiat currency by Interac e-transfer, cash, debit or bank wire, with the maximum amount for each transfer type set out on the Bitvo Platform.

58. Clients are charged a withdrawal fee when transferring Crypto Assets out of their Client Account to a blockchain address specified by the client. The withdrawal fee is a flat fee for all Crypto Assets and fiat withdrawals and is disclosed on the Bitvo Platform under "Fees". The total withdrawal fee payable in respect of a withdrawal is disclosed to the client prior to confirmation of the withdrawal.

59. Prior to transferring Crypto Assets out of a Client Account, the Filer conducts secondary verification of the blockchain address and screens the blockchain address specified by the transferring client using blockchain forensics software.

60. Clients can transfer fiat currency out of their Client Accounts by e-transfer, electronic funds transfer, Bitvo Visa, prepaid debit or bank wire, subject to a withdrawal fee disclosed on the Bitvo Platform under "Fees" and incorporated by reference into the User Agreement. Part of the withdrawal fee covers fees charged by the Filer's payment processor to process the withdrawal transaction. The total withdrawal fee payable in respect of a fiat currency withdrawal is disclosed to the client prior to confirmation of the withdrawal.

61. Clients have access to a complete record of all transactions in their Client Account, including all transfers in of fiat or Crypto Assets, all purchases, sales and withdrawals, and the relevant prices, commissions and withdrawal fees charged in respect of such transactions.

Custody of Crypto Assets

62. The Filer holds Crypto Assets for the benefit of clients separate and apart from its own assets. When the Filer holds Crypto Assets for the benefit of clients with a custodial services provider, such Crypto Assets are held separate and apart from the assets of the custodial services provider. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.

63. The Filer holds at least 80% of the total value of Client Assets in a cold storage custody account (the **Custody Account**) provided by BitGo Trust Company (the **Custodian**) and the remainder in online "hot" wallets secured by software licensed from BitGo Inc., the parent company of the Custodian. The Custodian is licensed as a trust company with the South Dakota Division of Banking. The Custodian is a qualified custodian as defined in section 1.1 of NI 31-103.

64. The Custodian has completed Service Organization Controls (**SOC**) reports under the SOC 1 – Type 1 and SOC 1 – Type 2 standards from a leading global audit firm. The Filer has conducted due diligence on the Custodian, including reviewing a copy of the SOC 1 – Type 1 and SOC 1 – Type 2 audit reports prepared by the Custodian's auditors, and has not identified any material concerns. The Filer has also reviewed the SOC 2 – Type 2 audit report prepared by BitGo Inc.'s auditors regarding BitGo Inc.'s multi-signature wallet services system (i.e., hot wallets) offered by BitGo Inc., and has not identified any material concerns. The Custodian has advised the Filer that it relies on technology licensed from BitGo Inc., which technology was audited pursuant to the SOC 2 – Type 2 audit report prepared by BitGo Inc.'s auditors.

65. The Custodian holds all Crypto Assets in trust for clients of the Filer in an omnibus account in the name of the Filer and separate and distinct from the assets of the Filer, the Filer's affiliates and all of the Custodian's other clients.

66. The Custodian maintains US$100 million of crime/specie insurance for crypto assets held in the Custodian's cold storage system. The coverage covers losses of assets held by the Custodian on behalf of its customers due to third party hacks, copying or theft of private keys, insider theft, or dishonest acts by the Custodian employees or executives and loss of keys. The Filer has assessed the Custodian's insurance policy and has determined, based on information that is publicly available and on information provided by the Custodian and considering the scope of the Custodian's business, that the amount of insurance is appropriate.

67. The Custodian has established, and applies, policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents.

68. The Custodian has established and applies written disaster recovery and business continuity plans.

69. The Filer has established, and will maintain and apply, policies and procedures that are reasonably designed to ensure the Custodian's records related to Crypto Assets that the Custodian holds in trust for clients of the Filer are accurate and complete.

70. The Filer has assessed the risks and benefits of using the Custodian and has determined that, in comparison to a Canadian custodian (as that term is defined in NI 31-103), it is more beneficial to use the Custodian, a U.S. custodian, to hold client assets than a Canadian custodian.

71. The Filer is proficient and experienced in holding Crypto Assets and has established and applied policies and procedures that manage and mitigate custodial risks, including but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets. The Filer also maintains appropriate policies and procedures related to information technology - security, cyber-resilience, disaster recovery capabilities and a business continuity plan.

72. In respect of Crypto Assets held in its hot wallets, the Filer will set aside cash that will be held in an account at a Canadian financial institution, separate from the Filer's operational accounts and the Filer's client accounts, in an amount agreed upon with its Principal Regulator. Funds from that bank account would be available to clients in the event of loss of Crypto Assets held in the Filer's hot wallet.

Marketplace and Clearing Agency

73. The Filer will not operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and in Ontario, subsection 1(1) of the *Securities Act* (Ontario).

74. The Filer will not operate a "clearing agency" or a "clearing house" as those terms are defined or referred to in securities legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of offering Crypto Contracts, as described in this Decision.

Decision

The Dual Exemption Decision Makers are satisfied that the Decision satisfies the test set out in the Legislation for the Dual Exemption Decision Makers to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief satisfies the test set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief.

The Decision of the Dual Exemption Decision Makers under the Legislation is that the Dual Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation of its jurisdiction is thatthe Trade Reporting Relief is granted, provided that:

A. Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulatory or securities regulatory authority of any other Jurisdiction, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.

B. The Filer is registered as a restricted dealer or investment dealer in the Jurisdictions.

C. The Filer, and any representatives of the Filer, will not provide recommendations or advice to any client or prospective client on the Bitvo Platform.

D. The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets, and performing its obligations under those contracts and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts. The Filer will seek the appropriate approvals from the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Jurisdiction, prior to undertaking any other activity governed by securities legislation.

E. The Filer will not operate a "marketplace" as the term is defined in NI 21-101 and in Ontario, in subsection 1(1) of the *Securities Act*, (Ontario) or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities legislation.

F. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with a custodian that meets the definition of a "qualified custodian" under NI 31-103, unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with a "qualified custodian".

G. Before the Filer holds Crypto Assets with a custodian referred to in condition F, the Filer will take reasonable steps to verify that the custodian:

(a) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;

(b) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian; and

(c) has obtained a SOC 2 Type 2 report within the last 12 months, unless the Filer has obtained the prior written approval of the Principal Regulator to alternatively verify that the custodian has obtained a SOC 1 Type 1 or Type 2 or a SOC 2 Type 1 report within the last 12 months.

H. The Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association or the South Dakota Division of Banking makes a determination that the Custodian is not permitted by that regulatory authority to hold Client Assets.

I. The Filer will only use a Liquidity Provider that it has verified is registered and/or licensed, to the extent required in its home jurisdiction, to execute trades in the Crypto Assets and is not in default of securities legislation in any of the Jurisdictions, and will promptly stop using a Liquidity Provider if (a) the Filer is made aware that the Liquidity Provider is, or (b) a court, regulator or securities regulatory authority in any of the Jurisdictions has determined it to be, not in compliance with securities legislation.

J. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.

K. For the Crypto Assets held by the Filer, the Filer:

(a) will hold the Crypto Assets for its clients separate and distinct from the assets of the Filer;

(b) will ensure there is appropriate insurance to cover the loss of Crypto Assets; and

(c) will have established and apply written policies and procedures that manage and mitigate the custodial risk, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

L. Before each prospective client opens an account, the Filer will deliver to the client a Risk Statement, and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

M. For each client with a pre-existing account at the date of this Decision, the Filer will deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement at the earlier of (a) before placing their next trade or deposit of Crypto Assets on the Bitvo Platform and (b) the next time they log in to their account with the Filer.

N. The Risk Statement delivered in conditions L and M to new clients and clients with pre-existing accounts on the date of this Decision will be prominent and separate from other disclosures given to the client at that time, and the acknowledgement will be separate from other acknowledgements by the client at that time.

O. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Bitvo Platform.

P. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Filer's website or mobile application.

Q. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Assets and,

(a) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement, and

(b) in the event of any update to a Crypto Asset Statement, will promptly notify clients through electronic disclosures on the Bitvo Platform, with links provided to the updated Crypto Asset Statement.

R. Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client, and a blackline of the changes, to the Principal Regulator.

S. For each client, the Filer will perform an appropriateness assessment as described in representations 25 to 28 prior to opening an account, on an ongoing basis and at least annually.

T. For each client with a pre-existing account at the date of this Decision, the Filer will perform an account appropriateness assessment, as described in representations 25 to 28, the next time the client uses their account. The client will not be permitted to trade until the completion of the account appropriateness assessment and a determination that the account is appropriate.

U. The Filer will monitor client activity and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required.

V. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets (as set out in Appendix B to this Decision), that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may enter into Crypto Contracts to purchase and sell on the Bitvo Platform (calculated on a net basis and is an amount not less than $0) in the preceding 12 months does not exceed a net acquisition cost of $30,000.

W. The Filer will apply and monitor the limits on the losses a client may incur as set out in representation 26.

X. In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that Jurisdiction.

Y. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:

(a) change of or use of a new custodian; and

(b) material changes to the Filer's ownership, its business operations, including its systems, or its business model.

Z. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of its or its custodian's system of controls or supervision, and what steps have been taken by the Filer or its custodian, as the case may be, to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.

AA. The Filer will evaluate Crypto Assets as set out in its KYP Policy and as described in representation 17.

BB. The Filer will only trade Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.

CC. Except to allow clients to liquidate their positions in those Crypto Contracts or transfer the underlying Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts if (a) the Filer determines the underlying Crypto Asset to be a security and/or derivative, (b) a court, regulator or securities regulatory authority in any Jurisdiction or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines the underlying Crypto Asset to be a security and/or derivative, or (c) the Filer is made aware or is informed that the underlying Crypto Asset is viewed by a regulator or securities regulatory authority to be a security and/or derivative.

DD. The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a customer in any Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of that Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of AML laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct; for the purposes of this condition, the term "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, Republic of Korea, New Zealand, Singapore, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Data reporting

EE. The Filer will provide the following information to the Principal Regulator, and to the securities regulatory authority or regulator in each of the other Jurisdictions with respect to clients in those jurisdictions, within 30 days of the end of each March, June, September and December:

(a) aggregate reporting of activity conducted pursuant to Crypto Contracts that will include the following:

i. number of Client Accounts opened each month in the quarter;

ii. number of Client Accounts closed each month in the quarter;

iii. number of trades in each month of the quarter;

iv. average value of the trades in each month of the quarter;

v. number of Client Accounts with a net acquisition cost greater than $30,000 of Crypto Assets at the end of each month in the quarter;

vi. number of Client Accounts with no trades during the quarter;

vii. number of Client Accounts that have not been funded at the end of each month in the quarter; and

viii. number of Client Accounts that hold a positive amount of Crypto Assets at the end of each month in the quarter;

(b) the details of any client complaints received by the Filer during the calendar quarter and how such complaints were addressed;

(c) the details of any fraudulent activity or cybersecurity incidents on the Bitvo Platform during the calendar quarter, any resulting harms and effects on clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future;

(d) the amount of Crypto Assets held in hot wallets as of the end of the quarter;

(e) the name of the financial institution and the amount of money held at the end of the quarter in an account with the financial institution, separate from the Filer's operational accounts and Filer's client accounts, relating to the Filer's hot wallets; and

(f) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.

FF. The Filer will deliver to the regulator or the securities regulatory authority in each of the Jurisdictions, in a form and format acceptable to the regulator or the securities regulatory authority, a report that includes the following anonymized account-level data for activity conducted pursuant to a Crypto Contract for each client within 30 days of the end of each March, June, September and December:

(a) unique account number and unique client identifier, as applicable;

(b) jurisdiction where the client is located;

(c) the date the account was opened;

(d) the amount of fiat held by the Filer at the beginning of the reporting period and at the end of the reporting period;

(e) cumulative realized gains/losses since account opening in CAD;

(f) unrealized gains/losses as of the report end date in CAD;

(g) quantity traded, deposited and withdrawn by Crypto Asset during the quarter in number of units;

(h) Crypto Asset traded;

(i) quantity held of each Crypto Asset as of the report end date in units;

(j) CAD equivalent aggregate value for each Crypto Asset, calculated as the amount in (i) multiplied by the market price of the asset in (h) as of the report end date;

(k) age of account in months; and

(l) the loss limit established by the Filer on each account.

GG. The Filer will deliver its 2021 annual audited financial statements in accordance with subsection 12.10(2) of NI 31-103 by June 30, 2022.

HH. Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Jurisdictions, a report of all accounts for which the loss limits established pursuant to representation 26 were exceeded during that month.

II. The Filer will deliver to the Principal Regulator within 30 days of the end of each March, June, September and December, either (a) blackline copies of changes made to the policies and procedures on the operations of its wallets that were previously delivered to the Principal Regulator or (b) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

JJ. In addition to any other reporting required by the Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian(s) and the Crypto Assets held by the Filer's custodian(s), that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in this Decision, in a format acceptable to the Principal Regulator.

KK. Upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the other Jurisdictions with aggregated and/or anonymized data concerning client demographics and activity on the Bitvo Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.

LL. The Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer or by the Principal Regulator arising from the operation of the Bitvo Platform.

Time limited relief

MM. The Filer will, if it intends to operate the Bitvo Platform in Ontario and Québec after the expiry of this Decision, take the following steps:

(a) submit an application to the Principal Regulator, the Ontario Securities Commission (**OSC**) and the Autorité des marches financiers (**AMF**) to become registered as an investment dealer no later than 12 months after the date of this Decision;

(b) submit an application with IIROC to become a dealer member no later than 12 months after the date of this Decision;

(c) work actively and diligently with the Principal Regulator, the OSC, the AMF and IIROC to transition the Bitvo Platform to investment dealer registration and obtain IIROC membership.

NN. This Decision shall expire upon the date that is two years from the date of this Decision.

OO. This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.

In respect of the Prospectus Relief:

“Tom Cotter”	“Kari Horn”
Commissioner	Commissioner
Alberta Securities Commission	Alberta Securities Commission

In respect of the Suitability Relief, the Audited Financial Statements Relief and the Trade Reporting Relief:

“Lynn Tsutsumi”
Director, Market Regulation
Alberta Securities Commission

APPENDIX A
LEGISLATION

Trade Reporting Relief

In this Decision, "**Local Trade Reporting Rules**" means each of the following:

(a) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of OSC Rule 91-507;

(b) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of MSC Rule 91-507; and

(c) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**), and the power to grant exemption orders set out in Section 43 of MI 96-101.

APPENDIX B
SPECIFIED CRYPTO ASSETS

Bitcoin
Ether
Bitcoin Cash
Litecoin

2.1.5 BRP Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Dual application – Issuer bid – Modified Dutch auction – Application for relief from the requirement that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the issuer first takes up all Shares deposited under the Offer and not withdrawn (Section 2.32 of R62-104).

Applicable Legislative Provisions

Securities Act (Québec), s. 263.
Multi-lateral Instrument 61-101 respecting Protection of Minority Security Holders in Special Transactions, s. 3.4.
National Instrument 62-104 respecting Take-Over Bids and Issuer Bids and Item 8 of Form 62-104F2, ss. 2.32, 6.1.

[TRANSLATION]

April 21, 2022

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

AND

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

AND

IN THE MATTER OF
BRP INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting the Filer, in connection with the proposed purchase of a portion of its outstanding subordinate voting shares (the **Shares**) pursuant to an issuer bid (the **Offer**), an exemption (the **Exemption Sought**) from the requirements in Section 2.32 of *Regulation 62-104 respecting Take-over Bids and Issuer Bids*, CQLR c V-1.1, r 35 (**Regulation 62-104**) that an issuer bid not be extended if all the terms and conditions of the issuer bid have been complied with or waived unless the Filer first takes up all securities deposited under the issuer bid and not withdrawn (the **Extension Take-Up Requirement**).

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

(a) the *Autorité des marchés financiers* is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System*, CQLR c V-1.1, r 1 (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, the Yukon, the Northwest Territories and Nunavut; 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 *Regulation 14-101 respecting Definitions*, CQLR c V-1.1, r 3, Regulation 11-102 and Regulation 62-104 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The head office and registered office of the Filer are located in the Province of Québec.

2. The Filer is a reporting issuer in each of the jurisdictions of Canada and the Filer's Shares are listed for trading on the Toronto Stock Exchange (the **TSX**) and on the Nasdaq Stock Market LLC (the **Nasdaq**). The Filer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized share capital of the Filer consists of unlimited number of multiple voting shares (the **MVS**) and Shares and an unlimited number of preferred shares issuable in series. As of March 23, 2022, there were 38,080,486 Shares and 42,954,979 MVS issued and outstanding, and no preferred shares were issued and outstanding. The MVS are not listed for trading on any stock exchange. Each outstanding MVS may at any time, at the option of the holder, be converted into one Share.

4. On March 23, 2022, the closing price of the Shares on the TSX was $89.12 and US$70.78 on the Nasdaq.

5. The Filer intends to make the Offer pursuant to which it would offer to purchase that number of Shares having an aggregate purchase price of up to $250,000,000.

6. Prior to making the Offer, the board of directors of the Filer will have determined that the Offer is in the best interests of the Filer.

7. Holders of MVS will be entitled to participate in the Offer by depositing their MVS to the Offer. MVS deposited under the Offer will be considered as Shares (i.e. on an as-converted basis) for purposes of all calculations under the Offer. Only those MVS taken up by the Filer will be converted into Shares immediately prior to take up.

8. The purchase price per Share will be determined by the Filer through a modified "Dutch auction" procedure in the manner described below, but will not be less than $103 and not more than $123 per Share (the **Price Range**).

9. The aggregate purchase price of up to $250,000,000 has been determined and was announced by the Filer in a press release issued on March 30, 2022. Both the maximum aggregate purchase price of $250,000,000 and the Price Range are specified in the issuer bid circular (the **Circular**).

10. The Filer expects to fund the purchase of Shares pursuant to the Offer, together with the fees and expenses of the Offer, with a combination of cash on hand and drawings on existing credit facilities. The Offer will not be conditional upon the receipt of any financing.

11. Holders of Shares and MVS (collectively, the **Shareholders**) wishing to tender to the Offer will be able to do so in one of the following ways:

    a. by making auction tenders in which the tendering Shareholders specify the number of Shares being tendered at a specified price per Share (the **Auction Price**) within the Price Range (the **Auction Tenders**); or

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

12. Shareholders may make multiple Auction Tenders, but not in respect of the same Shares (*i.e.* Shareholders may tender different Shares at different prices, but cannot tender the same Shares at different prices). Shareholders may also make an Auction Tender in respect of certain of their Shares and a Purchase Price Tender in respect of other Shares.

13. Any Shareholder who owns fewer than 100 Shares and tenders all of such Shareholder's Shares pursuant to an Auction Tender at or below the Purchase Price or makes a Purchase Price Tender will be considered to have made an "**Odd-Lot Tender**".

14. The Filer will determine the purchase price payable per Share (the **Purchase Price**) based on the Auction Prices and the number of Shares deposited pursuant to valid Auction Tenders and Purchase Price Tenders. The Purchase Price will be the lowest price that enables the Filer to purchase that number of Shares validly deposited and not properly withdrawn pursuant to the Offer having an aggregate purchase price not to exceed $250,000,000.

15. If the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders (the **Tender Amount**) is less than or equal to $250,000,000 and the conditions of the Offer are satisfied, the Filer will purchase at the Purchase Price all Shares so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders.

16. If the Tender Amount is greater than $250,000,000 and the conditions of the Offer are satisfied, the Filer will purchase at the Purchase Price a portion of the Shares so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders, determined as follows:

    a) first, the Filer will purchase all such Shares tendered by Shareholders at or below the Purchase Price pursuant to Odd-Lot Tenders; and

    b) second, the Filer will purchase on a *pro rata* basis that portion of such Shares tendered pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders having an aggregate purchase price, based on the Purchase Price, equal to (A) $250,000,000, less (B) the aggregate amount paid by the Filer for Shares tendered by Odd Lot Holders.

17. The number of Shares that the Filer will purchase pursuant to the Offer and the aggregate purchase price will vary depending on whether the Tender Amount is equal to or less than $250,000,000. If the Tender Amount is equal to $250,000,000, the Filer will purchase Shares pursuant to the Offer for an aggregate purchase price equal to $250,000,000; if the Tender Amount is less than $250,000,000, the Filer will purchase proportionately fewer Shares in the aggregate, with a proportionately lower aggregate purchase price.

18. All Shares purchased by the Filer pursuant to the Offer (including Shares tendered at Auction Prices below the Purchase Price) will be purchased at the Purchase Price. Shareholders will receive the Purchase Price in cash. All Auction Tenders and Purchase Price Tenders will be subject to adjustment to avoid the purchase of fractional Shares. All payments to Shareholders will be subject to deduction of applicable withholding taxes.

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

20. The Offer is subject to the provisions of the United States regulation entitled *Regulation 14E* adopted under the 1934 Act (**Regulation 14E**).

21. Until expiry of the Offer, all information about the number of Shares tendered and the prices at which the Shares are tendered will be required to be kept confidential by the depositary and the Filer until the Purchase Price has been determined.

22. Shareholders who do not accept the Offer will continue to hold the same number of Shares as before the Offer and their proportionate Share ownership will increase following completion of the Offer, in accordance with the number of Shares purchased under the Offer.

23. Under the Extension Take-Up Requirement contained in Section 2.32 of Regulation 62-104, an offeror may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the offeror first takes up all the securities deposited and not withdrawn under the issuer bid. Under Regulation 14E, the Filer must promptly pay for all securities deposited pursuant to the Offer at the time of expiry of the Offer. Regulation 14E does not allow the Filer to extend the Offer after having taken up and paid for securities deposited pursuant to the Offer. However, notwithstanding Section 2.32 of Regulation 62-104, the Filer may, in connection with the Offer, elect to extend the Offer without first taking up all the Shares deposited and not withdrawn under the Offer if the Tender Amount is less than $250,000,000.

24. As the determination of the Purchase Price requires that all Auction Prices and the number of Shares deposited pursuant to both Auction Tenders and Purchase Price Tenders be known and taken into account, the Filer will be unable to take up the Shares deposited and not withdrawn under the Offer at the time of expiry of the Offer prior to extending the Offer because the Purchase Price will not and cannot be known as additional Auction Tenders and Purchase Price Tenders may be made during the extension period that will impact the calculation of the Purchase Price. Accordingly, the Exemption Sought is required in connection with an extension of the Offer to enable the Filer to make a final determination regarding the Purchase Price, taking into account all Shares tendered prior to time of expiry of the Offer and those tendered during any extension period.

25. Shares deposited pursuant to the Offer, including those deposited prior to the time of expiry of the Offer, may be withdrawn by the Shareholder at any time during any extension period

26. The Filer intends to rely on the exemption from the formal valuation requirements applicable to issuer bids under *Regulation 61-101 respecting Protection of Minority Security Holders in Special Transactions*, CQLR c V-1.1, r 33 (**Regulation 61-101**) set out in subsection 3.4(b) of Regulation 61-101 (the **Liquid Market Exemption**).

27. There was a "liquid market" for the Shares, as such term is defined in Regulation 61-101, as of the date of the making of the Offer, because the test in paragraph 1.2(1)(a) of Regulation 61-101 was satisfied. In addition, an opinion was voluntarily sought by the Filer and obtained from RBC Dominion Securities Inc. as of March 29, 2022 in accordance with

Section 1.2 of Regulation 61-101 confirming that a liquid market exists for the Shares as of the date of the making of the Offer and such opinion is included in the Circular (the **Liquidity Opinion**).

28. Based on the maximum number of Shares that may be purchased under the Offer, as of the date of the Offer, it was reasonable to conclude (and the Liquidity Opinion provides that it will be reasonable to conclude) that, following the completion of the Offer in accordance with its terms, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less "liquid", as such term is defined in Regulation 61-101, than the market that existed at the time of the making of the Offer.

29. The Filer will disclose in the Circular relating to the Offer the following information:

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

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

c) that the Filer has filed for an exemption from the Extension Take-Up Requirement;

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

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

f) if known after reasonable enquiry, the name of every person named in Item 11 of Form 62-104F2 to Regulation 62-104 who has accepted or intends to accept the Offer and the number of Shares in respect of which the person has accepted or intends to accept the Offer;

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

h) the disclosure prescribed by applicable securities laws for issuer bids.

Decision

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

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

a) the Filer takes up Shares deposited pursuant to the Offer and not withdrawn and pays for such Shares, in each case, in the manner described herein;

b) the Filer is eligible to rely on the Liquid Market Exemption; and

c) the Filer complies with the requirements of Regulation 14E.

"Benoît Gascon"
Directeur principal du financement des sociétés

2.2 Orders

2.2.1 Go-To Developments Holdings Inc. et al.

File No. 2022-8

IN THE MATTER OF
GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO

Timothy Moseley, Vice-Chair and Chair of the Panel

April 20, 2022

ORDER

WHEREAS on April 20, 2022, the Ontario Securities Commission held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Commission and for the respondents;

IT IS ORDERED THAT:

1. Staff shall disclose to the respondents the non-privileged, relevant documents and things in the possession or control of Staff, by 4:30 p.m. on May 19, 2022;

2. the respondents shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents, by 4:30 p.m. on August 5, 2022;

3. Staff shall serve and file a witness list, and serve a summary of each witness's anticipated evidence on the respondents, and indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence, by 4:30 p.m. on August 10, 2022; and

4. a further attendance in this matter is scheduled for August 17, 2022, at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"Timothy Moseley"

2.2.2 Hochschild Mining Brazil Holdings Corp. (formerly Amarillo Gold Corporation)

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 20, 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
HOCHSCHILD MINING BRAZIL HOLDINGS CORP.
(formerly Amarillo Gold Corporation, the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0166

2.2.3 Mark Edward Valentine

File No. 2022-7

IN THE MATTER OF
MARK EDWARD VALENTINE

Cathy Singer, Commissioner and Chair of the Panel

April 21, 2022

ORDER

WHEREAS on April 21, 2022, the Ontario Securities Commission held a hearing by teleconference;

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**), and for Mark Edward Valentine (the **Respondent**);

IT IS ORDERED THAT:

1. the Respondent shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents, by 4:30 p.m. on August 26, 2022;

2. Staff shall serve and file a witness list, and serve a summary of each witness' anticipated evidence on the Respondent, and indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence, by 4:30 p.m. on September 2, 2022; and

3. a further attendance in this matter is scheduled for September 7, 2022 at 10:00 a.m., by teleconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"Cathy Singer"

2.2.4 Alcanna Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer – issuer deemed to be no longer a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

Citation: *Re Alcanna Inc.*, 2022 ABASC 34

April 20, 2022

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

AND

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

AND

IN THE MATTER OF
ALCANNA INC.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2022/0172

2.2.5 Solar Income Fund Inc. et al.

File No. 2019-35

IN THE MATTER OF
SOLAR INCOME FUND INC.,
ALLAN GROSSMAN,
CHARLES MAZZACATO, AND
KENNETH KADONOFF

Timothy Moseley, Vice-Chair and Chair of the Panel

April 25, 2022

ORDER

WHEREAS on April 25, 2022, the Ontario Securities Commission held a hearing by videoconference to set a schedule for a sanctions and costs hearing in this proceeding;

ON HEARING the submissions of the representatives for Staff of the Commission, Solar Income Fund Inc., Allan Grossman, Charles Mazzacato and Kenneth Kadonoff;

IT IS ORDERED THAT:

1. Staff shall serve and file written evidence, if any, and submissions on sanctions and costs, by 4:30 p.m. on June 17, 2022;

2. the respondents shall each serve and file written evidence, if any, and submissions on sanctions and costs, by 4:30 p.m. on August 5, 2022;

3. Staff shall serve and file reply written evidence, if any, and reply submissions on sanctions and costs, if any, by 4:30 p.m. on August 26, 2022; and

4. the hearing with respect to sanctions and costs is scheduled for September 13, 2022, at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"Timothy Moseley"

2.2.6 Polo Digital Assets, Ltd.

File No. 2021-17

IN THE MATTER OF
POLO DIGITAL ASSETS, LTD.

M. Cecilia Williams, Commissioner and Chair of the Panel

April 25, 2022

ORDER

WHEREAS on April 25, 2022, the Ontario Securities Commission held a hearing by videoconference to consider a motion by Crawley MacKewn Brush LLP to be removed as counsel of record for the respondent, and a motion by Staff of the Commission for an order permitting Staff to serve and file an updated witness list on the respondent, and related relief;

ON READING the materials filed by the parties, and on hearing the submissions of the representative for Staff and for Crawley MacKewn Brush LLP, the respondent not appearing although properly served;

IT IS ORDERED THAT:

1. pursuant to Rule 21(2) of the Commission's *Rules of Procedure and Forms*, (2019) 42 OSCB 9714, Crawley MacKewn Brush LLP is removed as counsel of record for the respondent;

2. Staff is granted leave to, by no later than 4:30 p.m. on May 2, 2022:

   a. file and serve on the respondent an updated witness list that replaces the Staff investigator identified previously on the witness list (R.S.) with a new Staff investigator (J.W.); and

   b. serve a summary of J.W.'s anticipated evidence on the respondent;

3. at the merits hearing in this proceeding, Staff may call J.W. as a witness instead of R.S.; and

4. a further attendance in this proceeding is scheduled for May 3, 2022, at 11:30 a.m., by teleconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"M. Cecilia Williams"

2.2.7 Amin Mohammed Ali

File No. 2022-6

IN THE MATTER OF
AMIN MOHAMMED ALI

M. Cecilia Williams, Commissioner and Chair of the Panel

April 25, 2022

ORDER

WHEREAS on April 25, 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 Staff of MFDA requested an adjournment of this hearing until after the release of a decision and reasons on Mr. Ali's penalty hearing before the MFDA, currently scheduled to be heard on July 22, 2022;

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

IT IS ORDERED THAT this hearing is adjourned to September 8, 2022 at 10:00 a.m., by teleconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"M. Cecilia Williams"

2.2.8 Pretium Resources Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – the issuer ceases to be a reporting issuer under securities legislation – the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; the issuer is not in default of securities legislation except it has not filed certain continuous disclosure documents.

Applicable Legislative Provisions

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

April 22, 2022

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

AND

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

AND

IN THE MATTER OF
PRETIUM RESOURCES INC.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

1. the Filer is a reporting issuer in all jurisdictions of Canada;

2. pursuant to a statutory plan of arrangement under Division 5 of Part 9 of the *Business Corporations Act* (British Columbia), effective March 9, 2022 (the Effective Date), Newcrest Mining Limited (Newcrest), through its indirect

wholly-owned subsidiary Newcrest BC Mining Ltd. (Newcrest BC), acquired all of the issued and outstanding common shares of the Filer (the Filer Shares), all upon the terms and conditions of the arrangement agreement dated November 8, 2021, as amended on December 13, 2021 and January 19, 2022, among the Filer, Newcrest and Newcrest BC (the Arrangement);

3. pursuant to and subsequent to the Arrangement, all other securities of the Filer have either been settled or transferred to the Filer for applicable consideration and cancelled;

4. immediately upon completion of the Arrangement, on the Effective Date, the Filer became an indirect wholly-owned subsidiary of Newcrest;

5. the Filer Shares have been delisted from the Toronto Stock Exchange and the New York Stock Exchange;

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

7. 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;

8. 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;

9. 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;

10. the Filer is not in default of securities legislation in any jurisdiction other than its obligations to file on or before March 31, 2022 its annual information form, annual financial statements and related management's discussion and analysis for the annual period ended December 31, 2021 as required under National Instrument 51-102 – *Continuous Disclosure Obligations* and the related certification of applicable annual filings as required under National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (collectively, the Filings);

11. the requirements to file the Filings did not arise until after the completion of the Arrangement;

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

13. but for the fact that the Filer is in default for failure to file the Filings, the Filer would be eligible for the "simplified procedure" under NP 11-206.

