The Ontario Securities Commission

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October 13, 2022

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

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Editor's Note: On Friday, April 29, 2022, the Securities Commission Act, 2021 (SCA), came into force by proclamation of the Lieutenant Governor of Ontario. The SCA's proclamation implemented key structural and governance changes to the OSC: the separation of the OSC Chair and Chief Executive Officer roles, and the creation of a new Capital Markets Tribunal. These new structural and governance changes are now reflected in the Bulletin, with one section to report and record the activities of the Capital Markets Tribunal and one section to report and record the activities of the Ontario Securities Commission: www.capitalmarketstribunal.ca/en/resources.

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A. Capital Markets Tribunal

A.1
Notices of Hearing

A.1.1 Aux Cayes Fintech Co. Ltd. – ss. 127(1), 127.1

FILE NO.: 2021-29

IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.

NOTICE OF HEARING
Subsection 127(1) and section 127.1 of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: October 12, 2022 at 2:30 p.m.

LOCATION: By videoconference

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Capital Markets Tribunal to approve the Settlement Agreement dated September 22, 2022 between Staff of the Commission and Aux Cayes Fintech Co. Ltd. in respect of the Statement of Allegations filed by Staff of the Commission dated August 18, 2021.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Tribunal in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Tribunal par écrit dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 7th day of October 2022.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

Please visit capitalmarketstribunal.ca or contact the Registrar at registrar@osc.gov.on.ca.

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A.2
Other Notices

A.2.1 Harry Stinson et al.

FOR IMMEDIATE RELEASE
October 4, 2022

HARRY STINSON,
BUFFALO GRAND HOTEL INC.,
STINSON HOSPITALITY MANAGEMENT INC.,
STINSON HOSPITALITY CORP.,
RESTORATION FUNDING CORPORATION,
BUFFALO CENTRAL LLC, AND
STEPHEN KELLEY,
File No. 2022-3

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

A copy of the Order dated October 4, 2022 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.2 Trevor Rosborough et al.

FOR IMMEDIATE RELEASE
October 5, 2022

TREVOR ROSBOROUGH,
TAYLOR CARR, AND
DMITRI GRAHAM,
File No. 2020-33

TORONTO – Take notice that the sanctions and costs hearing in the above named matter scheduled to be heard on October 7, 2022 at 10:00 a.m., will be heard on October 7, 2022 at 10:30 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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inquiries@osc.gov.on.ca

A.2.3 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
October 6, 2022

XIAO HUA (EDWARD) GONG,
File No. 2022-14

TORONTO – The Tribunal issued its Reasons and Decision and an Order in the above named matter.

A copy of the Reasons and Decision and the Order dated October 5, 2022 are available at capitalmarketstribunal.ca.

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Ontario Securities Commission

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A.2.4 Paramount Equity Financial Corporation et al.

FOR IMMEDIATE RELEASE
October 6, 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 Tribunal issued an Order in the above named matter.

A copy of the Order dated October 6, 2022 is available at capitalmarketstribunal.ca.

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Ontario Securities Commission

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For General Inquiries:

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inquiries@osc.gov.on.ca

A.2.5 Mark Odorico

FOR IMMEDIATE RELEASE
October 7, 2022

MARK ODORICO,
File No. 2022-18

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

A copy of the Order dated October 7, 2022 is available at capitalmarketstribunal.ca.

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Ontario Securities Commission

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For General Inquiries:

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inquiries@osc.gov.on.ca

A.2.6 Aux Cayes Fintech Co. Ltd.

FOR IMMEDIATE RELEASE
October 7, 2022

AUX CAYES FINTECH CO. LTD.,
File No. 2021-29

TORONTO – The Tribunal issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Aux Cayes Fintech Co. Ltd. in the above named matter.

The hearing will be held on October 12, 2022 at 2:30 p.m.

A copy of the Notice of Hearing dated October 7, 2022 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.7 Plateau Energy Metals Inc. et al.

FOR IMMEDIATE RELEASE
October 7, 2022

PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND
PHILIP NEVILLE GIBBS,
File No. 2021-16

TORONTO – Take notice of the following merits hearing date changes in the above named matter:

(1) the merits hearing days scheduled on October 12 and 14, 2022 are vacated; and

(2) the merits hearing shall commence on October 17, 2022 at 10:00 a.m., and continue on October 18, 19, 24, 26, 27, 28, 31, 2022, November 1, 2, 2022 and January 11 and 12, 2023 at 10:00 a.m. on each day.

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Ontario Securities Commission

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A.2.8 VRK Forex & Investments Inc. and Radhakrishna Namburi

FOR IMMEDIATE RELEASE
October 11, 2022

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

TORONTO – The Tribunal issued its Reasons and Decision and an Order in the above named matter.

A copy of the Reasons and Decision and the Order dated October 7, 2022 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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inquiries@osc.gov.on.ca

A.3
Orders

A.3.1 Harry Stinson et al.

IN THE MATTER OF
HARRY STINSON,
BUFFALO GRAND HOTEL INC.,
STINSON HOSPITALITY MANAGEMENT INC.,
STINSON HOSPITALITY CORP.,
RESTORATION FUNDING CORPORATION,
BUFFALO CENTRAL LLC, AND
STEPHEN KELLEY

File No. 2022-3

Adjudicators: M. Cecilia Williams (chair of the panel)
Cathy Singer
Sandra Blake

October 4, 2022

ORDER

WHEREAS on October 4, 2022, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives of Staff of the Ontario Securities Commission and of the respondents;

IT IS ORDERED THAT:

1. The parties shall serve and file their expert reports according to following schedule:

   a. by 4:30 p.m. on December 16, 2022, the parties shall serve and file their expert reports;

   b. by 4:30 p.m. on January 16, 2023, the parties shall serve and file their responding expert reports, if any; and

   c. by 4:30 p.m. on January 23, 2023 the parties shall serve and file their reply expert reports, if any;

2. by 4:30 p.m. on December 23, 2022, each party shall serve the other party with a hearing brief containing copies of the documents, and identifying the other things, that the party intends to produce or enter as evidence at the merits hearing;

3. by 4:30 p.m. on January 12, 2023, each party shall provide to the Registrar a completed copy of the *E-hearing Checklist for Videoconference Hearings*;

4. the final interlocutory attendance in this proceeding is scheduled for January 18, 2023 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 Governance & Tribunal Secretariat;

5. If Staff elects to file affidavits for any of its witnesses, Staff shall serve and file that affidavit evidence by 4:30 p.m. on March 13, 2023;

6. by 4:30 p.m. on March 20, 2023, each party shall provide to the Registrar the electronic documents that the party intends to rely on or enter into evidence at the merits hearing, along with an index file containing hyperlinks to the documents in the hearing brief, in accordance with the *Protocol for E-hearings*; and

7. the merits hearing shall take place by videoconference and commence on March 27, 2023 at 10:00 a.m., and continue on March 28, 29, 30, 31, April 3, 4, 5, 6, 10, 11, 12, 13, 14, and 17, 2023 at 10:00 a.m. on each day, or on such other dates and times as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"M. Cecilia Williams"

"Cathy Singer"

"Sandra Blake"

A.3.2 Xiao Hua (Edward) Gong

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

File No. 2022-14

Adjudicators: Russell Juriansz (chair of the panel)
Timothy Moseley
Sandra Blake

October 5, 2022

ORDER

WHEREAS on September 29, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider a motion by Alice Zhou seeking to be granted intervenor status in this proceeding (the **Motion**);

ON READING the materials filed and on hearing the submissions of Ms. Zhou and of the representatives of Staff of the Ontario Securities Commission and of the respondent;

IT IS ORDERED THAT the Motion is dismissed.

"Russell Juriansz"

"Timothy Moseley"

"Sandra Blake"

A.3.3 Paramount Equity Financial Corporation et al.

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

File No. 2019-12

Adjudicators: Timothy Moseley (chair of the panel)
Cathy Singer
Geoffrey D. Creighton

October 6, 2022

ORDER

WHEREAS on October 6, 2022, the Capital Markets Tribunal held a hearing by videoconference with respect to sanctions and costs in this proceeding;

ON HEARING the submissions of the representative for Staff of the Ontario Securities Commission and of Matthew Laverty, appearing on his own behalf, relating to an adjournment of the sanctions and costs hearing;

IT IS ORDERED THAT:

1. the sanctions and costs hearing is adjourned until a date to be determined; and

2. an attendance with respect to the continuation of the sanctions and costs hearing is scheduled for October 25, 2022, at 10:00 a.m. by videoconference, or on such other date or time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Timothy Moseley"

"Cathy Singer"

"Geoffrey D. Creighton"

A.3.4 Mark Odorico – ss. 8, 21.7

IN THE MATTER OF
MARK ODORICO

File No. 2022-18

Adjudicators: Andrea Burke (chair of the panel)
Sandra Blake

October 7, 2022

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

WHEREAS on October 6, 2022, the Capital Markets Tribunal held a hearing by videoconference, in relation to the Application brought by Mark Odorico to review the decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated April 7, 2022 and August 15, 2022 (the **Decisions**);

ON READING the Application and hearing the submissions of Mr. Odorico and the representatives of Staff of IIROC and Staff of the Ontario Securities Commission;

IT IS ORDERED THAT:

1. the hearing of the Application is scheduled for March 7, 2023 at 10:00 a.m., by videoconference, or on such other dates or times as may be agreed to by the parties and set by the Governance & Tribunal Secretariat;

2. the parties shall adhere to the following timeline for the delivery of materials for the Application:

    a. by 4:30 p.m. on October 20, 2022, Mr. Odorico shall serve and file the record of the original proceeding, which shall be kept confidential pending further order of the Tribunal, and advise which portions of the record of the original proceeding, if any, he is seeking an order to have marked as confidential, along with his position on why such portions should be marked as confidential;

    b. by 4:30 p.m. on October 25, 2022, the Respondent and Staff of the Commission shall advise of their position regarding Mr. Odorico's confidentiality request;

    c. by 4:30 p.m. on October 27, 2022, Mr. Odorico shall file his motion record and written submissions for his motion seeking a stay of the Decisions (the **Stay Motion**);

    d. by 4:30 p.m. on November 3, 2022, Staff of IIROC shall file its responding motion record and written submissions for the Stay Motion;

    e. by 4:30 p.m. on November 9, 2022, Staff of the Commission shall file its responding motion record and written submissions for the Stay Motion;

    f. by 4:30 p.m. on November 14, 2022, Mr. Odorico shall file his reply motion record and written submissions, if any, for the Stay Motion;

    g. the hearing of the Stay Motion is scheduled for November 25, 2022 at 10:00 am by videoconference, or on such other dates or times as may be agreed by the parties and set by the Governance & Tribunal Secretariat;

    h. by 4:30 p.m. on December 5, 2022, Mr. Odorico shall:

        i. give notice of any intention to rely on documents or things not included in the record of the original proceeding;

        ii. disclose any documents or things not included in the record of the original proceeding on which he intends to rely;

        iii. serve and file a witness list, and serve a summary of each witness' anticipated evidence; and

        iv. indicate any intention to call an expert witness;

i. by 4:30 p.m. on December 12, 2022, Staff of IIROC and Staff of the Commission shall:

i. give notice of any intention to rely on documents or things not included in the record of the original proceeding;

ii. disclose any documents or things not included in the record of the original proceeding on which they intend to rely;

iii. serve and file a witness list, and serve a summary of each witness' anticipated evidence; and

iv. indicate any intention to call an expert witness;

j. by 4:30 p.m. on December 23, 2022, the parties shall give notice of any other interlocutory matter to be raised, including motions, and if any motions are being brought, shall serve and file their motion and motion record;

k. by 4:30 p.m. on January 24, 2023, Mr. Odorico shall serve and file his hearing brief, if any, and written submissions on the Application;

l. by 4:30 p.m. on February 7, 2023, Staff of IIROC shall serve and file its hearing brief, if any, and written submissions on the Application;

m. by 4:30 p.m. on February 16, 2023, Staff of the Commission shall serve and file its hearing brief, if any, and written submissions on the Application;

n. by 4:30 p.m. on February 23, 2023, Mr. Odorico shall serve and file his reply written submissions, if any, on the Application; and

3. a further attendance in this proceeding is scheduled for January 11, 2023 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 Governance & Tribunal Secretariat.

"Andrea Burke"

"Sandra Blake"

A.3.5 VRK Forex & Investments Inc. and Radhakrishna Namburi – ss. 127(1), 127.1

IN THE MATTER OF
VRK FOREX & INVESTMENTS INC. AND
RADHAKRISHNA NAMBURI

File No. 2019-40

Adjudicators: Timothy Moseley (chair of the panel)
Geoffrey D. Creighton
Dale R. Ponder

October 7, 2022

ORDER
(Subsection 127(1) and section 127.1 of the *Securities Act,* RSO 1990, c S.5)

WHEREAS on June 17, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider the sanctions and costs that the Tribunal should impose on VRK Forex & Investments Inc. (**VRK Forex**) and Radhakrishna Namburi as a result of the findings in the Reasons and Decision on the merits, issued January 24, 2022;

ON READING the materials filed by the parties, and on hearing the submissions of the representatives for Staff of the Ontario Securities Commission and for the respondents;

IT IS ORDERED:

1. with respect to Namburi, that:

   a. he shall cease trading in any securities or derivatives, or acquiring any securities, for a period of 10 years, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, except that, upon full payment of the amounts in paragraphs (3), (4) and (5) below, he may trade in or acquire securities in any registered retirement savings plan accounts, and/or tax-free savings accounts, and/or other self-directed retirement savings plan in which he has sole legal and beneficial interest, solely through a registered dealer or registered advisor that has first been given a copy of this order;

   b. any exemptions contained in Ontario securities law shall not apply to him for a period of 10 years, pursuant to paragraph 3 of subsection 127(1) of the Act, except that, upon full payment of the amounts in paragraphs (3), (4) and (5) below, he may rely on exemptions used in respect of trading in or acquiring securities in accordance with the exception in (a) above;

   c. he resign any positions he holds as a director or officer of an issuer or registrant, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act;

   d. he is prohibited from acting as a director or officer of an issuer or registrant for a period of 10 years, pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act; and

   e. he is prohibited from becoming or acting as a registrant or promoter for a period of 10 years, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

2. with respect to VRK Forex, that:

   a. it shall cease trading in any securities or derivatives, or acquiring any securities, for a period of 10 years, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

   b. any exemptions contained in Ontario securities law shall not apply to it for a period of 10 years, pursuant to paragraph 3 of subsection 127(1) of the Act; and

   c. it is prohibited from becoming or acting as a registrant or promoter for a period of 10 years, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

3. Namburi and VRK Forex shall jointly and severally pay an administrative penalty in the amount of $250,000, pursuant to paragraph 9 of subsection 127(1) of the Act;

4. Namburi and VRK Forex shall jointly and severally disgorge to the Commission the amount of $430,192.50, pursuant to paragraph 10 of subsection 127(1) of the Act;

5. Namburi and VRK Forex shall jointly and severally pay $200,000 for the costs of the Commission's investigation and hearing, pursuant to section 127.1 of the Act; and

6. in the event that any of the payments set out in paragraphs (3), (4) and (5) are not made in full, the orders in paragraphs (1) and (2) shall continue in force without any limitations as to time period.

"Timothy Moseley"

"Geoffrey D. Creighton"

"Dale R. Ponder"

A.4
Reasons and Decisions

A.4.1 Xiao Hua (Edward) Gong – Rule 21(4) of the Capital Markets Tribunal Rules of Procedure and Forms

Citation: *Gong (Re)*, 2022 ONCMT 27
Date: 2022-10-05
File No. 2022-14

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

REASONS AND DECISION
(Rule 21(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators:	Russell Juriansz (chair of the panel) Timothy Moseley Sandra Blake	
Hearing:	By videoconference, September 29, 2022	
Appearances:	Mark Bailey Braden Stapleton	For Staff of the Ontario Securities Commission
	Paul Stern Margot Davies	For Edward Gong
	Alice Zhou	For herself

REASONS AND DECISION

1. OVERVIEW

[1] On June 13, 2022, Staff of the Ontario Securities Commission (**Staff**) filed a Statement of Allegations with respect to Xiao Hua (Edward) Gong (**Gong**) alleging securities fraud and unregistered trading.

[2] On July 29, 2022, after the first attendance, Alice Zhou (**Zhou**) filed a motion seeking intervenor status to participate in this proceeding. She submits that there is an unresolved issue regarding Gong's identity and that forged documents may be presented in court proceedings and before the Tribunal.

[3] Zhou further submits that she is representing investors located in China who were victims of Gong's alleged misconduct.

[4] Staff and Gong oppose Zhou's motion.

[5] We dismiss Zhou's motion for the reasons set out below. We conclude that Zhou:

a. is not directly affected by this proceeding;

b. would not likely have a unique and useful contribution to the panel's understanding of the issues in this case; and

c. would best convey her concerns to Staff.

