The Ontario Securities Commission

OSC Bulletin

October 20, 2022

Volume 45, Issue 42

(2022), 45 OSCB

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

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

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

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

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

42953167

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

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

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

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

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

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

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

Printed in the United States by Thomson Reuters.

ISSN 0226-9325

THOMSON REUTERS®

Address

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

Customer Support

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

Table of Contents

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.

A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Majd Kitmitto et al.

FOR IMMEDIATE RELEASE
October 11, 2022

MAJD KITMITTO,
STEVEN VANNATTA,
CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO,
DONALD ALEXANDER (SANDY) GOSS,
JOHN FIELDING, AND
FRANK FAKHRY,
File No. 2018-70

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on October 13, 2022 at 10:00 a.m. will proceed on October 13, 2022 at 9:30 a.m.

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 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
October 12, 2022

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

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

A copy of the Reasons and Decision dated October 11, 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.2.3 Aux Cayes Fintech Co. Ltd.

FOR IMMEDIATE RELEASE
October 12, 2022

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

TORONTO – Following a hearing held today, the Tribunal issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Aux Cayes Fintech Co. Ltd.

A copy of the Order dated October 12, 2022, Oral Reasons for Approval of a Settlement and Settlement Agreement dated September 22, 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:

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

A.2.4 Mark Hamlin

FOR IMMEDIATE RELEASE
October 12, 2022

MARK HAMLIN,
File No. 2022-16

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.

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.2.5 Mark Hamlin

FOR IMMEDIATE RELEASE
October 12, 2022

MARK HAMLIN,
File No. 2022-16

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

A copy of the Order dated October 12, 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.2.6 Aux Cayes Fintech Co. Ltd.

FOR IMMEDIATE RELEASE
October 12, 2022

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

TORONTO – Following a hearing held today, the Tribunal issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Aux Cayes Fintech Co. Ltd.

A copy of the Order dated October 12, 2022, Oral Reasons for Approval of a Settlement dated October 12, 2022 and Settlement Agreement dated September 22, 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:

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

A.2.7 Mark Hamlin

FOR IMMEDIATE RELEASE
October 13, 2022

MARK HAMLIN,
File No. 2022-16

TORONTO – The Applicant, Mark Hamlin, filed an Application dated July 8, 2022.

A copy of the Application dated July 8, 2022 and the Order dated September 21, 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:

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

A.2.8 Plateau Energy Metals Inc. et al.

FOR IMMEDIATE RELEASE
October 13, 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 17, 18 and 19, 2022 are vacated; and

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

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.3
Orders

A.3.1 Aux Cayes Fintech Co. Ltd. – ss. 127(1), 127.1

IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.

File No. 2021-29

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

October 12, 2022

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

WHEREAS on October 12, 2022, the Capital Markets Tribunal (the Tribunal) held a hearing by videoconference to consider the request for approval of a settlement agreement dated September 22, 2022 (the Settlement Agreement) in the matter of Aux Cayes Fintech Co. Ltd. (Aux Cayes);

ON READING the Joint Request for a Settlement Hearing, including the Statement of Allegations dated August 18, 2021, the Settlement Agreement, and the written submissions, on hearing the submissions of the representatives for each of the parties, on considering that Aux Cayes has paid $600,000.00 CAD, $514,950.00 USD and $25,000.00 CAD to the Commission in accordance with the terms of the Settlement Agreement, and on considering the undertaking of Aux Cayes dated September 22, 2022 and attached as Schedule "A" to this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved pursuant to subsection 127(1) of the Securities Act (the Act)

2. Aux Cayes is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

3. Aux Cayes shall:

   a) pay an administrative penalty in the amount of $600,000 CAD, pursuant to paragraph 9 of subsection 127(1) of the Act;

   b) disgorge $514,950.00 USD to the Commission, pursuant to paragraph 10 of subsection 127(1) of the Act; and

   c) pay costs of the Commission's investigation in the amount of $25,000.00 CAD, pursuant to section 127.1 of the Act.