Order

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

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

"Gordon Smith"
Acting Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2022/0102

2.2.9 Trilogy Mortgage Group Inc. and Trilogy Equities Group Limited Partnership – ss. 127(1), 127(8)

File No. 2018-21

IN THE MATTER OF
TRILOGY MORTGAGE GROUP INC. AND
TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP

Timothy Moseley, Vice-Chair and Chair of the Panel

April 25, 2022

ORDER
(Subsections 127(1) and 127(8) of the *Securities Act,* RSO 1990, c S.5)

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing in writing to consider a motion by staff of the Commission (**Staff**) to further extend, as against the respondent Trilogy Mortgage Group Inc., a temporary order issued by the Commission on April 16, 2018 (the **Temporary Order**) and most recently extended on April 24, 2019;

ON READING the submissions of Staff, no one participating on behalf of Trilogy Mortgage Group Inc.;

IT IS ORDERED, for reasons issued this day, that until the conclusion of the proceeding in the matter of Paramount Equity Financial Corporation and others (File No. 2019-12):

1. pursuant to subsection 127(8) and paragraph 2 of subsection 127(1) of the *Securities Act*, all trading in securities by or of Trilogy Mortgage Group Inc. shall cease; and

2. pursuant to subsection 127(8) and paragraph 3 of subsection 127(1) of the *Securities Act*, any exemptions contained in Ontario securities law shall not apply to Trilogy Mortgage Group Inc.

“Timothy Moseley”

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Paramount Equity Financial Corporation et al. – s. 127(1)

Citation: *Paramount Equity Financial Corporation (Re)*, 2022 ONSEC 7
Date: 2022-04-25
File No. 2019-12

IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
TRILOGY MORTGAGE GROUP INC.,
MARC RUTTENBERG,
RONALD BRADLEY BURDON AND
MATTHEW LAVERTY

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

Hearing:	March 10, 11, 12, 2020 July 17 and 24, 2020	
Decision:	April 25, 2022	
Panel:	Timothy Moseley Garnet W. Fenn Heather Zordel	Vice-Chair and Chair of the Panel Commissioner Commissioner
Appearances:	Mark Bailey Vivian Lee	For Staff of the Commission
	Matthew Laverty	Appearing on his own behalf
	No one appearing for Paramount Equity Financial Corporation, Silverfern Secured Mortgage Fund, Silverfern Secured Mortgage Limited Partnership, GTA Private Capital Income Fund, GTA Private Capital Income Limited Partnership, Silverfern GP Inc., Trilogy Mortgage Group Inc., Marc Ruttenberg, or Ronald Bradley Burdon	

REASONS AND DECISION OF THE MAJORITY (VICE-CHAIR MOSELEY AND COMMISSIONER FENN)

I. OVERVIEW

[1] This enforcement proceeding is about raising money from investors to fund mortgages.

[2] Staff of the Commission alleges that beginning in late 2014, the respondents raised almost $80 million from hundreds of investors. Staff alleges that the funds were raised illegally and then used fraudulently.

[3] The central allegation is that investors were told that their funds would be used to invest in residential second mortgages. Instead, the funds were used primarily to invest in what we will call **Multi-Residential Mortgages**. These mortgages were secured by properties that were to bear multi-residential units but that had not yet been developed, or that had been developed for other purposes and were to be redeveloped.

[4] There are ten respondents in this proceeding. For convenience, we will briefly describe here who they are and what their roles were. We expand on these descriptions as necessary later in our reasons.

[5] Staff's allegations center on Paramount Equity Financial Corporation (**Paramount**) and related entities. Paramount was a licensed mortgage broker and administrator. Its activities focused on two funds, through which investors funded mortgages. The two funds, both of which are also respondents, are:

a. Silverfern Secured Mortgage Fund (**Silverfern**) – The Silverfern fund is a trust. Most of the activity that is the subject of this proceeding relates to the Silverfern fund.

b. GTA Private Capital Income Fund (**GTA**) – The GTA fund is also a trust. There is little difference between the nature of the GTA fund and that of the Silverfern fund. The GTA fund was created because a group of investors wanted their funds to be invested only in residential second mortgages in the Greater Toronto Area. They did not want their funds commingled with those of other investors.

[6] Three of the respondents are individuals. Marc Ruttenberg, Ronald Burdon and Matthew Laverty were principals of the business. We refer to them as the **Principals**. Neither Ruttenberg nor Burdon appeared at the hearing to contest Staff's allegations. Laverty participated in the hearing. We will distinguish each individual's involvement from that of the others as appropriate.

[7] Three of the respondents are partnerships related to the two funds. The Silverfern fund's assets were invested in Silverfern Secured Mortgage LP (**Silverfern LP**), a limited partnership. Silverfern GP Inc. (**Silverfern GP**) is the general partner in the limited partnership. The GTA fund's assets were invested in GTA Private Capital Income LP (**GTA LP**), a limited partnership.

[8] In 2017, the Ontario Superior Court of Justice appointed a receiver over Paramount and the Silverfern and GTA entities. At the hearing before us, the receiver did not appear on behalf of any of those entities, although it did provide evidence in support of Staff's allegations.

[9] The last respondent is Trilogy Mortgage Group Inc. (**Trilogy**), which was created in early 2017, as the events leading up to the receivership were unfolding. Like Paramount, Trilogy was a licensed mortgage broker and administrator. Burdon and Laverty intended Trilogy to be what they described as a "soft landing" for investors who had made Paramount-related investments. They did preliminary work to get Trilogy ready, including by preparing marketing materials. However, Trilogy never raised any funds from investors.

[10] Trilogy did not appear at the hearing. As a result, Laverty was the only one of the ten respondents who participated in the hearing.

[11] Staff's allegations of improper conduct fall into five categories. We summarize them here, along with our conclusions.

a. *Engaging in the business of trading without being registered* – The promotion and sale of units of the Silverfern fund and the GTA fund were carried out by individuals and entities who did not have the required registration under Ontario securities law. While Trilogy ceased operations before it could sell any fund units, it did take preparatory steps toward that goal, *i.e.*, acts in furtherance of what it hoped would be eventual sales of fund units. We conclude that all respondents engaged in the business of trading without being registered, thereby contravening s. 25(1) of the *Securities Act* (the **Act**).[1]

b. *Illegal distributions* – Units of the Silverfern and GTA funds were sold without a prospectus, and no exemption from the prospectus requirement was available. We conclude that all respondents other than Trilogy were involved in illegal distributions of units of the two funds, thereby contravening s. 53(1) of the Act. We exclude Trilogy because it did not participate in any completed trades and therefore did not effect any distributions.

c. *Fraud* – Instead of the money raised being used as promised, it was used to invest in riskier mortgages, to benefit the Principals personally, and to pay Paramount's operating costs and other obligations. We conclude that all respondents other than Trilogy perpetrated a fraud in relation to securities through this conduct, thereby contravening s. 126.1(1)(b) of the Act. We exclude Trilogy because it did not participate in the raising of any funds from investors.

d. *Prohibited representations* – Staff alleges that Paramount, the Silverfern entities and the Principals breached s. 44(2) of the Act by making false or misleading statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship. Our findings about Staff's allegations of fraud include all of the elements required to show a contravention of s. 44(2). We decline to make an additional finding about this section.

e. *Misleading statements* – Staff alleges that Trilogy, and by extension the Principals, contravened s. 126.2(1) of the Act by making statements that they knew or ought reasonably to have known were misleading or untrue,

[1] RSO 1990, c S.5

and would reasonably be expected to have a significant effect on the market price or value of a security. Because Trilogy did not begin operations and was never involved in selling any particular security, we dismiss the allegation against Trilogy.

[12] Before turning to our analysis of the five categories of allegations, we begin with some additional background about the parties and the history of this and related proceedings.

II. BACKGROUND

A. Parties

[13] Paramount offered units in pooled mortgage investment funds (including the Silverfern and GTA funds) and direct mortgage investments. Ruttenberg and his wife were Paramount's sole shareholders and directors, although Ruttenberg's wife was not involved in Paramount's operations.

[14] All three Principals were officers of Paramount. Together, they ran the business, although their roles differed:

a. Ruttenberg was its Chief Executive Officer and principal broker. Ruttenberg focused on the sale of fund units to investors.

b. Burdon was Senior Vice President – Real Estate Development. Burdon brought Multi-Residential Mortgage projects to the business. In addition, he was responsible for verifying that project milestones were met before funds were advanced. Burdon was also supposed to review marketing material before it was sent to investors, although that process was not always followed.

c. Laverty was Director of National Sales and then Vice President – Sales and Strategy. While Laverty's title changed, his responsibilities did not. Laverty's focus was on finding opportunities for Paramount and related entities to be a lender. Like Burdon, Laverty was supposed to review marketing material before it was sent to investors. He did review some material, although he does not know the extent to which the process was followed.

[15] Most of the impugned conduct in this proceeding relates to the Silverfern fund, a trust established in September 2014. The three Principals were the trustees of the trust. They were the three signatories on the offering memorandum filed with the Commission and distributed to investors in connection with units of the Silverfern fund. Proceeds from the sale of fund units were used to purchase units of Silverfern LP, the limited partnership.

[16] Silverfern GP was primarily responsible for operating and managing Silverfern LP, although these duties were formally delegated to Paramount. Ruttenberg and Burdon were directors, officers and indirect controlling shareholders of Silverfern GP. We refer to the Silverfern fund, Silverfern LP, and Silverfern GP collectively as the **Silverfern entities**.

[17] Conduct relating to the GTA fund was similar but on a smaller scale. The GTA fund was a trust established in 2015. All three Principals were trustees of the trust. The fund invested in units of GTA LP. As with the Silverfern fund, management responsibilities of the GTA fund were formally delegated to Paramount.

[18] Initially, Burdon and Laverty were content to let Ruttenberg run the business while they focused on their own responsibilities. In the spring of 2016, Burdon and Laverty began to have concerns about how Ruttenberg was running Paramount. They tried to take control, but Ruttenberg was unwilling to relinquish control. Burdon and Laverty took a more active role in the oversight of Paramount's activities.

[19] One result of the difficulties at Paramount was the creation of Trilogy. Its activities were never more than minimal and preliminary. None of the Principals was formally a director or officer of Trilogy. However, Burdon and Laverty were involved in its creation and its short-lived activities.

B. History of this and related proceedings

[20] The respondents' activities have resulted in three inter-related proceedings.

[21] The first is the application brought by the Commission in the Ontario Superior Court of Justice, seeking the appointment of a receiver over Paramount and related entities. The court appointed the receiver in 2017.[2]

[22] The second proceeding relates to Trilogy. In 2018, Staff learned that the Principals had formed Trilogy and that they intended to engage in similar conduct. At Staff's request, the Commission issued a temporary order[3], which required that Trilogy cease trading any securities and provided that any exemptions contained in Ontario securities law would not apply

[2] *Ontario Securities Commission v Paramount Equity Financial Corporation et al* (June 7, 2017), Toronto CV-17-11818-00CL (Ont Sup Ct Commercial List) and *Ontario Securities Commission v Paramount Equity Financial Corporation et al* (August 2, 2017), Toronto CV-17-11818-00CL (Ont Sup Ct Commercial List)

[3] *Trilogy Mortgage Group Inc (Re),* (2018) 41 OSCB 3437

to Trilogy. The Commission extended that temporary order several times, most recently until the conclusion of the merits hearing in this proceeding. In a separate decision[4] issued simultaneously with these reasons, the Commission has further extended that temporary order until the conclusion of this proceeding.

[23] This third proceeding arises from Staff's 2019 filing of a Statement of Allegations against the respondents. The original Statement of Allegations named other related corporations that have since been removed as respondents.

III. ANALYSIS

A. Introduction

[24] We turn now to consider the five categories of allegations described above.

[25] In our analysis that follows, we sometimes use the term "the respondents" when describing activities carried out by some but not all the respondents in this proceeding. We do so for convenience. We are mindful of the different entities involved, and we draw distinctions where necessary.

[26] As we review each category of allegations, and particularly as we consider the three Principals' involvement, we will refer as necessary to s. 129.2 of the Act. That section provides that where a company or person has not complied with Ontario securities law, a director or officer of that company or person shall be deemed also to have not complied with Ontario securities law if the director or officer authorized, permitted, or acquiesced in the company or person's non-compliance.

[27] That section of the Act speaks about a "company or person" and a "director or officer". In this case, it is important to note that in s. 1(1) of the Act, the word "person" is defined to include a trust, and the word "director" means "a director of a company… or occupying a similar position for any person." It follows that a trustee of a trust is subject to s. 129.2 of the Act in the same way as is a director of a company.

B. Engaging in the business of trading without being registered

1. Introduction

[28] We begin with Staff's allegation that the respondents engaged in the business of trading without being registered. Section 25 of the Act provides that if a person or company is to engage in the business of trading in securities, that person or company must be registered under Ontario securities law.

[29] None of the respondents was ever registered. The only issue, therefore, is whether the respondents engaged in the business of trading. We conclude that they did.

[30] Staff alleges that the respondents engaged in the business of trading by:

a. raising more than $70 million from more than 500 investors in the Silverfern fund;

b. raising more than $5 million from six investors in the GTA fund;

c. using a network of referral agents to sell units of those two funds to investors; and

d. taking preparatory steps concerning Trilogy.

[31] The meaning of "engaged in the business of trading in securities" is addressed in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. That Companion Policy suggests criteria that assist in determining whether a person or company is engaged in the business of trading in securities.

[32] The Companion Policy is not part of Ontario securities law and therefore is not directly binding on the respondents. However, the "business purpose" test in s. 1.3 (also referred to as the "business trigger" test), on which Staff relies, has been adopted by the Commission in other proceedings[5] and reflects a test that the Commission had earlier applied with respect to advisers.[6] The test includes the following factors, which are relevant in this matter:

a. trading with repetition, regularity or continuity, whether or not that activity is the sole or even primary endeavour;

b. directly or indirectly soliciting securities transactions;

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

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4 *Trilogy Mortgage Group Inc (Re),* 2022 ONSEC 8

5 *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40, (2020) 43 OSCB 35 (***Money Gate***) at para 145

6 See, *e.g.*, *Maguire (Re)*, (1995) 18 OSCB 4623; *Momentas Corporation (Re)*, (2006) 29 OSCB 7414 (***Momentas***) at paras 35-65

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

[33] We adopt the test and will assess each of these factors in turn.

2. Trading with repetition, regularity and continuity

[34] We begin by determining whether the impugned trading happened repeatedly, regularly or continuously. We agree with Staff that the trading did so in this case.

[35] Paramount sold units of the Silverfern fund continuously from September 2014 to November 2016. It sold units frequently, making 804 distributions of units to approximately 500 investors. These facts easily satisfy this element of the test.

[36] The sale of GTA fund units happened on a smaller scale. There were only 20 distributions of GTA fund units to only six investors following the inception of the GTA fund in May 2015. However, it is appropriate to treat the GTA fund distributions as part of the continuing course of conduct for purposes of the business trigger test.

3. Directly or indirectly soliciting securities transactions

[37] We next consider whether the respondents were directly or indirectly soliciting securities transactions.

[38] There can be no doubt that they were.

[39] The respondents created promotional materials, an offering memorandum, other documents, and websites, all designed to solicit investors. They paid referral agents for recruiting new investors.

4. Receiving, or expecting to receive, compensation from trading

[40] Next, we determine whether those who engaged in the trading activity received, or expected to receive, compensation for doing so.

[41] Again, there is no doubt that this was true. Ruttenberg received commissions for referring investors to the Silverfern fund. Other referral agents who raised funds from investors were also compensated for their efforts.

[42] Paramount records indicate that Laverty received a small sum for commissions, although he denies this. We address this discrepancy below in our analysis of Staff's allegations of illegal distributions. However, even if we were to accept Laverty's testimony, it would not change our conclusion on this point for the purposes of the business trigger test.

5. Engaging in activities similar to those of a registrant

[43] Finally, we consider whether the respondents' activities were similar to those of a registrant. We conclude that they were.

[44] When funds are raised properly in the exempt market, a registered exempt market dealer will carry out many functions. These functions include soliciting members of the public to be investors, explaining the potential investment to some of those prospective investors, and meeting with investors to complete and sign subscription documents.

[45] In this case, the respondents did not engage a registered dealer. Instead, they carried out the tasks themselves. Ruttenberg and referral agents met and communicated with investors, and either completed and witnessed subscription documents themselves or helped investors and others do so. The respondents engaged in the very activities that a registrant ought to have carried out.

[46] As the Commission has previously concluded, the fact that an issuer carries on a core or some other business does not preclude the conclusion that the issuer also engaged in the business of trading in securities.[7] The Superior Court of Justice (Divisional Court) reached a similar conclusion in a case involving a respondent who engaged in the business of advising with respect to securities:

> There is nothing in this legislation to suggest that the business of advising must be the only business in which a person must be involved in order to trigger the requirement of registration.[8]

[47] It is undisputed that even though Ruttenberg was CEO of Paramount, he focused his time and efforts on the sale of fund units to investors, *i.e.*, on trading. As the Commission has previously found, a key consideration in determining whether

[7] *Momentas* at para 56
[8] *Costello (Re)*, 2004 CanLII 2651 (ON SCDC) at para 62, affirming (2003) 26 OSCB 1617

a respondent entity has engaged in the business of trading is the extent to which management's activities were allocated to the raising of capital.[9]

[48] Other Commission decisions on this topic have involved situations where the entity's emphasis was more on fundraising than on a core business unrelated to trading. However, the circumstances of this case raise the same investor protection concerns. The proportion of management resources devoted to trading, on an ongoing basis, requires the conclusion that the respondent entities were engaged in the business of trading, a proposed conclusion that was not contested by those entities, who failed to appear at the hearing.

6. Distinguishing features of the roles of Laverty and Trilogy

[49] Collectively, the respondents' conduct easily satisfies all four elements of the business trigger test. Before we conclude our analysis about whether this conduct implicates all respondents, we must make specific comments about Laverty and Trilogy.

(a) Laverty

[50] Laverty testified that he was responsible for developing Paramount's mortgage business from the time he began with Paramount in early 2014. Relying in part on his pre-existing relationships in the financial services industry, he found opportunities for Paramount to lend funds.

[51] Laverty was not directly involved in raising funds from investors. In mid-2014, when Ruttenberg told Laverty that Ruttenberg wanted to create a fund to support Paramount's growth, Laverty introduced Burdon to Ruttenberg.

[52] Each of Burdon and Ruttenberg indirectly owned 50% of Silverfern GP. Laverty neither had an ownership interest in Silverfern, nor did he meet with potential or existing investors. However, as we have noted above, Laverty was one of the three trustees of the Silverfern fund, and he signed the offering memorandum.

[53] Understandably, Laverty sought at the hearing to distance himself from the respondents' conduct as it related to investor funds. It is true that meetings with potential or existing investors were conducted by Ruttenberg and people reporting to him, and not by Laverty. However, that cannot relieve Laverty of responsibility for the activities of the Silverfern fund. The fund was engaged in the business of trading its securities. As one of the fund's three trustees and as a signatory to the offering memorandum, Laverty was similarly engaged, even though he may not have realized it at the time. He shared responsibility for ensuring that the fund complied with its regulatory obligations, and he permitted or at least acquiesced in the fund's non-compliance.

(b) Trilogy

[54] As for Trilogy, we repeat our finding above that it was essentially a continuation of Paramount, except that Ruttenberg was excluded. Even though it ceased operations before it sold any fund units, it took preparatory steps toward that goal. Those steps were acts in furtherance of hoped-for trades. The definition of "trade" in s. 1(1) of the Act includes acts in furtherance of trades. Trilogy's steps were, therefore, part of a course of conduct that was the business of trading.

7. Conclusion on the business of trading without registration

[55] Ruttenberg, the CEO and leader of a small senior management group, focused his efforts on trading, *i.e.*, selling fund units to investors. He did this not on his own personal behalf but on behalf of Paramount and the funds of which he sold units. He was a directing mind of those entities and caused them to engage in the business of trading without being registered.

[56] We therefore conclude that all seven respondent entities (Paramount, the three Silverfern entities, the two GTA entities, and Trilogy) engaged in the business of trading without being registered to do so. They thereby contravened s. 25(1) of the Act.

[57] We reach the same conclusion about the three Principals in respect of the Silverfern fund. As officers of Paramount and as trustees of the fund, they at least acquiesced in the fund's trading. Therefore, by s. 129.2 of the Act, they are deemed to have contravened s. 25(1) of the Act.

[9] *Momentas* at para 54

C. Illegal distribution

1. Introduction

[58] We turn next to Staff's allegation of illegal distribution. We agree with Staff's submission that units of the Silverfern fund and GTA fund were distributed without a prospectus and that the respondents have not demonstrated that they were entitled to any exemptions from the prospectus requirement.

[59] However, because Trilogy was not involved in any completed trades, we disagree with Staff's submission that Trilogy also engaged in illegal distribution.

[60] Section 53(1) of the Act prohibits the distribution of securities unless a prospectus has been filed and a receipt for the prospectus has been issued. In this case, no prospectus was filed. All sales of the fund units were "distributions" because those units had not previously been issued.[10]

[61] Ontario securities law does provide numerous exemptions from this requirement. However, where a respondent seeks to rely on an exemption, the respondent bears the burden of establishing the respondent's entitlement to the exemption.[11]

[62] The burden of compliance does not rest on the investor. When the availability of the exemption claimed depends on the investor's financial circumstances, part of the respondent's obligation is to show that they carried out sufficient due diligence to confirm the accuracy of those financial circumstances. That due diligence must include a "serious factual inquiry in good faith" and a "look behind the boilerplate language of a subscription agreement". The respondent cannot simply rely on the investor's representation that the investor meets the applicable criteria.[12]

[63] Other than Laverty, none of the respondents appeared at the hearing, so no argument was put forward by those respondents that they were entitled to an exemption or that they had conducted sufficient due diligence. As for Laverty, he limited his submissions to his role in the respondents' conduct. He made no submissions about exemptions from s. 53(1) of the Act.

[64] However, we note that when the fund units were distributed to investors, the respondents did file reports under National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**), by which they purported to rely on four different exemptions:

a. for approximately 71.4% of the 804 Silverfern distributions, the respondents purported to rely on the "accredited investor" exemption in s. 2.3 of NI 45-106;

b. for approximately 12.6% of the Silverfern distributions, the respondents purported to rely on the "family, friends and business associates" exemption in s. 2.5 of NI 45-106;

c. for approximately 12.3% of the Silverfern distributions, the respondents purported to rely on the "offering memorandum" exemption in s. 2.9(2.1) of NI 45-106; and

d. for approximately 1.4% of the 804 Silverfern distributions, the respondents relied on the "minimum amount investment" exemption in s. 2.10 of NI 45-106.

[65] We address in turn each of the first three exemptions that appeared on the respondents' reports of exempt distribution.

2. Accredited investor exemption

[66] The accredited investor exemption, upon which the respondents purported to rely with respect to almost three-quarters of the distributions, according to the reports filed, prescribes certain income and asset tests. The respondents supplied no evidence that the investors in respect of whom this exemption was claimed actually met those income and asset tests, despite what was implied by the filed reports. Moreover, testimony from investor witnesses showed that at least some of the supposedly accredited investors were not.

[67] The respondents have not met their burden of showing that they were entitled to the benefit of the accredited investor exemption in any instance.

3. Family, friends and business associates exemption

[68] The family, friends and business associates exemption is available where the person who purchases the security falls under one of the categories listed in s. 2.5(1) of NI 45-106. Those categories include "a close personal friend of a director, executive officer or control person of the issuer".

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10 Act, s 1.1, "distribution"
11 *Meharchand (Re), 2018 ONSEC 51, (2018) 41 OSCB 8434* (***Meharchand***) at para 95
12 *York Rio Resources Inc (Re),* 2013 ONSEC 10, (2013) 36 OSCB 3499 at para 110

[69] One investor purportedly fell within this category because she was a close personal friend of Ruttenberg's. In fact, she was not a close friend and had never met him; rather, she was a relative of another investor who had met Ruttenberg only once and was also falsely represented to be Ruttenberg's close personal friend.

[70] Further, s. 2.5(2) of NI 45-106 provides that the family, friends and business associates exemption is unavailable where a commission or finder's fee is paid to a director, officer or control person of the issuer or an affiliate of the issuer.

[71] For eight of the instances where the Silverfern fund purported in its filings to rely on this exemption, Ruttenberg received a commission. Ruttenberg was a trustee of the fund and was thus a control person. The exemption was therefore unavailable in these instances.

[72] For two instances, financial records of the Silverfern fund and related entities suggest that Laverty received commissions totaling almost $3,000. Laverty denies this. He testified that the commissions went directly to his sister and to a friend who was identified in the records as the investor. The records are not primary source documents, such as a cheque or other bank record. We are prepared to give Laverty the benefit of the doubt on this point. We do not conclude that Laverty received the commissions.

[73] In any event, the respondents have failed to demonstrate that they were entitled to the family, friends and business associates exemption for the approximately 100 distributions in respect of which that exemption was claimed.

4. Offering memorandum exemption

[74] The offering memorandum exemption is available where:

a. an offering memorandum is delivered to the purchaser;

b. the purchaser provides a signed risk acknowledgment in prescribed form; and

c. the purchaser's acquisition cost of all securities in the preceding 12 months does not exceed a prescribed limit that depends on the purchaser's individual circumstances, but which limit may be as low as $10,000.

[75] In the reports of exempt distribution that they filed, the respondents purported to rely on the offering memorandum exemption with respect to approximately 100 of the 804 Silverfern distributions. However, the respondents did not meet their burden of demonstrating that the purchasers qualified according to the applicable financial criteria, or that offering memoranda were in fact delivered and proper risk acknowledgments obtained. We cannot find that the respondents were entitled to the benefit of the offering memorandum exemption.

5. Trilogy

[76] Staff alleges that Trilogy engaged in illegal distribution. We disagree.

[77] The definition of "trade" includes acts in furtherance of a trade. Staff argues that for this reason, Trilogy's promotional activities were trades, and since no prospectus was filed for any sales that Trilogy was hoping to effect, these acts in furtherance of those anticipated sales were illegal distributions.

[78] Staff provided no authority for the proposition that uncompleted sales of securities can constitute the basis for a finding of illegal distribution of those securities. We are not prepared to make that finding here. Such a finding would imply that a final prospectus must be filed, and a receipt obtained, before any promotional activities can be carried out.

[79] Further, where an exemption to the prospectus requirement depends on the identity and circumstances of the purchaser of securities, it is impossible to determine whether that exemption is available in respect of purchasers who do not yet exist. The finding Staff asks us to make would unfairly expose legitimate issuers, who fully intend to rely properly on available exemptions, to a burden that the issuers could not possibly overcome.

[80] Accordingly, we dismiss Staff's allegation that Trilogy engaged in an illegal distribution.

6. Conclusion on illegal distribution

[81] Distributions of units of the Silverfern and GTA funds were made without a prospectus. The respondents did not meet their burden of demonstrating their entitlement to exemptions from that requirement. We therefore conclude that substantially all the distributions of units of those two funds contravened s. 53(1) of the Act, and that each of the respondent entities except Trilogy contravened that provision.

[82] As trustees of the Silverfern fund and as signatories to the fund's offering memorandum, and as trustees of the GTA fund, all three Principals authorized the illegal distributions by the Silverfern and GTA funds and are therefore deemed to have contravened s. 53(1) of the Act with respect to distributions of the fund units, by s. 129.2 of the Act.

D. Fraud

1. Introduction

[83] We turn now to Staff's allegations of fraud. Staff makes these allegations against Paramount, the three Silverfern entities (the fund, the general partner, and the limited partnership) and the Principals.

[84] The alleged misconduct falls into three categories:

a. misrepresentations to investors in the Silverfern fund, *i.e.*, use of the raised funds in a manner not contemplated by the offering memorandum or various materials provided to investors, including marketing materials and subscription agreements;

b. hidden self-dealing by the Principals; and

c. misuse of an account established for pre-paid funds.

[85] Before we address these three categories, we review the legal framework relating to fraud under the Act.

2. Legal framework regarding fraud

[86] Section 126.1(1)(b) of the Act prohibits securities fraud. In this case, to prove that a respondent contravened that provision, Staff must show that the respondent:

a. directly or indirectly engaged or participated in an act, practice or course of conduct relating to the units of the Silverfern fund; and

b. knew, or ought reasonably to have known, that the act, practice or course of conduct would perpetrate a fraud on any person or company.

[87] There is no question that Paramount, the Silverfern entities and the Principals (to a greater or lesser extent) engaged in a course of conduct relating to units of the Silverfern fund. The question is whether each respondent knew, or ought reasonably to have known, that his or its course of conduct would perpetrate a fraud on any person or company.

[88] A fraud has two elements:

a. the *actus reus*, or primarily objective element, which must consist of:

i. an act of deceit, falsehood, or some other fraudulent means; and

ii. deprivation caused by that act; and

b. the *mens rea*, or subjective element, which must consist of:

i. subjective knowledge of the act referred to above; and

ii. subjective knowledge that the act could have as a consequence the deprivation of another.[13]

[89] We will now apply this framework to the three categories of fraud alleged by Staff. For all three categories, when we analyze the subjective element we focus on the Principals since they are individuals, who can more readily be said to "know" something, unlike an entity such as Paramount or the Silverfern fund. Having said that, in the circumstances of this case, any finding we make about what the Principals knew or ought to have known applies equally to Paramount and the three Silverfern entities. This is so because the Principals were the directing minds of those entities.[14]

3. Misrepresentations to investors in the Silverfern fund

[90] The first category comprises Staff's allegations that the representations made to investors in the Silverfern fund were false.

[91] Term sheets attached to subscription agreements stated explicitly that the Silverfern fund would invest in second mortgages on residential properties. There was no mention of mortgages for other purposes.

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[13] *Quadrexx Hedge Capital Management Ltd (Re)*, 2017 ONSEC 3, (2017) 40 OSCB 1308 (***Quadrexx***) at paras 18-19; affirmed by the Divisional Court in *Quadrexx Hedge Capital Management Ltd. v Ontario Securities Commission,* 2020 ONSC 4392; *R v Théroux*, [1993] 2 SCR 5 (***Théroux***) at para 27, cited in *Richvale Resource Corp (Re)*, 2012 ONSEC 13, (2012) 35 OSCB 4286 at para 102; *Meharchand* at para 119

[14] *Quadrexx* at para 25

[92] Marketing materials used to promote the Silverfern fund described the investment as being safe and dependable, and used terms such as “predictable, steady returns”, “low volatility”, “high-returning annuity/GIC alternative”, “capital preservation” and “stable returns”.

[93] The Silverfern fund offering memorandum expressly contemplated that the fund would invest in units of Silverfern LP. The fund's trustees were entitled to retain “a portion of the proceeds” for “operational funds, general trust purposes and for permitted Unit redemptions”.

[94] Silverfern LP was to use the proceeds from the sale of its units “to directly or indirectly, invest its funds in second residential mortgages of up to 85% loan to value and in certain instances in higher ratio residential mortgages, provided that such higher ratio mortgages shall not exceed fifty percent (50%) of [Silverfern LP]’s total mortgage portfolio.”

[95] Elsewhere, the offering memorandum contemplated investment in “Commercial First, Second Mortgages and Third Mortgages including land being acquired for residential development and construction”, but stated that the fund primarily invested in residential second mortgages.

[96] Investors’ funds were not used as promised in the term sheets, marketing materials or offering memorandum. Only $20 million of the $70 million raised by the Silverfern fund was used for residential second mortgages. The remaining $50 million funded higher-risk mortgages for undeveloped land or for the redevelopment of land to new uses.

[97] The portfolio of Multi-Residential Mortgages did not resemble what was promised to investors. In some instances, loan-to-value ratios far exceeded 100%, let alone the 85% figure that was disclosed. Not all mortgages were properly registered. Paramount exercised limited, if any, oversight over costs associated with development of the subject properties. The portfolio was highly concentrated in loans to entities controlled by one individual. All these factors contributed to a significantly higher risk than investors had bargained for.

[98] The objective element of the fraud allegations is clearly established. Even if the respondents decided to change course following issuance of the offering memorandum (a possibility that was neither argued by respondents nor supported by any evidence, and about which we cannot speculate), it would have been incumbent on the respondents to modify their disclosure and representations (*e.g.*, by filing an amended offering memorandum and by amending marketing material and subscription forms) so that existing and future investors were properly informed. Laverty, the only respondent who contested Staff’s allegations, explicitly admitted that this ought to have been done.

[99] Without any such modifications, the representations persisted and they quickly, if not immediately, became false. The investors suffered a deprivation in that their funds were used in a way that was not authorized and that exposed them to greater risk.

[100] That brings us to the subjective element. Its first component is satisfied because the Principals knew what the funds were being used for. We must still determine whether the second component is satisfied; *i.e.*, did the Principals know, or ought they reasonably to have known, that those uses could result in a deprivation of the investors? We conclude that they did know.

[101] The Principals, all three of whom were trustees of the Silverfern fund, signed the offering memorandum. All three knew or ought reasonably to have known that investors’ funds were not being invested as promised in the offering memorandum.