2. TEST FOR GRANTING INTERVENOR STATUS

[6] Rule 21(4) of the *Capital Markets Tribunal Rules of Procedure and Forms* provides that on a motion, a panel may grant a person who is not a party to a proceeding intervenor status to participate in all or part of the proceeding. The factors to consider in a motion to intervene include:

a. the nature of the matter;

b. the issues;

c. whether the person or company is directly affected;

d. the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;

e. any delay or prejudice to the parties; and

f. any other factor the Panel considers relevant.[1]

3. ANALYSIS

3.1 Is Zhou directly affected by the outcome of this proceeding?

[7] This proceeding is an enforcement hearing concerning issues of fraud and unregistered trading. The outcome may result in sanctions against Gong. While investors, who may include Zhou, may have been impacted by the alleged actions of Gong, they are not directly affected by the outcome of the Proceeding.

[8] Further, we are unclear as to how concerns about Gong's identity in other proceedings relate to this proceeding. In her motion, Zhou states that Xiao Hua Gong is the man who's been "committing numerous crimes to thousands and thousands of civilians". She believes he has swapped identities in other proceedings to escape punishment and jail time. However, as Zhou acknowledges, Xiao Hua Gong is correctly named in this proceeding. Any sanctions or penalties imposed if Staff's allegations are found to be substantiated will be imposed on Gong, the respondent in this proceeding.

3.2 Is there an alternative avenue available to Zhou to communicate her concerns?

[9] Upon receiving an email from Zhou on July 8, 2022, Staff contacted Zhou on two separate occasions inviting her to discuss any further information she may have regarding the matters raised in her email and regarding the grounds supporting her request to intervene. Zhou has not held discussions with Staff.

3.3 Is it likely that Zhou would make a unique and useful contribution to the panel's understanding of the issues?

[10] Even if Zhou has some relevant information, we conclude that on balance she would not likely make a unique and useful contribution to the panel's understanding of the issues. Investors who are alleged victims of misconduct have an understandable interest in ensuring that an enforcement proceeding is conducted effectively, but it is the public interest that is at stake in an enforcement proceeding, not the interest of one or more individual investors. In our view, Zhou's participation as an intervenor would likely undermine rather than enhance the efficiency of this proceeding.

[11] That conclusion is unaffected by whether, as Zhou claims, she represents a group of investors.

[12] We should not grant intervenor status where the intervenor and other investors have other avenues available to them if they believe they have a legitimate claim against Gong.[2]

[13] We find that Zhou and other investors have other avenues available to them to make their concerns known. One such avenue is to contact Staff to discuss those concerns.

4. CONCLUSION

[14] For the reasons set out above, we dismiss Zhou's motion for intervenor status.

Dated at Toronto this 5th day of October, 2022

"Russell Juriansz"

"Timothy Moseley"

"Sandra Blake"

1 *Catalyst Capital Group (Re)*, 2016 ONSEC 14 at para 13-14
2 *Katanga Mining (Re)*, 2021 ONSEC 11 at para 20

A.4.2 VRK Forex & Investments Inc. and Radhakrishna Namburi – ss. 127(1), 127.1

Citation: *VRK Forex & Investments Inc (Re)*, 2022 ONCMT 28
Date: 2022-10-07
File No. 2019-40

IN THE MATTER OF
VRK FOREX & INVESTMENTS INC. AND
RADHAKRISHNA NAMBURI

REASONS AND DECISION
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Timothy Moseley (chair of the panel) Geoffrey D. Creighton Dale R. Ponder	
Hearing:	By videoconference, June 17, 2022	
Appearances:	Erin Hoult Jacob Millar	For Staff of the Ontario Securities Commission
	Max Muñoz	For VRK Forex & Investments Inc. and Radhakrishna Namburi

REASONS AND DECISION

1. OVERVIEW

[1] In a decision on the merits dated January 24, 2022 (the **Merits Decision**),[1] this Tribunal found that the respondents Radhakrishna Namburi and his company VRK Forex & Investments Inc. (**VRK Forex**) had:

a. engaged in the business of trading in securities without being registered to do so and without an exemption, contrary to s. 25(1) of the *Securities Act*[2] (the **Act**); and

b. engaged in the business of advising with respect to investing in, buying or selling securities without being registered to do so and without an exemption, contrary to s. 25(3) of the Act.[3]

[2] The respondents' contraventions arose from their extensive promotion of a trading program of contracts for difference (**CFDs**). The respondents solicited investors, provided advice related to CFD trading, and conducted CFD trading in investor accounts, sometimes on a discretionary basis. As a result of that activity, the respondents received profit-sharing payments and commission rebates totaling approximately $430,000 and the investors lost an aggregate of approximately $1.9 million.[4]

[3] Staff of the Ontario Securities Commissions asks that we impose sanctions against the respondents under s. 127(1) of the Act, and that we order them to pay a portion of the Commission's costs of the investigation and this proceeding.

[4] For the reasons we set out below, we conclude that it would be in the public interest to order that:

a. the respondents be subject to time-limited market participation bans, explained further below;

b. the respondents pay an administrative penalty, on a joint and several basis, in the amount of $250,000;

c. the respondents disgorge, on a joint and several basis, $430,192.50 to the Commission; and

d. the respondents pay costs in the amount of $200,000.

1 *VRK Forex & Investments Inc (Re)*, 2022 ONSEC 1
2 RSO 1990, c S.5
3 Merits Decision at para 158
4 Merits Decision at para 5

2. BACKGROUND

[5] Namburi is the sole director of VRK Forex and described the company as his "own business". VRK Forex operated out of a storefront office in a shopping mall and out of Namburi's residence.[5]

[6] The merits panel found that the respondents:

a. promoted CFD trading as a form of investment with significant daily returns, *e.g.*, "Earn every day 1 to 5 percent";

b. agreed with the investors to work in their accounts in respect of CFD trading and to receive 50% of the monthly net realized profits from the CFD trading;

c. assisted investors in the opening and funding of online accounts with CFD providers;

d. accessed investors' accounts and monitored and executed trades in CFDs in the investors' accounts based on certain instructions; and

e. received approximately $400,000 from investors as profit-sharing payments.[6]

[7] At least 19 Ontario-resident investors engaged the respondents and deposited approximately $3.8 million into accounts on two online trading platforms, both of which were recommended by the respondents.[7]

[8] In communications with some of the investors, Namburi repeatedly made positive statements about his successful performance in CFD trading for other clients, and the low risk associated with the investment ("100% safe").[8]

[9] The merits panel found that the CFDs were securities[9] and that the respondents' activities constituted engaging in the business of trading and advising with respect to the CFDs.

[10] Staff's undisputed evidence at the merits hearing established that the respondents received profit-sharing fees of $400,507.50 and commission rebates of $29,685.00 paid to Namburi by the operator of one of the CFD trading platforms.

3. ANALYSIS

3.1 Introduction

[11] The Tribunal may impose sanctions under s. 127(1) of the Act where it finds it to be in the public interest to do so. The Tribunal's exercise of that jurisdiction must be consistent with the purposes of the Act, which include protecting investors from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in the capital markets.

[12] Sanctions are protective and are intended to prevent future harm to investors and to the capital markets.[10]

[13] In this case, Staff seeks two types of sanctions:

a. a time-limited order restricting Namburi's and VRK Forex's participation in the capital markets (a category we refer to as **market sanctions**); and

b. financial sanctions, including an administrative penalty and an order requiring Namburi and VRK Forex to disgorge funds that they obtained improperly.

[14] We will address each of these categories in turn, as well as Staff's request that the respondents pay a portion of the Commission's costs of the investigation and this proceeding.

5 Merits Decision at para 7
6 Merits Decision at paras 10 and 63
7 Merits Decision at para 11
8 Merits Decision at para 64
9 Merits Decision at para 14
10 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 42

3.2 Restrictions on participation in the capital markets (market sanctions)

3.2.1 Introduction

[15] Staff asks that we impose an order restricting the respondents' participation in the capital markets. Specifically, Staff asks for an order:

a. requiring that Namburi resign any position he holds as a director or officer of an issuer or registrant, and

b. providing that for a ten-year period, or whenever all financial sanctions are paid, whichever is later:

i. Namburi and VRK Forex be prohibited from trading in any securities or derivatives, and from acquiring any securities;

ii. the exemptions contained in Ontario securities law not apply to Namburi or VRK Forex;

iii. Namburi be prohibited from acting as a director or officer of an issuer, registrant, or investment fund manager; and

iv. Namburi and VRK Forex be prohibited from becoming or acting as a registrant, investment fund manager, or promoter.

[16] The respondents agreed to these market sanctions, subject to their request that once all financial sanctions and costs orders are paid, Namburi be permitted to trade for himself in accounts in his name only in which he has the sole legal and beneficial interest. Staff agreed to that limited exception.

[17] When parties are able to agree on issues before a hearing, the process is made more expeditious and efficient. We commend Staff and the respondents for their work in reaching an agreement about these sanctions.

[18] However, even if parties agree on what they consider to be the appropriate sanctions, the Tribunal will not necessarily order those sanctions. The Tribunal must still determine that such an order would be in the public interest, as required by s. 127(1) of the Act.

[19] In this case, we accept the parties' joint submission as being within a reasonable range of market sanctions, and we determine that it would be in the public interest to make the requested order. In coming to that conclusion, we considered all the relevant factors for sanctions, as discussed by the Tribunal in previous decisions.[11] The particular factors that influenced our decision about the market sanctions are set out in the following paragraphs.

3.2.2 Seriousness of the misconduct

[20] The respondents' misconduct was serious. Registration is a key element of investor protection under the Act. It is designed to ensure that those who engage in the business of selling securities, or advising about them, are proficient and solvent and that they act with integrity. Engaging in the business of trading and advising about securities without being registered is contrary to these necessary protections and undermines investor protection and the integrity of the capital markets.

[21] The respondents raised approximately $3.8 million from at least 19 investors, all of whom were inexperienced with respect to CFDs. These investors subsequently lost approximately $1.9 million. Meanwhile, the Respondents received $430,192.50 in profit-sharing fees and commission rebates.

[22] The seriousness of the respondents' misconduct was exacerbated by their misleading promotional tactics, *e.g.*, promises that investors could earn 1 to 5 per cent per day and that any account with a balance of more than $100,000 was 100% safe. These kinds of representations demonstrate the importance of a registration regime that prescribes communication standards.

3.2.3 Recurrent nature of the misconduct

[23] The respondents' misconduct was recurrent, not isolated. It continued for three years out of the respondents' established storefront operation. Namburi conducted regular information sessions, facilitated the opening and funding of trading accounts, met with investors, distributed promotional materials, and traded in investors' accounts.

[11] *York Rio Resources Inc (Re)*, 2014 ONSEC 9 at para 34

[24] Staff also relies on what it says is Namburi's history of violating Ontario securities law. In support of this submission, Staff refers to the Acknowledgement and Undertaking to Staff signed by Namburi in September 2016, in which the respondents admitted to having contravened Ontario securities law by engaging in the business of trading without being registered.

[25] The merits panel in this proceeding found that the undertaking portion of the Acknowledgment and Undertaking lacked sufficient clarity to support any finding of a breach of the undertaking. However, that conclusion did not relate to the acknowledgment portion, which is clear and unambiguous:

> Radhakrishna NAMBURI and VRK Forex & Investments Inc. engaged in the business of trading in securities contrary to section 25 of the *Securities Act*… and the requirements of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Obligations*…

[26] In response, the respondents rely on what Namburi says were oral representations made to him in 2016 by a member of Staff to the effect that he did not need to be registered to trade CFDs. The respondents submit that they would have sought registration if Staff had been clear from the outset in explaining the respondents' obligations.

[27] We are not persuaded by this submission and we give it no weight. Having expressly acknowledged that they had breached the registration requirements, the respondents were clearly aware of the existence of a registration regime for trading in securities. To then operate a business focused on the promotion of, and trading in, complex instruments such as CFDs without seeking expert advice about registration requirements was at least reckless.

[28] We agree with Staff's submission that the respondents' September 2016 acknowledgment amplifies the recurrent nature of the respondents' misconduct.

3.2.4 Experience in the marketplace

[29] By Namburi's own description, he has lengthy and broad experience in capital markets, extending back to India in 1987. He testified that he had been trading CFDs since 2008. He highlighted his experience and expertise related to CFD trading and CFD trading strategies.

[30] We accept Namburi's assertion that he has substantial experience in the capital markets generally, including with respect to CFDs.

3.2.5 Remorse

[31] Namburi filed an affidavit for the sanctions and costs hearing, in which he testified to his deep shame and remorse for the losses his misconduct has caused. Staff counters that this professed remorse comes at the eleventh hour, after the merits decision, and that it is unsupported by any concrete action.

[32] We are not troubled by the timing of the statement of remorse. A respondent is entitled to fully defend against allegations at a merits hearing. We should draw no adverse inference from the fact that no remorse was expressed until after the merits decision was issued.

[33] However, it is noteworthy that the respondents continue to suggest that Staff bears some responsibility for having failed in 2016 to alert the respondents to the details of their registration requirements for CFDs. That mindset indicates to us that the respondents do not understand that it was they who were responsible for understanding applicable requirements, and for getting help to understand those requirements if necessary. For us, this failure to acknowledge their responsibility to this day significantly undermines the relevance of the statement of remorse.

[34] Staff also submits that the respondents' remorse is a bald statement and is without any other expression of remorse, through words or actions. We disagree. The respondents agreed to broad and meaningful sanctions, including the abovementioned condition that the market sanctions will continue until all financial sanctions and costs are paid. This concession is more indicative of remorse than perfunctory actions would have been.

3.2.6 Whether the respondents benefited financially from their misconduct

[35] The respondents submit that they did not benefit financially from the funds they obtained. We disagree.

[36] The respondents base that submission on the fact that they invested the approximately $430,000 of profit they earned and that they eventually lost the entire amount. They assert that this left them in a net zero position, and they should not be taken to have gained financially.

[37] We categorically reject that submission. There is no reason to distinguish between the respondents' use of the profit from the situation where a respondent spends improperly obtained funds on a boat, a car or real property that later loses some or all of its value. The respondents appropriated the profit to their own use. There is no basis to believe that if they had traded those funds successfully, the investor clients would have benefited in any way. The respondents were exclusive

owners of both the upside and the downside risk. It is not a mitigating factor that the respondents lost their profit in the market.

3.2.7 Effect of failure to pay financial sanctions

[38] Before we conclude regarding market sanctions, a comment is in order regarding the two consequences that will follow if the respondents fail to pay all financial sanctions and costs. First, the ten-year period specified for the market sanctions will extend until the respondents pay all financial sanctions and costs. Second, the limited exception to permit Namburi to trade for his own account will not become effective until that condition is fully met.

[39] In the hearing, we voiced some concern that such a term might be punitive, especially in a case where the respondents assert impecuniosity. The parties identified no case in which a similar term had been ordered over a respondent's objection, but they confirmed to us that they were content with the term. We have accepted it as being within a reasonable range in this case but we leave it to panels in future cases to determine whether a similar term is in the public interest where it is requested by Staff but contested by a respondent.

3.2.8 Conclusion about market sanctions

[40] The respondents were experienced in the marketplace and engaged in conduct that was serious and recurrent, and by which they received a significant profit, despite the fact that they later lost those funds through their own actions. The respondents' expression of remorse is relevant but does not deserve significant weight, given their unwillingness to accept full responsibility for their actions. That reluctance is particularly concerning to us in light of the complexity of the regulatory environment in which the respondents chose to operate, and their inability or unwillingness to seek expert advice to ensure that they operated in conformance with Ontario securities law.

[41] It is in the public interest to exclude the respondents from participation in the capital markets as jointly proposed by Staff and the respondents, subject to a minor exception described in paragraph [43] below. Such an order is necessary for specific deterrence, to protect other participants in the capital markets from the respondents' continued participation in the capital markets. It is also necessary for general deterrence, to send a strong message to others who might be inclined to engage in similar activity.

[42] The ten-year term of the market sanctions is proportionate to the misconduct. It is long enough to act as an effective specific and general deterrent, but it is not as long as in cases involving more egregious conduct (*e.g.*, fraud).

[43] The minor exception we referred to in paragraph [41] above is about Staff's request that Namburi be prohibited from acting as an investment fund manager, or as a director or officer of an investment fund manager. As the Tribunal has previously observed,[12] the term "registrant" includes an investment fund manager. Accordingly, our order that Namburi be prohibited from being a registrant, or a director or officer of a registrant, extends to investment fund managers. Therefore, we need not duplicate Staff's request in our order by referring to investment fund managers as well as registrants.

[44] We turn now to consider Staff's request for financial sanctions.

3.3 Financial sanctions

3.3.1 Introduction

[45] Staff seeks two financial sanctions:

a. an administrative penalty of $300,000; and

b. disgorgement of $430,192.50.

[46] Staff asks that Namburi and VRK Forex be jointly and severally liable for both sanctions.

[47] We conclude that it would be in the public interest to order:

a. that the respondents be jointly and severally liable for an administrative penalty in the amount of $250,000; and

b. that the respondents be jointly and severally liable to disgorge to the Commission $430,192.50, being the sum of the profit-sharing fees and the commission rebates received.

[12] See, *e.g.*, *Inverlake (Re)*, 2018 ONSEC 35 at para 39

[48] In reaching that conclusion, we take into account the same factors (*e.g.*, seriousness, recurrence) discussed above at paragraphs [20] to [37]. In addition, we consider the respondents' alleged impecuniosity, as discussed below.