"Timothy Moseley"

"Russell Juriansz"

"Sandra Blake"

SCHEDULE "A" – UNDERTAKING

IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.

UNDERTAKING

1. This Undertaking is given by Aux Cayes Fintech Co. Ltd. (**Aux Cayes**) to the Ontario Securities Commission (the **Commission**) in connection with the settlement agreement dated September 22, 2022 in the matter of Aux Cayes Fintech Co. Ltd. (the **Settlement Agreement**).

2. For the purposes of this Undertaking:

   a) "**Restricted Products**" means any contracts that involve leverage, margin, or the extension of credit, including but not limited to contracts that are marketed/labelled by Aux Cayes as:

      (i) futures;

      (ii) forward contracts;

      (iii) OTC contracts on margin;

      (iv) perpetual swaps and futures;

      (v) rolling spot;

      (vi) contracts for difference;

      (vii) options; or

      (viii) leveraged tokens.

   b) "**Retail Customers**" means investors who are not "permitted clients" as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Undertaking in respect of Retail Customers

3. In respect of Retail Customers, Aux Cayes undertakes to:

   a) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), determine which existing Ontario accounts are held by Retail Customers, including implementing appropriate systems and procedures, acceptable to the Commission, to make that determination;

   b) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), implement systems and procedures, acceptable to the Commission, to prevent any Ontario Retail Customers from opening new positions in Restricted Products;

   c) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), notify existing Ontario Retail Customers, in a form acceptable to the Commission, that (i) they are only permitted to reduce their existing positions in Restricted Products, (ii) they must close out and settle their existing positions in Restricted Products (including for greater certainty, any margined positions) within 90 days from the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission); and (iii) any funds or assets remaining in Ontario Retail Customer accounts can continue to be used for non-Restricted Products or withdrawn from the OKX Platform.

Undertaking in respect of permitted clients

4. In respect of permitted clients (as defined in National Instrument 31-103), Aux Cayes undertakes to, within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), take steps, acceptable to the Commission, to determine which, if any, Ontario accounts are held by permitted clients, including implementing appropriate systems and procedures to make that determination;

Undertaking to engage in registration discussions regarding registrable business

5. Aux Cayes undertakes to engage in discussions with the Commission, with diligence and good faith, with a view to bringing the operations of the crypto asset trading platform www.okx.com (the **OKX Platform**) into compliance with Ontario securities law, on the following terms:

   a) While these discussions are ongoing, Aux Cayes will abide by the following limitations:

      (i) Aux Cayes will stop accepting new accounts for investors identified as residents of Ontario. Aux Cayes will maintain and implement the following procedures and controls to prevent Ontario investors from opening new accounts on the OKX Platform:

         1) Aux Cayes will maintain the language in the terms of use of the OKX Platform that indicates that residents of Ontario are not permitted to open new accounts on the OKX Platform;

         2) as of a date to be determined by Aux Cayes, but no later than 30 days from the approval of the Settlement Agreement, Aux Cayes will ensure that potential investors who identify themselves as residents of Ontario based on the address or identification provided through the account onboarding process are not permitted to open an account with Aux Cayes; and

         3) as of a date to be determined by Aux Cayes, but no later than 30 days from the approval of the Settlement Agreement, Aux Cayes will screen the IP address location of potential investors and ensure that potential investors accessing the OKX Platform from an Ontario based IP address are not permitted to open an account with Aux Cayes;

         (collectively, **the Enhanced Procedures and Controls**);

      (ii) Aux Cayes will not offer any new products to existing accounts held by Ontario investors;

      (iii) Aux Cayes will not engage in any marketing or promotional activities specifically directed at Ontario investors, which include marketing or promotional activities at events that take place in Ontario; and

      (iv) Aux Cayes will comply with any additional restrictions that the Commission may require as a condition of continuing registration discussions, or if not prepared to comply with such additional restrictions, terminate registration discussions in accordance with paragraph 6.