[102] Laverty submits that he did not have timely or complete access to Paramount’s financial records or status. Even if that is true, it does not change the fact that the offering memorandum, which Laverty signed, promised that investor funds would be used in a manner that differed from how the funds were actually used; nor does it change the fact that Laverty knew that some of the funds were being used for Multi-Residential Mortgage projects.

[103] Laverty concedes that the mortgage portfolio was materially different from what was represented to investors. However, he submits that Ruttenberg and others, but not Laverty himself, were responsible for disclosing this difference to investors.

[104] We cannot accept his submission. It is at odds with his admission on cross-examination that his responsibility as trustee was to oversee the funds, whether or not he had difficulties carrying out that responsibility.

[105] Laverty’s submission on this issue also poignantly highlights the pitfalls of becoming a director, officer or trustee of an entity that engages in the public solicitation of investor funds. Laverty was a trustee of the Silverfern fund, and he signed the offering memorandum. Those roles are not mere formalities. They carry with them important obligations. We believe that Laverty was sincere in his efforts and honest in his intentions. But he took on a responsibility that he did not fully understand.

[106] As a trustee of the fund and as a signatory to the offering memorandum, Laverty assumed the burden of the representations in that document. Those representations proved to be false. As the Supreme Court of Canada has held, where someone tells a lie, knowing that some other person would act on that lie, and thereby puts that other person's property at risk, "the inference of subjective knowledge that the property of another would be put at risk is clear."[15]

[107] We acknowledge Laverty's testimony and submissions about the limited degree of his control over the respondent entities' affairs. Even if that is true, it was open to Laverty to take definitive steps (up to and including resignation) to ensure that he was not part of an enterprise that was breaching its regulatory obligations on an ongoing basis. He did not, and by continuing his involvement as an officer and trustee, he acquiesced in the entities' activities.

[108] We therefore find that Paramount, the Silverfern entities and all the Principals contravened s. 126.1(1)(b) of the Act through the misrepresentations in the offering memorandum.

4. Hidden self-dealing by the Principals

[109] The second category of fraud allegations relates to benefits that flowed to the Principals through a group of companies, the parent of which was Paramount Alternative Capital Corporation (**Paramount Alternative**). That parent company was owned as to 40% by each of Ruttenberg (jointly with his wife) and Burdon, and as to 20% by Laverty, all through holding companies.

[110] The benefits that flowed to the Principals included ownership interests in Multi-Residential Mortgage projects, as well as substantial fees paid to Paramount Alternative or to special purpose corporations owned by it. We begin by reviewing the ownership interests in Multi-Residential Mortgage projects.

(a) Ownership interests in Multi-Residential Mortgage projects

[111] Paramount Alternative owned a number of special purpose corporations, each of which was set up in respect of a particular Multi-Residential Mortgage project. Each special purpose corporation, in turn, owned an interest (usually either 50% or 100%) in that project's borrower.

[112] Because of this structure, each of the Principals had an indirect ownership interest in these Multi-Residential Mortgage projects.

[113] The marketing materials given to investors did not disclose that the Principals owned or would come to own interests in the Multi-Residential Mortgage projects.

[114] The offering memorandum provided some disclosure about possible conflicts of interest arising from ownership interests. However:

a. the disclosure applied only to situations where the mortgage loan was to a Paramount-related corporation, as opposed to an unrelated third party, and there were only two such instances among the many loans provided to third parties; and

b. the disclosure applied only to corporations owned by Ruttenberg and Burdon.

[115] The objective element of the fraud is clearly established. Investor funds were used in a way that was not disclosed, and to the personal benefit of the Principals instead of to the benefit of investors. This unauthorized diversion of funds constitutes "other fraudulent means".[16]

[116] We also conclude that the subjective element is satisfied for all three Principals. The entire Paramount Alternative structure was premised on the three Principals having ownership interests in the twenty special purpose corporations. None of the Principals, including Laverty, offered any evidence or argument to rebut Staff's allegations about the ownership interests.

(b) Fees paid to Paramount Alternative or to special purpose corporations owned by it

[117] The Principals, through their holding companies, issued invoices for upfront fees regarding the Multi-Residential Mortgages. The invoices contained no detail to substantiate the fees. However, François Collat, Paramount's former Chief Financial Officer, testified that he understood that the Principals regarded the fees as payable for work performed in arranging the mortgages.

[118] The fees were substantial. For 2015 and 2016 together, the Principals submitted invoices totaling $3,871,427. Of that amount, at least $1.72 million is traceable through bank and other records to the Principals' corporations. Approximately

[15] *Théroux* at para 29
[16] *Théroux* at para 18; *Meharchand* at para 120

$1.32 million came from the Silverfern fund. Some portion of the fees was held back to cover expenses charged to the special purpose corporations. The percentage held back changed over time, ranging from zero to 20%.

[119] Fees were split among the three Principals in proportion to their ownership interest in Paramount Alternative (40% for each of Ruttenberg and 20% for Laverty). Laverty confirmed that he received 20% of the fees, less the amount held back. However, he characterized the payments as legitimate brokerage fees.

[120] We found the evidence about the fees to be inconclusive. The Silverfern fund offering memorandum disclosed that Paramount Alternative originated mortgages for the fund on behalf of Paramount pursuant to a referral agreement. The offering memorandum refers to a "Referral Agreement" in a way that suggests that it is a defined term. However, the offering memorandum contains no definition of "Referral Agreement".

[121] While we accept Staff's submission that the marketing materials did not disclose these referral fees, the offering memorandum does contain language that might authorize them. Based on the evidence and submissions before us, we cannot conclude on a balance of probabilities that the fees were unauthorized.

(c) Conclusion about hidden self-dealing

[122] We find that the Principals contravened s. 126.1(1)(b) of the Act by obtaining undisclosed ownership interests in Multi-Residential Mortgage projects. We dismiss Staff's allegation of a contravention related to the referral fees.

5. Misuse of an account for pre-paid funds

[123] The final category of fraud alleged by Staff relates to an account established to receive and disburse pre-paid funds. Two types of payments were paid into this account (the **Pre-Paid Account**), as reflected on term sheets for individual mortgage loans:

a. interest contingency, or pre-paid interest payments; and

b. interest rate buy-down payments.

[124] The interest contingency component was necessary because many Multi-Residential Mortgage projects would not produce sufficient income to cover periodic interest obligations, at least in the early stages. When the Silverfern fund made a mortgage advance to the borrower, an amount was withheld to represent interest payments for a specified period. As each periodic interest payment was earned, the appropriate amount was to be withdrawn from the Pre-Paid Account and paid to the Silverfern fund.

[125] Interest rate buy-down payments occurred when a borrower wished to obtain a lower interest rate than was otherwise available and was willing to make an up-front payment to "purchase" that lower rate. That up-front payment was effected as a reduction in the amount advanced.

[126] Paramount did not always use the Pre-Paid Account funds as intended. Instead, Paramount used some of the funds to cover its operating costs. It also used some funds to repay certain loans that: (i) were related to Paramount and Ruttenberg but were unrelated to the Silverfern fund; (ii) put Paramount into a negative cash flow position; and (iii) pre-date the material time in this proceeding.

[127] When Collat, who was Paramount's CFO at the time, became aware of this practice, he told Burdon and Laverty about it. Laverty testified that this discussion occurred in April 2016. Collat initially testified that it happened in early 2015, although when confronted with Laverty's recollection, Collat conceded that it might have been 2016. Laverty attributed his confidence in the timing to a connection between the discussion and certain personal events in his and Burdon's lives that month. It is more likely than not that the discussion occurred in 2016.

[128] Burdon and Laverty spoke to Ruttenberg about the practice. Following that discussion, the Principals worked to find a substitute source of funds to cover Paramount's cash flow deficit.

[129] In late May 2016, an agreement was entered into that acknowledged the approximately $8 million owed by Paramount, Ruttenberg and his wife to Paramount Alternative, the Silverfern fund and the Silverfern general partner. The parties to the agreement were Paramount, Ruttenberg, his wife, Paramount Alternative, several special purpose corporations related to Paramount Alternative, the Silverfern general partner, and Aleria Capital Inc. (**Aleria**), which was a holding company owned by Burdon. The agreement was signed by Ruttenberg (personally and for Paramount) and by his wife, and by Burdon on behalf of all the other corporate parties to the agreement.

[130] Under the agreement, Aleria (Burdon's holding company) committed to lend working capital to Paramount and the Ruttenbergs in order to restructure Paramount's business. The loans were to be by way of a $1.75 million "1st mortgage facility" and a $1m "revolving line of credit".

[131] A few days after the date of the agreement, $1.75 million was deposited into the Pre-Paid Account. However, the funds did not come from Aleria, as contemplated by the agreement. Instead, they originated from the Silverfern fund. They were then passed through a corporation controlled by an individual who controlled most of the Multi-Residential Mortgage borrowers, before ending up in the Pre-Paid Account.

[132] In addition to that $1.75 million, the Silverfern fund continued to be the source of payments out of the Pre-Paid Account to cover Paramount's operating expenses and loan obligations. From May 2016 to June 2017, those payments totaled more than $3.2 million.

[133] Each time the Pre-Paid Account was used this way, Collat sought approval by sending an email to Burdon, with a copy to Laverty. Burdon routinely gave his approval. There is no evidence that Laverty ever responded, but neither did he object or attempt to stop the practice.

[134] Again, the objective element of fraud is established. Money from the Silverfern fund was diverted for purposes that improperly benefited Paramount and Ruttenberg, and that were not disclosed to investors.

6. Conclusion regarding Staff's fraud allegations

[135] We conclude that the respondents contravened s. 126.1(1)(b) of the Act in the following ways:

a. Paramount, the Silverfern entities and the Principals misrepresented the use to which investors' funds would be put. Because the Principals themselves made these misrepresentations, including by way of the Silverfern offering memorandum, we need not address s. 129.2 of the Act; *i.e.*, the question of whether they authorized, permitted or acquiesced in the entities' misrepresentations.

b. The Principals improperly acquired ownership interests in Multi-Residential Mortgage projects. Again, because the Principals engaged in this conduct directly, we need not address s. 129.2 of the Act.

c. Paramount and the Silverfern entities misused the Pre-Paid Account. Ruttenberg and Burdon authorized this misuse. Laverty acquiesced in it. All three Principals are deemed to have contravened s. 126.1(1)(b) of the Act, as contemplated by s. 129.2.

E. Prohibited representations

[136] The fourth category of Staff's allegations refers to s. 44(2) of the Act, which prohibits the making of false or misleading statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship.

[137] We have already found that the respondents made false or misleading statements to investors, and that the respondents' conduct was fraudulent when examined against those statements. Even if the investors could be said to be in a trading relationship with one or more of the respondents, which is not clear, a finding under s. 44(2) would share a common factual background with that underlying the fraud allegations. We therefore decline to make a finding regarding the s. 44(2) allegation.

F. Misleading statements by Trilogy

[138] The fifth and final category of allegations relates to Trilogy. Staff alleges that Trilogy, and by extension the Principals, contravened s. 126.2(1) of the Act, which prohibits a person or company from making a statement that the person or company knows, or ought reasonably to know, is misleading and would reasonably be expected to have a significant effect on the market price of a security.

[139] All efforts related to Trilogy were preliminary. Trilogy prepared marketing materials and set up a website, but did little else. Undoubtedly, Burdon and Laverty intended to establish an issuer of securities. They did not get that far. There was no market price of a security to be affected by any misstatements.

[140] We dismiss these allegations against Trilogy.

G. Conduct contrary to the public interest

[141] In addition to specifically alleged contraventions of the Act, Staff alleges in numerous instances in the Statement of Allegations that the impugned conduct is "contrary to the public interest".

[142] As the Commission has previously noted,[17] the words "contrary to the public interest" do not appear in the Act. In this proceeding, Staff has identified no conduct, other than the alleged contraventions of the Act, that would warrant an order under s. 127 of the Act. We dismiss these allegations.

IV. CONCLUSION

[143] We have found that:

a. all seven respondent entities engaged in the business of trading without being registered to do so, contrary to s. 25(1) of the Act, and all three Principals are deemed to have similarly contravened that section, pursuant to s. 129.2 of the Act;

b. all respondent entities except Trilogy distributed securities without a prospectus, contrary to s. 53(1) of the Act, and all three Principals are deemed to have similarly contravened that section, pursuant to s. 129.2 of the Act;

c. Paramount, the Silverfern entities and the Principals contravened s. 126.1(1)(b) of the Act by perpetrating a fraud, in that:

i. they all misrepresented the use to which investors' funds would be put, or in the case of the Principals acquiesced in the entities' use of funds in a manner inconsistent with what had been represented;

ii. the Principals contravened s. 126.1(1)(b) of the Act by improperly acquiring ownership interests in Multi-Residential Mortgage projects; and

iii. Paramount and the Silverfern entities contravened s. 126.1(1)(b) of the Act by misusing the Pre-Paid Account, and the Principals are deemed to have similarly contravened that section, pursuant to s. 129.2 of the Act.

[144] We therefore require that the parties contact the Registrar by 4:30pm on May 20, 2022, to arrange an attendance, the purpose of which is to schedule a hearing regarding sanctions and costs, and the delivery of materials in advance of that hearing. The attendance is to take place on a mutually convenient date that is fixed by the Secretary, and that is no later than June 10, 2022.

[145] If the parties are unable to present a mutually convenient date to the Registrar, each party may submit to the Registrar, for consideration by a panel of the Commission, a one-page written submission regarding a date for the attendance. Any such submission shall be submitted by 4:30pm on May 20, 2022.

Dated at Toronto this 25th day of April, 2022.

"Timothy Moseley" "Garnet W. Fenn"

COMMISSIONER ZORDEL (DISSENTING IN PART):

I. INTRODUCTION

[146] At its core, this case is about capital raising by individuals and entities other than banks using business structures, including limited partnerships and unincorporated open-ended investment trusts, to raise money through the sale of securities of Mortgage Investment Entities (MIEs). Funds from the sale of these securities were used for and to fund single and multi-residential and non-residential property mortgages and project financing. In some later cases, funds were used to buy real estate property.

[147] The story began in 2014 with work putting together the ideas and structuring the entities, and the initial selling of securities. The allegations are multiple, covering various activities over the September 2014 to December 1, 2016 timeframe. During this time period, the Paramount Group raised approximately $78 million from over 500 investors through pooled MIEs. For convenience, I adopt all the defined terms as set out in the majority reasons.

[148] The allegations in this case involve fraud, misleading investors, unregistered trading, and the illegal distribution of securities of MIEs. In my view, considering the evidence presented at the hearing, Enforcement Staff has not proven all their allegations on a balance of probabilities. As a result, my findings are that:

a. Only Ruttenberg engaged in, and held himself out to be engaged in, the business of trading in securities to the public while unregistered contrary to subsection 25(1) *Registration – Dealers* of the Act;

[17] *Solar Income Fund Inc (Re)*, 2021 ONSEC 2, (2021) 44 OSCB 557 at paras 70-76

b. I agree with the majority that Trilogy did not engage in an illegal distribution and did not breach s. 53(1) *Prospectus Required* of the Act;

c. Only Ruttenberg failed to file a prospectus or preliminary prospectus with respect to trades of units of the Silverfern fund contrary to subsection 53(1) *Prospectus Required* of the Act, in circumstances where no prospectus exemptions were available pursuant to Part XVII *Exemptions from the Prospectus Requirement* of the Act;

d. Only Ruttenberg engaged in fraud contrary to s. 126.1(1)(b) *Fraud and Market Manipulation* of the Act with respect to the following:

i. his actions, which over time were not always in accordance with the representations in the Silverfern fund offering memorandum and marketing materials;

ii. hidden self-dealing by Ruttenberg; and

iii. misuse of an account established for pre-paid funds;

e. I decline to make findings on the s. 44(2) *Representation Prohibited* allegation, for the same reasons as set out by the majority at paragraphs 136 and 137;

f. I decline to find that Trilogy breached s. 126.2(1) *Misleading or Untrue Statements* of the Act for the same reasons as set out by the majority at paragraphs 138 to 140; and

g. I decline to make a finding that the respondents acted contrary to the public interest for the same reasons as the majority set out at paragraphs 141 and 142.

[149] My reasons are set out below.

A. Unregistered trading

1. Application of the business trigger test

[150] I acknowledge that none of the respondents was ever registered under securities law. The issue is whether the respondents engaged in the business of trading and were required to be registered.

[151] This case involves the continuing and developing interpretation of the "business trigger test" from s. 1.3 *Fundamental Concepts* of the Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. For background, National Instrument 31-103 *Registrant Requirements, Exemptions and Ongoing Registrant Obligations* and the Companion Policy, introduced in September 2009 and subsequently amended multiple times, purported to change how regulators should decide if a market participant needed to be registered with the OSC as an exempt market dealer or full dealer representative in order to communicate with potential funders, to accept investments or to sell securities. In 2009, the policy approach moved from a "trading trigger" to a "business trigger" for registration requirements. Cases since that time have raised a continuing discussion on how the "business trigger test" should be interpreted and applied.

[152] The "business trigger test" is set out at Companion Policy, s. 1.3 *Fundamental Concepts*. The test includes the following factors, which are listed as headings in the Companion Policy, s. 1.3 *Fundamental Concepts*:

a. Engaging in activities similar to a registrant (this includes trading or advising for a business purpose);

b. Intermediating trades or acting as a market maker (this typically takes the form of the business commonly referred to as a broker, and making a market in securities and is also generally considered to be trading for a business purpose);

c. Directly or indirectly carrying on the activity with repetition, regularity or continuity;

d. Being, or expecting to be, remunerated or compensated (compensation and having the capacity or the ability to carry on the activity to produce profit is also a relevant factor); and

e. Directly or indirectly soliciting (i.e. contacting anyone to solicit securities transactions or to offer advice may reflect a business purpose).

[153] When I apply these factors to the evidence, I come to a different conclusion than the majority. I also note that a Companion Policy is not binding law, which was also acknowledged by the majority in the statements at paragraph 32. While previous Commission decisions have applied the business trigger test from the Companion Policy, in my view these decisions

have over time broadened the scope of the type of activities that are captured by the business trigger test to the point where they may negatively impact capital formation in Ontario and create extra burden for individuals and entities operating legitimate businesses for compensation.

[154] In my view, the only respondent whose conduct met the business trigger test and therefore had to be registered was Ruttenberg. Ruttenberg engaged in acts in furtherance of trades and traded on a regular and continual basis. He brought in investors, he helped investors fill out complicated subscription forms, and encouraged investors to check off boxes in subscription agreements where there was no proof that the investors were qualified for those exemptions and where they may not have had separate, independent or otherwise appropriate financial advice. Through these actions, he was directly involved in soliciting securities transactions. Ruttenberg received commissions for referring investors to the Silverfern fund. Overall, Ruttenberg was engaging in activities similar to those of a registrant through his actions of soliciting and selling units to investors.

[155] This was not the case for the other individuals, Laverty and Burdon. Based on the evidence presented, Laverty and Burdon do not meet the factors in the business trigger test.

[156] Laverty did not have the same involvement in dealing with investors as Ruttenberg did. I accept Laverty's testimony at the hearing that Laverty did not personally attend any of the sales meetings with investors or potential investors. Sales meetings were strictly done by Ruttenberg and his team of account managers. This is evident from looking at the evidence regarding interactions with investors and payment of commissions, which may have been something other than commissions. Staff's evidence indicated that Laverty solicited two investors and received $2,970 in commissions, whereas Ruttenberg received $218,490 in commissions from more than 70 investors. However, Laverty testified that he never received referral fees in connection with those two investors as they were (i) his sister and (ii) a friend of 20 years, and the two investors were paid the commission directly from Paramount and no compensation was paid to Laverty. I believe that Laverty was telling the truth and he also provided a letter from his friend supporting his position and explaining that his friend received the commission instead of Laverty. Regardless, dealing with two investors and receiving a small payment/commission does not in my view meet the threshold for trading with repetition, regularity or continuity. Laverty's actions fall short of meeting the business trigger test and he was not engaging in activities similar to a registrant or a market maker.

[157] Burdon did not meet with any investors and did not receive any commission. He was not trading with repetition, regularity or continuity. He was not engaging in activities similar to those of a registrant or a market maker. The business trigger test is not met for Burdon.

[158] With respect to the seven respondent entities (Paramount, the three Silverfern entities, the two GTA entities, and Trilogy), I find that none of these entities meet the business trigger test.

[159] When I review the precedents that Enforcement Staff relies on to establish that the business trigger test was met, I can distinguish them from the present case.

[160] For example, in *Momentas*, the actual business of the entity was trading and the principal business activities were described in the offering memorandum as using an automated equities trading system for equities trading and the trading of foreign currencies through foreign exchange traders.[18] In *Momentas,* the core business involved the selling of securities as evidenced by the overall composition of the workforce, overall expenses incurred and sources of revenue.[19] It had a team that was exclusively cold calling and selling convertible debentures. This is not the situation in the present case. In the present case, the notes to the Paramount audited financial statements for the year ended May 31, 2016 set out that "The company's principal business activity is to provide alternative lending solutions for clients who require short term interim financing." Further, the Silverfern offering memorandum sets out that the underlying business is:

> …to generate income from its Mortgage loan and other investments. To achieve these objectives, the Partnership will benefit from [Paramount]'s experience in originating, underwriting, syndicating and servicing Mortgage investments. …
>
> The Partnership intends to continue to pursue a strategy of growth through additional investments in Residential Mortgages and Commercial Mortgages that are currently underserviced by banks and other lending institutions. The Partnership is well positioned to add to its portfolio by focusing on underserviced market niches within the real estate lending market and intends to grow the Partnership's Mortgage assets by accessing capital through further capital contributions from the Fund. The Fund will finance such capital contributions by the issuance of additional Units. See Investment Strategy and Investment and Operating Policies of the Partnership. The Partnership may also invest directly or indirectly in real estate in Canada and the United States.

[18] *Momentas* at para 50
[19] *Momentas* at para 55

[161] In the present case the underlying business was mortgage-financing, being businesses that pool together money from investors to lend as mortgages. Each mortgage is meant to be secured by real property. The mortgage is registered in the name of the MIE or an entity created by the MIE for the benefit of the MIE investors. This did not deal with trading like *Momentas*. Not everyone is eligible for bank-offered mortgages, and even if an applicant does get a bank mortgage, they may need additional money in the form of a second mortgage or a third mortgage and those may not be available through a bank. In order to meet demand for non-bank mortgages, the respondent entities were set up in Ontario for the purpose of (i) providing mortgages directly, or indirectly through corporate entities; to lend first or second mortgages to individual home or property owners; and then later (ii) to collectively, through business entities including limited partnerships, lend to developers of what have been called Multi-Residential Mortgages, for what could be business developments, or for real estate developments, and what was later found out to have included real property that was not yet being developed.

[162] Further, I note that the *Momentas* case predates the current business trigger test and is thus of limited value as a precedent.

[163] Another case referred to by Staff was *Meharchand*. In that case, the panel found that whatever legitimate cybersecurity business might have existed at some earlier period did not meaningfully persist and that investors were the only real source of funds.[20] Again this is not the situation in the present case. There was a legitimate business that existed during the Material Time. The Paramount audited financial statements for the year ended May 31, 2016 were in evidence. With respect to revenue, $6,011,064 was collected from mortgages under administration. There was a legitimate operating business that was generating revenue.

[164] Staff also relied on *Money Gate* as a precedent. I note that it was acknowledged in that case that not all mortgage investment corporations are necessarily engaged in the business of trading in securities simply because of the nature of a mortgage investment company.[21] Whether or not a mortgage investment company is engaged in the business of trading in securities remains an issue that must be resolved in light of all the relevant facts.[22] While the panel in *Money Gate* did find that the respondents in that case were in the business of trading, there are some facts that can be distinguished from the present case. Specifically, in *Money Gate* multiple individual respondents promoted the sale of securities and met with investors and the solicitation of investors took place through various means including promotional events, training sessions, the website, trade shows and certain individuals had a core responsibility to deal with investor relations.[23] Overall many respondents in *Money Gate* were involved with the soliciting of trades and this was a large part of *Money Gate's* overall operations. The same cannot be said in the present case. I find that only one principal Ruttenberg, was primarily involved with soliciting investments and in the business of trading. The actions of this one individual cannot condemn the legitimate activities of the seven respondent entities.

[165] Trading is done by people, either individually or as representatives of a trading firm that is a registered dealer. Ruttenberg was the only principal trading with repetition, regularity or continuity and who met the threshold of that factor in the business trigger test. Looking at the activities of the respondent entities holistically, capital raising was but one element of what they were doing and in my view not the main element. The respondent entities were not trading with repetition, regularity or continuity – only Ruttenberg was. The respondent entities were engaged in active businesses whose growth was funded by the capital raised from investors.

[166] The seven respondent entities were operating legitimately in the mortgage sector. I take a cautious approach with the case law that focuses on "whether or not that activity is the sole or even primary endeavour". Through this wording, the business trigger test scope has been expanded over time and overreaches to capture conduct of legitimate business entities, which is of concern considering that the Companion Policy is not law.

[167] The Companion Policy language focuses on whether the activities engaged in are similar to a registrant or acting as a market maker. The wording in the Companion Policy states "Examples include promoting securities or stating in any way that the individual or firm will buy or sell securities. If an individual or firm sets up a business to carry out any of these activities, we **may** consider them to be trading or advising for a business purpose" [emphasis added]. The word "may" is used in the Companion Policy and in my view this reflects that there are some nuances based on the circumstances and context to determine whether the business trigger test is met as to different respondents. A CEO, or other officers, directors or staff may engage in activities to raise funds and this would not automatically mean that registration is required. A full examination of the unique circumstances is needed to determine whether or not registration is required as discussed below.

[168] Another important consideration is that subsection 25(1) *Registration – Dealers* uses the heading "Dealer". In my view an individual person being a dealer, while possible in some circumstances, can be a stretch and caution should be exercised to ensure that individuals who raise capital legitimately are not automatically found to meet the business trigger

[20] *Meharchand* at paras 116 and 117
[21] *Money Gate* at para 165
[22] *Money Gate* at para 166
[23] *Money Gate* at paras 150 and 151

test and require registration. For example, a CEO should not feel constrained to raise capital and such raising of capital does not automatically mean that trading is being done for a business purpose similar to a registrant.

[169] While I acknowledge that Ruttenberg did engage in acts in furtherance of trades, and he did raise funds during the time that the respondent entities were operating, the fact that funds were raised and the focus of trading with repetition, regularity or continuity, whether or not that activity is the sole or even primary endeavour are not determinative of whether an entity meets the business trigger test. Looked at holistically, the factors for the business trigger test are not met by the respondent entities. Specifically, there was evidence of Ruttenberg receiving commission compensation for trading but there was insufficient evidence to demonstrate the respondent entities were expecting to receive compensation for trading.

[170] I also acknowledge that there was uncertainty regarding the application of registration exemptions to MIEs. At the hearing, Staff referred to *CSA Staff Notice 31-323 Guidance relating to the registration obligations of mortgage investment entities* which was published on February 25, 2011 and an *OSC News Release of February 19, 2016: OSC Reminds Mortgage Investment Entities of Registration Requirements*. In Staff's view, this information signalled to those acting in the MIE space that registration was required. In my view, the CSA Staff Notice and OSC News Release signal that there was some confusion about whether MIEs needed to be registered. This is because the registration requirement is dependent upon the business trigger test being met. This test is not a bright-line test and is specific to the unique circumstances and, as set out in the Companion Policy, it **may** indicate registration is necessary but this determination is not automatic. Regardless of any confusion that may have existed for such entities, in the specific circumstances of this case, when I apply the business trigger test to the respondent entities and Laverty and Burdon, I find that they were not in the business of trading.

[171] For the reasons I have set out above, I find that only Ruttenberg breached s. 25(1) *Registration – Dealers* of the Act.

2. Section 129.2 of the Act – Directors and Officers

[172] As I have found that none of the respondent entities met the business trigger test and were required to be registered, the question of whether the principals are liable under s. 129.2 *Directors and Officers* of the Act is moot.

B. Illegal distributions

1. Trilogy

[173] I agree with the majority decision that Trilogy did not breach s. 53(1) *Prospectus Required* of the Act as it was not involved in any completed trades and therefore was not involved in an illegal distribution.

2. The Paramount entities, Laverty and Burdon

[174] I acknowledge that distributions took place. Fund units are securities and the sale of fund units were distributions because those units had not previously been issued. However, I find that there was insufficient evidence provided by Staff to make a finding that exemptions were not available to the Paramount entities (which include Paramount, the three Silverfern entities, the two GTA entities), Laverty and Burdon.

[175] There was no prospectus and no market for these securities and they could only be issued under a prospectus exemption and resold through further prospectus exemptions. There are numerous exemptions to the prospectus requirement set out in NI 45-106 *Prospectus Exemptions*. Staff submits that it was up to the respondents to lead evidence to establish that exemptions from the prospectus requirement were properly claimed in respect of each issuance of the units of the Funds and Staff also submits that such evidence was not led by the respondents for all investors. I note that resales of securities issued under prospectus exemptions would have required further prospectus and registration exemptions under securities laws, which issues were not addressed or a concern in this case.

[176] The subscription agreement allowed for various exemptions and subscribers checked the applicable boxes, as is standard for exempt distributions. I do not know if appropriate evidence of the availability of such checked exemptions was obtained.

[177] Unfortunately it is not clear that the prospectus exemptions purported to be relied on for distributions were actually available for every investor who purported to avail themself of such prospectus exemption. It is also in evidence that some investors made incorrect statements in subscription agreements to the effect that they were eligible to participate in a private placement when in fact they were not eligible.

[178] In my view, the onus should not be on the respondents to demonstrate that an exemption is available for every security issued, but they should demonstrate that processes were followed at the time so management could sign off on there being an exemption available and so regulatory filings could be made with securities regulators regarding use of such

exemptions. Staff has made allegations and Staff must prove those allegations on a balance of probabilities. In this case, Staff is alleging that exemptions are not available and there is insufficient evidence before me to make such a finding.

[179] In their evidence and submissions, of the over 500 investors, Staff focused on 75 investors of which Staff said 41 investors did not meet any of the criteria that would establish them as an accredited investor or have another exemption available. This conclusion by Staff regarding the 41 investors was made on the basis of an after-the-fact survey, which I do not find to be determinative. However, I accept that some investors did not have prospectus exemptions available. Three of these investors, SB, MC and JW testified at the hearing. MC testified at the hearing that the friends, family and business associates exemption that MC used was not available to MC. However, the accredited investor and friends, family and business associates prospectus and offering memorandum exemptions in NI 45-106 *Prospectus Exemptions* and other prospectus exemptions may have been available. Staff did not address this possibility and as such I am left with uncertainty and cannot make a finding that no prospectus exemptions were available.

[180] An example of another exemption that may have been available is the offering memorandum exemption. In this case there was in evidence before the Panel a Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* regarding the issuer Silverfern Secured Mortgage Fund. Page 6 of this offering memorandum states that the offering memorandum exemption is one of the exemptions being relied upon (along with the accredited investor exemption and minimum amount exemption). Further, in evidence there were Form 46-106F1 *Reports of Exempt Distributions* filed for the Silverfern Fund and there was a Schedule 1 to this form filed in evidence that indicated that some investors did rely on the offering memorandum exemption. Staff did not address whether the s. 2.9 *Offering Memorandum* exemption in s. 2.9 of NI 45-106 *Prospectus Exemptions* was available and I am left with an incomplete picture as to the application of exemptions. Instead, Staff took a narrow focus and only looked at two exemptions, the accredited investor exemption and friends, family and business associates exemption. This narrow focus ignores that while investors may not have qualified for the accredited investor exemption and friends, family and business associates exemption, there could have been other exemptions available at the same time such as the offering memorandum exemption or others.

[181] I cannot ignore the offering memorandum in evidence before me. The offering memorandum prospectus exemption (NI 45-106, s. 2.9) has specific requirements for disclosures to investors and does require audited financial statements, whereas other prospectus exemptions like the accredited investor exemption do not. I have reviewed the Silverfern Subscription Agreement and the Offering Memorandum of April 2016 and note that they were prepared by external legal counsel. I find the documents to be standard for the time and not misleading based on the included information at the time and they appear to comply with the requirements for the offering memorandum exemption as set out in NI 45-106, s. 2.9.

[182] I note that the offering memorandum exemption in NI 45-106, s. 2.9 came into force on January 13, 2016. The conduct in the case before me spans from September 2014 to November 2016. So for at least a portion of the relevant time period, the offering memorandum exemption was available and in force in Ontario. I also note that other jurisdictions in Canada had the offering memorandum prior to January 2016. Because Staff did not cover the offering memorandum exemption at the hearing, I have an incomplete picture of which investors could have benefited from this exemption. Where there is the possibility or it is likely that other exemptions applied, the benefit of the doubt should be given to the respondents.