3.3.2 Administrative penalty

3.3.2.a Introduction

[49] Staff's requested administrative penalty of $300,000 is, as Staff concedes, at the higher end of the spectrum of relevant precedents. Staff highlights the aggravating factors noted above (*e.g.*, the recurrent nature of the misconduct and the respondents' experience in the marketplace) and the absence of any truly mitigating factors.

[50] The respondents submit that they are impecunious, and that we should take this into account in determining an appropriate administrative penalty. As we discuss in further detail below, we cannot accede to this submission, due to the incomplete nature of the evidence produced by the respondents in support.

3.3.2.b Alleged impecuniosity

[51] The respondents submit forcefully that they are impecunious, and that the financial sanctions and costs orders that Staff seeks "are akin to attempting to draw blood from a stone".[13]

[52] Staff counters that while a respondent's ability to pay may be a factor in determining appropriate sanctions, it is not the predominant or determining factor, and we ought not to attach too much weight to the respondents' circumstances at the expense of investor protection and market integrity.

[53] We agree with Staff's submission. Impecuniosity is a relevant but not determinative factor.

[54] In this case, the evidence of impecuniosity is incomplete. The respondents' evidence does address at some length the depleted nature of their bank accounts, their outstanding credit card balances, and the trading account losses that caused the dissipation of profits.

[55] Namburi also provided notices of assessment from the Canada Revenue Agency from 2014 to 2020, showing very modest total income and, in 2017, a significant loss. However, in the absence of any further evidence as to how these amounts are derived, they are not compelling evidence.

[56] The evidentiary record is further muddied by an outstanding dispute over Namburi's interest in a home he co-owned with his wife, to whom he purported to transfer his remaining share while this proceeding was underway. The Commission has commenced an action in the Ontario Superior Court of Justice alleging that the transfer was fraudulent and void as against the Commission and creditors. In that action, the Commission seeks various relief, including a declaration that Namburi is a 50% owner of the property.

[57] Namburi counters that the transfer was in respect of outstanding loans he had received from his wife for his business, VRK Forex. The court action is ongoing, and the parties agree that we should not address the issues upon which the Court will need to rule. Staff submits, however, that while the Court's determination is pending, the Tribunal should not accept the respondents' submission of impecuniosity.

[58] Like much of the evidence adduced concerning impecuniosity, the Court action raises more questions than it answers (at least until the action is disposed of), and ultimately is of little assistance either way as to whether the respondents are truly impecunious.

[59] By the same token, however, we note that despite the volume of evidence provided by the respondents, they have provided no comprehensive statement of assets and liabilities, leaving ample scope for speculation as to what may not have been disclosed. The onus of demonstrating impecuniosity as a mitigating factor lies upon the respondents. The respondents have not produced clear and complete evidence, and they have therefore failed to meet their onus. We make no finding one way or the other about whether the respondents are impecunious.

3.3.2.c Range of administrative penalties in relevant precedents

[60] The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future, and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

[61] We have discussed several of the factors to be considered in determining an appropriate administrative penalty: the seriousness of the misconduct, its recurrent nature, the respondents' experience in the marketplace, whether the

[13] Written Submissions of the Respondents, May 5, 2022, at para 1

respondents benefited financially from their misconduct, and potential mitigating factors such as remorse and impecuniosity.

[62] There is no formulaic approach to determine the quantum of an administrative penalty. However, we are guided by administrative penalties that this Tribunal has imposed in other cases. While no two cases are exactly alike, and the determination of appropriate sanctions is highly fact-specific, previous decisions help establish a range of reasonable outcomes.

[63] Of the decisions cited by the parties, we found the following to be particularly relevant. All of them involved unregistered trading or advising about securities:

a. In *Simba (Re)*, the respondent placed 440 buy/sell orders in an investor's locked-in retirement account over the course of 14 months incurring $56,000 in losses. In addition to 10-year market sanctions, Simba was ordered to pay an administrative penalty of $100,000 and costs;[14]

b. In *Doulis (Re)*, the respondents engaged in the business of advising in respect of securities without being registered. They conducted trades on behalf of investors worth between $15 million and $17 million, and received approximately $50,000 in fees. The Tribunal found that they also made misleading or untrue statements to Staff. It imposed a 15-year market ban, ordered disgorgement of the fees, and imposed administrative penalties of $200,000 against the individual respondent;[15]

c. In *Khan (Re)*, the respondents' unregistered trading and advising in commodity futures contracts led to 32 investors losing over $366,000. In addition to permanent market sanctions, disgorgement and costs, the respondents were each ordered to pay an administrative penalty of $200,000;[16]

d. In *MP Global Financial Ltd (Re)*, the respondents raised approximately $25 million (of which $8 million was lost) from 150 investors. Fifteen-year market sanctions, disgorgement and costs were ordered, along with administrative penalties of $250,000 against each individual and corporate respondent.[17]

3.3.2.d Conclusion about administrative penalty

[64] In our view, it would be in the public interest to require the respondents to pay an administrative penalty of $250,000. Staff asked that any administrative penalty be payable jointly and severally by the respondents, and we will so order.

[65] In concluding that $250,000 is an appropriate amount, we were particularly influenced by the seriousness of the conduct as evidenced by the significant losses suffered by investors and by the recurrent nature of the respondents' conduct, in light of their earlier undertaking. We also take into account the fact that there is no evidence Namburi set out to deprive the investors in any way. Despite that, the misconduct was serious and warrants a strong response.

3.3.3 Disgorgement

3.3.3a Introduction

[66] Paragraph 10 of s. 127(1) of the Act authorizes the Tribunal to make an order requiring a person or company who has failed to comply with Ontario securities law to disgorge "any amounts obtained" through its non-compliance.

[67] Staff asks that we order the respondents, jointly and severally, to disgorge the sum of $430,192.50, an amount that is made up of both the profit-sharing fees they withheld ($400,507.50) and the commission rebates paid to them by the operator of one of the CFD trading platforms under an Introducing Broker Agreement ($29,685.00). The respondents submit that no disgorgement order is warranted, because they did not benefit from their misconduct and because they are unable to pay.

[68] For reasons discussed above, we reject these submissions by the respondents. They obtained the amount sought by Staff, and there is no good reason for us to reduce that amount. We therefore grant the order requested.

3.3.3.b Analysis

[69] The purpose of a disgorgement order is not to provide restitution; rather, it is a remedy that seeks to fulfill the goals of specific and general deterrence by preventing those found to be in non-compliance with Ontario securities law from benefiting from their non-compliance.[18]

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14 2018 ONSEC 56
15 2014 ONSEC 40
16 2015 ONSEC 15
17 2012 ONSEC 35
18 *Sabourin (Re)*, 2010 ONSEC 10 at para 65

[70] The Tribunal has set out a non-exhaustive list of factors to be considered in determining whether a disgorgement order should be made, and if so, in what amount:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to individual investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and other market participants.[19]

[71] With respect to the first factor, we conclude that the respondents obtained the requested amount as a result of their non-compliance with Ontario securities law. The profit-sharing fees and commission rebates arose directly from the illegal trading that the respondents conducted. Had they not conducted that trading, they would not have obtained the impugned funds. Further, we note that the statute refers to amounts "obtained by" the respondent, not profit earned by the respondent. We have already rejected the respondents' contention that they earned no profit, but even if we accepted that characterization, there can be no dispute that the respondents "obtained" the funds in the first place.[20] The amount of a disgorgement order ought not to be affected by how the funds were subsequently used.[21]

[72] We addressed the second and fifth of these factors above in our discussion of sanctioning factors generally. We conclude that the serious and harmful nature of the respondents' non-compliance in this case, and the need for both specific and general deterrence, support a disgorgement order in this matter.

[73] The third factor is non-controversial – there is no dispute that the amount sought by Staff represents the total of the profit-sharing fees and commission rebates that the respondents received.

[74] Finally, with respect to the fourth factor, there is no apparent prospect that the investors would recover any of those funds.

[75] Accordingly, we conclude that a disgorgement order would be appropriate. The amount obtained by the respondents is readily ascertainable, and the respondents have offered no persuasive basis for us to reduce that amount.

[76] Even if the respondents had persuaded us that they are impecunious, we would not reduce the amount of the disgorgement order. In this regard, we agree with the analysis of the Alberta Securities Commission in *Magee (Re)*, in which the panel observed that it would seem perverse that disgorgement could be ordered against a respondent who retains amounts illegally obtained, but could not be ordered against a respondent who squanders those amounts.[22]

[77] We find that it is in the public interest to require the respondents to disgorge, jointly and severally, the sum of $430,192.50 to the Commission.

3.4 Costs

3.4.1 Introduction

[78] Finally, we consider Staff's request that the respondents pay certain of the costs associated with this matter. Staff seeks costs of $251,997.71, representing fees for Staff time of $242,031.38 and disbursements of $9,966.34. For the reasons we set out below, we will order that the respondents be jointly and severally responsible for costs in the amount of $200,000.

3.4.2 Analysis

[79] Section 127.1 of the Act permits the Tribunal to order a person or company to pay the costs of an investigation and/or hearing if it is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest. A costs order is not a sanction, but rather a means of recovering investigation and/or hearing costs. A costs order will not necessarily lead to the recovery of all of the costs incurred by the Commission, but it is appropriate for respondents to contribute to such costs when it is their contravention of Ontario securities law that caused the costs to be incurred.

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19 *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18 (***PFAM***) at para 50
20 *PFAM* at para 49
21 *Phillips (Re)*, 2015 ONSEC 36 at para 19
22 2015 ABASC 846 at para 191, quoted in *Rustulka (Re)*, 2021 ABASC 15 at para 105

[80] Staff supports its request in this case with evidence regarding the time spent by various members of Staff during its investigation and this proceeding. Staff also seeks reimbursement for disbursed court reporter fees during the investigation.

[81] Staff reduced the total costs requested by limiting the list of Staff members for whom costs are claimed to only two: the lead investigator and counsel, defined as the investigator and counsel who recorded the highest number of hours. Staff further reduced the costs sought in the litigation phase by an additional $74,647.50. Staff then further reduced the net costs by applying a discount of 10% in recognition of the respondents' success on the issue of whether there was a breach of the undertaking given to the Commission concerning the respondents' registration obligations.

[82] Overall, Staff's claim represents a discount of approximately 47.95% on the actual costs it incurred during its investigation and this proceeding.

[83] The respondents submit that we should not order costs given:

a. the lack of clarity of communications by Staff with the respondents during the course of discussions resulting in the Acknowledgment and Undertaking;

b. the lack of clarity of the undertaking itself;

c. Staff's mixed success in the merits hearing; and

d. the respondents' financial circumstances.

[84] The first three of those submissions are related, and we have addressed them above. In the context of Staff's request for costs, we note that the allegation of a breach of the undertaking was an independent allegation, and the dismissal of that allegation does not detract from the fact that Staff proved the significantly more substantive allegations relating to the respondents being in the business of trading and advising about securities without registration.

[85] We cannot accept the respondents' contention that the entire proceeding could have been avoided had Staff been clearer in its communications with the respondents and in setting out the respondents' registration obligations. Staff was not, and should not be, under any obligation to engage in detailed communications with those who participate in the capital markets (registered and unregistered) to supplement the provisions of Ontario securities law. The respondents were free to engage their own advisors to help them comply with Ontario securities law. At no time in this proceeding did the respondents offer a valid reason why they did not do so. It was clear from Namburi's testimony that his was a one-person business, and that he worked extremely long hours doing everything himself. That was his choice, but he must bear the consequences of having made that choice.

[86] The respondents submit, in the alternative, that the costs requested by Staff are too high and reflect time spent on the matter by Staff that is patently excessive in the context of the proceeding. In particular, the respondents point to the fact that Staff's senior forensic accountant spent nearly 1,000 hours on this matter, including both the investigation and litigation stages.

[87] We agree that the time spent appears to be disproportionately high given the scope of the proceeding. We also note that there were changes of personnel assigned to this matter during its life, and while Staff has applied a reduction to reflect the inevitable duplication that comes with personnel changes, we find that it would be appropriate to apply a further reduction.

[88] Finally, the respondents further submit that Staff's "mixed success" in the merits hearing means that Staff has insufficiently reduced the amount of the costs sought. We do not accept this submission. The 10% discount applied by Staff as a result of the allegation about the undertaking not being proved is a fair discount.

3.4.3 Conclusion about costs

[89] For the above reasons, we conclude that the costs to be borne by the respondents should be further reduced, beyond the discounts that Staff has applied. We reduce Staff's claim by approximately 20% and will order that the respondents be jointly and severally liable for costs in the amount of $200,000.

4. CONCLUSION

[90] For the reasons stated above, we order:

a. with respect to Namburi, that:

i. he shall cease trading in any securities or derivatives, or acquiring any securities, for a period of 10 years, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, except that, upon full payment

of the amounts in subparagraphs (c), (d) and (e) below, he may trade in or acquire securities in any registered retirement savings plan accounts, and/or tax-free savings accounts, and/or other self-directed retirement savings plan in which he has sole legal and beneficial interest, solely through a registered dealer or registered advisor that has first been given a copy of the Tribunal's order;

ii. any exemptions contained in Ontario securities law shall not apply to him for a period of 10 years, pursuant to paragraph 3 of subsection 127(1) of the Act, except that, upon full payment of the amounts in subparagraphs (c), (d) and (e) below, he may rely on exemptions used in respect of trading in or acquiring securities in accordance with the exception in (i) above;

iii. he resign any positions he holds as a director or officer of an issuer or registrant, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act;

iv. he is prohibited from acting as a director or officer of an issuer or registrant for a period of 10 years, pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act; and

v. he is prohibited from becoming or acting as a registrant or promoter for a period of 10 years, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

b. with respect to VRK Forex, that:

i. it shall cease trading in any securities or derivatives, or acquiring any securities, for a period of 10 years, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

ii. any exemptions contained in Ontario securities law shall not apply to it for a period of 10 years, pursuant to paragraph 3 of subsection 127(1) of the Act; and

iii. it is prohibited from becoming or acting as a registrant or promoter for a period of 10 years, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

c. Namburi and VRK Forex shall jointly and severally pay an administrative penalty in the amount of $250,000, pursuant to paragraph 9 of subsection 127(1) of the Act;

d. Namburi and VRK Forex shall jointly and severally disgorge to the Commission the amount of $430,192.50, pursuant to paragraph 10 of subsection 127(1) of the Act;

e. Namburi and VRK Forex shall jointly and severally pay $200,000 for the costs of the Commission's investigation and hearing, pursuant to section 127.1 of the Act; and

f. in the event that any of the payments set out in subparagraphs (c), (d) and (e) are not made in full, the orders in subparagraphs (a) and (b) shall continue in force without any limitations as to time period.

Dated at Toronto this 7th day of October, 2022

"Timothy Moseley"

"Geoffrey D. Creighton"

"Dale R. Ponder"

B. Ontario Securities Commission

B.1
Notices

B.1.1 Notice of Coming into Force – OSC Rule 32-506 (Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers – Amendment to OSC Rule 91-502 Trades in Recognized Options under the Securities Act

NOTICE OF COMING INTO FORCE

OSC RULE 32-506 (COMMODITY FUTURES ACT)
EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS

AMENDMENT TO
OSC RULE 91-502 *TRADES IN RECOGNIZED OPTIONS* UNDER THE *SECURITIES ACT*

October 13, 2022

Introduction

On August 4, 2022, the Ontario Securities Commission (the **Commission**) delivered Ontario Securities Commission Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers* (**OSC Rule 32-506**) and an amendment (the **91-502 Amendment**) to OSC Rule 91-502 *Trades in Recognized Options* (**OSC Rule 91-502**) collectively, the **Instruments**) to the Ontario Minister of Finance (the **Minister**) in accordance with section 68 of the *Commodity Futures Act* (Ontario) (the **CFA**) and section 143.3 of the *Securities Act* (Ontario) (the **OSA**), respectively.

The Instruments were published on August 11, 2022 in the Bulletin. See (2022), 45 OSCB 7289.

In accordance with section 69 of the CFA and section 143.4 of the OSA, the Instruments come into force on October 17, 2022.

The text of the Instruments is published in Chapter B.5 of this Bulletin.

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B.2
Orders

B.2.1 LifeWorks Inc. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16 as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
LIFEWORKS INC.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is an "offering corporation" as defined in subsection 1(1) of the OBCA;

2. The Applicant's head office is located in Ontario;

3. The Applicant has no intention to seek public financing by way of an offering of securities;

4. On September 16, 2022 the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*; and

5. The representations set out in the Reporting Issuer Order continue to be true.

AND UPON the Commission being satisfied that to grant this order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA, that the Applicant is deemed to have ceased to be offering its securities to the public.