[183] I find that some investors misrepresented their prospectus exemption qualifications in order to participate in the investments and to avoid missing out on what was expected to be a high rate of interest, and there was incorrect information on the subscription forms and/or 45-106F1 *Report of Exempt Distribution* forms filed with the OSC. While I agree with the law that it is the obligation of the issuers to show that subscriptions were completed properly for subscribers, I disagree with the application of the procedural principal to the extent that if there are a few subscriptions that were not completed correctly and allowed a non-eligible subscriber to participate, then the result is that the entire business is offside, and all the directors and officers are offside the law, regardless of their level of involvement, with the potential result that the entities may be shut down in a way that results in unanticipated losses for investors. This is a disproportionate consequence for an otherwise legitimate business. The Paramount entities, Burdon and Laverty should not be held responsible where investors misled them about qualifying for exemptions. It is unrealistic for entities and individuals such as the Paramount entities, Burdon and Laverty to uncover misrepresentations or lies from investors when investors are purposefully deceiving them and completing forms inappropriately, possibly at the suggestion of Ruttenberg as we had evidence that he was telling investors how to fill out forms. Exemptions should be available to issuers, entities and persons when they are used in good faith.

[184] In my view, investors do need to take some responsibility for completing subscription forms properly. To qualify under the accredited investor exemption, an individual purchasing a security must meet certain income or asset tests prescribed under NI 45-106 *Prospectus Exemptions*. The Commission's decisions confirm that the respondents must carry out a factual inquiry to confirm that the individual actually meets **one of** those income or asset or other exemption tests. Not completing a subscription agreement responsibly as to being eligible as an accredited investor (which has a lot of subcategories) is problematic. Subscribers/investors also have a "common sense" obligation to read the material they

are given and to seek the assistance of a financial and/or legal advisor before they commit to the investment and as time passes and the investment and the markets change.

[185] As a result, I find that prospectus exemptions were available for many of the subscribers, and that the Paramount entities, Burdon and Laverty, did not engage in an illegal distribution without an exemption and did not breach s. 53(1) *Prospectus Required* of the Act. I do find that Ruttenberg breached s. 53(1) *Prospectus Required* for the reasons set out in the section below.

3. Ruttenberg engaged in an illegal distribution without any available exemptions

[186] Further to the above paragraph, I have come to a different conclusion with respect to Ruttenberg. I find that Ruttenberg cannot benefit from any prospectus exemptions, because it was he who told certain investors to misrepresent whether they qualified for exemptions, either directly or through his staff; or Ruttenberg himself falsely completed the subscription agreements and indicated exemptions which he knew did not apply. Ruttenberg, directly or through his staff, told investors to fill out the forms in a certain way.

[187] In this case, it was the actions done by Ruttenberg in obtaining completed exempt distribution documentation and doing filings with the applicable securities regulators that were offside securities law. The testimony given by two investors revealed that they were told by Ruttenberg to provide answers to subscription questions that would indicate they were qualified to invest, which representations were false, but would thus allow them to participate. It became clear in their testimony that those two investors did not have prospectus exemptions available to them for the requested investments. It appears that Ruttenberg told them they could not invest if they didn't fit in one of these categories. While I recognize subscription forms are difficult to navigate, and the decision to misrepresent was made by the investors, I also find that it was more likely than not that the Ruttenberg knew the two subscribers were lying and did nothing about that.

[188] The evidence demonstrated that it was Ruttenberg meeting with the majority of investors and dealing with the associated paperwork directly or through his staff; and Burdon never met with investors and Laverty only met with two investors, being his sister and a friend of 20 years, as stated above.

[189] In my view, Ruttenberg's misconduct should not impact the Paramount entities, or Burdon and Laverty, because they were unaware of what Ruttenberg was doing. They could not control Ruttenberg and how he was handling the filling out and reviewing of the paperwork associated with investor subscriptions. In my view, if anyone else should have been reviewing and ascertaining that Ruttenberg was acting appropriately, it should have been the Chief Financial Officer, who was not named as a respondent in this proceeding, but in the end it was Ruttenberg's responsibility.

[190] As a result, I find that Ruttenberg did not qualify for prospectus exemptions and breached s. 53(1) *Prospectus Required* of the Act.

4. Section 129.2 of the Act – Directors and Officers

[191] As I have found that none of the respondent entities breached s. 53(1) *Prospectus Required* of the Act, the question of whether the principals are liable under s. 129.2 *Directors and Officers* of the Act is moot.

C. Fraud

[192] To make out its securities fraud allegations, Staff must establish:

a. a respondent directly or indirectly engaged or participated in any act, practice or course of conduct relating to securities;

b. the act, practice or course of conduct perpetrated a fraud on any person or company; and

c. a respondent knew or reasonably ought to have known that the act, practice or course of conduct perpetrated a fraud.

[193] To satisfy the second element above, Staff must establish the following elements of fraud:

a. the *actus reus*, or objective element, which must consist of: an act of deceit, falsehood, or some other fraudulent means; and deprivation caused by that act; and

b. the *mens rea*, or subjective element, which must consist of subjective knowledge of the act referred to above, and subjective knowledge that the act could have as a consequence the deprivation of another.[24]

[24] *Quadrexx* at paras 18-19; *Théroux* at para 27

[194] The majority finds that the above elements are satisfied with respect to the following three categories of fraud alleged by Staff:

a. misrepresentations to investors in the Silverfern fund;

b. hidden self-dealing by the Principals; and

c. misuse of an account established for pre-paid funds.

[195] I disagree with the majority that Staff has proven the above elements for all of the respondents, particularly Laverty, Burdon and the Paramount entities. I agree with certain of the majority's findings, as I explain herein, including that Ruttenberg engaged in fraud. These are my reasons for these findings.

1. Misrepresentations to investors in the Silverfern fund

[196] Staff alleges that the representations made to investors in the Silverfern fund were false, and were thereby fraudulent. Staff submit that the Principals and Paramount entities defrauded investors by making misrepresentations in the promotional materials, subscription agreements and offering memorandum as to the true nature and risks associated with investments in the Silverfern fund. Investors were told that their funds would be invested in a portfolio of Second Residential Mortgages. Instead, some of their funds were invested in some Multi-Residential Mortgages, an investment that was fundamentally different and riskier in nature. The majority sets out the representations at paragraphs 91 to 97 of the majority reasons.

[197] The majority finds that the first element of fraud, the objective element, is satisfied as the representations in the offering memorandum and marketing materials were false.

[198] With respect to the second element of the test, the subjective element, the majority finds that the first component is satisfied because the Principals knew what the funds were being used for and the majority focused its analysis on the second component of the test: did the Principals know, or ought reasonably to have known, that those uses could result in a deprivation to the investors? The majority finds that they did know.

[199] I disagree with the majority, with respect to both elements of the test, for the following reasons.

[200] First, I do not find that there was a misrepresentation as to the use of funds in the materials, including the Silverfern offering memorandum. The offering memorandum is not in itself fraudulent. The offering memorandum included plans for what the entities were going to do. Problems arose later when investment in mortgages and property were not made in accordance with some of the parameters set out in the offering memorandum.

[201] The offering memorandum is a business plan and roadmap. It explains what a corporation intends to do with funds. Sometimes plans change and things do not happen as expected. In my view, that does not mean the offering memorandum and related materials are inherently fraudulent.

[202] Having reviewed the offering memorandum through the lens of securities law requirements for disclosure, and having considered the document's contents in the context of what has been provided in evidence and testimony in this hearing, I have not found anything that could stand out as being misleading. Any category of disclosure that was required to be included was included. There is insufficient evidence for me to determine that some other information should have been included.

[203] The 74-page disclosure document was comprehensive and well-written. The Silverfern fund's structure was set out along with the business of the Paramount entities and risk factors. The process for investment and redemptions once a year was clear. The disclosure of investment risks was extensive. The conflicts of interest were addressed. The payments to various entities for services were set out. The offering memorandum was very clear that there was a lot of flexibility as to what could be invested in.

[204] As I did not find misrepresentations in the offering memorandum and other promotional materials as of the date of the offering memorandum (April 30, 2016), there was thus no deprivation caused by any offering memorandum misrepresentations, and I find that the objective element of fraud is not established, let alone the subjective element.

[205] Even if the objective element is somehow established, the subjective element of fraud (i.e., did the Principals know, or ought reasonably to have known, that there was a consequence of deprivation to investors), is not satisfied as it relates to Laverty and Burdon. This is because Laverty and Burdon had no control over Ruttenberg's actions and were unaware of Ruttenberg's actions until it was too late.

[206] It is important to note that the Silverfern financial statements were audited and there was no evidence provided to me of anything being out of order. Laverty and Burdon were not involved in keeping the books. They did not authorize, permit

or acquiesce to types of investment percentages being offside, and they actively tried to take control of the business when they discovered problems. They would have no way of knowing if investors' funds were not being used as promised in the offering memorandum. Neither Ruttenberg nor the CFO provided appropriate financial information to Laverty and Burdon. Ruttenberg was the individual in control. He was the one communicating directly with investors and making the "sale" and "closing the deal". It is unfair to place blame on all three Principals in the circumstances. In this situation, while the offering memorandum did not contain fraudulent misrepresentations, it was Ruttenberg's actions which were offside the offering memorandum and fraudulent.

[207] Staff submits that the Principals were aware of the representations regarding the Silverfern fund investments and therefore had subjective knowledge that the representations were untrue. I do not agree that Laverty or Burdon knew deprivation would result from the investments when the business started, because they did not have knowledge of what specific investments would be made; what the terms of the contracts would be; and what the actual profitability or losses of individual investments would be. They did not realize they would be unable to get adequate information, or influence or control how the business was operated, and they did not expect fraud to result. Despite efforts by Laverty and Burdon to effect change, Ruttenberg refused to relinquish control of the bank accounts or otherwise relinquish or share control of the business.

[208] To summarize, Ruttenberg controlled everything with respect to the business and should be held solely liable for any and all fraudulent conduct. Ruttenberg was the main source for the verbal representations to investors, not Laverty or Burdon. Ruttenberg ran the business and, with the assistance of the CFO who controlled the books and financial disclosure, managed the organization, misrepresenting a lot of information to Laverty and Burdon, as well as to investors.

[209] Upon reviewing the evidence before me, I question what actual ability Laverty and Burdon had to effect decisions. Neither Laverty nor Burdon controlled Paramount or the other entities. Laverty testified that attempts by him and Burdon to remove Ruttenberg were unsuccessful and that Ruttenberg was not interested in handing control over. In addition, Laverty testified that Ruttenberg's whole family worked in the business and everyone that worked there was handpicked by Ruttenberg, loyal and dedicated to him. The staff had no interest in taking direction from anyone but Ruttenberg. Ruttenberg, directly or indirectly was making all the decisions.

[210] Ruttenberg and his wife were the sole shareholders and directors of Paramount. Ruttenberg was controlling Paramount and was clearly unwilling to take direction from Laverty or Burdon. Laverty did not have adequate or timely access to financial information from Ruttenberg or the CFO and testified at the merits hearing that he was misled about the financial situation of Paramount: "If I had known the financial position of Paramount and what had been going on, I never would have gotten involved in the company at all. Neither would have Burdon. All transfers and controls of cash and accounting were handled solely by Ruttenberg."[25]

[211] The majority states at paragraph 89 of these reasons that any finding made about what the Principals knew or ought to have known applies equally to the corporate entities because the Principals were the directing minds of those entities, citing the Commission's *Quadrexx* decision for this proposition.

[212] I considered concluding that some entities controlled by Ruttenberg committed fraud, because they acted on Ruttenberg's knowledge in making investments in Multi-Residential Mortgage projects that were not well addressed in what they had originally marketed, though the offering memorandum in evidence does indicate considerable investment latitude, as noted above. Also, Ruttenberg did not advise or seek consent from prior investors as the portfolio make-up changed, but such consent was not necessarily required in the pooled funds. Further, there is no evidence before me that new investors were advised of the change in allocation structure.

[213] I do not think it is necessary or appropriate to find, every time an entity varies from statements in an offering memorandum due to the activities of a director or officer, that the corporation also committed fraud. I find that coming to such a conclusion here takes the law too far.

[214] While I find Ruttenberg committed fraud, I do not find that Staff has shown that Laverty or Burdon engaged in fraud in the first category alleged by Staff. I also find that not only did the Paramount entities not perpetrate a fraud, they were potentially the victims of fraud as a result of Ruttenberg's actions and being controlled by Ruttenberg.

[215] I find that the offering memorandum contained no misrepresentations when it was prepared. It set out a plan for the use of funds and provided adequate disclosure about this and did not over represent the business plan. The language in the offering memorandum also provided some leeway for implementation of the business plan.

[216] Ruttenberg knew what was stated in the offering memorandum and, on his own, he knowingly diverged from the plan set out in the offering memorandum and engaged in actions that were not in accordance with the disclosure in the offering memorandum, thereby harming and depriving investors, which I find to be fraudulent misconduct. The Silverfern offering memorandum set out that funds would be invested in a portfolio of First or Subordinate Mortgages, including Second and

[25] Paramount Transcript July 24, 2020, page 12, lines 9-16

Third Residential Mortgages and land being acquired for residential development and construction; and could be invested directly or indirectly through a joint venture or co-ownership in real estate. As a result of Ruttenberg's actions, some investor funds were invested in Multi-Residential Mortgages, an investment with a fundamentally different and riskier nature than individual home mortgages. Ruttenberg also lied to investors through his use of marketing materials to entice them to invest. Ruttenberg was the main source for verbal representations to investors which included conveying that the investment was low risk, using words like "predictable, steady returns", "low volatility", "high-returning annuity/GIC alternative", "safety", "capital preservation", and "stable returns". It was Ruttenberg who met with investors and made these representations and put their funds at higher risk than they had expected. Laverty and Burdon did not interact with investors. Further, as I found above at paragraphs 208 to 210, Laverty and Burdon could not control Ruttenberg and they were unaware that funds were not being used as promised in the offering memorandum. I find that it was Ruttenberg on his own that engaged in fraud.

2. Hidden self-dealing by the Principals

[217] Turning to the second fraud allegation, that the Principals leveraged investor funds in the Silverfern fund to procure undisclosed benefits for themselves, the majority finds that both elements of fraud were satisfied with respect to ownership interests in Multi-Residential Mortgage projects. I agree with the majority's conclusions in paragraphs 117 to 121 with respect to referral fees. My reasons below relate exclusively to the allegations as they relate to Multi-Residential Mortgage projects, where, other than with respect to Ruttenberg, I disagree with the majority's findings.

[218] The majority finds that the first component of fraud is satisfied, because the Principals knew what the funds were being used for (i.e., for the personal benefit of the Principals instead of for the benefit of investors). The majority also finds that the second element is established for all three Principals.

[219] Staff submits that the Principals leveraged investor funds in the Silverfern fund to procure undisclosed benefits for themselves. Marketing materials given to investors did not disclose that the Principals owned or would come to own interests in the Multi-Residential Mortgage projects.

[220] Staff submits that the omission of material facts from marketing materials and other investor disclosure including the offering memorandum is itself a fraudulent act. The use of investor assets to procure a personal benefit is, in fact, a form of diversion of investor assets, and also constitutes "other fraudulent means" when considering the *actus reus* (the objective element) of fraud.

[221] The fraud occurred in the acceptance of the investments by the Paramount and Silverfern fund, where the acceptances, at some point, were not in accordance with the terms on which investors had been told these funds would be structured, including what percentage of the funds could be Multi-Residential Mortgages.

[222] I do not find the objective or subjective elements of fraud to be established with respect to Laverty or Burdon. It was reasonable for Laverty and Burdon to expect fund investment money would be used for what the Declarations of Trust, offering memorandum and presentation material said they would be used for, at the beginning. They did not control the entities and Laverty's testimony at the merits hearing was that he did not have timely (or complete) access to financial information. They may have been naïve and failed to ensure there were adequate controls in the organization, but that is not evidence of *actus reus* on their part. The situation evolved, and when Laverty and Burdon learned of the changed situation they tried to correct it.

[223] There is no restriction on the Principals owning Limited Partnership units. To the extent that someone (just Ruttenberg) had an interest in a Multi-Residential Mortgage project that was being financed through a Paramount entity, that would be a conflict of interest. I find that only Ruttenberg's actions constitute "other fraudulent means" and he used investor assets for personal benefit.

[224] Accordingly, I find that there was no hidden self-dealing by Laverty or Burdon, or the Paramount entities (for the reasons I've set out in paragraphs 212 to 214 above). I find that Ruttenberg did engage in hidden self-dealing and did not disclose a conflict of interest, and Staff has established that Ruttenberg engaged in fraud.

3. Misuse of an account for pre-paid funds

[225] Staff submits that the pre-paid account diversions are the last and, arguably, most blatant layer of fraud engaged in by the Principals and the Paramount entities. The majority finds that Staff has established this third fraud allegation. I disagree, except as the findings relate to Ruttenberg, for the following reasons.

[226] I note that Laverty's role was to extend the flow of the mortgage business, so he was generally out of the office, meeting with businesses and other partners so they would refer clients needing second mortgages, and he would summarize

term sheets and complete a capital breakdown and send all documentation to Paramount or Silverfern for review and possible funding.[26] There is no evidence of deceit, falsehood or deprivation in these activities.

[227] Burdon's role was being responsible for sourcing the development deals for the Multi-Residential Mortgage projects.[27] There is no evidence of deceit, falsehood or deprivation in these activities either.

[228] Ruttenberg appeared, later during the Material Time, to be misusing prepaid interest amounts for other purposes, due to financial difficulties and possibly for his own family's use, without advance approval and without appropriate explanations being provided to Laverty and Burdon, as to what was developing. This caused further declines in the business that may not have been discoverable by Burdon and Laverty on a timely basis. Ruttenberg's wife would also have benefited from misuse of the prepaid funds (however, I note Ruttenberg's wife is not a named respondent in this matter and I make no findings against her).

[229] Ruttenberg initiated the pre-paid account withdrawals and was the beneficiary of the withdrawals. Laverty and Burdon were informed of the pre-paid account withdrawals at the outset and were informed of each withdrawal thereafter. The withdrawals were either expressly approved, in the case of Burdon, or were not objected to by Laverty who also took no steps to stop the payments.

[230] Even if the withdrawals were approved or not objected to, I believe this fraud allegation is another instance in which Laverty and Burdon lacked the knowledge and control of the business to be expected to have the same level of culpability as Ruttenberg.

[231] For these reasons, I do not find that Laverty or Burdon engaged in fraud in the third category alleged by Staff. Staff has also not shown that the Paramount entities engaged in fraud for the reasons I set out in paragraphs 212 to 214 above. I find that only Ruttenberg engaged in fraud.

4. Conclusion

[232] For all of the above reasons, I find that Staff has not proven on a balance of probabilities that all of the respondents perpetrated a fraud on investors. In my view, the only respondent that has perpetrated a fraud is Ruttenberg and I find that he alone contravened s. 126.1(1)(b) *Fraud and Market Manipulation* of the Act.

5. Section 129.2 of the Act – Directors and Officers

[233] As I have found that none of the Paramount entities breached s. 126.1(1)(b) *Fraud and Market Manipulation* of the Act, the question of whether the principals are liable under s. 129.2 *Directors and Officers* of the Act is moot.

D. Prohibited representations

[234] I decline to make findings on the s. 44(2) *Representations Prohibited* allegation, for the same reasons as set out by the majority at paragraphs 136 and 137.

E. Trilogy did not make misleading statements

[235] I decline to find that Trilogy breached s. 126.2(1) *Misleading or Untrue Statements* of the Act for the same reasons as set out by the majority at paragraphs 138 to 140.

F. Public interest allegations

[236] I decline to make a finding that the respondents acted contrary to the public interest for the same reasons as the majority set out at paragraphs 141 and 142.

V. CONCLUSION

[237] I therefore find that:

a. Only Ruttenberg engaged in, and held himself out to be engaged in, the business of trading in securities to the public while unregistered contrary to subsection 25(1) *Registration – Dealers* of the Act;

b. I agree with the majority that Trilogy did not engage in an illegal distribution and did not breach s. 53(1) *Prospectus Required* of the Act;

[26] Paramount Transcript July 24, 2020, page 10 lines 8-11
[27] Paramount Transcript July 24, 2020, page 32 lines 18-21

c. Only Ruttenberg failed to file a prospectus or preliminary prospectus with respect to trades of units of the Silverfern fund contrary to subsection 53(1) *Prospectus Required* of the Act, in circumstances where no prospectus exemptions were available pursuant to Part XVII *Exemptions from the Prospectus Requirement* the Act;

d. Only Ruttenberg engaged in fraud contrary to s. 126.1(1)(b) *Fraud and Market Manipulation* of the Act with respect to the following:

   i. his actions, which over time were not always in accordance with the representations in the Silverfern fund offering memorandum and marketing materials;

   ii. hidden self-dealing by Ruttenberg; and

   iii. misuse of an account established for pre-paid funds;

e. I decline to make findings on the s. 44(2) *Representation Prohibited* allegation;

f. I decline to find that Trilogy breached s. 126.2(1) *Misleading or Untrue Statements*;

g. I decline to make a finding that the respondents acted contrary to the public interest.

Dated at Toronto this 25th day of April, 2022.

"Heather Zordel"

3.1.2 Trilogy Mortgage Group Inc. and Trilogy Equities Group Limited Partnership – s. 127(8)

Citation: *Trilogy Mortgage Group Inc (Re)*, 2022 ONSEC 8
Date: 2022-04-25
File No.: 2018-21

IN THE MATTER OF
TRILOGY MORTGAGE GROUP INC. AND
TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP

REASONS AND DECISION
(Subsection 127(8) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	In writing	
Decision:	April 25, 2022	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
Submissions:	Mark Bailey Vivian Lee	For Staff of the Commission
		No submissions made by or on behalf of Trilogy Mortgage Group Inc. and Trilogy Equities Group Limited Partnership

REASONS AND DECISION

[1] On April 16, 2018, the Ontario Securities Commission issued a temporary order against the respondents Trilogy Mortgage Group Inc. (**Trilogy Inc.**) and Trilogy Equities Group Limited Partnership (**Trilogy LP**).[1] That order provided that all trading in securities of or by the respondents would cease. The Commission also ordered that exemptions available under Ontario securities law not be available to the respondents.

[2] The Commission extended that temporary order a number of times. The most recent extension was on April 24, 2019, when the Commission extended[2] the order until the conclusion of the hearing on the merits in a related proceeding in which Trilogy Inc. is a respondent. Trilogy LP is not a respondent in that proceeding, and it has since become evident that Trilogy LP has never existed, even though it is named as a respondent in this proceeding.

[3] In September 2020, while the merits hearing was underway in the related proceeding, Staff asked in this proceeding that the temporary order be extended against Trilogy Inc. (but not against Trilogy LP) until the related proceeding concludes, should the panel in that proceeding determine that a sanctions and costs hearing will follow the merits hearing.

[4] In reasons and a decision[3] issued simultaneously with this decision, a majority of the panel in the related proceeding found that all respondents contravened Ontario securities law. The panel concluded that Trilogy Inc. engaged in the business of trading securities without being registered to do so, contrary to s. 25(1) of the *Securities Act*.[4] A sanctions and costs hearing will therefore be required in that proceeding.

[5] For these reasons, it is in the public interest that the temporary order against Trilogy be extended until the related proceeding concludes. I will issue an order to that effect.

Dated at Toronto this 25th day of April, 2022.

"Timothy Moseley"

1 *Trilogy Mortgage Group Inc (Re)*, (2018) 41 OSCB 3437
2 *Trilogy Mortgage Group Inc (Re)*, (2019) 42 OSCB 4035
3 *Paramount Equity Financial Corporation (Re)*, 2022 ONSEC 7
4 RSO 1990, c S.5

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
THERE IS NOTHING TO REPORT THIS WEEK.		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
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	
Gatos Silver, Inc.	April 12, 2022	

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Chapter 5

Rules and Policies

5.1.1 OSC Rule 81-507 Extension to Ontario Instrument 81-506 Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds

OSC RULE 81-507
EXTENSION TO ONTARIO INSTRUMENT 81-506 TEMPORARY EXEMPTIONS FROM NATIONAL INSTRUMENT 81-104 ALTERNATIVE MUTUAL FUNDS

Purpose

1. This Rule provides, in Ontario, a temporary extension to the exemptions provided in Ontario Instrument 81-506 *Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds*, pursuant to paragraph 143.11(3)(b) of the *Securities Act* (Ontario).

Extension of temporary exemptions

2. ***Section 11 of Ontario Instrument 81-506 Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds is amended by replacing "***July 28, 2022***" with "***January 29, 2024***".***

Effective date

3. This Rule comes into force on July 29, 2022.

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Chapter 6

Request for Comments

6.1.1 CSA and CCIR Joint Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations and Proposed CCIR Individual Variable Insurance Contract Ongoing Disclosure Guidance Total Cost Reporting for Investment Funds and Segregated Funds

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CCIR CCRRA Canadian Council of Insurance Regulators Conseil canadien des responsables de la réglementation d'assurance

CSA AND CCIR JOINT NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO

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

AND TO

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

AND PROPOSED

CCIR INDIVIDUAL VARIABLE INSURANCE CONTRACT ONGOING DISCLOSURE GUIDANCE

TOTAL COST REPORTING FOR INVESTMENT FUNDS AND SEGREGATED FUNDS

April 28, 2022

Introduction

The Canadian Securities Administrators (the **CSA**) and the Canadian Council of Insurance Regulators (the **CCIR**, together, the **Joint Regulators** or **we**), are publishing, for a 90-day comment period, proposed enhanced cost disclosure reporting requirements for investment funds and new cost and performance reporting requirements for individual variable insurance contracts or IVICs (referred to here as **Segregated Fund Contracts**), as described below (collectively, the **Proposals**).

The Proposals have been developed by a joint project committee composed of members from the CSA, CCIR, Canadian Insurance Services Regulatory Organizations (CISRO), Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA)** (together referred to as the **SROs**) (the **Project Committee**). The Proposals follow on work securities regulators began after the completion of the Client Relationship Model, Phase 2 (**CRM2**) project in 2016 and recommendations published by the CCIR in a December 2017 position paper on segregated funds, as revised in June 2018 (**CCIR Segregated Funds Position Paper**).

The Proposals for the securities sector (the **Proposed Securities Amendments**) are for amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103** or the **Instrument**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP** or the **Companion Policy**).

The Proposals for the insurance sector are for an *Individual Variable Insurance Contract Ongoing Disclosure Guidance* (the **Proposed Insurance Guidance**) – an enhanced disclosure framework for Segregated Fund Contracts. The CCIR expects each of its member jurisdictions will adopt the framework by local guidance or, in certain jurisdictions, regulation. In addition to including cost and performance reporting guidance, the Proposed Insurance Guidance also includes additional ongoing performance disclosure guidance designed to bring the insurance sector into closer harmony with the securities sector, as well as guidance with respect to ongoing disclosure with respect to Segregated Fund Contract guarantees.

The Proposed Securities Amendments would apply to all registered dealers, advisers and investment fund managers. The Proposed Insurance Guidance would apply to all insurers offering Segregated Fund Contracts to their policy holders.

This notice contains the following annexes:

- Annex A – Specific questions regarding the Proposed Securities Amendments
- Annex B – Specific questions regarding the Proposed Insurance Guidance
- Annex C – Proposed Amendments to NI 31-103
- Annex D – Proposed changes to 31-103CP
- Annex E – Blackline showing changes to NI 31-103 under the Proposed Amendments
- Annex F – Blackline showing changes to 31-103CP under the Proposed Amendments
- Annex G – Sample prototype statement and report for the securities sector
- Annex H – Sample prototype report for the insurance sector
- Annex I – Local matters
- Annex J – Proposed Insurance Guidance
- Annex K – Segregated funds and investment funds: differences between products, distribution channels and regulation

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

www.lautorite.qc.ca
www.asc.ca
www.bcsc.bc.ca
www.fcnb.ca
nssc.novascotia.ca
www.osc.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

This notice will also be available on the CCIR website: https://www.ccir-ccrra.org.

Substance and Purpose

The Proposals are part of the Joint Regulators' harmonized response to concerns we have identified relating to current cost disclosure and product performance reporting requirements for investment funds and segregated funds. The Proposed Insurance Guidance also addresses concerns about ongoing disclosure regarding Segregated Fund Contract guarantees. We seek to enhance investor protection by improving investors' and policy holders' awareness of the ongoing embedded fees such as management fund expense ratios (**MER**) and trading expense ratios (**TER**) that form part of the cost of owning investment funds and segregated funds. The Proposed Insurance Guidance also seeks to enhance policy holder protection by improving policy holders' awareness of their rights to guarantees under their Segregated Fund Contracts and how their actions might affect their guarantees.

One important concern is that there are currently no requirements for securities industry registrants or insurers to provide ongoing reporting to investors and policy holders on the amount of such costs after the initial sale of the investment product, in a form which is specific to the individual's holdings and easily understandable. While fund facts and ETF facts documents required to be delivered at the point of sale for some investment funds contain certain disclosure concerning the ongoing costs of ownership of

those funds, those documents are not tailored to the individual's holdings or required to be delivered on an ongoing basis and this requirement only applies to a subset of investment funds[1].

Research carried out by the Ontario Securities Commission's (**OSC**) Investor Office and the Behavioural Insights Team)[2] in connection with the adoption of CRM2 shows that Canadian investors presented with a sample annual charges and compensation report, assumed that it included embedded fees associated with investment funds, when it does not include such fees.[3]

We believe it is important that investors and policyholders be aware of all of the costs associated with the investment funds and segregated funds they hold, as these fees can impact their returns and have a compounding effect over time. Furthermore, transparency about costs may encourage more competition, which would benefit investors and policyholders.

The Proposals would require disclosure of the ongoing costs of owning Segregated Fund Contracts and investment funds, both as a percentage, for each fund or segregated fund, and as an aggregate amount, in dollars, for all investment funds or investments in a Segregated Fund Contract held during the year.

The Proposals are as consistent as possible between the securities and insurance sectors with respect to disclosure of the ongoing costs of owning Segregated Fund Contracts and investment funds, taking into account the material differences among those products and in the ways the two sectors and their regulatory regimes operate. Differences include who provides cost disclosure to clients, how often account statements are typically sent, distribution channels and product features, as indicated in the table in Annex K.

Summary of Proposals

Securities sector

The Proposed Securities Amendments would add the following new elements to client reporting under NI 31-103:

- in the account statement (s.14.14) or additional statement (s.14.14.1) as appropriate, the fund expense ratio, stated as a percentage for each investment fund held by the client; and
- in the annual report on charges and other compensation (s.14.17) for the account as a whole:
    - the aggregate amount of fund expenses, in dollars, for all investment funds held during the year; and
    - the aggregate amount of any direct investment fund charges (e.g., short-term trading fees or redemption fees), in dollars.

Fund expenses would be calculated by reference to the fund expense ratio, which would be defined as the sum of the MER and the TER. This definition is consistent with how that term is used in the context of a mutual fund's fund facts document and with how the term "ETF expenses" is used in the ETF Facts document.[4] The methodology for determining the information included in the reports would be prescribed in order to ensure comparability for investors and a level playing field for registrants. Explanatory notes, substantially in a prescribed form tested with investors, would be included as appropriate.

The Proposed Securities Amendments would apply to all registrants to which the requirements to deliver an account statement, additional statement or annual cost and compensation report currently apply,[5] in respect of all investment funds owned by their clients, including scholarship plans, labour sponsored funds, foreign funds, mutual funds, non-redeemable investment funds, prospectus-exempt investment funds and exchange-traded funds.

Existing exemptions for statements and reports provided to non-individual permitted clients (including, for example, many different institutional investors), pursuant to subsections 14.14.1(6) and 14.17(5) of NI 31-103, would continue to apply. SRO rules would be amended to be uniform in substance with final amendments to NI 31-103.

Registered investment fund managers would be required to provide the registered dealers and registered advisers with certain information that the dealers and advisers would require in order to prepare the enhanced statements and reports for their clients.

The Proposed Securities Amendments would allow investment fund managers to rely on publicly available information disclosed in an investment fund's most recently published fund facts document, ETF facts document, prospectus or management report of

1 Other continuous disclosure documents prepared by investment funds, such as annual statements or management reports of fund performance, are not prepared by all investment funds, present information in a form which may be complex for retail investors to understand and do not allow investors to understand their total costs of investing, as they present information which is specific to a single issuer or group of issuers.
2 Behavioural Insights Team is a social purpose company part-owned by the U.K. Government.
3 See OSC Staff Notice 11-787 *Improving Fee Disclosure Through Behavioural Insights*, August 19, 2019, p. 11.
4 See item 1.3 of Part II of Form 81-101F3 in *National instrument 81-101 Mutual Fund Prospectus Disclosure*.
5 See sections 14.14, 14.14.1 and 14.17 of NI 31-103.

fund performance, unless this information is outdated, or the investment fund manager reasonably believes that doing so would cause the information reported in the statement or report to be misleading.