DATED at Toronto on this 11th day of October, 2022.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0419

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B.3
Reasons and Decisions

B.3.1 Gain Capital – Forex.com Canada Ltd. et al.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Application by investment dealer (Canadian Filer) for relief from prospectus requirement in connection with distribution of contracts for difference (CFDs) and OTC foreign exchange contracts (collectively, OTC Contracts) to investors, subject to terms and conditions – Application by affiliates of Canadian Filer for relief from prospectus requirement in connection with distribution of OTC Contracts to Canadian Filer pursuant to offsetting transactions – Canadian Filer acts as both market intermediary and as principal or counterparty to OTC transaction with client – Canadian Filer registered as investment dealer and a member of the Investment Industry Regulatory Organization of Canada (IIROC) – Filer complies with IIROC rules and IIROC acceptable practices applicable to offerings of OTC Contracts – Canadian Filer seeking relief to permit Canadian Filer to offer OTC Contracts to investors on the basis of clear and plain language risk disclosure document rather than a prospectus – risk disclosure document contains disclosure substantially similar to risk disclosure document required for recognized options in OSC Rule 91-502 Trades in Recognized Options, the regime for OTC derivatives contemplated by former proposed OSC Rule 91-504 OTC Derivatives (which was not adopted), and the Quebec Derivatives Act – Relief consistent with relief contemplated by OSC Staff Notice 91-702 Offerings of contracts for difference and foreign exchange contracts to investors in Ontario (OSC SN 91-702) – Relief granted, subject to terms and conditions as described in OSC SN 91-702 including four-year sunset clause.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74(1).
OSC Rule 91-502 Trades in Recognized Options.
OSC Rule 91-503 Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario.
Proposed OSC Rule 91-504 OTC Derivatives (not adopted).

October 5, 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
GAIN CAPITAL – FOREX.COM CANADA LTD.
(the Canadian Filer)

AND

STONEX GROUP INC.,
GAIN CAPITAL GROUP, LLC AND
STONEX FINANCIAL LTD.
(each a Canadian Filer Affiliate and collectively with the Canadian Filer, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application for a decision (the **Decision**) under the securities legislation of the Jurisdiction (the **Legislation**) that:

(a) the Canadian Filer and its respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of contracts for difference (**CFDs**), over-the-counter (**OTC**) foreign exchange contracts and other similar OTC contracts (collectively, **OTC Contracts**) to investors resident in the Applicable Jurisdictions (as defined below) (the **Client Prospectus Relief**) subject to the terms and conditions below; and

(b) the Canadian Filer Affiliates and their respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of OTC Contracts to the Canadian Filer pursuant to an Off-setting Transaction (as described below) (the **Canadian Filer Prospectus Relief**)

(collectively, the **Requested Relief**).

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

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

(b) the Canadian Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each province and territory of Canada, except Québec and Alberta, with respect to the Client Prospectus Relief.

Interpretation

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

Representations

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

The Canadian Filer

1. The Canadian Filer is a corporation incorporated under the *Canada Business Corporations Act* with its registered corporate head office located in Toronto, Ontario.

2. The Canadian Filer is registered as a dealer in the category of investment dealer in each of the provinces and territories of Canada, as a derivatives dealer in Québec, and is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The Canadian Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.

4. The Canadian Filer currently offers OTC Contracts to "accredited investors" as defined in National Instrument 45-106 *Prospectus Exemptions* and to retail investors in compliance with the terms and conditions set out in In the Matter of GAIN Capital – Forex.com Canada Ltd., GAIN Capital Holdings, Inc., GAIN Capital Group, LLC and GAIN Capital – Forex.com UK Ltd. dated November 7, 2017 (the **Previous Relief**), except as explained in the following paragraph.

5. The Canadian Filer is not in default of any requirements of securities or derivatives legislation in Canada or the IIROC Rules or the IIROC Acceptable Practices (each, as defined below), except with respect to the fact that the Previous Relief has lapsed and was not renewed on a timely basis. The Canadian Filer has at all times since the Previous Relief lapsed acted in full compliance with the terms and conditions set out in such relief, except for the four year sunset clause.

The StoneX Group

6. The Canadian Filer is an indirect, wholly owned subsidiary of StoneX Group Inc. (**StoneX**) and is part of the StoneX Group of companies.

7. The Filers are all related companies within the StoneX Group of companies. StoneX is the parent company of the Filers and is a publicly listed company with its common shares listed for trading on the National Association of Securities Dealers Automated Quotations (NASDAQ) stock market under the symbol "SNEX".

8. The Filers expect that an internal reorganization already approved by the Principal Regulator will be completed sometime later in 2022.

9. Operating under the global brand "Forex.com" the Canadian Filer Affiliates are each well-established leading providers of 24-hour online self-directed OTC trading services offering CFDs and spot forex contracts and servicing retail and

institutional customers from more than 140 countries around the globe. The Filers offer these services to investors in Canada through the Canadian Filer.

10. GAIN Capital Group, LLC (**Forex.com US**), an indirect wholly owned subsidiary of StoneX, is authorized and registered as a Retail Foreign Exchange Dealer with the United States National Futures Association and is registered as a Futures Commission Merchant with the United States Commodity Futures Trading Commission.

11. StoneX Financial Ltd. (**SFL**), a wholly owned subsidiary of StoneX, is authorized and regulated by the Financial Conduct Authority (the **FCA**) in the United Kingdom (**U.K.**) as a full scope 730k IFPRU firm. SFL is licensed in the U.K., among other things, to act as principal to its clients in the products it offers and may deal with all categories of clients, including directly with retail clients. Furthermore, SFL is regulated on a consolidated basis in the U.K. by the FCA.

Offerings

12. The Canadian Filer offers OTC Contracts to investors in each of the provinces and territories of Canada, except Québec and Alberta, (each an **Applicable Jurisdiction**) in accordance with the representations, terms and conditions described in the Previous Relief and wants to continue to do so in accordance with the representations, terms and conditions set out in this Decision. During the Interim Period (as defined below), the Canadian Filer will rely on the Client Prospectus Relief in connection with the offering of OTC Contracts to investors in the Jurisdiction and intends to rely on this Decision and the "Passport System" described in MI 11-102 to offer OTC Contracts in the other Applicable Jurisdictions.

13. In Québec, the Canadian Filer is qualified by the Autorité des marchés financiers (**AMF**) pursuant to sections 82 and 83 of the *Derivatives Act* (Québec) (the **QDA**) and authorized to market certain forward contracts and CFDs offered to the public, subject to the terms and conditions of its qualification decision and related provisions of the QDA.

14. The Canadian Filer understands that staff of the Alberta Securities Commission have public interest concerns with CFD trading by retail clients and, accordingly, the Filers do not offer OTC Contracts to retail investors in Alberta. The Canadian Filer undertakes not to give notice that subsection 4.7(1) of MI 11-102 is intended to be relied upon in Alberta.

IIROC Rules and Acceptable Practices

15. As a member of IIROC, the Canadian Filer is only permitted to enter into OTC Contracts pursuant to the rules and regulations of IIROC (the **IIROC Rules**).

16. In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (the **IIROC Acceptable Practices**) as articulated in IIROC's "*Regulatory Analysis of Contracts for Differences (CFDs)*" published by IIROC on June 6, 2007, as amended on September 12, 2007, for any IIROC member proposing to offer OTC foreign exchange contracts or other types of CFDs to investors. The Canadian Filer is in compliance with IIROC Acceptable Practices in offering CFDs. The Canadian Filer will continue to offer CFDs in accordance with IIROC Acceptable Practices. The Canadian Filer has also provided IIROC with an undertaking to comply with the IIROC Acceptable Practices as established from time to time in offering OTC Contracts to investors.

17. The Canadian Filer is required by IIROC to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by IIROC (as per the calculation in the Form 1 Joint Regulatory Financial Questionnaire (the **Form 1**) and the Monthly Financial Reports to IIROC) is based predominantly on the generation of financial statements and calculations as to ensure capital adequacy. The Canadian Filer, as an IIROC member, is required to have a specified minimum capital which includes having any additional capital required with regards to margin requirements and other risks. This risk calculation is summarized as a risk adjusted capital calculation which is submitted in the Canadian Filer's Form 1 and required to be kept positive at all times.

Online Trading Platform

18. The Canadian Filer has established an execution-only division to offer OTC Contracts whereby clients can self-direct trades in OTC Contracts through an on-line trading platform (the **Trading Platform**).

19. Clients of the Canadian Filer can access the Trading Platform by utilizing a proprietary order-entry system developed by Forex.com US and licensed to the Canadian Filer, or through MetaTrader (i.e., MT4), a third-party order-entry system, as may be amended and/or upgraded from time to time.

20. The Trading Platform is a key component in a comprehensive risk management strategy which helps the Canadian Filer's clients and the Canadian Filer to manage the risks associated with leveraged products. This risk management system has evolved over many years with the objective of meeting the mutual interests of all relevant parties (including, in particular, clients). These attributes and services are described in more detail below:

    (a) *Real-time account status and client reporting.* Clients are provided with a real-time view of their account status. This includes how tick-by-tick movements affect their account balances and required margins. Clients can view this information throughout the trading day by including it on their trading screen, and can also set up alerts that

instruct the trading system to automatically send an email notifying them of key identified levels being hit in the market. Clients have the ability to monitor their account and the profit/loss of their positions in real time.

(b) *Fully automated risk management system.* Clients are instructed that they must have at the time of order entry, and must maintain at all times, the required margin against their position(s). If a client's funds drop below the required margin, margin calls are regularly issued via email, alerting the client to the fact that the client is required to either deposit more funds to maintain the position or close/reduce it voluntarily. Where possible, daily telephone margin calls are provided as a supporting communication for clients. However, if a client fails to deposit more funds, where required, the client's position is liquidated. This liquidation procedure is intended to act as a mechanism to help reduce the risk of losses being greater than the amount deposited. The risk management functionality of the Trading Platform ensures that client positions are closed out when the client no longer maintains sufficient margin in their account to support the position, thereby preventing the client from being placed in a margin call situation or losing more than their stated risk capital or cumulative loss limit. This functionality also ensures that the Canadian Filer will not incur any credit risk vis-à-vis its customers in respect of OTC transactions.

(c) *Wide range of order types.* The Trading Platform also provides risk management tools such as stops, limits, and contingent orders. These tools are designed to help clients reduce the risk of loss.

(d) *Training programs and Practice Accounts.* Clients are provided with on-line user-friendly training programs and educational risk-free trading accounts. In addition, clients may contact Client Services via telephone, email or live chat with any questions they may have.

21. The Trading Platform is similar to those developed for on-line brokerages in that the client trades without other communication with, or advice from, the dealer.

22. The Trading Platform is not a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner. The Trading Platform does not bring together multiple buyers and sellers, rather it offers clients direct access to real-time currency rates and price quotes for the OTC Contracts.

23. The OTC Contracts are not transferable or fungible with other contracts or financial instruments.

24. The Canadian Filer is the counterparty to trades by its clients in OTC Contracts (**OTC Transactions**); it will not act as an intermediary, broker or trustee in respect to the OTC Transactions. The Canadian Filer does not manage any discretionary accounts, nor does it provide any trading advice or recommendations regarding OTC Transactions.

25. The Canadian Filer manages the risk in its client positions by simultaneously placing an identical off-setting OTC trade on a back-to-back basis (an **Off-setting Transaction**) with a Canadian Filer Affiliate. Usually, StoneX Financial Ltd. will act as the counterparty to the Canadian Filer for CFDs and OTC Contracts.

26. The Canadian Filer does not have an inherent conflict of interest with its clients since it does not profit on a position if the client loses on that position, and vice versa. Further, the Canadian Filer does not charge a trade commission; rather it is compensated by the "spread" between the bid and ask prices it offers. In the event the Canadian Filer wishes to introduce any other fees or charges in respect of OTC Contracts, it will provide not less than the minimum prior written notice required of IIROC member firms wishing to do so. Any additional charges shall be fully disclosed to the client prior to trading.

27. Each of the Canadian Filer Affiliates is an "acceptable counterparty" or a "regulated entity" (as those terms are defined in the Form 1). Each of the Canadian Filer Affiliates relies on the exemption from dealer registration requirements set out in section 8.5 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) with respect to the Off-setting Transactions with the Canadian Filer.

28. In order to facilitate the distribution and offering of OTC Contracts to clients of the Canadian Filer in the manner described above, the Canadian Filer seeks the Client Prospectus Relief to allow it to offer OTC Contracts to its clients without a prospectus, and the Canadian Filer Affiliates seek the Canadian Filer Prospectus Relief to allow them to offer the corresponding Off-setting Transactions without a prospectus.

29. The ability to lever an investment is one of the principal features of OTC Contracts. Leverage allows clients to magnify investment returns (or losses) by reducing the initial capital outlay required to achieve the same market exposure that would be obtained by investing directly in the underlying currency or instrument, asset or sector.

30. The IIROC Rules and the IIROC Acceptable Practices set out detailed requirements and expectations relating to leverage and margin for offerings of CFDs and other OTC Contracts. The degree of leverage may be amended in accordance with the IIROC Rules and the IIROC Acceptable Practices as may be established from time to time.

31. Notwithstanding Section 13.12 [Restriction on borrowing from, or lending to, clients] of NI 31-103, only those firms that are registered as investment dealers (a condition of which is to be a member of IIROC) may lend money, extend credit or provide margin to a client.

Structure of CFDs

32. A CFD is a derivative product that allows clients to obtain economic exposure to the price movement of an underlying instrument, asset or sector, such as a share, index, market sector, currency pair, treasury or commodity, without the need for ownership and physical settlement of the underlying instrument or asset. Unlike certain OTC derivatives, such as forward contracts, CFDs do not require or oblige either the principal counterparty (being the Canadian Filer for the purposes of the Client Prospectus Relief) nor any agent (also being the Canadian Filer for the purposes of the Client Prospectus Relief) to deliver the underlying instrument or asset.

33. The CFDs and OTC Contracts to be offered by the Canadian Filer will not confer the right or obligation to acquire or deliver the underlying security, instrument or asset itself, and will not confer any other rights of shareholders of the underlying security, instrument or asset, such as voting rights. Rather, a CFD is a derivative instrument which is represented by an agreement between a counterparty and a client to exchange the difference between the opening price of a CFD position and the price of the CFD at the closing of the position. The value of the CFD is generally reflective of the movement in prices at which the underlying instrument or asset is traded at the time of opening and closing the position in the CFD.

34. CFDs allow clients to take a long or short position on an underlying instrument, asset or sector, but unlike futures contracts they have no fixed expiry date or standard contract size or an obligation for physical delivery of the underlying instrument or asset.

35. CFDs allow clients to obtain exposure to markets, instruments and assets that may not be available directly, or may not be available in a cost-effective manner.

OTC Contracts Distributed in the Applicable Jurisdictions

36. Certain types of OTC Contracts may be considered to be “securities” under the securities legislation of the Applicable Jurisdictions.

37. Investors wishing to enter into an OTC Contract with the Canadian Filer must open an account with the Canadian Filer.

38. Prior to a client’s first trade in an OTC Contract and as part of the account-opening process, the Canadian Filer will provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the **Risk Disclosure Document**). The Risk Disclosure Document includes the required risk disclosure set forth in Schedule A to the Regulations to the QDA and the leverage risk disclosure required under the IIROC Rules. The Risk Disclosure Document contains disclosure that is substantially similar to the risk disclosure statement required for recognized options in OSC Rule 91-502 *Trades in Recognized Options* (which provides both prospectus and registration exemptions) (**OSC Rule 91-502**) and the regime for OTC derivatives contemplated by OSC SN 91-702 (as defined below) and proposed OSC Rule 91-504 *OTC Derivatives* (which was not adopted) (**Proposed Rule 91-504**). The Canadian Filer will ensure that, prior to a client’s first trade in an OTC Contract, a complete copy of the Risk Disclosure Document provided to that client has been delivered, or has previously been delivered, to the Principal Regulator.

39. Prior to a client’s first OTC transaction and as part of the account opening process, the Canadian Filer will obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the Risk Disclosure Document. Such acknowledgement will be separate and prominent from other acknowledgements provided by the client as part of the account opening process.

40. As is customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Canadian Filer (such as changes in the IIROC Rules), information such as the underlying instrument listing and associated margin rates will not be disclosed in the Risk Disclosure Document but will be available to the client at the time of account opening on both the Canadian Filer’s website and the Trading Platform.

Satisfaction of the Registration Requirement

41. The role of the Canadian Filer as it relates to the offering of OTC Contracts (other than it being the principal under the OTC Contracts) is limited to acting as an execution-only dealer. In this role, the Canadian Filer, among other things, is responsible for approving all marketing, for holding all client funds and for client approval (including the review of know-your-client, due diligence and account opening suitability assessments).

42. The IIROC Rules exempt member firms that provide execution-only services such as discount brokerages from the obligation to determine whether each trade is suitable for a client. However, IIROC has exercised its discretion to impose

additional requirements on members proposing to trade in CFDs and OTC Contracts (namely the IIROC Acceptable Practices described in paragraph 16) which requires, among other things, that:

(a) applicable risk disclosure documents and client suitability waivers provided be in a form acceptable to IIROC;

(b) the firm's policies and procedures, amongst other things, require the Canadian Filer to assess whether trading in OTC Contracts is appropriate for a client before an account is approved to be opened. This account opening suitability process includes an assessment of the client's investment knowledge and trading experience; client identification, screening applicants and customers against lists of prohibited/blocked persons, and detecting and reporting suspicious trading and potential terrorist financing and money laundering activities to applicable enforcement authorities;

(c) the Canadian Filer's registered dealing representatives, as well as their registered supervisors who oversee the know-your-client and initial product suitability analysis will meet, or be exempt from, the proficiency requirements for futures trading and will be registered with IIROC as an Investment Representative for retail customers in the product category of Futures Contracts and Futures Contract Options. In addition, the Canadian Filer must have a fully qualified Supervisor for such products; and

(d) cumulative loss limits for each client's account will be established (this is a measure normally used by IIROC in connection with futures trading accounts).

43. The OTC Contracts offered in Canada will be offered in compliance with the applicable IIROC Rules and other IIROC Acceptable Practices. The Canadian Filer will not offer CFDs linked to bitcoin, cryptocurrencies or other novel or emerging asset classes to investors in the Applicable Jurisdictions without the prior written consent of IIROC.

44. IIROC limits the underlying instruments in respect which a member firm may offer OTC Contracts since only certain securities are eligible for reduced margin rates. For example, underlying equity securities must be listed or quoted on certain "recognized exchanges" (as that term is defined in the IIROC Rules) such as the Toronto Stock Exchange or the New York Stock Exchange. The purpose of these limits is to ensure that OTC Contracts offered in Canada will only be available in respect of underlying instruments that are traded in well-regulated markets, in significant enough volumes and with adequate publicly available information, so that clients can form a sufficient understanding of the exposure represented by a given OTC Contract.

45. The IIROC Rules prohibit the margining of OTC Contracts where the underlying instrument is a synthetic product (single U.S. sector or "mini-indices"). For example, Sector CFDs (i.e., basket of equities for the financial institutions industry) may be offered to non-Canadian clients; however, this is not permissible under the IIROC Rules.

46. IIROC members seeking to trade OTC Contracts are generally precluded, by virtue of the nature of the contracts, from distributing CFDs that confer the right or obligation to acquire or deliver the underlying security, instrument or asset itself (convertible CFDs), or that confer any other rights of shareholders of the underlying security, instrument or asset, such as voting rights.

47. The Requested Relief, if granted, will continue to harmonize the position of the regulators in the Applicable Jurisdictions (each a **Commission**) on the offering of OTC Contracts to investors in the Applicable Jurisdictions with how those products are offered to investors in Québec under the QDA. The QDA provides a legislative framework to govern derivatives activities within that province. Among other things, the QDA requires such products to be offered to investors through an IIROC member and the distribution of a standardized risk disclosure document rather than a prospectus in order to distribute such contracts to investors resident in Québec.

48. The Requested Relief, if granted, is consistent with the guidelines articulated by Staff of the Principal Regulator in OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**). OSC SN 91-702 provides guidance with regards to the distributions of CFDs, forex contracts and similar OTC derivative products to investors in the Jurisdiction.

49. The Principal Regulator has previously recognized that the prospectus requirement may not be well suited for the distribution of certain derivative products to investors in the Jurisdiction, and that alternative requirements, including requirements based on clear and plain language risk disclosure, may be better suited for certain derivatives.

50. In the Jurisdiction, both OSC Rule 91-502 and OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (**OSC Rule 91-503**) provide for a prospectus exemption for the trading of derivative products to clients. The Requested Relief is consistent with the principles and requirements of OSC Rule 91-502, OSC Rule 91-503 and Proposed Rule 91-504.

51. The Filers submit that the Requested Relief, if granted, will harmonize the Principal Regulator's position on the offering of OTC Contracts with certain other foreign jurisdictions that have concluded that a clear, plain language risk disclosure document is appropriate for retail clients seeking to trade in foreign exchange contracts.

52. The Filers are of the view that requiring compliance with the prospectus requirement in order to enter into OTC Contracts with retail clients would not be appropriate since the disclosure of a great deal of the information required under a prospectus and under the reporting issuer regime is not material to a client seeking to enter into an OTC Contract. The information to be given to such a client should principally focus on enhancing the client's appreciation of product risk including counterparty risk. In addition, most OTC Contracts are of short duration (positions are generally opened and closed on the same day and are in any event marked to market and cash settled daily).

53. The Canadian Filer is regulated by IIROC, which has a robust compliance regime including specific requirements to address market, capital and operational risks.

54. The Canadian Filer submits that the regulatory regimes developed by the AMF and IIROC for OTC Contracts adequately address issues relating to the potential risk to the clients of the Canadian Filer acting as counterparty. In view of these regulatory regimes, investors would receive little or no additional benefit from requiring the Canadian Filer to also comply with the prospectus requirement.

55. The Requested Relief in respect of each Applicable Jurisdiction is conditional on the Canadian Filer being registered as an investment dealer with the Commission in such Applicable Jurisdiction and maintaining its membership with IIROC and that all OTC transactions be conducted pursuant to the IIROC Rules and in accordance with the IIROC Acceptable Practices.

Non-Resident Undertaking

56. The Canadian Filer has been approved by IIROC specifically as a non-resident dealer member because its designated head office and principal business location for regulatory purposes is situated in Bedminster, New Jersey.

57. The Canadian Filer complies with all IIROC requirements for non-resident dealer members as set out in IIROC's paper, Regulatory Analysis of Non-Resident IDA Members, dated November 10, 2005, except, with IIROC's consent, Part 2, paragraph (g), which requires a non-resident dealer member to enter into an introducing and carrying broker arrangement (**IB/CB Arrangement**) with a resident dealer member of IIROC in accordance with IIROC Rule 2400.

58. In lieu of having to enter into an IB/CB Arrangement, the Canadian Filer has provided IIROC with a non-resident undertaking (the **Non-Resident Undertaking**) which terms include, among other things, its agreement to:

    (a) maintain custody of all customer monies in Canada with a Canadian financial institution that is an Acceptable Institution (as defined by IIROC) and such customer monies will be held in trust for the customers separate and apart from its own property;

    (b) provide each customer with a copy in writing of its Non-Resident Disclosure (as approved by IIROC);

    (c) provide each customer with the names and addresses of its agents for service of process in each of the provinces and territories of Canada;

    (d) provide customers with the choice of law with respect to all contracts for securities trading and provide a waiver of its right to challenge the convenience of the forum chosen by the customer in any action brought against it;

    (e) pay all compliance costs associated with the travel and accommodations of IIROC staff to perform a compliance review or investigation outside of Canada; and

    (f) provide a facility within Ontario, through its Canadian-resident director, to make its books and records, including electronic records, readily accessible and to produce physical records for IIROC within a reasonable time if requested.

59. The Canadian Filer has determined that it complies with all requirements under NI 31-103 relating to non-resident registrants, including subsection 14.5 of NI 31-103, since all client assets (i.e., cash) will be held by the Canadian Filer, a registered dealer that is a member of IIROC and is a member of the Canadian Investor Protection Fund, and since the Canadian Filer will hold client assets in Canada separate and apart from its own property, in trust for clients and, in the case of cash, in a designated trust account at a Canadian financial institution or Schedule III bank.

Decision

The Principal Regulator is satisfied that the test set out in the Legislation to make the Decision is met.

The Decision of the Principal Regulator is that the Requested Relief is granted provided that:

    (a) all OTC Contracts traded with residents in the Applicable Jurisdictions shall be executed through the Canadian Filer;

    (b) with respect to residents of an Applicable Jurisdiction, the Canadian Filer remains registered as a dealer in the category of investment dealer with the Principal Regulator and the Commission in such Applicable Jurisdiction and a dealer member of IIROC;

(c) all transactions in OTC Contracts with clients resident in the Applicable Jurisdictions shall be conducted pursuant to the IIROC Rules imposed on members seeking to trade in OTC Contracts and in accordance with the IIROC Acceptable Practices, as amended from time to time, and in accordance with the Non-Resident Undertaking;

(d) all transactions in OTC Contracts with clients resident in the Applicable Jurisdictions be conducted pursuant to the rules and regulations of the QDA and the AMF, as amended from time to time, unless and to the extent there is a conflict between (i) the rules and regulations of the QDA and the AMF, and (ii) the requirements of the securities laws of the Applicable Jurisdictions, the IIROC Rules and the IIROC Acceptable Practices, in which case the latter shall prevail;

(e) prior to a client first entering into a transaction in an OTC Contract, the Canadian Filer has provided to the client the Risk Disclosure Document described in paragraph 38 and has delivered, or has previously delivered, a copy of the Risk Disclosure Document provided to that client to the Principal Regulator;

(f) prior to the client's first transaction in an OTC Contract and as part of the account opening process, the Canadian Filer has obtained a written or electronic acknowledgement from the client, as described in paragraph 39, confirming that the client has received, read and understood the Risk Disclosure Document;

(g) the Canadian Filer has furnished to the Principal Regulator the name and principal occupation of its officers or directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information Requirements* completed by any officer or director;

(h) the Canadian Filer shall promptly inform the Principal Regulator in writing of any material change affecting the Canadian Filer or a Canadian Filer Affiliate, being any change in the business, activities, operations or financial results or condition of the Canadian Filer or Canadian Filer Affiliate that may reasonably be perceived by a counterparty to a derivative to be material;

(i) the Canadian Filer shall promptly inform the Principal Regulator in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Canadian Filer or a Canadian Filer Affiliate concerning the conduct of activities with respect to OTC Contracts;

(j) within 90 days following the end of its financial year, the Canadian Filer shall submit to IIROC, and to the Principal Regulator upon request, the audited annual financial statements of the Canadian Filer; and

(k) the Requested Relief shall immediately expire upon the earliest of:

(i) four years from the date that this Decision is issued;

(ii) in respect of a subject Applicable Jurisdiction or Québec, the issuance of an order or decision by a court, the Commission in such Applicable Jurisdiction, the AMF (in respect of Québec) or other similar regulatory body that suspends or terminates the ability of the Canadian Filer to offer CFDs to clients in such Applicable Jurisdiction or Québec; and

(iii) with respect to an Applicable Jurisdiction, the coming into force of legislation or a rule by its Commission regarding the distribution of OTC derivatives to investors in such Applicable Jurisdiction (the **Interim Period**)

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2021/0628

B.3.2 Brookfield Business Partners L.P. and Brookfield Business Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – partnership creates corporation to provide investors with alternative way to hold its units – corporation issues exchangeable shares whose terms are structured so that each exchangeable share is functionally and economically equivalent to a partnership unit – each exchangeable share provides an equivalent economic return as a partnership unit – both the partnership and the corporation are reporting issuers – the corporation will, from time to time, enter into related party transactions with persons other than the partnership – the partnership may not be party to each of these related party transactions but each such transaction will be treated by the partnership as a related party transaction – the corporation is exempt from related party transaction requirements, subject to conditions, including that the partnership will comply with the related party transaction requirements for each of the corporation's related party transactions as though the partnership entered into such related party transaction directly.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Part 5, and s. 9.1.

October 3, 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
BROOKFIELD BUSINESS PARTNERS L.P. AND
BROOKFIELD BUSINESS CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Business Partners L.P. (**BBU**) and Brookfield Business Corporation (**BBUC**, and together with BBU, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that BBUC be exempt from the requirements of Part 5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**, and the requirements of Part 5 of MI 61-101, the **Related Party Transaction Requirements**) in connection with related party transactions of BBUC entered into with persons other than BBU or subsidiary entities of BBU (the **Exemption Sought**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Québec and Saskatchewan.

Interpretation

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

Representations

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

Relevant Entities

BBU

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

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

3. The authorized capital of BBU consists of: (a) non-voting limited partnership units (**BBU Units**); and (b) general partnership units. As of August 30, 2022, there were 74,612,071 BBU Units (217,273,585 BBU Units assuming the exchange of redeemable partnership units of Holding LP (as defined below) and Exchangeable Shares) and 4 general partnership units issued and outstanding.

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

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

6. Each director of the general partner of BBU is also a director of BBUC.

7. Brookfield Business Partners Limited, a wholly-owned subsidiary of Brookfield Asset Management Inc. (**BAM**), holds the general partnership interest in BBU.

BBUC

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

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

10. The authorized share capital of BBUC consists of: (a) an unlimited number of class A exchangeable subordinate voting shares (the **Exchangeable Shares**); (b) an unlimited number of class B multiple voting shares (the **Class B Shares**); (c) an unlimited number of class C non-voting shares (the **Class C Shares**); (d) an unlimited number of class A senior preferred shares; and (e) an unlimited number of class B junior preferred shares (issuable in series). As of August 30, 2022, there were 72,956,017 Exchangeable Shares, 1 Class B Share, 25,934,120 Class C Shares, zero class A senior preferred shares, and zero class B junior preferred shares issued and outstanding.

11. The Exchangeable Shares are listed on the NYSE and the TSX under the symbol "BBUC".

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

13. The board of directors of BBUC consists of each of the directors of the general partner of BBU and two additional directors.

14. The only voting securities of BBUC are the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares are entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares. Accordingly, the Exchangeable Shares collectively represent a 25% voting interest in BBUC and the Class B Shares collectively represent a 75% voting interest in BBUC.

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

16. BBU, indirectly through wholly-owned subsidiaries, owns 100% of the issued and outstanding Class B Shares and 100% of the Class C Shares. Through its ownership of these securities, BBU has a 75% voting interest in BBUC, thereby controlling BBUC and the appointment and removal of directors of BBUC, and is entitled to all of the residual value in

BBUC after payment in full of the amount due to holders of Exchangeable Shares and Class B Shares and subject to the prior rights of holders of preferred shares. The Class B Shares and the Class C Shares are not transferable except to an affiliate of BBU.

BAM

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

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

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

20. BAM holds an approximate 64% economic interest in BBU on a fully-exchanged basis through its indirect ownership of redeemable partnership units of Holding LP and Exchangeable Shares.

21. BAM indirectly holds a 100% voting interest in BBU through its ownership of the general partner interest of BBU.

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

<u>The Exchangeable Shares</u>

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

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

25. On March 15, 2022, BBU completed a special distribution of Exchangeable Shares to holders of BBU Units (the **Special Distribution**). Each Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BBU Unit and the rights, privileges, restrictions and conditions attached to each Exchangeable Share (the **Exchangeable Share Provisions**) are such that each Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BBU Unit. In particular:

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

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

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

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

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

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

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

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

29. In connection with the Special Distribution, BAM entered into a rights agreement pursuant to which it agreed that, for the five-year period beginning on March 15, 2022, BAM will guarantee BBUC's obligation to deliver BBU Units or its cash equivalent in connection with an Exchange.

Other BBUC Related Party Transactions

30. On March 1, 2022, in connection with the Special Distribution, the Ontario Securities Commission granted: (i) BBU relief from the Related Party Transaction Requirements in connection with any related party transaction of BBU with BBUC or any of BBUC's subsidiary entities; (ii) BBUC relief from the Related Party Transaction Requirements in connection with any related party transaction of BBUC with BBU or any of BBU's subsidiary entities (the **BBUC Related Party Relief**); and (iii) BBU relief from the requirements of sections 5.4 and 5.6 of MI 61-101 in connection with any related party transaction of BBU entered into indirectly through Holding LP or any subsidiary entity of Holding LP, if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the Exchangeable Shares were included in the calculation of BBU's market capitalization.

31. It is anticipated that BBUC will, from time to time, enter into related party transactions with persons other than BBU or subsidiary entities of BBU (**Other BBUC Related Party Transactions**) in respect of which the BBUC Related Party Relief does not apply.

32. BBU may not be a party to each Other BBUC Related Party Transaction entered into. However, every Other BBUC Related Party Transaction will indirectly be a related party transaction for BBU and will be treated by BBU as a related party transaction of BBU.

33. Subject to the availability of an exemption, BBUC would be required to obtain: (i) a formal valuation in respect of the non-cash assets involved in the Other BBUC Related Party Transaction; and (ii) minority approval for the Other BBUC Related Party Transaction from the holders of every class of affected securities of BBUC voting separately as a class, excluding the votes attached to affected securities held by the persons enumerated in section 8.1(2) of MI 61-101.

34. Minority approval is required of every class of affected securities, being equity securities of the issuer. The Exchangeable Shares are not equity securities and thus are not entitled to vote for the purposes of minority approval under MI 61-101. The only equity securities of BBUC are the Class C Shares, all of which are held by BBU. BBU, as an entity for which each Other BBUC Related Party Transaction would also constitute a related party transaction, does not require the protections of MI 61-101.

35. By virtue of the Exchangeable Share Provisions, the economic rights of the holders of BBU Units and Exchangeable Shares will be affected in an identical manner in respect of any related party transaction entered into by either BBU or BBUC. A related party transaction for BBUC is, in effect, a related party transaction for BBU.

36. BBU, as the sole holder of the equity securities of BBUC, will receive any benefit and/or bear any detriment from any Other BBUC Related Party Transaction entered into.

37. BBUC is a controlled subsidiary of BBU and BBU consolidates BBUC and its businesses in BBU's financial statements.

38. Any committee of directors of BBU that considers an Other BBUC Related Party Transaction will be comprised of directors who are also directors of BBUC.

39. Investments in Exchangeable Shares are as nearly as practicable, functionally and economically, equivalent to an investment in BBU Units. BBU and BBUC believe that:

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

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

40. BBUC is the entity through which persons who do not wish to hold BBU Units directly may hold their interests in BBU, and BBU is the entity through which holders of Exchangeable Shares and BBU Units hold their interests in the collective operations of BBU and its subsidiaries, including BBUC and its subsidiaries. BBU and BBUC are a single economic entity.