If advisers or dealers are unable to rely on information provided by investment fund managers or believe that doing so would cause the information reported in the statement or report to be misleading, they would be required to rely on the most recent publicly available information in the relevant fund facts document, ETF facts document, prospectus or management report of fund performance, and if they cannot do so, would be required to make reasonable efforts to obtain that information by other means.

We believe this approach would adequately balance the need for investors to receive information about the ongoing costs of owning investments funds, while avoiding imposing an undue regulatory burden on registrants.

Insurance sector

The Proposed Insurance Guidance would express the CCIR's expectation that insurers would provide certain information to clients who own Segregated Fund Contracts at least once each year. The full list of these elements of disclosure is found in Annex J.

With respect to costs of holding Segregated Fund Contracts, these elements include:

- the fund expense ratio, stated as a percentage for each segregated fund held by the client within their Segregated Fund Contract during the statement period; and
- for the Segregated Fund Contract as a whole:
    - the aggregate amount of fund expenses, in dollars, for all segregated funds held during the statement period;
    - the aggregate cost of insurance guarantees under the Segregated Fund Contract, in dollars, for the statement period; and
    - the aggregate amount of all other expenses under the Segregated Fund Contract, in dollars, for the statement period.

The statement period would be no more than one year.

The fund expense ratio would be defined as the sum of the MER and the TER. The methodology for determining the information included in the statements would be prescribed in order to ensure comparability for investors and a level playing field for insurers and agents. Explanatory notes, substantially in a prescribed form tested with investors, would be included as appropriate.

The remaining elements of the ongoing disclosure would reflect the expectations set out in the CCIR Segregated Funds Position Paper, except as follows:

- insurers would be expected to report the total deposits, withdrawals and the change in value of segregated funds since the Segregated Fund Contract began and since the start of the previous statement period.
    - In contrast, the CCIR Segregated Funds Position Paper recommended reporting the aggregated dollar value change in net asset value of the Segregated Fund Contract.
- with respect to the amount the client would receive upon redeeming the entire Segregated Fund Contract, insurers would be expected to:
    - include a notice, substantially in a prescribed form, that explains the total net asset value for the contract is not necessarily the amount the client would receive if they ended their contract, and explains how the client could obtain more details about the amount of money they would receive, and
    - if the costs incurred at the redemption would be significant, include a notice, substantially in a prescribed form, that explains these costs.
- insurers would be expected to indicate whether a deferred sales charge may apply to each segregated fund; and
- when a Segregated Fund Contract provides a guaranteed income payment, insurers would be expected to state how long the guaranteed payment would be payable.

Insurance regulators in each jurisdiction will implement this initiative in line with their respective regulatory requirements.

Prior Consultations

In developing the Proposals, the Joint Regulators conducted extensive consultations with investor advocates and market participants, notably at a meeting of the Joint Forum of Financial Market Regulators[6] held on June 10, 2021, as well as through informal technical consultations with industry associations and service providers.

Prior to beginning the joint project, CCIR consulted with stakeholders with respect to disclosure of fees and performance through an Issues Paper released for public consultation in May 2016 and discussion directly with stakeholders. These consultations led to the 2017/2018 CCIR Segregated Funds Position Paper, which set out CCIR's expectations regarding cost disclosure. CCIR continued related research, including through investor focus groups, between the release of the Position Paper and the start of the joint project.

The Project Committee also worked with OSC Investor Office Research and Behavioural Insights Team (**IORBIT**), drawing in part on earlier research commissioned by the MFDA, to design seven prototype disclosure documents for the securities sector, which differed both in terms of substantive content and presentation. Four prototypes were developed for the insurance sector. IORBIT then tested the prototypes to determine which ones would be most effective in maximizing investor or policyholder's comprehension of cost information. The Proposed Amendments reflect the findings from IORBIT's research. The final prototypes are included in Annex G and H as illustrative examples, showing what statements and reports could look like if the Proposed Amendments were adopted, with the new information highlighted.[7]

Transition

We recognize that developing and implementing system enhancements to implement the Proposals will require a significant investment of time and resources by industry stakeholders. However, we firmly believe that providing both investors and policyholders with essential information about the ongoing embedded costs of investment funds and segregated funds at the earliest possible date is a priority. We therefore intend to adopt a short transition period for both the securities sector and the insurance sector.

We are proposing that both sectors move forward in lockstep, with final amendments coming into effect at the same time in September 2024, as further detailed below, assuming that final publication would occur and ministerial approvals be obtained during the second quarter of 2023. This would represent a transition period of approximately 18 months. Registrants and insurers would be required to deliver statements and reports compliant with the Proposals as of the first reporting periods that fall entirely after this date.

In practical terms, this means that

- for the securities sector, investors would receive the first quarterly account statements containing the newly required information for the reporting period ending in December 2024, and the first annual reports containing the newly required information for the reporting period ending in December 2025; and
- for the insurance sector, policyholders would receive an annual report containing the newly required information for the reporting period ending in December 2025, and a half-yearly statement containing the newly required information for the reporting period ending in June 2025, in the case where such statements are delivered.

We are proposing this approach considering the importance of this initiative for investors and policyholders and the fact that pre-consultations with industry stakeholders and investor advocacy groups have taken place and will continue. We strongly encourage registrants and insurers to begin reviewing their systems and conduct advanced planning as soon as possible in order to have all of the resources necessary for implementation in place on time, following the final publication and ministerial approvals. If you have comments on this transition period proposal, please provide detailed discussion of the comments in your submission.

Request for Comments

We welcome your comments on the Proposals and questions in Annexes A and B.

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

Similarly, all comments with respect to the CCIR Guidance may be posted on the CCIR website.

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6 https://www.securities-administrators.ca/news/joint-forum-of-financial-market-regulators-engages-with-industry-and-investor-groups-on-investment-fee-transparency/

7 The final prototype cost and compensation report developed for the securities sector will also be included as an appendix to 31-103CP.

Deadline for Comments

Please submit your comments in writing on or before July 27, 2022. If you are not sending your comments by email, please send a CD containing the submissions in Microsoft Word format.

Comments on Proposed Securities Amendments:

Address your submission to the CSA jurisdictions as follows:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Deliver your comments only to the addresses listed below. Your comments will be distributed to the remaining CSA jurisdictions.

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Comments on Proposed Insurance Guidance:

Address and deliver your comments to:

Mr. Tony Toy, Policy Manager
Canadian Council of Insurance Regulators
National Regulatory Coordination Branch
25 Sheppard Avenue West, Suite 100
Toronto, Ontario
M2N 6S6
ccir-ccrra@fsrao.ca

Your comments will be delivered to member jurisdictions of the CCIR.

Questions

If you have any questions, please contact the staff members listed below.

With respect to securities questions:

Gabriel Chénard
Senior Policy Analyst
Supervision of Intermediaries
Autorité des marchés financiers
(514) 395-0337, ext. 4482
Toll-free: 1 800 525-0337, ext. 4482
gabriel.chenard@lautorite.qc.ca

Jan Bagh
Senior Legal Counsel
Alberta Securities Commission
Corporate Finance
(403) 355-2804
jan.bagh@asc.ca

Chad Conrad
Senior Legal Counsel
Alberta Securities Commission
Corporate Finance
(403) 297-4295
chad.conrad@asc.ca

Kathryn Anthistle
Senior Legal Counsel, Legal Services
Capital Markets Regulation Division
British Columbia Securities Commission
(604) 899-6536
kanthistle@bcsc.bc.ca

Curtis Brezinski
Compliance Auditor
Financial and Consumer Affairs Authority of Saskatchewan
(306) 787-5876
curtis.brezinski@gov.sk.ca

Clayton Mitchell
Registration and Compliance Manager
Financial and Consumer Services Commission (New Brunswick)
(506) 658-5476
Clayton.mitchell@fcnb.ca

Nick Doyle
Compliance Officer
Financial and Consumer Services Commission (New Brunswick)
(506) 635-2450
Nick.doyle@fcnb.ca

Brian Murphy
Manager, Registration
Nova Scotia Securities Commission
(902) 424-4592
brian.murphy@novascotia.ca

Chris Jepson
Senior Legal Counsel
Ontario Securities Commission
(416) 593-2379
cjepson@osc.gov.on.ca

With respect to insurance questions:

Mr. Tony Toy, Policy Manager
Canadian Council of Insurance Regulators
National Regulatory Coordination Branch
416-590-7257
ccir-ccrra@fsrao.ca

Chantale Bégin CPA auditor, CA
Senior Accountant, Standardization of Financial Institutions
Capital Oversight of Financial Institutions
Autorité des marchés financiers
Tel : 418 525-0337, ext 4595
Toll free : 1 877 525-0337, ext 4595
chantale.begin@lautorite.qc.ca

ANNEX A

SPECIFIC QUESTIONS REGARDING THE PROPOSED SECURITIES AMENDMENTS

1. Do you anticipate implementation issues related to the inclusion of any of the following in the Proposed Securities Amendments,

   (a) exchange-traded funds,

   (b) prospectus-exempt investment funds,

   (c) scholarship plans,

   (d) labour-sponsored funds,

   (e) foreign investment funds?

2. Would you consider it acceptable if, instead of information about each investment fund's fund expense ratio (MER + TER), the MER alone was disclosed in account statements and additional statements and used in the calculation of the fund expenses for the purposes of the annual report on charges and other compensation?

3. For the purpose of subsection 14.14.1(2), is the use of net asset value appropriate, or would it be more appropriate to use market value or another input? Would it be better to use different inputs for different types of funds?

4. Do you anticipate any other implementation issues related to the Proposed Securities Amendments?

5. Do you anticipate any issues specifically related to the proposed transition period?

ANNEX B

SPECIFIC QUESTIONS REGARDING THE PROPOSED INSURANCE GUIDANCE

This annex has been prepared by the Canadian Council of Insurance Regulators (CCIR). Please send comments relating to it to the CCIR National Regulatory Coordination Branch at the address indicated under "Comments on Proposed Insurance Guidance".

[Editor's Note: This annex is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of this annex.]

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ANNEX B

SPECIFIC QUESTIONS REGARDING THE PROPOSED INSURANCE GUIDANCE

1. Do you anticipate implementation issues related to the inclusion of any of the following in the Proposed Insurance Guidance,

   (a) Segregated Fund Contracts which are no longer available for sale, but to which customers can still make deposits;

   (b) Segregated Fund Contracts which are no longer available for sale and to which customer can no longer make deposits;

   (c) Segregated Fund Contracts that have the potential to have funds in more than one phase at one time (i.e. Accumulation Phase, Withdrawal Phase, Benefits Phase);

   (d) Segregated Fund Contracts that may include insurance fees that are paid both directly (i.e. from money outside a segregated fund, such as where units are cashed out to pay the insurance fee) and indirectly (i.e. from assets held within a fund in which the client holds units)?

2. The Proposed Insurance Guidance does not yet include a method insurers must follow when calculating the fund expenses for each Segregated Fund Contract. Please comment on the advantages and disadvantages of calculating the fund expenses for each segregated fund the client holds each day as follows.

   Option 1:

$$\frac{A}{365} \text{ x } B \text{ x } C$$

   Option 2:

$$\frac{A}{365} \text{ x } \frac{B}{(1 - \frac{A}{365})} \text{ x } C$$

   In each option

   A = fund expense ratio of the applicable class or series of the segregated fund;

   B = the net asset value of a unit of the applicable class or series of the segregated fund for the day; and

C = the number of units owned by the client for the day.

The difference between these two options is that Option 1 bases the allocation of fund expenses on the net value of assets in the fund after they are reduced to reflect the fund expenses for the day. Option 2 bases the allocation of fund expenses on the gross assets before they are reduced to reflect these expenses.

For example, suppose that A = 2%, B = $1,000 and C = 10,000.

Under Option 1, the fund expenses for the client for that segregated fund for the year would be $547.95:

$$\frac{0.02}{365} \text{ x } 1000 \text{ x } 10000$$

Under Option 2, the fund expenses would be $547.98:

$$\frac{0.02}{365} \text{ x } \frac{1000}{(1 - \frac{0.02}{365})} \text{ x } 10000$$

3. Should all insurers be required to use the same formula to calculate the dollar amount of fund expenses? Please comment on the advantages and disadvantages of:

    a. Requiring all insurers to use the same calculation; or

    b. Allowing an insurer to use a different calculation method if the insurer can create a more precise approximation.

4. For the purpose of the calculation described in question 2, what are the costs, benefits and risks of using the following to calculate fund expense ratio (i.e. MER + TER):

    a. MER from the most recent Fund Facts document published before the year in question begins and a TER calculated at the same time on similar basis;

    b. MER and TER calculated for the year in question after the year ends; or

    c. Other estimated MER and TER for the year (please explain how this MER and TER would be calculated if you discuss this option)?

5. For the purpose of the calculation described in question 2, what are the costs, benefits and risks of using:

    a. 365 days;

    b. The actual number of days in the calendar year in question; or

    c. Another number that reflects the number of days on which the NAV is calculated for the fund rather than the number of days in the year?

    Note that the proposed calculation for securities assumes 365 days.

6. Would you consider it acceptable if, instead of information about each segregated fund's fund expense ratio (MER + TER), the MER alone was:

    a. disclosed in annual statements for each fund; and

    b. used in the calculation of the total fund expenses for the Segregated Fund Contract for the year?

    What are the costs, benefits and risks of using (MER + TER) versus only using MER?

7. Might Segregated Fund Contract customers incur significant costs, other than for deferred sales charges, if they withdraw all funds from their Segregated Fund Contracts? If so, what are those costs?

8. The guidance describes annual statements. Do you anticipate any issues in connection with the guidance as drafted in cases where an insurer provides semi-annual statements to customers?

9. Do you anticipate any other implementation issues related to the Proposed Insurance Guidance?

10. Do you anticipate any issues specifically related to the proposed transition period?

ANNEX C

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

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

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

““direct investment fund charge” means an amount charged, by an investment fund or an investment fund manager, to a client if the client buys, holds, sells or switches units or shares of an investment fund, including any federal, provincial or territorial sales taxes paid on that amount, other than, for greater certainty, an amount included in the investment fund’s fund expenses;

“ETF facts document” has the same meaning as in section 1.1 of National Instrument 41-101 *General Prospectus Requirements*;

“fund expense ratio” means the sum of an investment fund’s management expense ratio and trading expense ratio, expressed as a percentage;

“fund facts document” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“management expense ratio” has the same meaning as in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“management report of fund performance” has the same meaning as in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“trading expense ratio” means the ratio, expressed as a percentage, of the total commissions and other portfolio transaction costs incurred by an investment fund to its average net asset value, calculated in accordance with paragraph 12 of item 3 Financial Highlights of Part B of Form 81-106F1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;”

3. Section 14.1.1 is replaced with the following:

“14.1.1. Duty to provide information – investment fund managers

(1) A registered investment fund manager of an investment fund must, within a reasonable period of time, provide a registered dealer or a registered adviser that has a client that owns securities of the investment fund with the information that is required by the dealer or adviser, in order for the dealer or adviser to comply with paragraph 14.12(1)(c), subsections 14.14(4) and (5), 14.14.1(2) and 14.14.2(1) and paragraphs 14.17(1)(h) and (i) and (j), or with a reasonable approximation of such information.

(2) For the purpose of subsection (1), with respect to the information required in respect of paragraph 14.17(1)(i), the registered investment fund manager must provide the daily cost per unit or share of the relevant class or series of an investment fund calculated in dollars, determined using the following formula:

$\frac{\mathrm{A}}{365}\mathrm{X\ B} = \mathrm{C}$, where

A = fund expense ratio of the applicable class or series of the investment fund;

B = the net asset value of a share or unit of the applicable class or series of the investment fund for the day;

C = the daily dollar cost per unit for the investment fund class or series.

(3) For the purpose of subsection (1), and paragraph 14.14(5)(c.1) or 14.14.1(2)(c.1), if a registered investment fund manager provides an approximation, the approximation must be determined based on information

disclosed in an investment fund's most recently disclosed fund facts document, ETF facts document, prospectus or management report of fund performance, making any reasonable assumptions, unless

(a) the information was disclosed more than 12 months before the end of the period covered by the statement or report which is required to be delivered by the registered dealer or registered adviser under subsection 14.14(1), 14.14.1(1) or 14.17(1), or

(b) the investment fund manager reasonably believes that doing so would cause the information disclosed in the statement or report to be misleading."

4. Subsection 5 of section 14.14 is amended by adding the following, after paragraph (c):

"(c.1) the fund expense ratio of each class or series of each investment fund in the account;

(c.2) if information reported under paragraph (c.1) is based on an approximation or any other assumption, a description of the assumption or approximation;"

5. Subsection 5 of section 14.14 is amended by adding the following, after paragraph (g):

"(h) if there are investment funds in the account, the following notification or a notification that is substantially similar:

"Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.""

6. Subsection 2 of section 14.14.1 is amended by adding the following after paragraph (c):

"(c.1) the fund expense ratio of each class or series of each investment fund;

(c.2) if information reported under paragraph (c.1) is based on an approximation or any other assumption, a description of the assumption or approximation;"

7. Subsection 2 of section 14.14.1 is amended by adding the following after paragraph (h):

"(i) if the statement includes information under paragraph (c.1), the following notification or a notification that is substantially similar:

"*Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.*""

8. Subsection 1 of section 14.17 is amended by adding the following, after paragraph (h):

"(i) the total amount of fund expenses, in relation to securities of investment funds owned by the client during the period covered by the report, either:

(a) charged to the client by an investment fund, its investment fund manager or any other party, or;

(b) charged to an investment fund by its investment fund manager or any other party;

(j) the total amount of direct investment fund charges charged to the client by an investment fund, investment fund manager or any other party, in relation to securities of investment funds owned by the client during the period covered by the report, excluding any charges included in the amounts under paragraph (c) or (f);

(k) the total amount of the fund expenses reported under paragraph (i) and the direct investment fund charges reported under paragraph (j);

(l) the total amount of the registered firm's charges reported under paragraph (d) and the investment fund fees reported under paragraph (k);

(m) if the client owned investment fund securities during the period covered by the report, the following notification or a notification that is substantially similar:

"*Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.*

The number shown here is the total dollar amount you paid in management fees, trading fees and operating expenses for all the investment funds you owned last year. This amount depends on each of your funds' fund expenses and the amount you invested in each fund. Your account statements show the fund expenses as a percentage for each fund you hold."

(n) if the client owned investment fund securities during the period covered by the report and any deferred sales charges were paid by the client, the following notification or a notification that is substantially similar:

"*You paid this cost because you redeemed your units or shares of a fund purchased under a deferred sales charge option (DSC) before the end of the redemption fee schedule and a redemption fee was payable to the investment fund company. Information about these and other fees can be found in the prospectus or fund facts document for each investment fund. The redemption fee was deducted from the redemption amount you received."*

(o) if the client owned investment fund securities during the period covered by the report and direct investment fund charges, other than redemption fees, were charged to the client, a short explanation of the type of fees which were charged;

(p) if the information reported under paragraph (i) or (j) is based on an approximation or any other assumption, a description of the assumption or approximation."

9. Section 14.17 of the Instrument is amended by adding the following subsection:

"(6) For the purposes of determining the total amount of fund expenses under paragraph (1)(i), the fund expenses for each class or series of each investment fund owned by the client during the reporting period must be added together after using the following formula to calculate the fund expenses for each fund for each day that the client owned it,

(A x B) where

A = the daily cost per unit or share of the relevant class or series of an investment fund calculated in dollars using the formula in subsection 14.1.1(2), and

B = the number of shares or units owned by the client for the day."

10. The Instrument is amended by adding the following section, after section 14.17:

"**14.17.1 Reporting of fund expenses and direct investment fund charges**

(1) Subject to subsection (2), for the purposes of paragraphs 14.14(5)(c.1), 14.14.1(2)(c.1), and 14.17(1)(i) and (j), the information required to be delivered to clients by a registered dealer or registered adviser must be based on the information provided under section 14.1.1.

(2) Subject to subsection (3), if no information is provided under section 14.1.1, or the registered firm reasonably believes that any part of the information provided pursuant to section 14.1.1 is incomplete or that relying on it would cause information required to be delivered to a client to be misleading, the registered firm must rely on the most recent information disclosed in the relevant fund facts document, ETF facts document, prospectus or management report of fund performance, as applicable;

(3) If there is no publicly available information or if the information referred to in subsection (2) was disclosed more than 12 months before the end of the period covered by the statement or report required to be delivered to the client, or the registered firm reasonably believes that relying on the publicly available information would cause

information required to be delivered to the client to be misleading, the registered firm must not rely on the publicly available information and must

(a) make reasonable efforts to obtain the information referred to in subsection (1) by other means, and

(b) subject to subsection (4), rely on the information obtained under paragraph (a).

(4) If the registered firm reasonably believes it cannot obtain information under paragraph (3) that is not misleading, the registered firm must exclude the information from the calculation of the amount of fund expenses or of the direct investment fund charges reported to the client, as the case may be, or, in the case of a fund expense ratio, must not report the fund expense ratio, and must disclose the fact that the information is excluded or not reported in the relevant statement or report."

11. This Instrument comes into force on [●].

ANNEX D

PROPOSED CHANGES TO 31-103CP

NOT PUBLISHED IN ONTARIO – SEE ANNEX F: BLACKLINE SHOWING
PROPOSED CHANGES TO
COMPANION POLICY 31-103CP *NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

ANNEX E

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

1.1 Definitions of terms used throughout this Regulation

In this Instrument (…)

"direct investment fund charge" means an amount charged, by an investment fund or an investment fund manager, to a client if the client buys, holds, sells or switches units or shares of an investment fund, including any federal, provincial or territorial sales taxes paid on that amount, other than, for greater certainty, an amount included in the investment fund's fund expenses;

"ETF facts document" has the same meaning as in section 1.1 of National Instrument 41-101 *General Prospectus Requirements*;

"fund expense ratio" means the sum of an investment fund's management expense ratio and trading expense ratio, expressed as a percentage;

"fund facts document" has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

"management expense ratio" has the same meaning as in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"management report of fund performance" has the same meaning as in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"trading expense ratio" means the ratio, expressed as a percentage, of the total commissions and other portfolio transaction costs incurred by an investment fund to its average net asset value, calculated in accordance with paragraph 12 of item 3 Financial Highlights of Part B of Form 81-106F1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

(…)

14.1.1 Duty to provide information – investment fund managers

(1) A registered investment fund manager of an investment fund must, within a reasonable period of time, provide a registered dealer or a registered adviser that has a client that owns securities of the investment fund with the information that is required by the dealer or adviser, in order for the dealer or adviser to comply with paragraph 14.12(1)(c), subsections 14.14(4) and (5), 14.14.1(2) and 14.14.2(1) and paragraphs 14.17(1)(h) and (i) and (j), or with a reasonable approximation of such information.

(2) For the purpose of subsection (1), with respect to the information required in respect of paragraph 14.17(1)(i), the registered investment fund manager must provide the daily cost per unit or share of the relevant class or series of an investment fund calculated in dollars, determined using the following formula:

$\frac{A}{365} \times B = C$, where

A = fund expense ratio of the applicable class or series of the investment fund;

B = the net asset value of a share or unit of the applicable class or series of the investment fund for the day;

C = the daily dollar cost per unit for the investment fund class or series.

(3) For the purpose of subsection (1), and paragraph 14.14(5)(c.1) or 14.14.1(2)(c.1), if a registered investment fund manager provides an approximation, the approximation must be determined based on information disclosed in an investment fund's most recently disclosed fund facts document, ETF facts document, prospectus or management report of fund performance, making any reasonable assumptions, unless

(a) the information was disclosed more than 12 months before the end of the period covered by the statement or report which is required to be delivered by the registered dealer or registered adviser under subsection 14.14(1), 14.14.1(1) or 14.17(1), or

(b) the investment fund manager reasonably believes that doing so would cause the information disclosed in the statement or report to be misleading.

(…)

14.14. Account statements

(1) A registered dealer must deliver to a client a statement that includes the information referred to in subsections (4) and (5)

(a) at least once every 3 months, or

(b) if the client has requested to receive statements on a monthly basis, for each one-month period.

(2) A registered dealer must deliver to a client a statement that includes the information referred to in subsections (4) and (5) after the end of any month in which a transaction was effected in securities held by the dealer in the client's account, other than a transaction made under an automatic withdrawal plan or an automatic payment plan, including a dividend reinvestment plan.

(2.1) Paragraph 1(b) and subsection (2) do not apply to a mutual fund dealer in connection with its activities as a dealer in respect of the securities listed in paragraph 7.1(2)(b).

(3) A registered adviser must deliver to a client a statement that includes the information referred to in subsections (4) and (5) at least once every 3 months, except that if the client has requested to receive statements on a monthly basis, the adviser must deliver a statement to the client for each one-month period.

(3.1) (paragraph revoked).

(4) If a registered dealer or registered adviser made a transaction for a client during the period covered by a statement delivered under subsection (1), (2) or (3), the statement must include the following:

(a) the date of the transaction;

(b) whether the transaction was a purchase, sale or transfer;

(c) the name of the security;

(d) the number of securities purchased, sold or transferred;

(e) the price per security if the transaction was a purchase or sale;

(f) the total value of the transaction if it was a purchase or sale.

(5) If a registered dealer or registered adviser holds securities owned by a client in an account of the client, a statement delivered under subsection (1), (2) or (3) must indicate that the securities are held for the client by the registered firm and must include the following information about the client's account determined as at the end of the period for which the statement is made:

(a) the name and quantity of each security in the account;

(b) the market value of each security in the account and, if applicable, the notification in subsection 14.11.1(2);

(c) the total market value of each security position in the account;

(c.1) the fund expense ratio of each class or series of each investment fund in the account;

(c.2) if information reported under paragraph (c.1) is based on an approximation or any other assumption, a description of the assumption or approximation;

(d) any cash balance in the account;

(e) the total market value of all cash and securities in the account;

(f) whether the account is eligible for coverage under an investor protection fund approved or recognized by the securities regulatory authority and, if it is, the name of the investor protection fund;

(g) which securities in the account might be subject to a deferred sales charge if they are sold;

(h) if there are investment funds in the account, the following notification or a notification that is substantially similar:

"Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.";

(6) (paragraph revoked).

(7) For the purposes of this section, a security is considered to be held by a registered firm for a client if

(a) the firm is the registered owner of the security as nominee on behalf of the client, or

(b) the firm has physical possession of a certificate evidencing ownership of the security.

14.14.1. Additional statements

(1) A registered dealer or registered adviser must deliver a statement that includes the information referred to in subsection (2) to a client if any of the following apply in respect of a security owned by the client that is held or controlled by a party other than the dealer or adviser:

(a) the dealer or adviser has trading authority over the security or the client's account in which the security is held or was transacted;

(b) the dealer or adviser receives continuing payments related to the client's ownership of the security from the issuer of the security, the investment fund manager of the issuer or any other party;

(c) the security is issued by a scholarship plan, a mutual fund or an investment fund that is a labour-sponsored investment fund corporation, or labour-sponsored venture capital corporation, under legislation of a jurisdiction of Canada and the dealer or adviser is the dealer or adviser of record for the client on the records of the issuer of the security or the records of the issuer's investment fund manager.

(2) A statement delivered under subsection (1) must include the following in respect of the securities or the account referred to in subsection (1), determined as at the end of the period for which the statement is made:

(a) the name and quantity of each security;

(b) the market value of each security and, if applicable, the notification in subsection 14.11.1(2);

(c) the total market value of each security position;

(c.1) the fund expense ratio of each class or series of each investment fund;

(c.2) if information reported under paragraph (c.1) is based on an approximation or any other assumption, a description of the assumption or approximation;

(d) any cash balance in the account;

(e) the total market value of all of the cash and securities;

(f) disclosure in respect of the party that holds or controls each security and a description of the way it is held;

(g) whether the securities are, or the account is, eligible for coverage under an investor protection fund approved or recognized by the securities regulatory authority;

(h) which of the securities might be subject to a deferred sales charge if they are sold;

(i) if the statement includes information under paragraph (c.1), the following notification or a notification that is substantially similar:

"*Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because*

they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments."

(…)

14.17. Report on charges and other compensation

(1) For each 12-month period, a registered firm must deliver to a client a report on charges and other compensation containing the following information, except that the first report delivered after a client has opened an account may cover a period of less than 12 months:

(a) the registered firm's current operating charges which might be applicable to the client's account;

(b) the total amount of each type of operating charge related to the client's account paid by the client during the period covered by the report, and the total amount of those charges;

(c) the total amount of each type of transaction charge related to the purchase or sale of securities paid by the client during the period covered by the report, and the total amount of those charges;

(d) the total amount of the operating charges reported under paragraph (b) and the transaction charges reported under paragraph (c);

(e) if the registered firm purchased or sold debt securities for the client during the period covered by the report, either of the following:

(i) the total amount of any mark-ups, mark-downs, commissions or other service charges the firm applied on the purchases or sales of debt securities;

(ii) the total amount of any commissions charged to the client by the firm on the purchases or sales of debt securities and, if the firm applied mark-ups, mark-downs or any service charges other than commissions on the purchases or sales of debt securities, the following notification or a notification that is substantially similar:

"*For debt securities purchased or sold for you during the period covered by this report, dealer firm remuneration was added to the price you paid (in the case of a purchase) or deducted from the price you received (in the case of a sale). This amount was in addition to any commissions you were charged*.";

(f) if the registered firm is a scholarship plan dealer, the unpaid amount of any enrolment fee or other charge that is payable by the client;

(g) the total amount of each type of payment, other than a trailing commission, that is made to the registered firm or any of its registered individuals by a securities issuer or another registrant in relation to registerable services to the client during the period covered by the report, accompanied by an explanation of each type of payment;

(h) if the registered firm received trailing commissions related to securities owned by the client during the period covered by the report, the following notification or a notification that is substantially similar:

"*We received $[amount] in trailing commissions in respect of securities you owned during the 12-month period covered by this report.*

Investment funds pay investment fund managers a fee for managing their funds. The managers pay us ongoing trailing commissions for the services and advice we provide you. The amount of the trailing commission depends on the sales charge option you chose when you purchased the fund. You are not directly charged the trailing commission or the management fee. But, these fees affect you because they reduce the amount of the fund's return to you. Information about management fees and other charges to your investment funds is included in the prospectus, fund facts document or ETF Facts document for each fund.";

(i) the total amount of fund expenses, in relation to securities of investment funds owned by the client during the period covered by the report, either:

(a) charged to the client by an investment fund, its investment fund manager or any other party, or;

(b) charged to an investment fund by its investment fund manager or any other party;

(j) the total amount of direct investment fund charges charged to the client by an investment fund, investment fund manager or any other party, in relation to securities of investment funds owned by the client during the period covered by the report, excluding any charges included in the amounts under paragraph (c) or (f);

(k) the total amount of the fund expenses reported under paragraph (i) and the direct investment fund charges reported under paragraph (j);

(l) the total amount of the registered firm's charges reported under paragraph (d) and the investment fund fees reported under paragraph (k);

(m) if the client owned investment fund securities during the period covered by the report, the following notification or a notification that is substantially similar:

"*Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.*

The number shown here is the total dollar amount you paid in management fees, trading fees and operating expenses for all the investment funds you owned last year. This amount depends on each of your funds' fund expenses and the amount you invested in each fund. Your account statements show the fund expenses as a percentage for each fund you hold."

(n) if the client owned investment fund securities during the period covered by the report and any deferred sales charges were paid by the client, the following notification or a notification that is substantially similar:

"*You paid this cost because you redeemed your units or shares of a fund purchased under a deferred sales charge option (DSC) before the end of the redemption fee schedule and a redemption fee was payable to the investment fund company. Information about these and other fees can be found in the prospectus or fund facts document for each investment fund. The redemption fee was deducted from the redemption amount you received."*

(o) if the client owned investment fund securities during the period covered by the report and direct investment fund charges, other than redemption fees, were charged to the client, a short explanation of the type of fees which were charged;

(p) if the information reported under paragraph (i) or (j) is based on an approximation or any other assumption, a description of the assumption or approximation.

(2) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14(5) must be delivered in a separate report on charges and other compensation for each of the client's accounts.

(3) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14.1(1) must be delivered in a report on charges and other compensation for the client's account through which the securities were transacted.