41. BBU will comply with the Related Party Transaction Requirements for each Other BBUC Related Party Transaction as though BBU entered into the Other BBUC Related Party Transaction directly.

42. Other than where BBU or subsidiary entities of BBU are also party to the Other BBUC Related Party Transaction, in which case any formal valuation required to be obtained by BBU under the Related Party Transaction Requirements (including for the Other BBUC Related Party Transaction) will be in respect of BBU and its subsidiary entities (including BBUC and BBUC's subsidiary entities) on a consolidated basis:

    (a) the subject matter of any formal valuation required to be obtained by BBU under the Related Party Transaction Requirements for an Other BBUC Related Party Transaction and the value or range of values of such subject matter would be identical to any formal valuation obtained by BBUC for the same Other BBUC Related Party Transaction; and

    (b) the form and substance of any formal valuation required to be obtained by BBU under the Related Party Transaction Requirements for an Other BBUC Related Party Transaction would be identical, in all material respects, to any formal valuation obtained by BBUC for the same Other BBUC Related Party Transaction.

43. Any and all disclosure documents in connection with an Other BBUC Related Party Transaction, including any formal valuations, information circulars or material change reports, will be filed on the SEDAR profiles of both BBU and BBUC.

44. Holders of Exchangeable Shares who wish to vote at the BBU level may do so by conducting an Exchange of Exchangeable Shares for BBU Units.

Decision

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

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

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

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

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

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

(e) BBU will comply with the Related Party Transaction Requirements for each Other BBUC Related Party Transaction as though BBU entered into the Other BBUC Related Party Transaction directly;

(f) other than where BBU or subsidiary entities of BBU are also party to the Other BBUC Related Party Transaction, in which case any formal valuation required to be obtained by BBU under the Related Party Transaction Requirements (including for the Other BBUC Related Party Transaction) will be in respect of BBU and its subsidiary entities (including BBUC and BBUC's subdiary entities) on a consolidated basis:

    (i) the subject matter of any formal valuation required to be obtained by BBU under the Related Party Transaction Requirements for an Other BBUC Related Party Transaction and the value or range of values of such subject matter would be identical to any formal valuation obtained by BBUC for the same Other BBUC Related Party Transaction; and

    (ii) the form and substance of any formal valuation required to be obtained by BBU under the Related Party Transaction Requirements for an Other BBUC Related Party Transaction would be identical, in all material respects, to any formal valuation obtained by BBUC for the same Other BBUC Related Party Transaction; and

(g) any and all disclosure documents in connection with an Other BBUC Related Party Transaction, including any formal valuations, information circulars or material change reports, are filed on the SEDAR profiles of both BBU and BBUC.

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

B.3.3 Sprott Asset Management LP and Sprott Physical Battery Metals Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exchange-traded non-redeemable investment fund investing substantially all of its assets in physical battery metals exempted from the custodian requirements of subsection 6.1(1) and sections 6.2 and 6.3 of NI 81-102 to permit specialized warehouse providers with storage facilities located in the Netherlands, Belgium, Singapore, South Korea, Malaysia, the U.S. and Canada, to each act as custodian of the fund's battery metals – Relief subject to conditions, including that the battery metals are stored with three specified warehouse providers in LME approved warehouses in the storage jurisdictions, that the battery metals stored with the warehouse provider be 100% insured against loss, theft and damage, and that a single entity, to be the valuation agent, complete daily reconciliations amongst the warehouse providers and the custodian of the fund's cash before calculating the NAV of the fund – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 6.1(1), 6.2, 6.3, and 19.1.

October 6, 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
SPROTT ASSET MANAGEMENT LP
(the Filer)

AND

SPROTT PHYSICAL BATTERY METALS TRUST
(the Trust)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, in its capacity as the manager of the Trust, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**"), in connection with the formation and offering of the securities of a new non-redeemable investment fund trust to be established and managed by the Filer, for relief pursuant to Section 19.1 of National Instrument 81-102 – *Investment Funds* ("**NI 81-102**"), that the Filer and the Trust be exempt from Subsection 6.1(1) and Sections 6.2 and 6.3 of NI 81-102, to permit warehouse facilities owned and operated by well-established leading warehouse providers that are highly specialized, qualified and certified to store the Battery Metals (as defined below) (any one, a "**Warehouse Provider**", collectively the "**Warehouse Providers**") as custodians of the Trust to hold the Trust's Battery Metals both inside and outside Canada (the "**Requested Relief**").

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, collectively, the "**Canadian Jurisdictions**").

Interpretation

Terms defined in NI 81-102, National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

In this decision, the "total net assets" of the Trust means the NAV of the Trust determined in accordance with Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

Representations

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

The Filer and the Trust

1. The Filer is a limited partnership formed and organized under the laws of the Province of Ontario and maintains its head office in Toronto, Ontario. The general partner of the Filer is Sprott Asset Management GP Inc. (the "**General Partner**"), which is a corporation incorporated under the laws of the Province of Ontario. The General Partner is a wholly-owned, direct subsidiary of Sprott Inc. ("**SII**"). SII is a corporation incorporated under the laws of the Province of Ontario and is a public company with its common shares listed on the TSX and the New York Stock Exchange. SII is the sole limited partner of the Filer and the sole shareholder of the General Partner.

2. The Filer is registered under the securities legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as an adviser in the category of portfolio manager and in Ontario as an investment fund manager.

3. The Trust will be a non-redeemable investment fund trust established under the laws of the Province of Ontario pursuant to a trust agreement (the "**Trust Agreement**"). Pursuant to the Trust Agreement, a licensed trust company will be the trustee ("**Trustee**") and the Filer will be the manager ("**Manager**"), respectively, of the Trust. The Trust will be formed for the purposes of investing and holding substantially all of its assets in physical Nickel metal, Cobalt metal and Lithium carbonate (collectively, the "**Battery Metals**"). The Trust may hold the Battery Metals in different grades (i.e. purity levels) and/or different shapes (i.e. cut-cathodes, briquettes, pellets, etc.) as determined by the Manager.

4. The Filer will act as the Manager of the Trust pursuant to the Trust Agreement and a management agreement to be entered into between the Trust and the Filer (the "**Management Agreement**").

5. The Filer currently manages other Sprott investment funds and physical commodity funds, such as Sprott Physical Gold Trust, Sprott Physical Silver Trust, Sprott Physical Platinum and Palladium Trust, Sprott Physical Gold and Silver Trust and Sprott Physical Uranium Trust.

6. The Filer will appoint a registrar and transfer agent of the Trust pursuant to a transfer agent, registrar and disbursing agent agreement prior to the closing of the initial public offering (the "**Offering**") of units of the Trust ("**Units**").

7. In connection with the Offering, a preliminary long form prospectus was filed on September 27, 2022, with the securities regulatory authorities in each of the provinces and territories of Canada (collectively, the "**Canadian Jurisdictions**") and the Trust intends to become a reporting issuer, or the equivalent thereof, in such Canadian Jurisdictions following the filing of a final prospectus in respect of the Offering.

8. The Trust intends to list its Units on the Toronto Stock Exchange (the "**TSX**").

9. The Trust will be a "non-redeemable investment fund" as such term is defined in the *Securities Act* (Ontario) and is subject to the investment restrictions applicable to such funds that are prescribed by NI 81-102. The Filer will establish an independent review committee for the Trust in accordance with the requirements under National Instrument 81-107 – *Independent Review Committee for Investment Funds*.

10. The Filer is not in default of securities legislation in the Canadian Jurisdictions.

The Trust's Investment Objective, Strategy, and Investment and Operating Restrictions

11. The Trust will invest and hold substantially all of its assets in Battery Metals. The Trust will seek to provide a convenient and exchange-traded investment alternative for investors interested in holding Battery Metals without the inconvenience that is typical of a direct investment in Battery Metals. The Trust does not anticipate making regular cash distributions to unitholders of the Trust (the "**Unitholders**").

12. The Trust intends to achieve its objective by investing primarily in long-term holdings of Battery Metals that are associated with the production of Lithium-ion batteries and for which future demand (growth) is expected to be predominantly driven by the Lithium-ion battery supply chain.

13. The Filer will engage a technical advisor ("**Technical Advisor**") that has a team with specialized knowledge and experience in trading, storing and handling of the Battery Metals to assist the Filer in fulfilling the Trust's investment objectives and strategy.

14. The Filer expects that the Trust will generally target the following composition of the Battery Metals that will be included in the Trust's portfolio (the "**Target Composition**"):

	Nickel Metal	**Cobalt Metal**	**Lithium Carbonate**
Target Composition (expressed as % of NAV at then current prices)	20-60%	20-40%	15-40%

The Target Composition is non-binding, may change from time-to-time and will be impacted by, among other things, the evolution of the relative Battery Metals input requirements for Lithium-ion batteries, the availability and price of the Battery Metals and the associated transaction costs.

15. The Trust intends to use 80% of the proceeds of the Offering to acquire the Battery Metals as soon as practicable following the Closing of the Offering. The remaining proceeds will be held in cash reserve for future purchases of Battery Metals (15%) and for the Trust's expenses (5%).

16. The Trust's net asset value ("**NAV**") will be calculated through the value of Battery Metals that the Trust holds. The Battery Metals are commodities that can be readily disposed of through market facilities and therefore are not "illiquid assets" (as defined in NI 81-102).

17. The Trust intends to achieve its objective by investing primarily in long-term holdings of Battery Metals and will not speculate with regard to short-term changes in Battery Metal prices. The Trust may occasionally use futures, warrants, London Metals Exchange ("**LME**") warehouse receipts, and other financial instruments ("collectively, "**Financial Instruments**") to complement the Trust's Battery Metals procurement strategy to ensure, as appropriate, that physical exposure is secured while locking in corresponding pricing, until the near-term delivery of the Battery Metals into the holdings of the Trust. The Trust does not intend to actively rebalance the Trust's invested assets in Battery Metals back to the Target Composition. The Trust may occasionally enter into transactions intended to (a) enhance, or maintain, the value of its holdings of Battery Metals or (b) optimize the Battery Metals holdings and Trust operating costs, which could also lead to rebalancing. The Trust may occasionally lend out Battery Metals to other market participants, of sufficient credit quality and/or with appropriate credit enhancing measures, in exchange for a lending fee. The Filer does not anticipate utilizing any Financial Instruments in the Trust's initial portfolio following the completion of the Offering.

18. The investment and operating restrictions of the Trust will provide that the Trust will invest in and hold a minimum of 90% of the total net assets of the Trust in Battery Metals and invest in and hold no more than 10% of the total net assets of the Trust, at the discretion of the Filer, in debt obligations of or guaranteed by the Government of Canada or a province thereof, or by the Government of the United States of America or a state thereof, short-term commercial paper obligations of a corporation or other person whose short-term commercial paper is rated R-1 (or its equivalent, or higher) by DBRS Limited or its successors or assigns or F-1 (or its equivalent, or higher) by Fitch Ratings or its successors or assigns or A-1 (or its equivalent, or higher) by Standard & Poor's or its successors or assigns or P-1 (or its equivalent, or higher) by Moody's Investor Service or its successors or assigns, interest-bearing accounts and short-term certificates of deposit issued or guaranteed by a Canadian chartered bank or trust company, money market mutual funds, short-term government debt or short-term investment grade corporate debt, or other short-term debt obligations approved by the Filer from time to time (for the purpose of this paragraph, the term "short-term" means having a date of maturity or call for payment not more than 182 days from the date on which the investment is made), except during the 60-day period following the closing of the offerings or prior to the distribution of the assets of the Trust.

19. The Trust intends to primarily own Battery Metals that are in physical form, which Battery Metals will be stored on its behalf at Warehouse Providers appointed by the Manager, pursuant to storage agreements or other type of contracts or arrangements consistent with industry standards (each such agreement, contract or arrangement, a "**Storage Agreement**").

20. The Trust will not offer a redemption feature. Unitholders will not be permitted to redeem their Units for cash or Battery Metals.

Net Asset Value of the Trust, Liquidity and Pricing of the Battery Metals

21. The NAV of the Trust and NAV per Unit will be calculated on a daily basis as of 4:00 p.m. (Toronto time) (the "**Valuation Time**") on each day on which the TSX, or any U.S. stock exchange on which the Units are listed, is open for trading (the "**Valuation Date**"), by the Trust's valuation agent, which valuation agent is expected to be the Trustee or an affiliate of the Trustee. The NAV of the Trust as at the Valuation Time on each Valuation Date shall be the amount obtained by deducting from the aggregate fair market value of the assets of the Trust as of such Valuation Date an amount equal to the fair value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units) as of such Valuation Date. The NAV per Unit will be determined by dividing the NAV of the Trust on a Valuation Date by the total number of Units then outstanding. In calculating the NAV of the Trust and NAV per Unit, the valuation agent will reconcile all the portfolio assets of the Trust and will complete daily reconciliations amongst the Warehouse Providers and the custodian of the Trust. The valuation agent will receive input as required from any investment manager, the Technical Advisor, the Warehouse Providers and the custodian of the Trust, as applicable. The Filer will remain responsible for overseeing the valuation agent's calculation of the NAV of the Trust and NAV per Unit.

22. Pursuant to the Offering, the Filer expects that Units will be offered at a price equal to $10.00 per Unit. The Trust may not issue additional Units of the same class following the completion of the Offering, except: (i) if the net proceeds per Unit to be received by the Trust are not less than 100% of the most recently calculated Net Asset Value per Unit immediately prior to, or upon, the determination of the pricing of such issuance; or (ii) by way of Unit distribution in connection with an income distribution.

23. The fair market value of the assets of the Trust will be determined based on reported Battery Metals spot prices from one, or more, credible, market leading, independent price reporters (the "**Price Reporters**") that are most commonly used by the market subject to adjustment, as described in paragraph 25 below. The Price Reporters are private business organizations that offer subscription services to which most Battery Metals' market participants subscribe and the spot prices reported by such Price Reporters are used by such market participants as a basis on which to negotiate or settle contracted prices for Battery Metals. The principal Price Reporters whose services the Filer is currently considering are Fastmarkets MB, S&P Platts and Argus for Nickel. The LME, the largest base metals commodity exchange in the world, is a regulated commodities exchange in the United Kingdom and provides public pricing information for base prices on Nickel and Cobalt. The Filer may determine to use a different Price Reporter (or Price Reporters) from those listed above, depending on the results of such negotiations and any changes in market conditions.

24. The Battery Metals prices are mostly reported on a daily basis, and in all circumstances once a week, and, are reported for, amongst other, different locations, grades and shapes of the respective Battery Metals.

25. If the Trust purchases Battery Metals with characteristics (i.e. in a location, grade or shape) for which none of the Price Reporters report a spot price, the Trust will use the best available alternative spot price, as determined by the Manager and the Technical Advisor, to determine the fair market value of such Battery Metals. In making such a determination, the Manager and the Technical Advisor will consult with an independent market consultant that has the relevant experience on the matter who will issue a formal opinion to the Trust confirming that the selected alternative spot price is an appropriate proxy for purposes of valuating such Battery Metals. This may only be applicable for Nickel Metal in a limited number of forms (e.g. pellets, rounds and crowns), which all adhere to LME grade minimum purity specifications.

26. The Filer expects the Trust to purchase most of the Battery Metals directly over-the-counter, by entering into bilateral physical spot purchase and sale contracts with sellers, as that type of market should provide the most liquidity. The sellers are typically producers (mine operators), traders, and banks. Generally, the trades would be settled by payment by the Trust upon release of the Battery Metals by the Warehouse Provider to the Trust.

27. The markets for each Battery Metal are in different stages of development. The LME has both physically and financially settled contracts for Nickel metal and Cobalt metal. Lithium hydroxide financially settled futures contracts were recently introduced by the LME and it is expected that futures contracts for Lithium carbonate will follow. The Filer may use these financial products in the future to help with the Trust's procurement strategy, specifically, from time-to-time to manage short-term price movements of Nickel metal until the completion of the corresponding physical deliveries of Nickel metal to the Trust's holdings.

28. The Battery Metals are traded in a similar manner with other commodities including precious metals in over-the-counter transactions, with market price references provided by Price Reporters. In most cases the spot price reflects the most recently traded price and/or anticipated next transaction, but the spot price may deviate from the trade price as a result of a number of factors, including delivery location, origin, form, quantity, quality, counterparty and other factors.

The Trust's Custody Arrangements

29. The Trustee (or another entity that is qualified to act as a custodian under section 6.2 of NI 81-102) will act as the custodian of the assets of the Trust, other than the Battery Metals, pursuant to the Trust Agreement. The Trustee will

only be responsible for the assets of the Trust that are directly held by the Trustee, its affiliates or its appointed sub-custodians.