(4) Subsections (2) and (3) do not apply if the registered firm provides a report on charges and other compensation that consolidates, into a single report, the required information for more than one of a client's accounts and any securities of the client required to be reported under subsection 14.14(5) or 14.14.1(1) and if the following apply

(a) the client has consented in writing to the form of disclosure referred to in this subsection;

(b) the consolidated report specifies the accounts and securities with respect to which information is required to be reported under subsection 14.14.1(1).

(5) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

(6) For the purposes of determining the total amount of fund expenses under paragraph (1)(i), the fund expenses for each class or series of each investment fund owned by the client during the reporting period must be added together after using the following formula to calculate the fund expenses for each fund for each day that the client owned it,

(A x B)

where

A = the daily cost per unit or share of the relevant class or series of an investment fund calculated in dollars using the formula in subsection 14.1.1(2), and

B = the number of shares or units owned by the client for the day.

14.17.1 Reporting of fund expenses and direct investment fund charges

(1) Subject to subsection (2), for the purposes of paragraphs 14.14(5)(c.1), 14.14.1(2)(c.1), and 14.17(1)(i) and (j), the information required to be delivered to clients by a registered dealer or registered adviser must be based on the information provided under section 14.1.1.

(2) Subject to subsection (3), if no information is provided under section 14.1.1, or the registered firm reasonably believes that any part of the information provided pursuant to section 14.1.1 is incomplete or that relying on it would cause information required to be delivered to a client to be misleading, the registered firm must rely on the most recent information disclosed in the relevant fund facts document, ETF facts document, prospectus or management report of fund performance, as applicable;

(3) If there is no publicly available information or if the information referred to in subsection (2) was disclosed more than 12 months before the end of the period covered by the statement or report required to be delivered to the client, or the registered firm reasonably believes that relying on the publicly available information would cause information required to be delivered to the client to be misleading, the registered firm must not rely on the publicly available information and must

(a) make reasonable efforts to obtain the information referred to in subsection (1) by other means, and

(b) subject to subsection (4), rely on the information obtained under paragraph (a).

(4) If the registered firm reasonably believes it cannot obtain information under paragraph (3) that is not misleading, the registered firm must exclude the information, from the calculation of the amount of fund expenses or of the direct investment fund charges reported to the client, as the case may be, or, in the case of a fund expense ratio, must not report the fund expense ratio, and must disclose the fact that the information is excluded or not reported in the relevant statement or report.

ANNEX F

BLACKLINE SHOWING
PROPOSED CHANGES TO
COMPANION POLICY 31-103CP *NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

Division 1 Investment fund managers

Section 14.1 sets out the limited application of Part 14 to investment fund managers. The sections of Part 14 that apply to investment fund managers when performing their investment fund manager activities include section 14.1.1, section 14.5.2, section 14.5.3, section 14.6, section 14.6.1, section 14.6.2, subsection 14.12(5) and section 14.15. An investment fund manager that is also registered as a dealer or adviser (or both) is subject to all relevant sections of Part 14 in respect of that firm's dealer or adviser activities.

Section 14.1.1 requires investment fund managers to provide information that is known to them or which is required to be calculated by them concerning position cost, fund expense ratio, fund expenses, deferred sales charges and any other charges deducted from the net asset value of the securities, and trailing commissions to dealers and advisers who have clients that own the investment fund manager's funds. This information must be provided within a reasonable period of time, in order that the dealers and advisers may comply with their client reporting obligations. This is a principles-based requirement.

When relying on information disclosed in an investment fund's previous disclosure documents, we would expect investment fund managers to inform the advisers or dealers of any assumptions or approximations in the information reported to the advisers or dealers.

An investment fund manager must work with the dealers and advisers who distribute fund products to determine what information they need from the investment fund manager in order to satisfy their client reporting obligations. The information and arrangements for its delivery may vary, reflecting different operating models and information systems. The information and arrangements for its delivery may vary, reflecting different operating models and information systems.

(…)

14.14. Account statements

Section 14.14 requires registered dealers and advisers to deliver statements to clients at least once every 3 months. There is no prescribed form for these statements but they must contain the information referred to in subsections 14.14(4) and (5). The types of transactions that must be disclosed in an account statement include any purchase, sale or transfer of securities, dividend or interest payment received or reinvested, any fee or charge, and any other account activity. The fund expense ratio of each series of each investment fund in the account and a description of any assumptions or approximations used to calculate this ratio must also be disclosed. A firm must deliver an account statement with the information referred to in subsection (4) if any transaction was made for the client in the reporting period. A firm is only required to provide the account position information referred to in subsection (5) if it holds securities owned by a client in an account of the client.

There is no provision for consolidated statements in section 14.14 (or 14.14.1), so a registered firm must provide every client with an applicable statement for each of their accounts. Firms may provide supplementary reporting that they think a client might find useful. For example, a firm might provide a consolidated year-end statement where a client has requested a consolidated performance report under subsection 14.18(4).

14.14.1. Additional statements

A firm is required to deliver additional statements if the circumstances described in subsection 14.14.1(1) apply. The additional statements must be delivered once every 3 months, except that an adviser must deliver the statements on a monthly basis if requested by the client as provided in subsection 14.14.1(3). The requirements set out for the frequency of delivering account statements and additional statements are minimum standards. Firms may choose to provide the statements more frequently.

Paragraph 14.14.1(2)(g) requires disclosure about applicable investor protection funds. However, subsection 14.14.1(2.1) exempts a firm from this requirement where a client's securities are held or controlled by an IIROC or MFDA member. SRO rules require members to be participants in specified investor protection funds and prescribe client disclosures about them. To avoid the potential that clients may be confused or misinformed, registrants that are not participants in an investor protection fund should refrain from discussing its terms and conditions with clients.

Firms may choose to include securities that must be reported under the additional statement requirement in a document that it refers to as an account statement, consistent with their clients' expectations that their accounts are not limited to securities held by the firm, provided it satisfies the requirements for content of statements set out in sections 14.14 and 14.14.1.

(…)

14.17. Report on charges and other compensation

Registered firms must provide clients with an annual report on the firm's charges and other compensation received by the firm in connection with their investments. Examples of operating charges and transaction charges are provided in the discussion of the disclosure of charges and other compensation in section 14.2 of this Policy Statement. The annual report must include information about all of the firm's current operating charges that might be applicable to a client's account. A firm is only required to include the charges for those of its services that it would reasonably expect the particular client to utilize in the coming 12 months.

The discussion of debt security disclosure requirements in section 14.12 of this Policy Statement is also relevant with respect to paragraph 14.17(1)(e).

Scholarship plans often have enrolment fees payable in instalments in the first few years of a client's investment in the plan. Paragraph 14.17(1)(f) requires that scholarship plan dealers include a reminder of the unpaid amount of any such fees in their annual reports on charges and other compensation.

Payments that a registered firm or its registered representatives receive from issuers of securities or other registrants in relation to registerable services to a client must be reported under paragraph 14.17(1)(g). This disclosure requirement includes any form of payment to the firm or a representative of the firm linked to sales or other registerable services to the client receiving the report. Examples of payments that would be included in this part of the report on charges and other compensation include some referral fees, success fees on the completion of a transaction, or finder's fees. This part of the report does not include trailing commissions, as they are specifically addressed in paragraph 14.17(1)(h).

Registered firms must disclose the amount of trailing commissions they received related to a client's holdings. The disclosure of trailing commissions received in respect of a client's investments must be included with a notification prescribed in paragraph 14.17(1)(h). The notification must be in substantially the form prescribed, so a registered firm may modify it to be consistent with the actual arrangements. For example, a firm that receives a payment that falls within the definition of "trailing commission" in section 1.1 in respect of securities that are not investment funds can modify the notification accordingly. The notification set out is the required minimum and firms can provide further explanation if they believe it will be helpful to their clients.

Registered firms should not include in the total amount of direct investment fund charges required to be reported under paragraph 14.17(1)(j), the amount of a charge, including a sales commission, which is required to be reported by the registered firm to the client under paragraph 14.17(1)(c), concerning transaction charges, or (f), specific to scholarship plan dealers, in order to avoid any potential double counting of such charge in the total cost amount required to be reported under paragraph 14.17(1)(l).

Registered firms may want to organize the annual report on charges and other compensation with separate sections showing the charges paid by the client to the firm, and the other compensation received by the firm in respect of the client's account.

Appendix D of this Policy Statement includes a sample Report on Charges and Other Compensation, which registered firms are encouraged to use as guidance.

14.17.1 Reporting of fund expenses and direct investment fund charges

Dealers and advisers are required to rely on information provided by registered investment fund managers pursuant to section 14.1.1. However, they may be unable to rely on such information in certain circumstances, including if:

- there is no registered investment fund manager
- such information is not required to be provided for a fund (for example, as in the case of certain non-Canadian investment funds)
- an investment fund manager does not comply with section 14.1.1 for any reason, or
- the dealer or adviser reasonably believes that relying on this information would cause the information delivered to a client to be misleading.

In cases where paragraph 14.17.1(3)(a) applies, the registered firm must make reasonable efforts to obtain information about the investment fund's fund expenses, fund expense ratio or direct investment fund charges by other means. Those other means may include:

- relying on information disclosed in disclosure documents of the investment fund other than those referred to in paragraph 14.17.1(2), including documents prepared according to the reporting requirements applicable in a foreign jurisdiction

- requesting that the information be provided in writing by the investment fund or investment fund manager, or
- relying on information reported by a reliable third-party service provider.

We expect registered firms to use their professional judgement in determining what other means of obtaining the information would be appropriate, notably taking into account that doing so must not cause the information reported to clients to be misleading.

(…)

Appendix D Annual Charges and Compensation Report is replaced by [TCR sample account statement and cost report]

ANNEX G

SAMPLE PROTOTYPE STATEMENT AND REPORT FOR THE SECURITIES SECTOR

Highlighting shows new information

Dealer ABC Inc.

Your Account Number: 123-4567

Holdings in your account
On December 31, 2020

Portfolio Assets

Description	Shares Owned	Book Cost	Market Value	Current gain or loss	Fund Expenses[1]	% of your holdings
Investment Funds						
ABC Management Monthly Income Fund, Series A FE	250.00	$17,000.00	$19,500.00	$2,500.00	1.00%	41.49%
ABC Management Canadian Equity, Series A FE	450.00	$19,500.00	$22,500.00	$3,000.00	2.00%	47.87%
Equities						
Company A N/A	100.00	$2,000.00	$3,000.00	$1,000.00		6.88%
Company B N/A	50.00	$1,500.00	$2,000.00	$500.00		4.26%
Totals		**$40,000.00**	**$47,000.00**			**100.00%**

1. Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.

Dealer ABC Inc.

Your Account Number: 123-4567

Your Cost of Investing and Our Compensation

This report shows for 2021

- your cost of investing, including what you paid to us and to investment fund companies
- our compensation

Your Cost of Investing

Costs reduce your profits and increase your losses

Your total cost of investing was $815 last year

What you paid

Our charges: Amounts that you paid to us by withdrawals from your account or by other means such as cheques or transfers from your bank.	
Account administration and operating fees – you pay these fees to us each year	$100.00
Trading fees – you pay these fees to us when you buy or sell some investments	$20.00
Total you paid to us	**$120.00**
Investment fund company fees: Amounts you paid to investment fund companies that operate the investment funds (e.g., mutual funds) in your account.	
Fund Expenses - See the fund expenses % shown in the holdings section of your account statement[1]	$645.00
Redemption fees on deferred sales charge (DSC) investments[2]	$50.00
Amount you paid to investment fund companies	**$695.00**
Your total cost of investing	**$815.00**

Our Compensation

What we received

Total you paid us, as indicated above	$120.00
Trailing commissions[3] paid to us by investment fund companies	$342.00
Total we received for advice and services we provided to you	**$462.00**

1. **Fund expenses.** Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.

   The number shown here is the total dollar amount you paid in management fees, trading fees and operating expenses for all the investment funds you owned last year. This amount depends on each of your funds' fund expenses and the amount you invested in each fund. Your account statements show the fund expenses as a percentage for each fund you hold.

2. **Redemption fees on DSC investments**: You paid this cost because you redeemed your units or shares of a fund purchased under a deferred sales charge option (DSC) before the end of the redemption fee schedule and a redemption fee was payable to the investment fund company. Information about these and other fees can be found in the prospectus or fund facts document for each investment fund. The redemption fee was deducted from the redemption amount you received.

3. **Trailing commissions.** Investment funds pay investment fund companies a fee for managing their funds. Investment fund companies pay us ongoing trailing commissions for the services and advice we provide you. The amount of the trailing commission for each fund depends on the sales charge option you chose when you purchased the fund. You are not directly charged for trailing commissions. They are paid to us by investment fund companies.

Information about fund expenses, MERs, trading expenses and other investment fund company charges, as well as trailing commissions, is also included in the prospectus or fund facts document for each fund you own.

ANNEX H

SAMPLE PROTOTYPE REPORT FOR THE INSURANCE SECTOR

This annex has been prepared by the Canadian Council of Insurance Regulators (CCIR). Please send comments relating to it to the CCIR National Regulatory Coordination Branch at the address indicated under "Comments on Proposed Insurance Guidance".

[Editor's Note: This annex is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of this annex.]

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Your annual statement
As at December 31, 2020

ABC Insurer Inc.

1234 West Street,
Toronto, Ontario

1 800 567 8901
abcinsurerinc.ca

This statement provides you with information on how your contract has performed this year, including the rate of return and value of guarantees. It provides you with all charges and fees associated with your contract. It will help you track your financial goals. We recommend that you read it carefully. The Fund Fact documents and annual audited financial statements for segregated funds are available upon request. Please contact your representative or us if you require additional information.

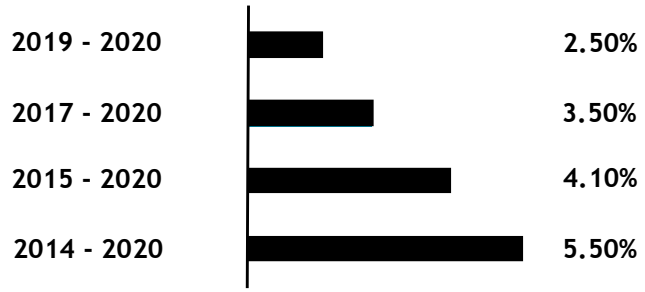
Information on your contract

Contract name:	ABC RetirementPlus
Contract tax status:	Registered
Contract no.:	78902314
Issue date:	March 20, 2014
Owner:	John Smith
Annuitant:	John Smith
Designated beneficiary:	Jane Smith
Your representative:	George Advisor
Your representative's telephone no.:	1 416 444 5353
Your representative's e-mail address:	gadvisor@advisor.ca

As at December 31, 2020			
Segregated funds	Number of units	Market value per unit ($)	Market value ($)
ABC Management Monthly Income Fund, Standard Series, DSC			
Guarantee 75/100	250.00	$78.00	$19,500.00
ABC Management Canadian Equity Fund, Standard Series, FEL			
Guarantee 75/100	450.00	$50.00	$22,500.00
Total[1]			$42,000.00

Your total annual personal rate of return (net of charges)

The following graph shows your total annual personal rate of return net of charges for different periods. Note that this rate of return may be different than the rate of return realized by the segregated funds because it takes into account the timing of your deposits and withdrawals.



[1] This is not necessarily the amount you would receive if you made a withdrawal. As an example, deferred sales charges or withdrawal fees may change the withdrawal value. You can contact us to learn the actual amount you can receive.

Your Contract Number: 78902314

Holdings in your Contract On December 31, 2020

Contract values since issue on March 30, 2014

Segregated funds	Deposits	Withdrawals	Net Growth or Loss[3]	Market value at end of 2020
ABC Management Monthly Income Fund, Standard Series 75/100, DSC[2]	$18,666.67	$1,666.67	$2,500.00	$19,500.00
ABC Management Canadian Equity, Standard Series 75/100, FEL	$19,500.00	$0.00	$3,000.00	$22,500.00
Totals	$38,166.67	$1,666.67	$5,500.00	$42,000.00

Contract values since December 31, 2019

Segregated funds	Market value at end of 2019	Deposits	Withdrawals	Net Growth or Loss[3]	Market value at end of 2020	Fund expenses[4]
ABC Management Monthly Income Fund, Standard Series 75/100, DSC[2]	$20,650.21	$0.00	$1,666.67	$516.46	$19,500.00	1.18%
ABC Management Canadian Equity, Standard Series 75/100, FEL	$21,951.22	$0.00	$0.00	$548.78	$22,500.00	2.04%
Totals	$42,601.43	$0.00	$1,666.67	$1,065.24	$42,000.00	
			Total annual rate of return	2.5%		

[2] Your fund has a deferred sales charge. You can withdraw all the money in this fund, but you may be charged a fee to do so if you are withdrawing those funds before the end of the 7-year deferred sales charge period.

[3] Total charges deducted from your return are detailed in the following section.

[4] The fund's expenses are made up of the management fee, operating expenses, and trading costs.. You don't pay these expenses directly. We periodically deduct them from the value of your investments to manage and operate the funds. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total fund's value. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments. The dollar amount of the expense calculated from the funds expenses ratio is included in the costs described below in the following section.

Your Contract Number: 78902314

Details of charges for the year 2020

Important: Review Your Costs

This part of the report shows the total cost of owning your contracts last year. These costs impact your returns. This does not include fees billed directly by your representative, if applicable.

Your cost of investing is impacted by your choices.

Your total cost of investing was $760 last year

Withdrawal fees on deferred sales charge investments[5]	$50.00
Transfer fee	$20.00
Investment fund expenses (Fund expenses) [6]	$645.00
Insurance cost for your guarantees[7]	$45.00
Total	**$760.00**

[5] You paid this cost to us because you withdrew money from a fund before the end of the deferred sales charge period, and it was more than your contract said you could withdraw without paying a deferred sales charge. You paid this cost directly from money withdrawn from your contract and it reduced the amount you received when you withdrew money.
[6] This is what you paid us to manage and operate the funds in which you have invested. Different funds charge different levels of fees. These fees are deducted from the value of your investments – you do not pay these fees directly. They reduce the value of each unit in the funds you hold, and therefore reduced your return on investment. These costs are already reflected in the market values reported for your fund investments.
[7] This is what you paid us this year for the insurance guarantees under your contract: the Maturity Guarantee, the Death Guarantee and the guaranteed withdrawal amount. You paid this cost by withdrawing investments in your contract.

Your Contract Number: 78902314

Your contract's guarantees

Your contract contains an insurance portion that offers you protection against negative market movements. You have a death guarantee and a maturity guarantee that protect a portion of your investment.

When you decide to withdraw money from your contract, you also have a guarantee that you will be able to withdraw a certain amount for a certain period of time or for the remainder of your life. The guaranteed withdrawal amount will be payable to you even if the net asset value of the guaranteed seg funds in the contract is less than this amount.

The chart below shows the actual value of those guarantees.

Guarantee 75/100[8]	
Market value of your segregated funds:	$42,000.00
Maturity date of the guarantee:	January 12, 2084
Value of 75% guarantee at maturity:	$27,428.42
Value of 100% guarantee on death:	$36,571.22
Date of the next automatic reset of your guarantees[9]	March 30, 2024

Accumulation phase		
Guaranteed lifetime annual withdrawal amount, if taken:[10]		
	At age 55	$575.50
	At age 65	$893.65
	At age 70	$1,353.20

[8] On withdrawal, the value of your guarantees is adjusted proportionally to the market value of your contract at the time of withdrawal. For example, if someone withdraws $1,200 when the market value of the segregated fund contract is $6,000, the withdrawal will reduce the market value of the segregated funds by 20 per cent ($1,200/$6,000). The maturity and death benefit guarantee amounts will be reduced proportionally by the same 20 per cent.

[9] You may make discretionary resets up to 3 times per year subject to certain conditions, as stipulated in your contract. Kindly contact your representative for additional information on the subject.

[10] Guaranteed withdrawal amounts have been calculated assuming no bonus, no deposit or withdrawal, no future return and no reset of guarantees between now and the start of annual periodic withdrawals.

DEFINITIONS

- Accumulation Phase: This phase starts when you begin making deposits into the contract and continues until you notify us you would like to trigger the Withdrawal Phase to start taking scheduled withdrawals.
- Deposit: Amount you paid to us for the purchase of segregated fund units.
- Market value: This is the value of your investments, calculated by taking the number of fund units and multiplying it by the market value per unit.
- Net Growth / Loss: This is the amount your investments have increased or decreased other than due to deposits, withdrawals or transfers in or out.
- Reset: Option enabling the contract holder to revaluate the guaranteed values applicable to his or her contract.
- Segregated Fund: A separate and distinct group of assets maintained by an insurer in respect of which the benefits of a variable insurance contract are provided.
- Total annual personal rate of return: This is how your investments have performed over time. This is calculated using an industry-standard method known as the “money weighted method” which factors in the time of your deposits and withdrawals (net of all charged fees) and does not take income tax into account. Your actual returns will depend on your personal tax situation. Since most benchmarks do not consider funds’ management fees and operating fees, your personal rate of return cannot be directly compared with an index.
- Transfer: Sometimes called a switch, this is the withdrawal of units in a fund for the purpose of purchasing units in another fund.
- Withdrawal: Withdrawals out of the contract from specific segregated fund units.

Your annual statement
As at December 31, 2020

ABC Insurer Inc.

1234 West Street,
Toronto, Ontario

1 800 567 8901
abcinsurerinc.ca

This statement provides you with information on how your contract has performed this year, including the rate of return and value of guarantees. It provides you with all charges and fees associated with your contract. It will help you track your financial goals. We recommend that you read it carefully. The Fund Fact documents and annual audited financial statements for segregated funds are available upon request. Please contact your representative or us if you require additional information.

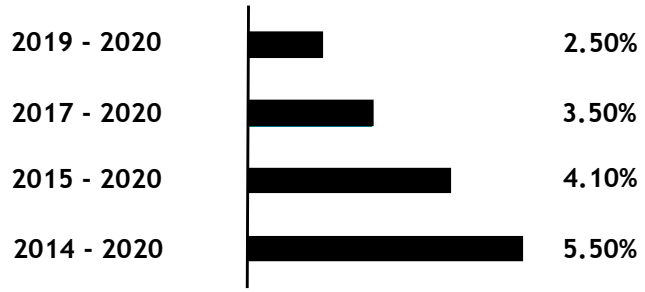
Information on your contract

Contract name:	ABC RetirementPlus
Contract tax status:	Registered
Contract no.:	78902314
Issue date:	March 20, 2014
Owner:	John Smith
Annuitant:	John Smith
Designated beneficiary:	Jane Smith
Your representative:	George Advisor
Your representative's telephone no.:	1 416 444 5353
Your representative's e-mail address:	gadvisor@advisor.ca

As at December 31, 2020			
Segregated funds	Number of units	Market value per unit ($)	Market value ($)
ABC Management Monthly Income Fund, Standard Series, DSC			
Guarantee 75/100	250.00	$78.00	$19,500.00
ABC Management Canadian Equity Fund, Standard Series, FEL			
Guarantee 75/100	450.00	$50.00	$22,500.00
Total[1]			$42,000.00

Your total annual personal rate of return (net of charges)

The following graph shows your total annual personal rate of return net of charges for different periods. Note that this rate of return may be different than the rate of return realized by the segregated funds because it takes into account the timing of your deposits and withdrawals.



[1] This is not necessarily the amount you would receive if you made a withdrawal. As an example, deferred sales charges or withdrawal fees may change the withdrawal value. You can contact us to learn the actual amount you can receive.

Your Contract Number: 78902314

Holdings in your Contract On December 31, 2020

Contract values since issue on March 30, 2014

Segregated funds	Deposits	Withdrawals	Net Growth or Loss[3]	Market value at end of 2020
ABC Management Monthly Income Fund, Standard Series 75/100, DSC[2]	$18,666.67	$1,666.67	$2,500.00	$19,500.00
ABC Management Canadian Equity, Standard Series 75/100, FEL	$19,500.00	$0.00	$3,000.00	$22,500.00
Totals	$38,166.67	$1,666.67	$5,500.00	$42,000.00

Contract values since December 31, 2019

Segregated funds	Market value at end of 2019	Deposits	Withdrawals	Net Growth or Loss[3]	Market value at end of 2020	Fund expenses[4]
ABC Management Monthly Income Fund, Standard Series 75/100, DSC[2]	$20,650.21	$0.00	$1,666.67	$516.46	$19,500.00	1.18%
ABC Management Canadian Equity, Standard Series 75/100, FEL	$21,951.22	$0.00	$0.00	$548.78	$22,500.00	2.04%
Totals	$42,601.43	$0.00	$1,666.67	$1,065.24	$42,000.00	
			Total annual rate of return	2.5%		

[2] Your fund has a deferred sales charge. You can withdraw all the money in this fund, but you may be charged a fee to do so if you are withdrawing those funds before the end of the 7-year deferred sales charge period.

[3] Total charges deducted from your return are detailed in the following section.

[4] The fund's expenses are made up of the management fee, operating expenses, and trading costs. You don't pay these expenses directly. We periodically deduct them from the value of your investments to manage and operate the funds. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total fund's value. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments. The dollar amount of the expense calculated from the Fund expenses ratio is included in the costs described below in the following section.

Your Contract Number: 78902314

Details of charges for the year 2020

Important: Review Your Costs

This part of the report shows the total cost of owning your contracts last year. These costs impact your returns. This does not include fees billed directly by your representative, if applicable.

Your cost of investing is impacted by your choices.

Your total cost of investing was $760 last year

Withdrawal fees on deferred sales charge investments[5]	$50.00
Transfer fee	$20.00
Investment fund expenses (Fund expenses) [6]	$645.00
Insurance cost for your guarantees[7]	$45.00
Total	**$760.00**

[5] You paid this cost to us because you withdrew money from a fund before the end of the deferred sales charge period, and it was more than your contract said you could withdraw without paying a deferred sales charge. You paid this cost directly from money withdrawn from your contract and it reduced the amount you received when you withdrew money.
[6] This is what you paid us to manage and operate the funds in which you have invested. Different funds charge different levels of fees. These fees are deducted from the value of your investments – you do not pay these fees directly. They reduce the value of each unit in the funds you hold, and therefore reduced your return on investment. These costs are already reflected in the market values reported for your fund investments.
[7] This is what you paid us this year for the insurance guarantees under your contract: the Maturity Guarantee, the Death Guarantee and the guaranteed withdrawal amount. You paid this cost by withdrawing investments in your contract.

Your Contract Number: 78902314

Your contract's guarantees

Your contract contains an insurance portion that offers you protection against negative market movements. You have a death guarantee and a maturity guarantee that protect a portion of your investment.

When you decide to withdraw money from your contract, you also have a guarantee that you will be able to withdraw a certain amount for a certain period of time or for the remainder of your life. The guaranteed withdrawal amount will be payable to you even if the net asset value of the guaranteed seg funds in the contract is less than this amount.

The chart below shows the actual value of those guarantees.

Guarantee 75/100[8]	
Market value of your segregated funds:	$42,000.00
Maturity date of the guarantee:	January 12, 2065
Value of 75% guarantee at maturity:	$27,428.42
Value of 100% guarantee on death:	$36,571.22

Withdrawal phase	
Guaranteed annual withdrawal amount:	$1,470.00
Annual withdrawal amount you have chosen to receive:[9]	$1,500.00
Income payable until	Until the Annuitant's death
RRIF/LIF/LRIF/RLIF minimum withdrawal amount	$1,400.00
LIF/LRIF/RLIF maximum withdrawal amount	No maximum

[8] On withdrawal, the value of your guarantees is adjusted proportionally to the market value of your contract at the time of withdrawal. For example, if someone withdraws $1,200 when the market value of the segregated fund contract is $6,000, the withdrawal will reduce the market value of the segregated funds by 20 per cent ($1,200/$6,000). The maturity and death benefit guarantee amounts will be reduced proportionally by the same 20 per cent.

[9] Any withdrawals that exceed the guaranteed annual withdrawal amount will decrease future guaranteed withdrawal amounts except if required in respect of a RRIF/LIF/LRIF/RLIF minimum withdrawal amount.

DEFINITIONS

- Deposit: Amount you paid to us for the purchase of segregated fund units.
- Market value: This is the value of your investments, calculated by taking the number of fund units and multiplying it by the market value per unit.
- Net Growth / Loss: This is the amount your investments have increased or decreased other than due to deposits, withdrawals or transfers in or out.
- Reset: Option enabling the contract holder to revaluate the guaranteed values applicable to his or her contract.
- Segregated Fund: A separate and distinct group of assets maintained by an insurer in respect of which the benefits of a variable insurance contract are provided.
- Total annual personal rate of return: This is how your investments have performed over time. This is calculated using an industry-standard method known as the “money weighted method” which factors in the time of your deposits and withdrawals (net of all charged fees) and does not take income tax into account. Your actual returns will depend on your personal tax situation. Since most benchmarks do not consider funds’ management fees and operating fees, your personal rate of return cannot be directly compared with an index.
- Transfer: Sometimes called a switch, this is the withdrawal of units in a fund for the purpose of purchasing units in another fund.
- Withdrawal: Withdrawals out of the contract from specific segregated fund units.
- Withdrawal Phase: This phase starts when you trigger your guaranteed withdrawal benefit and start taking the scheduled withdrawals. It continues while the contract continues enough invested money to pay each scheduled withdrawal. When there is no longer any money invested in the contract, the contract transitions to the benefit payment phase where you will continue to receive your guaranteed withdrawal amounts

Your annual statement
As at December 31, 2020

ABC Insurer Inc.
1234 West Street,
Toronto, Ontario
1 800 567 8901
abcinsurerinc.ca

This statement provides you with information on your contract, including the value of guarantees. It will help you track your financial goals. We recommend that you read it carefully. Please contact your representative or us if you require additional information.

Information on your contract

Contract name:	ABC RetirementPlus
Contract tax status:	Non-Registered
Contract no.:	78902314
Issue date:	March 20, 2014
Owner:	John Smith
Annuitant:	John Smith
Your representative:	George Advisor
Your representative's telephone no:	1 416 444 5353
Your representative's e-mail address:	gadvisor@advisor.ca

Your contract's guarantees

Your contract no longer has any active investments. However, it contains an insurance portion which provides guaranteed income payments for a certain period of time. The chart below shows the value of those payments.

Benefit Payments Phase	
Guaranteed annual withdrawal amount:	$7,000
Income payable until:	Until the Annuitant's death

ANNEX I

LOCAL MATTERS

SUBSTANCE AND PURPOSE

Further to their Total Cost Reporting project (**TCR**), the CSA, including the Ontario Securities Commission (the **Commission** or **we**) are are publishing for a 90-day comment period, proposals for enhanced disclosure to clients regarding the embedded fees associated with investment funds that they own (the **Proposed Amendments**).

The Proposed Amendments would amend National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and add related guidance in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

The Proposed Amendments are being published in conjunction with proposals by the CCIR regarding segregated fund contracts.

PROPOSED AMENDMENTS

The Proposed Amendments would add the following new elements to client reporting under NI 31-103:

- in the account statement (s.14.14) or additional statement (s.14.14.1), as appropriate, the fund expense ratio, stated as a percentage for each investment fund held by the client;
- in the annual report on charges and other compensation (s.14.17) for the account as a whole, calculated using a prescribed methodology (s.14.17.1):
    - the aggregate amount of fund expenses, in dollars, for all investment funds held during the year; and
    - the aggregate amount of any direct investment fund fees (e.g., short-term trading fees or redemption fees), in dollars;
- the duties of registered investment fund managers to provide information to assist registered dealers and advisers (s.14.1.1) would be expanded to include providing the dealers and advisers with some of the information needed for them to meet the enhanced client reporting requirements; and
- certain defined terms will be added (s.1.1).

Please refer to the main body and Annex C of this Notice for further details.

REGULATORY IMPACT ASSESSMENT

1. Purpose

The Proposed Amendments would amend NI 31-103 to rectify information asymmetry between investors and registrants concerning the ongoing costs of owning investment funds.

By enhancing existing client reporting to include information about embedded fees, we seek to make investors more aware of the ongoing costs of owning investment funds.

2. Rationale for the Proposed Amendments

Investment funds are widely held by retail investors. Embedded fees, which typically consist of the Management Expense Ratio (**MER**) and Trading Expense Ratio (**TER**), are an ongoing cost of owning investment funds but by their nature, can easily be overlooked after the initial purchase is made.

General information about embedded fees is included in offering documents such as the Fund Facts, and in continuous disclosure reports such as the Management Report of Fund Performance. But account statements and annual cost reports that registered dealers and advisers must send their clients on an ongoing basis are not required to include information about the embedded fees associated with the investment funds that they own.