30. The Trust anticipates that the Battery Metals will constitute in excess of 90% of the Trust's NAV and, consequently, the Warehouse Providers will hold substantially all of the assets of the Trust. The Trustee, as custodian of the Trust, will hold only the assets of the Trust other than the Battery Metals and, consequently, the division of the assets of the Trust will be clearly distinguished and will be separated by the respective areas of expertise of these custodians. As the investment objective and strategy of the Trust is to invest primarily in long-term holdings of the Battery Metals, the Trust will not be actively selling the Battery Metals held in the custody of the Warehouse Providers, except in cases where funds are required to pay the ongoing expenses of the Trust. Accordingly, the Trust's Battery Metals held in the custody of the Warehouse Providers will generally remain fixed from day-to-day, with the exception of incrementally purchased quantities that will add to the Trust's balance of Battery Metals in accordance with the Trust's purchasing activities.

31. Pursuant to the Trust Agreement and the Management Agreement, the Battery Metals owned by the Trust will be fully allocated and stored by Warehouse Providers that the Trust will enter into Storage Agreements with to store such Battery Metals. The Trust will store its Battery Metals with Warehouse Providers that are reputable and exclusively in warehouses that are LME approved, which is the main global market standard for physical metal warehousing services that is accepted by market participants and financiers. The LME approves warehouses pursuant to its *LME Policy on Approval of Locations as Delivery Points*. To obtain such approval, the Warehouse Provider must satisfy the LME that the proposed warehouse location is safe, well managed, politically and economically stable, commercially sensible, fiscally appropriate, legally sound, not subject to corruption, and that the metal belonging to the owner can be removed in case of bankruptcy or insolvency of the Warehouse Provider.

32. The Trust will only store Battery Metals with such Warehouse Providers at locations in the Netherlands, Belgium, the United States, Canada, Singapore, South Korea and Malaysia (the "**Storage Jurisdictions**"). The Storage Jurisdictions are all advanced economies with regulations similar to those in Canada.

33. The Trust is not expected to meet the requirement in subsection 6.1(1) of NI 81-102 for the portfolio assets of the Trust to be held under the custodianship of one custodian that satisfies the requirements of section 6.2. Due to the physical form and location of the Battery Metals, the manner in which Battery Metals purchases and sales are settled (as described in paragraph 26), and the fact that entities qualified to act as custodian under NI 81-102 are generally deposit-taking institutions that can only hold cash or securities, it is necessary for the Trust to retain several custodians, including one custodian to hold the cash and securities of the Trust, and several Warehouse Providers in the Storage Jurisdictions to hold the Battery Metals. While the custodian of the Trust's cash and securities will meet the requirements of sections 6.2 and 6.3 of NI 81-102, the Warehouse Providers who will hold the Trust's Battery Metals will not satisfy those requirements as they will not be a banking institution or trust company but rather will be leading warehouse providers that are highly specialized, qualified and certified to store the Battery Metals.

34. While the Warehouse Providers are not generally expected to meet the capitalization requirements in section 6.3 of NI 81-102, the Filer will mitigate risks associated with such lack of capitalization by maintaining, at all times, a separate, market standard insurance policy that insures 100% of the Battery Metals held with the Warehouse Providers for their full value. This arrangement is in accordance with the industry standards for transactions in, and the storage of, Battery Metals and is typically a requirement of the Warehouse Providers pursuant to the Storage Agreements. In addition, in connection with becoming an LME approved warehouse, Warehouse Providers have market standard insurance in place that insures the Battery Metals they are storing against gross negligence and fraud. The Filer will further mitigate this risk by only entering into Storage Agreements with Warehouse Providers that are large, well-regarded multi-national entities, namely Access World, C. Steinweg Handelsveem, and P Global Services, which are the three (3) largest Warehouse Providers in terms of global LME approved storage capacity of Battery Metals.

35. The Filer believes that the selection of the three (3) largest Warehouse Providers in terms of global LME approved storage capacity, supplemented by the insurance combination noted in paragraph 34, represents best practice and exceeds industry standard in connection with the storage, financing and trade of physical metals.

36. The safekeeping of Battery Metals is a specialized business in respect of which the Warehouse Providers have specialized knowledge and experience. Globally, there are a limited number of LME approved warehouses available to Battery Metals market participants. These warehouses and corresponding Warehouse Providers are used by suppliers, buyers and commodity traders for their storage needs. Accordingly, the Filer considers the Trust's risk in respect of its ownership and storage of Battery Metals to be no greater than that of any other participant in the Battery Metals industry. The Filer further believes this risk should always be regarded in conjunction with the additional protections the Trust will have, including the insurance policy described in paragraph 34. The combination of Storage Agreements with insurance is the industry standard from a security perspective for trading, logistics and financing related transactions for Battery Metals in addition to a range of other metals and soft-commodities.

37. The Storage Agreements will require Warehouse Providers to exercise their services with great care and skill, which is the same degree and care, diligence and skill that a reasonably prudent person would exercise in the circumstances, and to have appropriate insurance in place (as noted in paragraph 34).

38. Under the Storage Agreement(s), the Warehouse Provider will receive the Battery Metals specified in a notice delivered by the Manager to the Warehouse Provider that indicates the amount, weight, type, form, origin, characteristics and packaging condition of the Battery Metals that are to be stored with the Warehouse Provider. After verification, the Warehouse Provider will issue a "receipt of deposit" that confirms the information from the notice. In the event of discrepancy arising during the verification process, the Warehouse Provider will promptly notify the Manager. The Battery Metals owned by the Trust and stored at the Warehouse Providers will be segregated and identifiable at all times as belonging to the Trust, either by lot numbers (when stored in a common location) or by location (when stored in a location that is exclusively for the Trust). Under each Storage Agreement, the Battery Metals stored with the applicable Warehouse Provider will be required to be evidenced in an account maintained by the Warehouse Provider for the Trust, and the Warehouse Provider will be required to provide a written settlement statement no less frequently than each quarter indicating the type and amount of the Battery Metals owned by the Trust. The Filer and Technical Advisor expect to have inspection and audit rights, including with respect to the Warehouse Provider's inventory management system that keeps track of the Trust's inventory of Battery Metals. Pursuant to the Storage Agreements, title to stored Battery Metals will remain with the Trust, as the owner, and does not form part of the Warehouse Provider's assets. As such, in the event of an insolvency or other event at a Warehouse Provider, ownership of the Battery Metals will remain with the Trust.

39. Before entering into any Storage Agreement, the Filer, or the Technical Advisor on the Filer's behalf, will conduct due diligence on the respective Warehouse Provider, including the following analysis that are necessary to complete a risk profile in respect of such Warehouse Provider:

    (a) A business profile of the Warehouse Provider detailing its corporate history, reputation in the market, location of warehouse facilities, ownership structure, etc.;

    (b) A financial profile of the Warehouse Provider that includes a review of available financial statements and financial ratios, an assessment of the Warehouse Provider's credit worthiness and a review of financial news;

    (c) An insurance coverage review;

    (d) A draft or template version of inventory reports; and;

    (e) Confirmation of the LME approved status of the respective warehouses the Warehouse Provider and Filer agree are acceptable to use for the purpose of storing the Battery Metals on behalf of the Trust, pursuant to the Storage Agreements.

    In addition, the Filer, or the Technical Advisor on its behalf, will conduct or coordinate site inspections and request audited financial statements of the Warehouse Provider as part of the due diligence before entering into the Storage Agreement.

40. The Filer believes that the potential risks of storing the Battery Metals with the Warehouse Providers are damage to and/or loss of material due to theft, fire and flooding and to a lesser extent, gross negligence and fraud by the Warehouse Provider. The Filer intends to mitigate such risks by only selecting reputable Warehouse Providers located in the Storage Jurisdictions, using warehouses that are LME approved with the LME mandated insurance coverage, and to arrange for the Trust's own industry standard all-risk insurance of the owned Battery Metals.

41. The Filer, on behalf of the Trust will ensure that each Storage Agreement contains provisions as to who bears the responsibility for loss that are consistent with industry practice and covenants with respect to maintaining the necessary insurance policies.

42. The Filer, on behalf of the Trust, will use reasonable commercial efforts to ensure that, pursuant to each Storage Agreement, the terms with respect to liability of the parties continue to apply after the termination of the Storage Agreement until all the Battery Metals stored are transferred from the Trust's account.

43. In addition to continuous monitoring and reconfirmation of LME approved warehouse status, the Filer will take reasonable commercial efforts to satisfy itself that the balance sheet of each Warehouse Provider is sufficiently sound to continue its performance under the relevant Storage Agreement and that the Trust's Battery Metals will present a small fraction of each Warehouse Provider's aggregate warehoused materials, which the Filer expects will also be a requirement under the insurance policy that the Trust will have in place to avoid concentration risk. The Filer expects to negotiate in the Storage Agreement with each Warehouse Provider a requirement that each respective warehouse location maintain its LME approved status, as well as inspection and information rights to, among other things, maintain proper visibility on the financial standing of the Warehouse Provider. The Filer's actions in this regard are in addition to the due diligence the LME carries out on an ongoing basis on LME approved warehouses.

44. The Filer will take reasonable commercial efforts to ensure that the Storage Agreements it enters into impose a standard of care on each Warehouse Provider such that each Warehouse Provider is required to exercise the same degree of care and diligence in safeguarding the Battery Metals as any reasonably prudent person acting as custodian of the Battery Metals would exercise in the circumstance. The Filer will ensure that the arrangements with the Warehouse Providers satisfy the requirements under subsections 6.6(2) to 6.6(4) of NI 81-102 regarding the Warehouse Providers' standard of care owed to the Trust. The Warehouse Providers will not be entitled to an indemnity from the Trust in the event that they breach their standard of care.

45. The Storage Agreements will include industry standard termination provisions, including for termination in the event of a material breach of the Storage Agreement by the Warehouse Provider that is not cured within a prescribed number of days following the giving of written notice to the Warehouse Provider of such material breach.

46. The Filer will ensure that the Battery Metals stored at the Warehouse Providers will be subject to a physical count by a representative of the Filer or the Technical Advisor periodically on a spot-inspection basis as well as subject to audit procedures by the Trust's external auditors on at least an annual basis.

47. The Filer will ensure that the Battery Metals stored at the Warehouse Providers will be covered under available and appropriate insurance coverage for loss of and damage to the Battery Metals in storage in accordance with industry standards.

48. The Filer believes that the custodial arrangements with respect to the Trust's owned Battery Metals will be consistent with industry practice.

49. The Storage Agreements will not allow the Warehouse Providers to appoint any sub-custodians to store the Battery Metals, provided, however, that for the avoidance of doubt, each Warehouse Provider may store Battery Metals at an LME approved warehouse owned by its subsidiaries or affiliates.

50. The Filer will not be responsible for any losses or damages to the Trust arising out of any action or inaction by the Trust's custodians or any sub-custodians holding the assets of the Trust, including the Trustee or its sub-custodians holding the assets of the Trust other than the Battery Metals, and a Warehouse Provider holding the Battery Metals owned by the Trust.

51. The Filer, with the consent of the Trustee, will have the authority to change the custodial arrangements described above including, but not limited to, the appointment of a replacement custodian or sub-custodian and/or additional custodians or sub-custodians subject to the requirements under NI 81-102, as modified by the Requested Relief.

Requested Relief

52. Holding Battery Metals owned by the Trust with the Warehouse Providers in LME approved warehouses in combination with the appropriate insurance put in place by the Manager and the other assets of the Trust with the Trustee will not detract from the objectives of subsection 6.1(1) of NI 81-102 to ensure effective custody of the portfolio assets of an investment fund, and it will not be prejudicial to the Unitholders to grant the Requested Relief. The Warehouse Providers have the expertise to store Battery Metals safely and have the resources and experience required to act as the custodian for the Trust's Battery Metals. The Warehouse Providers are also subject to government regulation and licensing processes in their jurisdictions, intended to ensure safe and secure handling and storage of Battery Metals in addition to adherence to internationally recognized LME approved status on the warehouse level.

Decision

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

The decision of the Principal Regulator under the Legislation is that the Requested Relief is granted provided that:

a) the final long form prospectus of the Trust contains disclosure regarding the unique risks associated with an investment in the Trust, including the risk that direct purchases of Battery Metals by the Trust may generate higher transaction and custody costs than other types of investments and any material risks relating to the storage of the Battery Metals with Warehouse Providers, which may impact the performance of the Trust;

b) Battery Metals will be stored with established and reputable Warehouse Providers, specifically subsidiaries or affiliates of the following entities (or their successors): Access World, C. Steinweg Handelsveem, and P Global Services in LME approved warehouses in the Storage Jurisdictions, that provide secure storage space for the Battery Metals owned by the Trust;

c) The Filer will:

(i) maintain insurance coverage for 100% of the value of the Battery Metals owned by the Trust for loss of, theft of and damage to the Battery Metals stored with Warehouse Providers; and

(ii) require each Warehouse Provider to present evidence of the relevant insurance coverage for fraud and gross negligence by the Warehouse Provider for the stored Battery Metals as part of the initial due diligence when entering into a Storage Agreement and on an ongoing basis as part of the Filer's annual audit of the Warehouse Provider;

d) Each Storage Agreement will:

(i) require that the Warehouse Provider only store Battery Materials owned by the Trust in LME approved warehouses;

(ii) require that the Warehouse Provider have appropriate insurance in place for gross negligence and fraud by the Warehouse Provider, in accordance with LME standards for LME approved warehouses, and further require that the Warehouse Provider present evidence of satisfactory insurance coverage for its contractual liabilities on an ongoing basis as part of the Filer's annual audit of the Warehouse Provider;

(iii) provide that the Warehouse Provider, in carrying out its duties concerning the storage and safekeeping of, and dealing with, the Battery Metals, will exercise:

A the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; or

B at least the same degree of care as they exercise with respect to the property of LME warehouse receipt holders, if this is a higher degree of care than the degree of care referred to in paragraph A;

(iv) provide that all Battery Metals owned by the Trust will be segregated from any Battery Metals and other materials owned by the Warehouse Provider or other customers of the Warehouse Provider and be identifiable at all times as belonging to the Trust, and

(v) provide that the Battery Metals stored with the Warehouse Provider will be subject to a physical count by a representative of the Filer or the Technical Advisor periodically on a spot-inspection basis as well as subject to audit procedures by the Trust's external auditors on at least an annual basis;

d) a single entity, expected to be the valuation agent, will reconcile all the portfolio assets of the Trust and will provide the Trust with valuation and unitholder recordkeeping services and will complete daily reconciliations amongst the Warehouse Providers and the custodian of the assets of the Trust before calculating the NAV of the Trust and NAV per Unit;

e) the Filer will maintain such operational systems and processes, as between the Warehouse Providers and the custodian of the assets of the Trust and the single entity referred to in paragraph d) above, in order to keep a proper reconciliation of all the portfolio assets that will move amongst the Warehouse Providers and the custodian of the assets of the Trust, as appropriate; and

f) legal and physical title of the Battery Metals that form the assets of the Trust will be at all times held by the Trust.

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

Application File #: 2022/0444
SEDAR File #: 3440582

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B.4
Cease Trading Orders

B.4.1 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
Eagle Graphite Incorporated	October 4, 2022	
Certive Solutions Inc.	October 5, 2022	
Clearford Water Systems Inc.	May 6, 2022	October 7, 2022
GetSwift Technologies Limited	October 5, 2022	
Gnomestar Craft Inc.	October 5, 2022	
Voyager Digital Ltd.	October 5, 2022	

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

B.4.3 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	
Gatos Silver, Inc.	April 12, 2022	
Sproutly Canada, Inc.	June 30, 2022	
Gatos Silver, Inc.	July 7, 2022	
PlantX Life Inc.	August 4, 2022	
Radient Technologies Inc.	August 5, 2022	
AION THERAPEUTIC INC.	August 31, 2022	
iMining Technologies Inc.	September 30, 2022	

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B.5
Rules and Policies

B.5.1 Ontario Securities Commission Rule 32-506 (Under the Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers

ONTARIO SECURITIES COMMISSION RULE 32-506
(Under the *Commodity Futures Act*)
EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS

PART 1 DEFINITIONS

1. Definitions

(1) In this Rule,

"**Act**" means the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended from time to time;

"**Canadian financial institution**" has the meaning ascribed to that term in section 1.1 [*definitions*] of NI 45-106 under the *Securities Act*;

"**CFA adviser registration requirement**" means the provisions of section 22 of the Act that prohibit a person or company from acting as an adviser as to trading in a contract unless the person or company is registered in the appropriate category of registration under the Act;

Note: The following definition of "CFA permitted client" includes any person or company that is a "permitted client" as that term is defined in section 1.1 of NI 31-103 but also includes certain additional categories, including the following:

- a person or company registered under the commodity futures or derivatives legislation of a jurisdiction of Canada as an adviser or dealer; (clause (d.1))
- a family trust established by a permitted client that meets certain criteria (clause (o.1))
- an individual who, together with a spouse and/or a family trust that meets the criteria in clause (o.1), beneficially owns net financial assets that exceed $5 million (clause (o.2))

In addition, certain references to "securities legislation" in the definition of "permitted client" in NI 31-103 have been replaced with "securities, commodity futures or derivatives legislation".