Research has established that retail investors wrongly assume that the cost and compensation reports that they receive from their dealer or adviser include all fees, contributing to an inadequate understanding of the embedded fees they are paying. We believe investors should be aware of and understand these costs because of the impact they have on investment returns.

The Proposed Amendments draw on behavioural insights and the results of testing sample documents with investors to determine what information about embedded fees is likely to be the most useful to the typical retail investor.

3. Current Client Reporting Requirements

Currently, registered dealers and registered advisers are required to deliver to each of their clients an annual report on the amounts the client paid to them for their services (e.g., trading fees and account operating charges) as well as any additional compensation paid to the firm by third parties in relation to the client's account (e.g., trailing commissions). These are aggregate amounts for the whole account, reported in dollars. Dealers and advisers must also send their clients account statements during the year (typically, each quarter). The required information includes the book cost and current market value of each security in the account and the total book cost and market value of all securities in the account, as well as any cash balance and a notification on any security that might be subject to a deferred sales charge if sold. There are exemptions relating to reporting to institutional investors ("non-individual permitted clients").

4. The Proposed Amendments

Under the Proposed Amendments, the annual cost report would be expanded to include the total of fund expenses (MER + TER) paid by the client during the year. This would be a whole-account figure, in dollars, consistent with the other information in the report. Account statements would add the percentage fund expense ratio for each of the investment funds that the client owns, alongside other the information already provided on a per-investment basis. Explanatory notes, substantially in a prescribed form tested with investors, would be included as appropriate. Existing exemptions for reporting to institutional investors would continue to apply. SRO rules would be amended to be uniform in substance with final amendments to NI 31-103.

Investment fund managers would be required to assist dealers and advisers by providing them with some of the information needed for the enhanced client reporting requirements.

The Proposed Amendments would apply to all investment funds with embedded fees, not only publicly traded mutual funds and ETFs. This approach would extend the amendments to pooled funds and other exempt market instruments as well as scholarship plans and labour sponsored funds. We believe this is necessary in order to provide consistent information to investors and a level playing field for industry participants.

5. Affected Stakeholders

The stakeholders who will be impacted by the Proposed Amendments are retail investors, registered dealers and registered advisers, and investment fund managers/investment fund issuers.

(a) Investors

We estimate that about 39% of investors in Ontario own mutual funds and/or ETFs[1] and as such would be impacted by the proposed amendment. There are also other kinds of investment fund not included in this data set.

(b) Registrants

There are 951 registered firms for which Ontario is the principal regulator. This includes 364 investment fund managers, 228 adviser firms and 347 dealer firms. The dealers are registered in 4 principal categories: 115 Investment Dealers (IIROC Members), 54 Mutual Fund Dealers (MFDA Members), 172 Exempt Market Dealers and 4 Scholarship Plan Dealers.[2]

The enhanced reporting requirements would apply to all registrants to which the requirements to file an account statement/additional statement or annual cost and compensation report currently apply. This includes all registered dealers and all registered advisers that provide ongoing services to retail clients. In practical terms, this means that any dealer or adviser firm that includes any form of investment fund in retail clients' portfolios will be affected, unless the firm has a purely transactional relationship with its clients (typical of many EMDs).

All investment fund managers whose funds are distributed to retail investors would be required to provide the dealers and advisers who distribute them with certain information that the dealers and advisers require to prepare TCR-enhanced statements and reports for their clients.

[1] Estimate based on OSC analysis of household financial wealth data in the 2021 Investor Economics Household Balance Sheet Report and investment fund asset data in Investor Economics' October 2021 Insight Report. These households own an estimated $960 billion in mutual fund and ETF assets as at September 2021. Estimate based on OSC analysis of data in Investor Economics' October 2021 Insight Report.

[2] There are also 14 firms in other registration categories. These statistics are for firms where Ontario is the principal regulator as of December 31, 2021, and are derived from the National Registration Database.

6. Qualitative and Quantitative Analysis of Anticipated Costs and Benefits

(a) Benefits of the Proposed Amendments

The anticipated benefits of the Proposed Amendments include the following:

- Increased awareness of embedded fees and easy access to relevant information about them will make investors better equipped to assess the recommendations and decisions that their registered dealers and registered advisers make for them.
- A large proportion of dealers and advisers align their profitability directly with their clients' success by basing their fees on assets under management. Those firms stand to benefit when their clients are better equipped to make good investment choices, leading to better returns.
- Greater awareness among investors of the costs of investment funds will present a competitive opportunity for investment fund companies that are prepared to lower their embedded fees. Investors would benefit from such increased price competition.
- A less tangible benefit will be increased confidence in Ontario's capital markets, since access to good information about the costs of products and services is a basic component of a well-functioning market.

(b) Costs of the Proposed Amendments

The anticipated costs of the Proposed Amendments include the following:

- Direct costs to investors would involve the time to read and understand the new line items in their statements and reports, and the time to discuss them with their dealers or advisers.
- Investment fund companies or, possibly, dealers and advisers, may seek to pass implementation costs on to investors by increasing management fees or introducing some kind of new fee.
- The Proposed Amendments would impose both implementation and ongoing costs on registrants. Dealers and advisers would have to undertake systems changes to add the required information to their current account statements and annual reports. For the annual reports, this will involve calculating the aggregate fund expense at the account level for each client. Investment fund managers would have to develop systems to report the required information to dealers and advisers. Notably, the required information is derived from information that is already prepared for purposes of the fund facts/ETF facts and MRFP. All affected registrants will also have to develop and implement compliance and staff training procedures. Some registrants may choose to outsource some or all of the initial implementation work while others may choose to carry out the implementation work in-house.

RELIANCE ON UNPUBLISHED STUDIES

The OSC Investor Office Research and Behavioural Insights Team provided the joint project committee with a report, *Cost Disclosure Comprehension Experiment, Joint CSA – CCIR Total Cost Reporting Project* (October 29, 2021), regarding the results of the tests of prototype account statements and cost reports that was undertaken for the project.

We have not relied on any other unpublished study, report, or other written material in developing the Proposed Amendments.

ALTERNATIVES CONSIDERED

We considered maintaining the *status quo*. However, we think that it is important to propose changes for the reasons discussed in this Notice. The testing of alternative prototype statements and reports undertaken by IORBIT suggests that the Proposed Amendments will be an effective option for addressing the concerns we have identified.

RULE MAKING AUTHORITY

The following provisions of the *Securities Act* (Ontario) provide the Commission with authority to make the Proposed Amendments: paragraphs 2, 7 and 8 of subsection 143(1).

ANNEX J

PROPOSED INSURANCE GUIDANCE

This annex has been prepared by the Canadian Council of Insurance Regulators (CCIR). Please send comments relating to it to the CCIR National Regulatory Coordination Branch at the address indicated under "Comments on Proposed Insurance Guidance".

[Editor's Note: This annex is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of this annex.]

Definitions

[1.1] In this Guidance

a) “accumulation phase” is the time between the date the owner begins making deposits to an IVIC that provides a guaranteed withdrawal benefit and the date the owner notifies the insurer they want to begin receiving such guaranteed payments under the IVIC.

b) “Annuitant” means the person or people whose life or lives trigger any guarantee on death or any payment for life.

c) “benefits phase” under an IVIC that provides a guaranteed withdrawal benefit begins when the withdrawal phase ends for all or part of the IVIC and continues until the last date a guaranteed withdrawal benefit is payable.

d) “fees and charges” means any sales charges, distribution fees, management fees, administrative fees, account set-up or closing charges, surrender charges, transfer fees, insurance fees or any other fees, charges or expenses whether or not contingent or deferred which are or may be payable in connection with the acquisition, holding, transferring or withdrawal of units of a segregated fund credited to the contract.

e) “Fund Facts” means a disclosure document in respect of a segregated fund under an individual variable insurance contract; this document forms part of the information folder and includes information required by law or regulatory guidance in the relevant jurisdiction including information under the following headings:

    a. Quick Facts

    b. What does the fund invest in?

    c. How has the fund performed?

    d. How risky is it?

    e. Are there any guarantees?

    f. Who is the fund for?

    g. How much does it cost?

    h. What if I change my mind? and

    i. For More Information.

f) “individual variable insurance contract” or “IVIC” means an individual contract of life insurance under which the Insurer’s liabilities vary in amount depending upon the market value of a specified group of assets in a segregated fund. IVIC includes a

provision in an individual contract of life insurance under which policy dividends are deposited in a segregated fund.

g) "Insurer" means an insurer as defined under the laws of the applicable Canadian jurisdiction.

h) "Insurer's name" means an insurer's full legal name;

i) "Intermediary" means a Licensed Individual authorized to sell and service IVICs under the laws of relevant Canadian jurisdiction, or a Licensed Business.

j) "Licensed Business" means any person licensed under the laws of the relevant Canadian jurisdiction to sell IVICs, other than an Insurer or a Licensed Individual.

k) "Licensed Individual" means any of the following individuals:

   a. an insurance agent,

   b. an insurance broker, or

   c. an insurance representative authorized under the laws of the applicable Canadian jurisdiction.

l) "life insurance" means life insurance as defined under the laws of the applicable Canadian jurisdiction and includes an annuity or an undertaking to provide an annuity.

m) "owner" means a person who owns an IVIC.

n) "Segregated fund" means a specified and distinct group of assets the Insurer holds with respect to an IVIC, in which a Customer who owns an IVIC can invest by purchasing units of a segregated fund under the IVIC.

o) "withdrawal phase" begins the date the owner triggers their guaranteed withdrawal benefit under an IVIC that provides such a benefit, and continues as long as there is enough value under the IVIC to pay each scheduled withdrawal; the withdrawal phase ends when the relevant value under the IVIC reaches zero.

[1.2] With respect to the annual statement described in section [#.#.1] of this guidance:

a) "advisory service fee" means any fee payable by an owner to an Intermediary with respect to the IVIC, that is paid by the insurer to the Intermediary on direction of the owner from assets within the IVIC.

b) "market value" of the units of a segregated fund in an IVIC is the value of the investments in that segregated funds, calculated by taking the number of fund units within the IVIC and multiplying it by the market value per unit at the end the date for which the market value is calculated.

c) “Statement date” means the date of the last day of the period covered by the statement.

Annual Statement to Contract Owner

[2.1] The Insurer shall provide to the owner of each IVIC, within four months of each successive fiscal year-end of the fund, a statement showing the information described in Schedule [X].

Schedule [X] – Minimum Content of Annual Statement

1) General

a) Statement date,
b) The following information about the Insurer:
    i) Insurer's name,
    ii) Insurer's phone number, and
    iii) Insurer's website,
c) The following information about the IVIC:
    i) Contract name,
    ii) Contract tax status,
    iii) Contract number, and
    iv) Contract issue date,
d) Owner(s),
e) Annuitant(s),
f) Designated beneficiary(ies),
g) The following information about the Licensed individual responsible for servicing the IVIC:
    i) Licensed individual's name,
    ii) Licensed individual's phone number, and
    iii) Licensed individual's email address,
h) A notice in plain language to
    i) Remind owners that the information contained in the statement will help them track their financial goals,
    ii) Remind owners they can obtain copies of the most recent Fund Facts associated with their contract and how to obtain them, and
    iii) Invite the owner to contact the Licensed individual or the Insurer if they need additional information, and
    iv) Remind owners they can obtain annual audited financial statements [and unaudited semi-annual financial statements] for each fund upon request and how to obtain them.

2) Performance – Contract

a) For the overall IVIC, market value at the start of the year,
b) For the overall IVIC, as of the statement date, total deposits
    i) Since the IVIC began, and
    ii) Since the start of the year,
c) For the overall IVIC, as of the statement date, total withdrawals

i) Since the IVIC began, and
ii) Since the start of the year,

d) For the overall IVIC, as of the statement date, the change in value of investments in the IVIC for reasons other than deposit to or withdrawal from the IVIC
   i) Since the IVIC began, and
   ii) Since the start of the year,

e) For the overall IVIC, market value at the statement date,

f) Personal rate of return, as a percentage, calculated on the dollar-weighted method:
   i) Since the contract began, and
   ii) Where the contract has been in effect for the relevant time:
      (1) For the 10 years ending on the statement date,
      (2) For the 5 years ending on the statement date,
      (3) For the 3 years ending on the statement date, and
      (4) For the year ending on the statement date, and

g) A plain language explanation that the personal rate of return may be different than the rate realized by the segregated funds within the IVIC because calculation of personal rate of return depends on factors such as timing of premiums and withdrawals.

3) Costs – Contract

a) Where applicable, a notice in plain language:
   i) Explaining the total market value of the contract is not necessarily the amount the owner will receive if they end their contract,
   ii) Explaining how the owner can get more details about the amount of money they would receive if they ended their contract, and
   iii) If the costs the owner would incur if they withdrew the full market value of the IVIC are significant, explaining these costs in enough detail to allow the owner to understand the effect.

   For further clarity, deferred sales charges are considered to be significant costs, but the disclosure explicitly required under this guidance with respect to deferred sales charges is sufficient to address item 3 a) iii) regarding deferred sales charges.

b) For the overall IVIC, the dollar amount the owner incurred during the year for each of the following
   i) Front end load,
   ii) Deferred sales charges,
   iii) advisory service fee,
   iv) Transfer fees,
   v) Reset fees,
   vi) Early withdrawal and/or short term trading fee,

vii) Fees with respect to cheques returned due to insufficient funds,

viii) Small policy fee,

ix) Insurance fees,

x) Fund expenses, and

xi) Any other fees and charges.

For further clarity, the Insurer is not required to include one of these items if the dollar amount the owner incurred for that item in the year is zero.

c) For the overall IVIC, the dollar amount of the total of the items listed in 3 b),

d) Any changes to the insurance fee, where legally permitted,

e) A plain language explanation that any fees the owner pays directly to the Licensed individual and/or Licensed business, if applicable, are not included in the amount in 3 c), and

f) A plain language explanation of how costs affect returns

4) Fund details – Value, Fund Expense Ratio, Deferred Sales Charges

a) For each fund held within the IVIC during the year described by the statement:

i) The fund name,

ii) As of the statement date:

(1) Number of units held,

(2) Market value per unit, and

(3) Total market value of units held,

iii) The fund expense ratio for the fund,

iv) A plain language explanation of

(1) What the fund expense ratio is, and

(2) The fact that the dollar amount of the fund expenses allocated to the IVIC are included in the details of the charges for the IVIC for the year, and

v) The fact that a deferred sales charge applies, if applicable.

5) Guarantees

a) For the overall IVIC:

i) The market value of the funds subject to the guarantee under the contract

ii) The maturity date of the guarantee at the contract level

iii) The dollar value guaranteed on the contract maturity date

iv) The dollar value guaranteed on death of the Annuitant

b) For further clarity:

i) If the amount under 5 a) i) is the same as the total value of the contract, the insurer is not required to repeat this information, and

ii) If the contract has more than one maturity date, the insurer is only required to provide the information in items 5 a) i), ii) and iii) for the contract-level maturity guarantee, not for each separate deposit.

c) If the contract has an automatic reset provision, the date of the next automatic reset and an explanation of what will happen.

6) Guarantees – Contracts with guaranteed withdrawals

Accumulation Phase

a) If the IVIC provides a guaranteed withdrawal benefit and all or part of the contract is in the accumulation phase, the following information with respect to the assets in the accumulation phase

i) The guaranteed withdrawal amount for every withdrawal option available to the owner under that contract at:

(1) The earliest age at which the owner can begin receiving guaranteed withdrawals,

(2) Age 65, if applicable, and

(3) Age 70, if applicable,

ii) A notice in plain language that the guaranteed amounts have been calculated assuming

(1) the owner will make no further deposits to the IVIC,

(2) the owner will make no withdrawal from the IVIC, aside from the guaranteed withdrawals,

(3) the value of the units in the IVIC will not change between the date of calculation and the dates for which guaranteed withdrawal amounts are shown,

(4) that no bonuses will be credited to the IVIC, if applicable, between the date of calculation and the dates for which guaranteed withdrawal amounts are shown, and

(5) that the owner will not reset any guarantees under the IVIC, if applicable, between the date of calculation and the dates for which guaranteed withdrawal amounts are shown,

iii) A notice in plain language explaining how guarantees are affected by withdrawals, and

iv) If applicable, a notice in plain language to remind the owner of their ability to make discretionary resets of the guarantees under the contract.

Withdrawal Phase

b) If the IVIC provides a guaranteed withdrawal benefit and all or part of the contract is in the withdrawal phase, the following information with respect to the assets in the withdrawal phase

i) Guaranteed annual withdrawal amount,

ii) How long the guaranteed annual withdrawal amount will be payable, assuming the owner does not make any withdrawals other than the scheduled withdrawals,
iii) The amount the owner has chosen to receive annually, if different from the guaranteed annual withdrawal amount,
iv) If the IVIC is a RRIF, LIF, LRIF or RLIF, the minimum RRIF, LIF, LRIF or RLIF withdrawal for the year following the statement date,
v) If the IVIC is a LIF, LRIF or RLIF, the maximum LIF, LRIF or RLIF withdrawal for the year following the statement date,
vi) A notice that any withdrawals that exceed the guaranteed annual withdrawal amount will decrease future guaranteed withdrawal amounts, except if required with respect to RRIF/LIF/LRIF/RLI minimum withdrawals, and
vii) A notice in plain language explaining the guaranteed withdrawal amount will be payable to the client even if the net asset value of the relevant assets in the contract are less than this amount.

Benefits Phase

c) If the IVIC provides a guaranteed withdrawal benefit and all or part of the contract is in the benefits phase, the following information with respect to the assets in the benefits phase
   i) Guaranteed annual withdrawal amount, and
   ii) How long the withdrawal amount is guaranteed to be payable.

ANNEX K

SEGREGATED FUNDS AND INVESTMENT FUNDS: DIFFERENCES BETWEEN PRODUCTS, DISTRIBUTION CHANNELS AND REGULATION

The role of registrants/insurers in cost disclosure

Investment funds	Segregated funds
A registered dealer or adviser (i.e., an intermediary) provides disclosures to clients.	Cost and performance disclosure is provided by the insurer (i.e., the manufacturer) directly to the policy holder, typically on an annual basis.

Account statement frequency

Investment funds	Segregated funds
Clients receive monthly/quarterly account statements, an annual report on charges and other compensation and an annual investment performance report.	There is a single statement provided annually, although some insurers choose to provide statements more frequently.

Distribution channel

Investment funds	Segregated funds
The registered dealer or adviser has an ongoing relationship with the client.	There is no intermediary equivalent to the registered dealer in the insurance sector in most jurisdictions. Insurance advisers are not required to carry on an ongoing relationship with clients in the same way as advisor on securities side.

Product features

Investment funds	Segregated funds
No guarantees are provided.	Segregated funds are insurance contracts that provide guarantees.

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:
Purpose Ether ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Apr 19, 2022
NP 11-202 Final Receipt dated Apr 20, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3350767

Issuer Name:
RBC 1-5 Year Laddered Canadian Bond ETF
RBC 1-5 Year Laddered Corporate Bond ETF
RBC Canadian Bank Yield Index ETF
RBC Canadian Discount Bond ETF
RBC Canadian Preferred Share ETF
RBC PH&N Short Term Canadian Bond ETF
RBC Quant Canadian Dividend Leaders ETF
RBC Quant Canadian Equity Leaders ETF
RBC Quant EAFE Dividend Leaders (CAD Hedged) ETF
RBC Quant EAFE Dividend Leaders ETF
RBC Quant EAFE Equity Leaders (CAD Hedged) ETF
RBC Quant EAFE Equity Leaders ETF
RBC Quant Emerging Markets Dividend Leaders ETF
RBC Quant Emerging Markets Equity Leaders ETF
RBC Quant European Dividend Leaders (CAD Hedged) ETF
RBC Quant European Dividend Leaders ETF
RBC Quant U.S. Dividend Leaders (CAD Hedged) ETF
RBC Quant U.S. Dividend Leaders ETF
RBC Quant U.S. Equity Leaders (CAD Hedged) ETF
RBC Quant U.S. Equity Leaders ETF
RBC Short Term U.S. Corporate Bond ETF
RBC Target 2022 Corporate Bond Index ETF
RBC Target 2023 Corporate Bond Index ETF
RBC Target 2024 Corporate Bond Index ETF
RBC Target 2025 Corporate Bond Index ETF
RBC Target 2026 Corporate Bond Index ETF
RBC Target 2027 Corporate Bond Index ETF
RBC U.S. Banks Yield (CAD Hedged) Index ETF
RBC U.S. Banks Yield Index ETF
RBC Vision Women's Leadership MSCI Canada Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Apr 22, 2022
NP 11-202 Final Receipt dated Apr 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3352429

Issuer Name:
Picton Mahoney Fortified Active Extension Alternative Fund
Picton Mahoney Fortified Alpha Alternative Fund
Picton Mahoney Fortified Income Alternative Fund
Picton Mahoney Fortified Long Short Alternative Fund
Picton Mahoney Fortified Market Neutral Alternative Fund
Picton Mahoney Fortified Multi-Strategy Alternative Fund
Picton Mahoney Fortified Special Situations Alternative Fund
Principal Regulator – Ontario
Type and Date
Securities Description:
Class FT Units
ETF Units
Class I Units
ETF units
Class F Units
Class A Units
Project #03353671
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Apr 20, 2022
NP 11-202 Final Receipt dated Apr 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #353671

Issuer Name:
Capital Group Multi-Sector Income Fund (Canada)
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Apr 22, 2022
NP 11-202 Preliminary Receipt dated Apr 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3371244

Issuer Name:
Dundee Global Resource Class
Principal Regulator – Ontario
Type and Date:
Pro Forma Simplified Prospectus dated Apr 20, 2022
NP 11-202 Final Receipt dated Apr 21, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3352513

Issuer Name:
Fidelity Global Equity Class Portfolio
Fidelity Global Equity Portfolio
Fidelity Total Metaverse Index ETF Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Apr 20, 2022
NP 11-202 Final Receipt dated Apr 22, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3350187

Issuer Name:
Fidelity Total Metaverse Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Apr 18, 2022
NP 11-202 Final Receipt dated Apr 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3350346

Issuer Name:
Ninepoint Bitcoin ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Apr 21, 2022
NP 11-202 Final Receipt dated Apr 22, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3365895

Issuer Name:
BMO Canadian Banks ETF Fund
BMO Global Enhanced Income Fund
BMO Global Quality ETF Fund
BMO U.S. Corporate Bond Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Apr 22, 2022
NP 11-202 Preliminary Receipt dated Apr 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3371204

Issuer Name:
CI 1-5 Year Laddered Government Strip Bond Index ETF
CI Blockchain ETF
CI Canadian Banks Income Class ETF (formerly CI First Asset CanBanc Income Class ETF)
CI Canadian Convertible Bond ETF (formerly CI First Asset Canadian Convertible Bond ETF)
CI Canadian Equity Index ETF
CI Canadian REIT ETF (formerly CI First Asset Canadian REIT ETF)
CI Emerging Markets Alpha ETF
CI Energy Giants Covered Call ETF (formerly CI First Asset Energy Giants Covered Call ETF)
CI Enhanced Government Bond ETF (formerly CI First Asset Enhanced Government Bond ETF)
CI Global Alpha Innovation ETF
CI Global Financial Sector ETF (formerly CI First Asset Global Financial Sector ETF)
CI Global Healthcare Leaders Index ETF
CI Gold Bullion Fund
CI Gold+ Giants Covered Call ETF (formerly CI First Asset Gold+ Giants Covered Call ETF)
CI Health Care Giants Covered Call ETF (formerly CI First Asset Health Care Giants Covered Call ETF)
CI High Interest Savings ETF (formerly CI First Asset High Interest Savings ETF)
CI Investment Grade Bond ETF (formerly CI First Asset Investment Grade Bond ETF)
CI Metaverse ETF
CI Morningstar Canada Momentum Index ETF (formerly CI First Asset Morningstar Canada Momentum Index ETF)
CI Morningstar Canada Value Index ETF (formerly CI First Asset Morningstar Canada Value Index ETF)
CI Morningstar International Momentum Index ETF (formerly CI First Asset Morningstar International Momentum Index ETF)
CI Morningstar International Value Index ETF (formerly CI First Asset Morningstar International Value Index ETF)
CI Morningstar National Bank Québec Index ETF (formerly CI First Asset Morningstar National Bank Québec Index ETF)
CI Morningstar US Momentum Index ETF (formerly CI First Asset Morningstar US Momentum Index ETF)
CI Morningstar US Value Index ETF (formerly CI First Asset Morningstar US Value Index ETF)
CI MSCI Canada Quality Index Class ETF (formerly CI First Asset MSCI Canada Quality Index Class ETF)
CI MSCI Europe Low Risk Weighted ETF (formerly CI First Asset MSCI Europe Low Risk Weighted ETF)
CI MSCI International Low Risk Weighted ETF (formerly CI First Asset MSCI International Low Risk Weighted ETF)
CI MSCI World ESG Impact ETF (formerly CI First Asset MSCI World ESG Impact ETF)
CI MSCI World Low Risk Weighted ETF (formerly CI First Asset MSCI World Low Risk Weighted ETF)
CI Preferred Share ETF (formerly CI First Asset Preferred Share ETF)
CI Short Term Government Bond Index Class ETF (formerly CI First Asset Short Term Government Bond Index Class ETF)
CI Tech Giants Covered Call ETF (formerly CI First Asset Tech Giants Covered Call ETF)

CI U.S. & Canada Lifeco Income ETF (formerly CI First Asset U.S. & Canada Lifeco Income ETF)
CI U.S. 1000 Index ETF
CI U.S. 500 Index ETF
CI U.S. Treasury Inflation-linked Bond Index ETF (CAD Hedged)
CI U.S. TrendLeaders Index ETF (formerly CI First Asset U.S. TrendLeaders Index ETF)
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Apr 21, 2022
NP 11-202 Final Receipt dated Apr 22, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3348045

Issuer Name:
Middlefield Global Energy Transition Class
Middlefield Innovation Dividend Class
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Apr 22, 2022
NP 11-202 Preliminary Receipt dated Apr 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3371172

Issuer Name:
Purpose Best Ideas Fund
Purpose Canadian Equity Growth Fund
Purpose Canadian Income Growth Fund
Purpose Canadian Preferred Share Fund
Purpose Core Dividend Fund
Purpose Core Equity Income Fund
Purpose Enhanced Premium Yield Fund
Purpose Global Bond Class
Purpose Global Climate Opportunities Fund
Purpose Global Innovators Fund
Purpose Global Resource Fund
Purpose Marijuana Opportunities Fund
Purpose Monthly Income Fund
Purpose Multi-Asset Income Fund
Purpose Real Estate Income Fund
Purpose Special Opportunities Fund
Purpose Strategic Yield Fund
Purpose Tactical Asset Allocation Fund
Purpose Tactical Hedged Equity Fund
Purpose Total Return Bond Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Apr 14, 2022
NP 11-202 Final Receipt dated Apr 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3352032

NON-INVESTMENT FUNDS

Issuer Name:
1933 Industries Inc
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated April 20, 2022
Preliminary Receipt dated April 21, 2022
Offering Price and Description:
US$100,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Convertible Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3369985

Issuer Name:
Battery Metals Streaming Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated April 19, 2022
Preliminary Receipt dated April 19, 2022
Offering Price and Description:
Common Shares issuable without payment upon the conversion of Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
Michael Murphy
Project #3369386

Issuer Name:
Big Gold Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 19, 2022
Preliminary Receipt dated April 21, 2022
Offering Price and Description:
No securities are being offered pursuant to this Prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3369508

Issuer Name:
BSR Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 19, 2022
Preliminary Receipt dated April 19, 2022
Offering Price and Description:
US$100,096,000 5,120,000 Units
US$19.55
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
IA PRIVATE WEALTH INC.
Promoter(s):
-
Project #3367517

Issuer Name:
H&R Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated April 22, 2022
Preliminary Receipt dated April 25, 2022
Offering Price and Description:
REIT Units, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3371563

Issuer Name:
Pentagon I Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated April 18, 2022
Preliminary Receipt dated April 20, 2022
Offering Price and Description:
$300,000.00 or 3,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #3369018

Issuer Name:
Verses Technologies Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated April 4, 2022
Preliminary Receipt dated April 20, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Gabriel René
Dan Mapes
Project #3368663

Issuer Name:
Woodbine Resources Corp
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated April 19, 2022
Preliminary Receipt dated April 22, 2022
Offering Price and Description:
Public Offering of $400,000.00 - 4,000,000 Common Shares at a price of $0.10 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
James Walchuck
Project #3371149

Issuer Name:
Yamana Gold Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated April 25, 2022
Preliminary Receipt dated April 25, 2022
Offering Price and Description:
US$1,000,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Units
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3371614

Issuer Name:
Cathedral Energy Services Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 18, 2022
Receipt dated April 19, 2022
Offering Price and Description:
$23,000,600.00 - 32,858,000 Units $0.70 per Unit
Underwriter(s) or Distributor(s):
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
PETERS & CO. LIMITED
Promoter(s):
-
Project #3366449

Issuer Name:
E3 Metals Corp.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated April 18, 2022
Receipt dated April 19, 2022
Offering Price and Description:
$100,000,000.00 - COMMON SHARES, WARRANTS, SUBSCRIPTION RECEIPTS UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3327284

Issuer Name:
H&R Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated April 22, 2022
Receipt dated April 25, 2022
Offering Price and Description:
REIT Units, Debt Securities, Subscription Receipts, Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3371563

Issuer Name:
Kontrol Technologies Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated April 22, 2022
Receipt dated April 25, 2022
Offering Price and Description:
$20,000,000.00 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3321957

Issuer Name:
MustGrow Biologics Corp.
Principal Regulator - Saskatchewan
Type and Date:
Final Shelf Prospectus dated April 21, 2022
Receipt dated April 21, 2022
Offering Price and Description:
$40,000,000.00 - Common Shares, Warrants, Units, Debt Securities, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3364435

Issuer Name:
Playmaker Capital Inc. (formerly, Apolo III Acquisition Corp.)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated April 21, 2022
Receipt dated April 21, 2022
Offering Price and Description:
$75,000,000.00 - Common Shares, Preferred Shares, Units, Debt Securities, Warrants, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3354001

Issuer Name:
Two Hands Corporation
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated April 21, 2022
Receipt dated April 22, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Nadav Elituv
Project #3292817

Issuer Name:
Yamana Gold Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated April 25, 2022
Receipt dated April 25, 2022
Offering Price and Description:
US$1,000,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Units
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3371614

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Morex Asset Management Corp.	Exempt Market Dealer	April 18, 2022
New Registration	Fortax Private Wealth Corp.	Mutual Fund Dealer	April 21, 2022

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 Investment Industry Regulatory Organization of Canada (IIROC) – Proposed Amendments to the IIROC Rules and Form 1 Regarding the Floating Index Margin Rate Methodology – Request for Comment

REQUEST FOR COMMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

PROPOSED AMENDMENTS TO
THE IIROC RULES AND FORM 1 REGARDING
THE FLOATING INDEX MARGIN RATE METHODOLOGY

IIROC is publishing for public comment proposed amendments to the IIROC Rules and Form 1 (collectively, **Proposed Amendments**) regarding the floating index margin rate methodology (**Methodology**) applicable to qualifying Canadian and U.S. index products.

IIROC's existing Methodology calculates lower than optimal margin rate requirements during long periods of low market volatility but results in sharp increases in margin rates during intermittent periods of high market volatility. The Proposed Amendments are required to reduce this procyclicality in the Methodology.

The Proposed Amendments:

- introduce floor margin rates for qualifying Canadian and U.S. index products, and
- codify current practices, including IIROC's discretionary authority to limit sharp increases in floating index margin rates, if needed.

A copy of the IIROC Notice, including the Proposed Amendments, is also published on our website at www.osc.ca. The comment period ends on June 27, 2022.

13.2 Marketplaces

13.2.1 Nasdaq CXC Limited – Notice of Proposed Changes and Request for Comment

NASDAQ CXC LIMITED

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Nasdaq CXC Limited (Nasdaq Canada) has announced plans to implement the changes described below in Q4 2022 subject to regulatory approval. Nasdaq Canada is publishing this Notice of Proposed Changes in accordance with the requirements set out in the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto (Exchange Protocol). Pursuant to the Exchange Protocol, market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by May 30, 2022 to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Fax 416 595 8940
Email: marketregulation@osc.gov.on.ca

And to

Matt Thompson
Chief Compliance Officer
Nasdaq CXC Limited
25 York St., Suite 900
Toronto, ON M5J 2V5
Email: matthew.thompson@nasdaq.com

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

NASDAQ CXC LIMITED

NOTICE OF PROPOSED CHANGES

Nasdaq Canada has announced plans to introduce the following change in Q4 2022 subject to regulatory approval. Nasdaq Canada is publishing this Notice of Proposed Changes in accordance with the requirements set out in the Exchange Protocol.