"**CFA dealer registration requirement**" means the provisions of section 22 of the Act that prohibit a person or company from trading in a contract unless the person or company is registered in the appropriate category of registration under the Act;

"**CFA permitted client**" means any of the following:

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

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

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

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

(d.1) a person or company registered under the commodity futures or derivatives legislation of a jurisdiction of Canada as an adviser or dealer;

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

(f) referred to in paragraphs (a) to (e);

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

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

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

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

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

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

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

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

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

(n) in respect of an adviser, a registered charity under the *Income Tax Act* (Canada) that is advised by an eligibility adviser, as defined in section 1.1[*definitions*] of NI 45-106, or an adviser registered under the securities, commodity futures or derivatives legislation of the jurisdiction of the registered charity;

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

(o.1) in the case of a CFA permitted client that is an individual, a trust established by the individual for the benefit of the individual's family members of which a majority of the trustees are CFA permitted clients and all of the beneficiaries are the individual's spouse, a former spouse or a parent, grandparent, brother, sister, child or grandchild of that individual, of that individual's spouse or of that individual's former spouse;

(o.2) an individual who is not a CFA permitted client under clause (o) of the definition of CFA permitted client but who, together with a spouse and/or a family trust as described in clause (o.1) above established by the individual or the individual's spouse, beneficially own financial assets, as defined in section 1.1 of NI 45-106, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million;

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

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

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

"**commodity trading manager**" means an adviser that is registered under the Act in the category of "commodity trading manager" as provided for in section 8 [*categories of registration*] of Regulation 90 under the Act;

"**foreign contract**" means a contract that is primarily traded on one or more non-Canadian exchanges and primarily cleared through one or more clearing corporations that are located outside of Canada;

"**individual**" means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his or her capacity as trustee, executor, administrator or other legal personal representative;

"**investment fund**" has the meaning ascribed to that term in subsection 1(1) of the *Securities Act*;

"**jurisdiction of Canada**" means a province or territory of Canada;

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

"**NI 14-101**" means National Instrument 14-101 *Definitions* under the *Securities Act*;

"**NI 31-103**" means National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations under the Securities Act;

"**NI 45-106**" means National Instrument 45-106 *Prospectus Exemptions* under the *Securities Act*;

"**non-Canadian exchange**" means a commodity futures exchange that is located outside of Canada;

"**non-registrant CFA permitted client**" means a person or company that is a CFA permitted client other than a person or company that is registered as an adviser or dealer under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada;

"**OSA adviser registration requirement**" means the provisions of section 25 of the *Securities Act* that prohibit a person or company from engaging in the business of, or holding himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in securities or buying or selling securities unless the person or company satisfies the applicable provisions of section 25 of the *Securities Act*;

"**OSA dealer registration requirement**" means the provisions of section 25 of the *Securities Act* that prohibit a person or company from engaging in the business of, or holding himself, herself or itself out as engaging in the business of, trading in securities unless the person or company satisfies the applicable provisions of section 25 of the Securities Act;

"**OSA international adviser exemption**" means the exemption from the OSA adviser registration requirement set out in section 8.26 [*international adviser*] of NI 31-103 under the *Securities Act*;

"**OSA international dealer exemption**" means the exemption from the OSA dealer registration requirement set out in section 8.18 [*international dealer*] of NI 31-103 NI 31-103 under the *Securities Act*;

"**OSA international sub-adviser exemption**" means the exemption from the OSA adviser registration requirement set out in section 8.26.1 [*international sub-adviser*] of NI 31-103 under the *Securities Act*;

"**permitted client**" has the meaning ascribed to that term in section 1.1 [*definitions*] of NI 31-103 under the *Securities Act*;

"**principal adviser**" means an adviser registered under the Act in the category of commodity trading manager for which a sub-adviser provides sub-advisory services;

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

"**Securities Act**" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

"**securities legislation**" means, for a local jurisdiction of Canada, the statute and other instruments listed in Appendix B of NI 14-101, opposite the name of the local jurisdiction;

"**specified foreign jurisdiction**" means any of Australia, Brazil, any member country of the European Union, Hong Kong, India, Japan, Korea, Mexico, New Zealand, Singapore, Switzerland, the U.K., and the U.S.;

"**sub-adviser**" means an adviser to

(a) a registered adviser, or

(b) a registered dealer acting as a commodity trading manager as permitted by subsection 44(2) [*exemptions from registration requirements*] of Ontario Regulation 90;

"**sub-advisory services"** means services provided by a sub-adviser to a principal adviser for purposes of providing, on a discretionary basis, adviser services in respect of contracts to the principal adviser's sub-advisory clients;

"sub-advisory client" means a client of a principal adviser for whom a sub-adviser to the principal adviser provides sub-advisory services;

"**trading restrictions in the CFA**" means the provisions of section 33 of the Act that prohibit a person or company from trading in contracts unless the person or company satisfies the applicable provisions of section 33 of the Act;

"**U.K.**" means the United Kingdom of Great Britain and Northern Ireland; and

"**U.S.**" means the United States of America.

(2) Terms used in this Rule that are defined in the Act have the meaning ascribed to them in the Act, unless otherwise defined in this Rule or the context otherwise requires.

(3) Terms used in this Rule that are not defined in the Act but are defined in subsection 1(1) of the *Securities Act* have the same meaning as in the *Securities Act* unless the context otherwise requires.

(4) In this Rule, a person or company is deemed to be an affiliate of another person or company if one of them is the subsidiary of the other or if both are subsidiaries of the same person or company or if each of them is controlled by the same person or company.

(5) A person or company is deemed to be controlled by another person or company or by two or more persons and companies if,

(a) voting securities of the first-mentioned person or company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other persons and companies; and

(b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned person or company.

(6) A person or company shall be deemed to be a subsidiary of another person or company if,

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more persons and companies each of which is controlled by that other, or

(iii) two or more persons and companies each of which is controlled by that other; or

(b) it is a subsidiary of a person or company that is that other's subsidiary.

PART 2 DEALER REGISTRATION EXEMPTIONS

2. General condition to exemptions from the CFA dealer registration requirement

The exemptions in this Part are not available to a person or company if the person or company is registered under the Act and if their category of registration permits the person or company to act as a dealer or trade in the contract for which the exemption is provided.

3. Dealer registration exemption – International dealer

(1) The CFA dealer registration requirement does not apply to a person or company in respect of a trade in a contract to, with or on behalf of a CFA permitted client, where the person or company is acting as principal or agent in such trade to, with or on behalf of the CFA permitted client, if at the time of the trade all of the following apply:

(a) the trade is in respect of a foreign contract on a non-Canadian exchange;

(b) the person or company:

(i) has its head office or principal place of business in a specified foreign jurisdiction and does not have an office or place of business in Ontario;

(ii) engages in the business of trading in contracts in the specified foreign jurisdiction; and

(iii) is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of the specified foreign jurisdiction in which its head office or principal place of business is located in a category of registration, licensing or authorization that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Ontario;

(c) the person or company has provided to the CFA permitted client, other than a CFA permitted client that is registered under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada, the following disclosure in writing:

(i) a statement that the person or company is not registered in Ontario to trade in contracts as principal or agent;

(ii) a statement specifying the location of the head office or principal place of business of the person or company;

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

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

(v) the name and address of the person or company's agent for service of process in Ontario; and

(d) the person or company has submitted to the Commission a completed Form 32-506F1 Submission to Jurisdiction and Appointment of Agent for Service;

(2) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the Commission of that fact by December 1 of that year.

(3) Subsection (2) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

(4) If a person or company relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year and is not registered under the *Securities Act* and does not rely on the OSA international dealer exemption, the person or company must pay a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees*, as if the person or company relied on the OSA international dealer exemption.

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

(a) in connection with an activity or trade described under subsection (1), and

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

4. Dealer registration exemption – CFA permitted client of an international dealer

The CFA dealer registration requirement does not apply to a CFA permitted client in respect of a trade in a contract on a non-Canadian exchange to, with or on behalf of a person or company relying on the dealer registration exemption in section 3.

5. Exemption from the trading restrictions in the Act

The trading restrictions in the Act do not apply to a person or company in connection with a trade in a contract on a non-Canadian exchange if the person or company is exempt from the CFA dealer registration exemption under section 3 or section 4.

PART 3 ADVISER REGISTRATION EXEMPTIONS

6. General condition to exemptions from the CFA adviser registration requirement

The exemptions in this Part are not available to a person or company if the person or company is registered under the Act and if their category of registration permits the person or company to act as an adviser in respect of the activities for which the exemption is provided.

7. Adviser registration exemption – International adviser

(1) The CFA adviser registration requirement does not apply to a person or company in respect of advice provided to a non-registrant CFA permitted client as to the trading of foreign contracts provided that at the time of providing the advice all of the following apply:

(a) the person or company provides advice to the non-registrant CFA permitted client only as to the trading of foreign contracts and does not provide advice as to the trading of contracts that are not foreign contracts, unless providing such advice is incidental to its providing advice on foreign contracts;

(b) the person or company:

(i) has its head office or principal place of business in a specified foreign jurisdiction;

(ii) engages in the business of advising others in relation to contracts in the specified foreign jurisdiction; and

(iii) in a category of registration, or operates under an exemption from registration, or is otherwise licensed or authorized under the applicable securities, commodity futures or derivatives legislation of the specified foreign jurisdiction, to carry on the activities in the specified foreign jurisdiction that registration under the Act as an adviser in the category of commodity trading manager would permit it to carry on in Ontario;

(c) as at the end of the person or company's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the person or company, its affiliates and its affiliated partnerships, excluding the gross revenue of an affiliate or affiliated partnership of the person or company if the affiliate or affiliated partnership is registered under securities legislation, commodity futures legislation or derivatives legislation of a jurisdiction of Canada, was derived from the portfolio management activities of the person or company, its affiliates and its affiliated partnerships in Canada (including for clarity both securities-related and commodity-futures-related activities);

(d) prior to advising a non-registrant CFA permitted client with respect to a foreign contract, the person or company provides the non-registrant CFA permitted client the following disclosure in writing:

(i) a statement that the person or company is not registered in Ontario to provide the advice described in paragraph (a) of this exemption;

(ii) a statement specifying the location of the head office or principal place of business of the person or company;

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

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

(v) the name and address of the person or company's agent for service of process in Ontario;

(e) the person or company has submitted to the Commission a completed Form 32-506F1 *Submission to Jurisdiction and Appointment of Agent for Service*;

(2) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the Commission of that fact by December 1 of that year.

(3) Subsection (2) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

(4) If a person or company relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year and is not registered under the *Securities Act* and does not rely on the OSA international adviser exemption, the person or company must pay a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees*, as if the person or company relied on the OSA international adviser exemption.

8. Adviser registration exemption – International sub-adviser

(1) The CFA adviser registration requirement does not apply to a person or company acting as a sub-adviser to a principal adviser in respect of the provision of sub-advisory services if at the time of providing the sub-advisory services all of the following apply:

(a) the principal adviser is registered under the Act as an adviser in the category of commodity trading manager;

(b) the head office or principal place of business of the person or company acting as sub-adviser is in a specified foreign jurisdiction;

(c) the person or company acting as sub-adviser engages in the business of advising others in relation to contracts in the specified foreign jurisdiction;

(d) the person or company acting as sub-adviser is registered in a category of registration, or operates under an exemption from registration, or is otherwise licensed or authorized under the applicable securities, commodity futures or derivatives legislation of the specified foreign jurisdiction, to carry on the activities in the specified foreign jurisdiction that registration under the Act as an adviser would permit it to carry on in Ontario;

(e) the obligations and duties of the person or company acting as sub-adviser are set out in a written agreement with the principal adviser;

(f) the principal adviser has entered into a written agreement with each sub-advisory client in respect of whom the person or company acting as sub-adviser is providing sub-advisory services, agreeing to be responsible for any loss that arises out of the failure of the person or company acting as sub-adviser:

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the principal adviser and the sub-advisory client; or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**);

(g) if a sub-advisory client for whom sub-advisory services are being provided is an investment fund, the prospectus or other offering document (in either case, the **Offering Document**) of the investment fund includes, or will include, the following:

(i) a statement that the principal adviser is responsible for any loss that arises out of the failure of the person or company acting as sub-adviser in respect of the sub- advisory services to meet the Assumed Obligations; and

(ii) a statement that there may be difficulty in enforcing any legal rights against the person or company acting as sub-adviser in respect of the sub-advisory services (or any of its representatives) because that person or company is resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

(h) the disclosure required by paragraph 8(1)(g) is provided in writing prior to purchasing any contracts for each sub-advisory client that is a managed account for which the principal adviser engages the person or company to provide the sub-advisory services.

FORM 32-506F1
SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE
ONTARIO SECURITIES COMMISSION RULE 32-506 (Under the *Commodity Futures Act*)
EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS

Sections 3 *[international dealer]* and 7 *[international adviser])*

1. Name of person or company ("**International Firm**"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:

   E-mail address:

   Phone:

   Fax:

6. The International Firm is relying on an exemption under OSC Rule 32-506 and/or an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*:

   ☐ Section 8.18 [international dealer]

   ☐ Section 8.26 [international adviser]

   ☐ Other [specify]:

7. Name of agent for service of process (the "**Agent for Service**"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "**Proceeding**") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on an exemption in section 3 [*international dealer*] or section 7 [*international adviser*] of Ontario Securities Commission Rule 32-506 (*under the Commodity Futures Act*) *Exemptions for International Dealers, Advisers and Sub-Advisers*, the International Firm must submit to the regulator

    (a) a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    (b) an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service; and

    (c) a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.ca

B.5.2 Ontario Securities Commission Rule 91-502 Trades in Recognized Options

AMENDMENT TO
ONTARIO SECURITIES COMMISSION RULE 91-502 *TRADES IN RECOGNIZED OPTIONS*

1. Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* is amended by this Instrument.

2. Section 1.1 is amended by deleting the definition of "Canadian Options Course" **and by adding the following definitions:**

"Derivatives Fundamentals and Options Licensing Course" means the course prepared and conducted by The Canadian Securities Institute and so named by that Institute on the date that this Rule comes into force and every predecessor to that course and every successor to that course that does not significantly narrow a subject matter;

3. Section 3.1 is amended by replacing "the Canadian Options Course" **with** "the Derivatives Fundamentals and Options Licensing Course".

4. Part 3 is amended by adding the following section:

3.2 Section 3.1 does not apply to

(a) a person or company exempt from the dealer registration requirement or the adviser registration requirement if the person or company complies with the terms and conditions of the exemption from the registration requirement; and

(b) a person or company exempt from the CFA dealer registration requirement or the CFA adviser registration requirement (as those terms are defined in Ontario Securities Commission Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers*) if the person or company complies with the terms and conditions of the exemption from the registration requirement.

B.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).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Canadian Dollar Cash Management Fund
U.S. Dollar Cash Management Fund
Invesco Canadian Core Plus Bond Fund
Invesco Canadian Short-Term Bond Fund
Invesco ESG Canadian Core Plus Bond ETF Fund
Invesco Global Bond Fund
Invesco Canadian Premier Balanced Fund
Invesco Canadian Premier Balanced Class
Invesco Diversified Yield Class
Invesco Global Balanced Fund
Invesco Global Balanced Class
Invesco Global Diversified Income Fund
Invesco Global Select Balanced Fund
Invesco Income Growth Fund
Invesco Select Balanced Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 3, 2022
NP 11-202 Final Receipt dated Oct 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3419998

Issuer Name:
Invesco ESG Canadian Core Plus Bond ETF
Invesco ESG Global Bond ETF
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Long Form Prospectus dated October 3, 2022
NP 11-202 Final Receipt dated Oct 6, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3305170

NON-INVESTMENT FUNDS

Issuer Name:
Demesne Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 29, 2022
NP 11-202 Preliminary Receipt dated October 4, 2022
Offering Price and Description:
C$500,000.00 - 5,000,000 Common Shares at a price of $0.10 per Common Share
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
Promoter(s):
-
Project #3441962

Issuer Name:
G2 Goldfields Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 5, 2022
NP 11-202 Preliminary Receipt dated October 5, 2022
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3443477

Issuer Name:
PesoRama Inc. (formerly Skyscape Capital Inc.)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 6, 2022
NP 11-202 Preliminary Receipt dated October 6, 2022
Offering Price and Description:
$[•] [•] Units $[•] per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
RICHARDSON WEALTH LIMITED
CORMARK SECURITIES INC.
Promoter(s):
Rahim Bhaloo
Project #3443796

Issuer Name:
Spectral Medical Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 5, 2022
NP 11-202 Preliminary Receipt dated October 5, 2022
Offering Price and Description:
Up to $[•] Up to [•] Units
Price: $[•] per Offered Unit
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #3443410

Issuer Name:
Loop Energy Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated October 3, 2022
NP 11-202 Receipt dated October 4, 2022
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3415749

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Merchant Growth EMD Services Ltd.	Exempt Market Dealer	October 5, 2022
New Registration	iA Global Asset Management Inc./iA Gestion mondiale d'actifs inc.	Portfolio Manager, Commodity Trading Counsel, Commodity Trading Manager	October 7, 2022

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Editor's Note: On Friday, April 29, 2022, the Securities Commission Act, 2021, came into force by proclamation of the Lieutenant Governor of Ontario. The new structural and governance changes are now reflected in the Bulletin index with the use of the "Capital Markets Tribunal" designation to differentiate those proceedings from the proceedings of the Ontario Securities Commission: www.capitalmarketstribunal.ca.

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