Summary of Proposed Changes

PURESTREAM – OVERVIEW

Nasdaq Canada is proposing to introduce PureStream, a new order type where orders are paired with one another based on a specified liquidity transfer rate, instead of a specific price (a liquidity transfer rate, or "LTR" indicates the percentage volume of a Reference Trade a user is willing to trade).

When orders are paired, streams are established which are held by the system until a Reference Trade occurs (see definition of Reference Trade below). When a Reference Trade occurs, a match is generated from orders paired in a stream based on their LTR and printed on the market as bona fide trades. Information about PureStream matches is disseminated in market data feeds.

ORDER TYPE FEATURES

A New Order Type Offered on CXD

PureStream will be made available to Nasdaq Canada Members on the CXD Trading Book (CXD) as a new order type similar to how Nasdaq Canada's Midpoint-Extended Life Order (or MELO) is supported today on the CXC Trading Book. Matches generated from paired orders in a stream will be identified with a unique liquidity marker that will be disseminated in CXD's market data feed and provided to the Information Processor in accordance with National Instrument 21-101.

PureStream will be made available during the same operational hours as CXD. Orders will be eligible to match during CXD's trading session between 9:30 a.m. to 4:00 p.m. (EST). Orders entered before the open of CXD's trading session will be accepted from 7:00 a.m. to 9:30 a.m. where they will be held by the system until the open, at which time they will be paired into streams based on PureStream's order Pairing Priority methodology (discussed below). Orders paired in a stream will be matched starting with the first Reference Trade for a security after the security opens for trading on the listing exchange after 9:30 a.m.

Liquidity Rate Parameters

PureStream orders can be entered using a variety of predefined LTR parameters. Each LTR parameter specifies the range of acceptable LTRs at which matches will be generated in response to Reference Trades. The LTR of any individual stream depends on the LTR parameters specified by the orders that are paired in that stream.

In addition to the predefined LTR parameters made available, Members may also enter orders with a custom LTR or elect to use a Liquidity Seeking Order (LS Order) where an infinite LTR parameter is applied. Because LS Orders are not constrained by a LTR, they are immediately available to match with any contra-side LS Orders at the midpoint of the protected NBBO and do not require a Reference Trade to match. While LS Orders can trade against one another at the midpoint immediately, they can also be paired in a stream and trade in response to a Reference Trade at the paired LTR for that stream.

Liquidity Rate Parameters

- 5 – 15% (15% desired – willing to trade a minimum of 5%)
- 5 – 30% (30% desired – willing to trade a minimum of 5%)
- Mach Two (200% desired – willing to trade a minimum of 10%)
- Liquidity Seeking – infinite %
- Custom %

Attribution

Members have the option to enter PureStream orders as either attributed or unattributed (anonymous). Orders are attributed by default however Members may elect to enter orders without attribution by selecting the anonymous order marker. All orders (attributed or unattributed) are eligible for broker preferencing.

ORDER MATCHING CHARACTERISTICS

Streams

Eligible contra-side orders are paired with one another based on PureStream's Pairing Priority methodology (see below) which in turn create streams. Multiple streams can be established and held by the system at any one time and an order can be paired with more than one contra-side order in multiple streams. After orders are paired in a stream, a stream will continue to match volume without interruption (the stream will persist) until one of the following events occurs:

- An order in the stream is cancelled;
- The remaining quantity of an order in the stream is fully matched;
- A Reference Trade occurs at a price above/below the limit price specified for an order;
- A contra-side order entered by the same broker is given pairing priority (broker preferencing).

Reference Trades

After orders are paired in a stream, they are ready to match in response to a Reference Trade. A Reference Trade is defined as:

- Any trade of at least one standard trading unit of a particular security displayed in a consolidated market display other than a reported trade resulting from a match between two PureStream orders (subject to certain exceptions);[1]

Reference Trades include intentional and specialty crosses subject to certain exceptions listed in UMIR and include trades from protected and unprotected marketplaces as defined in National Instrument 23-101 *Trading Rules*[2].

When a Reference Trade is reported by a marketplace, orders paired in a stream will be matched based on the LTR of that stream. If there is more than one stream, each stream will generate an individual match and be printed simultaneously. It is therefore possible for an order that is paired in multiple streams to generate multiple matches in response to a Reference Trade – one based on each stream. Depending on the size of the Reference Trade and the LTR of a stream, a match could result in a volume that is either a multiple of a Board Lot, a Mixed Lot or an Odd Lot.

ORDER CONSTRAINTS

Minimum Order Size

All PureStream orders must be entered in Board Lot multiples and meet a minimum order size as determined by the Exchange. While the size of the minimum order size is customizable and subject to the discretion of the Exchange, a minimum order size of greater than 50 Board Lots and greater than $30,000 in nominal value or greater than $100,000 in nominal value) is currently being considered.

Minimum LTR

In certain circumstances Members can specify a minimum LTR parameter that must be met by a contra-side order to be eligible to pair. In the case of LS Orders and Custom LTR orders, a customized Minimum LTR constraint can be added. For all other orders entered with a predetermined LTR parameter, the lower range of the LTR parameter serves as the minimum LTR constraint.

Minimum Quantity

Members can specify a minimum quantity (MQ) for LS orders where the order will only match if there is sufficient demand or supply to satisfy the minimum quantity instruction. If the remaining shares of a partially filled LS Order with a MQ instruction is less than the original MQ instruction, the remaining quantity will become the new MQ instruction. MQ instructions are only permitted for LS Orders and only apply when two or more LS Orders are matched at the midpoint.

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[1] Trade exceptions that are not included in the definition of a Reference Trade are:
- Basis Order
- Call Market Order
- Closing Price Order
- Special Terms Order (as defined by UMIR) unless the Special Terms Order has executed with an order or orders other than a Special Terms Order or
- Volume-Weighted Average Price Order

[2] "protected marketplace" means a marketplace that displays "protected orders" as defined under the Trading Rules. An unprotected marketplace is a marketplace that does not display "protected orders."

Limit Price

Members can specify a limit price for a PureStream order will not trade. Limit prices can be entered in full tick increments while LS Orders can also be entered in half tick increments.

Marketability Threshold

There is a marketability threshold for each individual security used by the Trading System to evaluate whether an order is eligible (or marketable) to be paired in a stream. For an order to be eligible to pair its limit price must be better than the NBBO and the amount of the marketability threshold. In the case of a buy order the order's limit price must be higher than the NBO plus the amount of the marketability threshold. In the case of a sell order the order's limit price must be lower than the NBB minus the amount of the marketability threshold.

For example, if the NBBO was $9.98 – $10.00 and the marketability threshold was $0.01 a buy order entered with a limit price of $10.00 would not be eligible to pair as its limit price is below the NBO and the amount of the marketability threshold ($10.00 + $0.01 = $10.01). However, if a sell order was entered with a limit price of $9.97 it would be eligible to pair because its limit price is lower than the NBB and the amount of the marketability threshold ($9.98 - $0.01 = $9.97).

By requiring that the limit price of an order is better than the contra-side of the NBBO by the marketability threshold, a buffer is created to ensure that streams will be sustained in the event that the NBBO changes.

Marketability Thresholds are defined in minimum tick increments and determined by the Exchange.

Conditional Orders

Members are able to use a conditional parameter that can be added to any PureStream order (Conditional Order) allowing the Member to potentially source liquidity from multiple trading venues at the same time without the risk of an overfill. Whereas other contra-side PureStream orders will immediately pair with one another when eligible to establish a stream, a Conditional Order does not require a firm commitment to trade. Instead, when it is possible for a Conditional Order to be paired with one or more orders, a firm-up request will be sent to the Member and the Member will be given a short time window in which to act on the firm-up request by entering a new order that is then considered firm. When a new order is sent in response to a firm-up request, a Member is able to modify the order instructions which may or may not impact the order's pairing priority or opportunity to pair. If the Member does not respond to a firm-up request in the time window provided, the order will be rejected. Conditional Orders are able to be paired with both Conditional Orders and other orders. Because there is a time window provided to a Member in which they must respond to a firm-up request, there is a possibility that the eligible contra-side order triggering the firm-up request will no longer be available when the firm order is received. The cost of missing an opportunity to pair must be considered by the Member when using a Conditional Order and must be weighed against the benefit of being given time to consider whether or not to make a Conditional Order firm.

To ensure Members are entering PureStream Conditional orders with the legitimate intention of matching, Nasdaq Canada will monitor the number and percentage of firm-up requests that do not result in a firm order being entered (fall down).

Monitoring will be performed on the Trader ID level and action may be taken to prevent a Trader ID from continuing to use a conditional parameter on future orders if the number or percentage of firm-up requests that are not acted upon exceeds a parameter as determined by the Exchange. Nasdaq Canada is proposing to require a Trader ID to firm-up 70% of firm-up invitations received in a trading day (with a minimum of 20 firm up invitations) for an individual symbol. If a Trader ID fails to meet this 70% threshold level it will be suspended from entering any new Conditional orders for that security for the remainder of the trading day. This compliance mechanism is an important characteristic of PureStream's conditional order offering as it will help mitigate against information leakage and against any potential market abuse.

Time in Force Conditions

PureStream Orders can be entered with the following three Time-in-Force conditions (limited in certain circumstances as defined below):

- **Day**: A Day Order will remain posted for the duration of the Trading Day or until cancelled. At the end of the Trading Day all outstanding, unfilled Day orders will be cancelled.

- **Immediate-or-Cancel**: IOC Order is an order for which any portion of the order that is not filled immediately is cancelled. An IOC condition can only be added to an LS Order. As a result of the potential delay created by a firm-up request being sent in response to a Conditional Order, an IOC order will only be eligible to pair with a Conditional Order if the Member indicates the intention to do so. Otherwise, contra-side Conditional Orders will not be considered for pairing when an IOC order is entered.

- **Stream-or-Kill**: Similar to an IOC order, a SOK order requires an immediate outcome to take place when the order is entered or the order will be cancelled back. In contrast to an IOC order where an immediate execution must result on order entry, in the case of an SOK order the order must immediately be paired into a stream. An SOK order will not rest in the order book if it is not paired immediately upon entry and will be cancelled back should it no longer be paired in a stream. As a result of the potential delay created by a firm-up request being sent in response to a Conditional Order, a SOK order will only be eligible to pair with a Conditional Order if the Member indicates the intention to do so. Otherwise, contra-side Conditional Orders will not be considered for pairing when an SOK order is entered.

PURESTREAM ORDER PAIRING PRIORITY

PureStream orders are paired based on the following order characteristics:

- Member ID (an order will be paired with another Member order first);
- Liquidity Transfer Rate (the upper limit of a LTR parameter);
- The size of the order;
- The limit price of the order; and
- The time the order was entered.

This PureStream Order Pairing Priority will be used whenever a new stream is being established.

How it Works

Examples of Order Paring Priority

Example 1 – LTR Priority

Action:

Order 1 is entered to buy 50,000 shares with a 5-15% LTR
Order 2 is entered to buy 15,000 shares with a 10-200% LTR

Result:

Order 2 is given priority because it has a higher LTR parameter

Example 2 – Size Priority

Action:

Order 1 is entered to buy 50,000 shares with a 5-15% LTR
Order 2 is entered to buy 75,000 shares with a 5-15% LTR

Result:

Order 2 is given priority because it has a larger order quantity

Example 3 – Limit Price Priority

Action:

Order 1 is entered to buy 50,000 shares with a 5-15% LTR and a limit price of $10.00
Order 2 is entered to buy 50,000 shares with a 5-15% LTR and a limit price of $10.01

Result:

Order 2 is given priority because it has a higher limit price

Example 4 – Time Priority

Action:

Order 1 is entered to buy 50,000 shares with a 5-15% LTR at 10:05:00

Order 2 is entered to buy 50,000 shares with a 5-15% LTR at 10:06:00

Result:

Order 1 is given priority because it has time priority as it was entered first

Example 5 – Broker Priority

Action:

Order 1 is entered to buy 50,000 with a 5–15% LTR by Member 002 at 10:05:00
Order 2 is entered to buy 50,000 shares with a 5–15% LTR by Member 007 at 10:06:00
Order 3 is entered to sell 50,000 shares with a 5– 15% LTR by Member 007 at 10:07:00

Result:

Order 2 is given priority and pairs with Order 3. Although Order 1 and Order 2 have the same LTR and Order 1 was entered first (time priority) Order 3 is entered by the same Member as Order 2 (Member 007) and therefore is given priority.

Examples of Pairing Streams and Matches

Example 1 – Single Stream

NBBO for Security ABC: $10.00 – $10.02

Action:

Order #1 entered to buy 10,000 shares with a 30% LTR
Order #2 entered to sell 20,000 shares with a 30% LTR
Order #1 paired with Order #2 in Stream #1 with 30% LTR

Result:

Stream 1: Order #1 (Buy 10,000) paired with Order #2 (Sell 20,000) with a 30% LTR

Reference trade – 1,000 shares of ABC trades at $10.01

Result:

Order #1 matches 300 shares at $10.01 with Order #2 (30% of 1000 shares based on LTR)

Stream #1: Order #1 (Buy 9,700) paired with Order #2 (Sell 19,700) with 30% LTR

NBBO for Security ABC: $10.00 – $10.02

Reference trade – 8,000 shares of ABC trades at $10.02

Result:

Order #1 matches 2,400 shares at $10.02 with Order #2 (30% of 8,000 shares based on LTR)

Stream #1: Order #1 (Buy 7,300) paired with Order #2 (Sell 17,300) with 30% LTR

NBBO Change: $10.00 – 10.02 to $10.02 – $10.04

Reference trade – 4,000 shares of ABC trades at $10.02

Action:

Order #1 matches 1,200 shares at $10.02 with Order #2 (30% of 4,000 shares based on LTR)

Stream #1: Order #1 (Buy 6,100) paired with Order #2 (Sell 16,100) with 30% LTR

NBBO Change: $10.02 – $10.04 to $10.01 – $10.03

Reference trade – 3,000 shares of ABC trades at $10.02

Result:

Order #1 matches 900 shares at $10.02 with Order #2 (30% of 3,000 shares based on LTR)

Stream #1: Order #1 (Buy 5,200) paired with Order #2 (Sell 15,200) with 30% LTR

Action:

Order #2 is cancelled
Stream #1 is terminated
Order #1 remains open to pair with another order with a residual quantity of 5,200 shares

Example 2 – Single Stream Interrupted by Broker Preferencing

NBBO for Security ABC: $10.00 – $10.02

Action:

Order #1 entered by Member 009 to buy 10,000 shares with a 30% LTR
Order #2 entered by Member 007 to sell 20,000 shares with a 30% LTR
Order #1 paired with Order #2 in Stream #1 with 30% LTR

Result:

Stream 1: Order #1 (Buy 10,000) paired with Order #2 (Sell 20,000) with a 30% LTR

Reference trade – 1,000 shares of ABC trades at $10.01

Result:

Order #1 matches 300 shares at $10.01 with Order #2 (30% of 1,000 shares based on LTR)

Stream #1: Order #1 (Buy 9,700) paired with Order #2 (Sell 19,700) with 30% LTR

Action:

Order #3 entered by Member 009 to sell 10,000 shares with a 30% LTR

Result:

Order #1 paired with Order #3 in Stream #2 with 30% LTR because Order #3 was entered by the same Member (broker preferencing)

Stream #1 is terminated because of broker preferencing

Order #2 rests in the order book and remains open to pair with another order

Reference trade – 1,000 shares of ABC trades at $10.01

Result:

Order #1 matches 300 shares at $10.01 with Order #3 (30% of 1,000 shares based on LTR)

Stream #1: Order #1 (Buy 9,400) paired with Order #3 (Sell 9,700) with 30% LTR

Example 3 – Three Orders Matched in 2 Streams

NBBO for Security ABC: $10.00 – $10.02

Action:

Order #1 entered to buy 20,000 shares with 30% LTR
Order #2 entered to sell 10,000 shares with 15% LTR
Order #1 paired with Order #2 in Stream #1 with 15% LTR
Order #3 entered to sell 6,000 shares with 15% LTR
Order #3 paired with Order #1 in Stream #2 with 15% LTR

Stream #1: Order #1 (Buy 20,000) paired with Order #2 (Sell 10,000) with 15% LTR
Stream #2: Order #1 (Buy 20,000) paired with Order #3 (Sell 6,000) with 15% LTR

Reference trade – 2,000 shares of ABC trades at $10.01

Result:

Order #1 matches 300 shares at $10.01 with Order #2 (15% of 2,000 shares based on LTR) (Stream #1)
Order #1 matches 300 shares at $10.01 with Order #3 (15% of 2,000 shares based on LTR (Stream #2)

Stream #1: Order #1 (Buy 19,400) paired with Order #2 (Sell 9,700) with 15% LTR
Stream #2: Order #1 (Buy 19,400) paired with Order #3 (Sell 5,700) with 15% LTR

NBBO Change: $10.00 – $10.02 to $10.02 – $10.04

Reference trade – 38,000 shares of ABC trades at $10.03

Result:

Order #1 matches 5,700 shares at $10.03 with Order #2 (15% of 38,000 shares based on LTR)
Order #1 matches 5,700 shares at $10.03 with Order #3 (15% of 38,000 shares based on LTR)

Stream #1: Order #1 (Buy 8,000) paired with Order #2 (Sell 4,000) with 15% LTR
Stream #2 is terminated because Order #3 is filled

Example 4 – Sustainable or Persistent Streams

NBBO for Security ABC: $10.00 – $10.02

Action:

Order #1 entered to buy 100,000 shares with 30% LTR
Order #2 entered to sell 5,000 shares with 15% LTR
Order #1 paired with Order #2 in Stream #1 with 15% LTR
Order #3 entered to sell 10,000 shares with 15% LTR
Order #1 paired with Order #3 in Stream #2 with 15% LTR

Stream #1: Order #1 (Buy 100,000; 5,000 in Stream) paired with Order #2 (Sell 5,000) with 15% LTR
Stream #2: Order #1 (Buy 100,000; 10,000 in Stream) paired with Order #3 (Sell 10,000) with 15% LTR

Reference trade – 2,000 shares of ABC trades at $10.01

Result:

Order #1 matches 300 shares at $10.01 with Order #2 (15% of 2000 shares based on LTR)
Order #1 matches 300 shares at $10.01 with Order #3 (15% of 2000 shares based on LTR)

Stream #1: Order #1 (Buy 99,400) paired with Order #2 (Sell 4,700) with 15% LTR
Stream #2: Order #1 (Buy 99,400) paired with Order #3 (Sell 9,700) with 15% LTR

NBBO Change: $10.00 – $10:02 to $10.02 – $10.04

Reference trade – 10,000 shares of ABC trades at $10.03

Result:

Order #1 matches 1,500 shares at $10.03 with Order #2 (15% of 10,000 shares based on LTR)
Order #1 matches 1,500 shares at $10.03 with Order #3 (15% of 10,000 shares based on LTR)

Stream #1: Order #1 (Buy 97,900) paired with Order #2 (Sell 3,200) with 15% LTR
Stream #2: Order #1 (Buy 97,900) paired with Order #3 (Sell 8,200) with 15% LTR

Action:

Order #4 entered to sell 100,000 shares with 200% LTR

NBBO Change: $10.02 – $10.04 to $10.01 – $10.03

Reference trade – 2,000 shares of ABC trades at $10.01 (Reference Trade #3)

Result:

Order #1 matches 300 shares at $10.01 with Order #2 (15% of 2,000 shares based on LTR)
Order #1 matches 300 shares at $10.01 with Order #3 (15% of 2,000 shares based on LTR)
Order #4 continues to rest in the order book

Stream #1: Order #1 (Buy 97,300) paired with Order #2 (Sell 2,900) with 15% LTR
Stream #2: Order #1 (Buy 97,300) paired with Order #3 (Sell 7,900) with 15% LTR

Action:

Order #2 is cancelled

Result:

Stream #1 is terminated because Order #2 is cancelled

Order #1 is paired with Order #4 in Stream #3 with 15% LTR

Stream #2: Order #1 (Buy 97,300) paired with Order #3 (Sell 7,900) with 15% LTR

Stream #3: Order #1 (Buy 97,300) paired with Order #4 (Sell 100,000) with 15% LTR

Examples of Unique Order Types

Example 1 – Liquidity Seeking Orders

NBBO for Security ABC: $10.00 – $10.02

Action:

Order #1 entered a LS Order to buy 10,000 shares
Order #2 entered a LS Order to sell 20,000 shares

Result:

Order #1 matches 10,000 shares with Order #2 at the midpoint ($10.01) immediately without waiting for a Reference Trade
Order #2 continues to rest in the order book with a residual size of 10,000 shares

Action:

Order #3 entered to buy 10,000 shares with 30% LTR
Order #3 pairs with Order #2 in Stream #1

Stream #1: Order #3 (Buy 10,000) paired with Order #2 (Sell 10,000) with 30% LTR

Reference trade – 1,000 shares of ABC trades at $10.01

Result:

Order #2 matches 300 shares at $10.01 with Order #3 (30% of 1000 shares based on LTR)

Stream #1: Order #3 (Buy 9,700) paired with Order #2 (Sell 9,700) with 30% LTR

Example 2 – Conditional Order

NBBO for Security ABC: $10.00 – $10.02

Action:

Order #1 entered by Member 002 to buy 10,000 shares with a 30% LTR as a Conditional Order
Order #2 entered to sell 20,000 shares with a 30% LTR

Result:

Firm up request sent to Member 002

Action:

Member 002 responds to firm-up request and enters an order to buy 10,000 shares with a 30% LTR

Result:

Stream 1: Order #1 (Buy 10,000) paired with Order #2 (Sell 20,000) with a 30% LTR

Reference trade – 1,000 shares of ABC trades at $10.01

Result:

Order #1 matches 300 shares at $10.01 against Order #2 (30% of 1000 shares based on LTR)

Stream #1: Order #1 (Buy 9,700) paired with Order #2 (Sell 19,700) with 30% LTR

Expected Date of Implementation

Subject to regulatory approval, we are expecting to introduce PureStream in Q4 2022.

Rationale and Relevant Supporting Analysis

The growth in electronic trading has increased the amount of natural institutional order flow that is handled by algorithmic trading strategies. As a result, it is more and more difficult for these participants to find meaningful liquidity with which to trade and often they are compelled instead to enter only small size orders in the market over long periods of time in order to mitigate price impact. Because of this trend, at any one time there is only a small size of a total order that is available to trade while the residual size of the order is held back unable to be interacted with or accessed. As a result an order's posted liquidity represents only a fraction of what is available to trade. This not only leads to lost opportunities for natural contra-side orders to find one another but also results in higher execution costs for both participants as each side must often pay the cost of crossing the bid-ask spread.

PureStream's unique market structure has been designed to specifically address these challenges and provide a solution for institutional accounts and the dealers that manage their order flow. By prioritizing order pairing (and in turn matching) based on LTR instead of price, PureStream provides participants with a unique trading option that will ensure they receive a selected rate of participation of consolidated traded volume for a security while at the same time minimizing market impact. By separating the price discovery process from the liquidity discovery process, PureStream enables algorithmic orders to search, find and yield more liquidity faster without price impact. Furthermore, PureStream minimizes the number of counterparties with which a large order trade against. This in turn helps minimize information leakage.

Expected Impact on Market Structure

We expect the introduction of PureStream to bring the benefits of facilitating matching between large size natural orders (particular institutional orders) which in turn will result in lower trading costs and better execution outcomes by minimize market impact and information leakage. Furthermore, the market will benefit from a fair and orderly market being facilitated for securities where sharp unidirectional price movements occur.

While we recognize that PureStream will result in matches (and in turn an increase in trade messages) being generated in response to a Reference Trade we do not anticipate this increase will result in any significant demand on participants' systems. This is because unlike orders executed in the market that result in a high number of order and trade messages, PureStream will only generate trade messages after a stream is established. Furthermore, any increase in trade messages is anticipated to be small and represent a very small percentage of total messages.

Expected Impact on the Exchange's Compliance with Ontario Securities Law

There is no expected impact on Nasdaq Canada's compliance with Ontario Securities Law. Given However, because of PureStream's unique market structure where matches are generated in response to Reference Trades we have provided explanations how PureStream will comply with the Order Protection Rule and facilitate the maintenance of a fair and orderly market.

a) Order Protection Rule

To ensure compliance with the Order Protection Rule, a Reference Trade must occur at a price at or within the protected NBBO. If a Reference Trade takes place outside the protected NBBO, the Trading System will not consider the Reference

Trade for matching purposes and will not generate any matches between paired orders in a stream. A Reference Trade will also be ignored if it occurs when the NBBO is in a crossed condition. Matches will be generated for paired orders in a stream if the market is in a locked condition with the exception of orders intended to trade at the midpoint (an unpaired LS Orders trading with another unpaired LS Order).

b) Fair and Orderly Markets

i. Helping Price Stabilization

Because PureStream generates matched in response to Reference Trades it minimizes market impact which in turn helps stabilize prices at times of extreme volatility. Today, many algorithmic strategies require participation in proportion to consolidated traded volume. This in turn results in strategies exacerbating sharp price movements in one direction. Because the strategy requires participation when a security moves in one direction the only way to participate is to cross the spread which in turn adds pricing pressure in the same direction as the move. Purestream, by matching orders in response to Reference Trades facilitates participation without market impact. As a result, it will volatility is dampened from what would otherwise result in a rapidly rising or falling market.

ii. Trading Halts

A security must be in an open state for an PureStream order to be accepted by the Trading System. If an order is entered when a security is halted for trading it will be rejected. At the time a security is halted existing orders in the order book will continue to be held by the system if a symbol is halted. Members are able to cancel orders when a security is halted.

iii. Trade Cancellations

If a Reference Trade is cancelled, matches that were generated in response to this trade will stand. However, matches that have been generated in response to a Reference Trade that is cancelled by direction of IIROC for market integrity concerns (such as a trade that takes place at a price beyond the 5% trigger price of a Single Stock Circuit Breaker) will be cancelled.

Nasdaq Canada will apply for an exemption order in respect of the requirement in subsection 7.1(1) of National Instrument 21-101 – *Marketplace Operation* ("**NI 21-101**") that requires a marketplace that "displays" orders of exchange-traded securities to provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor (the "**Pre-Trade Information Transparency Requirement**"). Where a conditional parameter has been added to a PureStream order, the invitation sent to the Conditional Order could be considered to be a "display" of the PureStream order that generated it, and could be subject to the Pre-Trade Information Transparency Requirement, which is at is at odds with the anticipated benefits and appeal of using Conditional Orders. Therefore, to the extent that the benefits of an interaction between a Conditional Order and a PureStream order conflict with the Pre-Trade Information Transparency Requirement, Nasdaq Canada will apply to the OSC, in its capacity as principal regulator, for an exemption order pursuant to section 15.1 of NI 21-101 in regards to the Pre-Trade Information Transparency Requirement.

In support of its exemption application, Nasdaq Canada has noted that:

(a) the Conditional Orders will be limited to the Minimum Order Size which is greater than 50 Board Lots and greater than $30,000 in nominal value or greater than $100,000 in nominal value);

(b) A conditional order parameter that is added to any PureStream order is eligible to interact with any other PureStream order with the exception of Liquidity Seeking orders marked IOC in which case a participant must communicate their intention to interact with Conditional Orders explicitly. This is because of the potential delay created by a firm-up request being sent in response to a Conditional Order. For all other PureStream orders we consider a participant to have opt-ed into interacting with Conditional Orders by nature of entering a PureStream order in the system. If the participant does not want to interact with a Conditional Order we expect that participant not to use the PureStream order type.

(c) when an invitation is provided to the participant who entered the Conditional Order, such invitation will only provide symbol and side (i.e., buy or sell), of the PureStream order. The size of the PureStream order should not be able to be inferred as the minimum size for a Conditional Order is the same as the minimum size for all other PureStream orders;

(d) when an invitation is provided to the participant who entered the Conditional Order, the participant receiving the invitation will be unable to determine whether the contra size order is another Conditional Order or a PureStream order; and

(e) there can be no guarantee that the participant who entered the Conditional Order will 'firm up' the invitation.

Consultation and Review

Consultations were undertaken with Investment Dealers that support institutional clients.

Estimated Time Required by Subscribers and Vendors (or why a reasonable estimate is not provided)

Some optional development work will be required by Members and vendors that choose to incorporate the proposed order types into their trading systems. Based on the intended implementation date we anticipate there will be at least 90 days between regulatory approval of the proposed changes and implementation, which should be sufficient for those who decide to implement PureStream into their trading systems.

Will Proposed Fee Change or Significant Change introduce a Fee Model or Feature that Currently Exists in other Markets or Jurisdictions

Yes, PureStream currently operates in the United States as an independent ATS.

Any questions regarding these changes should be addressed to Matt Thompson, Nasdaq CXC Limited: matthew.thompson@nasdaq.com, T: 647-243-6242

Appendix A

Text of the Public Interest Rule Change to Nasdaq Canada Trading Rules and Policies

1.1 Definitions and Interpretation

Liquidity Transfer Rate or "LTR"	The percentage of volume specified in a PureStream Order to be matched in response to a Reference Trade.
PureStream Minimum Order Size	The minimum order size required for a PureStream Order to be accepted by the Exchange.
PureStream Limit Price	A limit price for a PureStream Order either above the current price for a security in the case of a buy order or below the current price in the case of a sell order and beyond which the order will not trade.
Reference Price	Any trade of at least one Board Lot of a particular security displayed in a consolidated market display other than a reported trade resulting from a match between two PureStream Orders with the exception of a: • Basis order • Call market order • Closing price order • Special Terms Order (as defined by UMIR) unless the Special Terms Order has executed with a n order or orders other than a Special Terms Order or • Volume-Weighted Average Price Order
Stream	Two PureStream Order paired with one another.

5.6.1 Order Types Book

ORDER TYPE	DEFINITION
Limit Order	"Limit order", as defined in UMIR, means an order to: a) buy a security to be executed at a specified (or better) maximum price; or b) sell a security to be executed at a specified (or better) minimum price.
Market Order	"Market order", as defined in UMIR, means an order to: a) buy a security to be executed upon entry to a marketplace at the best ask price; or b) sell a security to be executed upon entry to a marketplace at the best bid price.
PureStream Order	"PureStream Order" means an order meeting the PureStream Minimum Order Size to: a) buy a security to be executed at the price of Reference Trades based on its specified LTR; or b) sell a security to be executed at a price of Reference Trades based on its specified LTR.

5.6.2 Time in Force Attributes

ATTRIBUTE	DEFINITION
Day	A Limit Order that is valid until it is fully filled or cancelled. The order expires at the end of the Trading Session
Immediate or Cancel (IOC)	An order that must be filled immediately in full or in part. Any unfilled part of the order will be cancelled.

Fill or Kill (FOK)	An order that will be fully filled immediately or cancelled.
Stream or Kill (SOK)	A Purestream Order that will be paired immediately in a Stream or be cancelled.

5.6.3 Instructional Attributes

Execution	Self-Trade Prevention	Prevents an order from a Member from executing with a contra-order from the same Member. The Member can select from the following behaviors: • Cancel the newest order (the active order is cancelled) • Cancel the oldest order (the resting order is cancelled and the new order is booked) • Decrement and Cancel (the quantity of the larger order will be reduced, and the smaller order is cancelled) • Execute trade (the trade is executed, but not distributed on the public market data feed)
	Post only	An order that will post into the Exchange's order book. If a displayed post-only order, upon entry, would result in a trade, the order will be re-priced one tick increment inferior to the relevant side of the NBBO and booked.
	Conditional	An order that does not require a firm commitment but instead results in a firm-up request being sent to a Member when the order becomes eligible to match or pair and must be acted upon by the Member.

5.7.3 CXD Book

CXD is a dark book with matching based on price/broker/time priority. Orders entered on CXD that do not meet the minimum size requirements as defined by UMIR must provide incoming orders with minimum price improvement.

CXD Orders are attributed by default and are automatically eligible for broker preferencing. Members may not opt-out of broker preferencing for attributed orders.

Anonymous orders are eligible for broker preferencing. Jitney orders are not eligible for broker preferencing.

CXD supports Board Lot, Mixed Lot and Odd Lot orders.

CXD supports PureStream Orders with pairing based on broker/LTR/Size/PureStream Limit Price/Time. Only Board Lots can be entered as PureStream Orders.

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