Undertaking to wind up Ontario operations if registration discussions fail

6. If at some time during registration discussions (the **Decision Date**) the Commission concludes and communicates to Aux Cayes that it will not be feasible for the OKX Platform to operate in a manner that is compliant with Ontario securities law, or Aux Cayes, acting in good faith, elects to terminate registration discussions, Aux Cayes undertakes to:

   a) identify the accounts on the OKX Platform associated with Ontario investors (**Ontario Accounts**) and report to the Commission on the number of Ontario Accounts and the aggregate holdings in the Ontario Accounts within 30 days of the Decision Date;

   b) cease trading in all Ontario Accounts with no funds or assets remaining in them and close those accounts within 30 days of the Decision Date;

   c) with respect to Ontario Accounts with funds or assets remaining in them (**Funded Ontario Accounts**), initiate steps to return all funds or assets to the account holders by completing the following steps:

      (i) send correspondence to account holders of the Funded Ontario Accounts within 30 days of the Decision Date, indicating that:

         1) no new deposits of funds or other assets shall be made in the Funded Ontario Accounts;

         2) account holders will have a grace period to trade and withdraw their existing holdings, which period expires within 90 days of the Decision Date;

         3) upon the expiry of the grace period, no further trading will be permitted in the Funded Ontario Accounts and any funds or assets remaining in the Funded Ontario Accounts will be returned to the account holders; and

         4) account holders must contact Aux Cayes to provide instructions regarding the return of funds or assets in their Funded Ontario Accounts.

(ii) attempt to contact the account holders by any other means provided by the account holder if no response to the correspondence referred to above is received within 30 days of sending the correspondence;

(iii) on instruction from the account holders, return the funds or assets in the Funded Ontario Accounts without charging fees;

(iv) close the Funded Ontario Accounts where the funds or assets have been returned to the account holders;

(v) provide email reminders to all remaining Funded Ontario Account holders every 30 days in relation to unreturned funds until all funds are returned;

(vi) deliver to the Commission, on the first and second anniversary of the Decision Date, certificates signed by a senior officer of Aux Cayes listing the Funded Ontario Accounts with funds or assets remaining in them and certifying that Aux Cayes has taken the steps set out above to attempt to obtain instructions from each account holder; and based on the senior officer's knowledge, after exercising reasonable due diligence, also certifying that:

1) Aux Cayes did not open any accounts for clients resident in Ontario since the Decision Date;

2) Aux Cayes has ceased trading in and closed all Ontario Accounts with no funds or assets remaining in them; and

3) the Enhanced Procedures and Controls remain in place on the OKX Platform; and

(vii) if Aux Cayes has not obtained instructions regarding the return of any remaining funds or assets in the Funded Ontario Accounts by the second anniversary of the Decision Date, Aux Cayes shall segregate and maintain control of the remaining funds or assets, or sufficient funds or assets to satisfy all claims by the holders of these accounts, and shall not dispose of them other than in accordance with the relevant user's instructions, or as required by law, or as agreed in writing by the Commission, and provide confirmation to the Commission that it has done so.

Undertaking to donate ongoing Ontario revenues

7. Aux Cayes shall donate, to Prosper Canada Centre for Financial Literacy, revenues earned from Ontario accounts between June 20, 2022 and either (i) the date registration discussions are successfully completed or (b) if registration discussions are terminated without registration, the date that Aux Cayes has ceased trading in and closed all Ontario accounts.

Undertaking to abide by Ontario securities law

8. Aux Cayes will refrain from any non-compliance with Ontario securities law in the future.

Dated this 22nd day of September, 2022.

AUX CAYES FINTECH CO. LTD.

"Jie Hao"
Director

I have authority to bind the corporation

FILE NO.: 2021-29

IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. Regulators across the globe serve to protect the investing public and preserve the integrity of the capital markets in their respective jurisdictions; therefore, it is imperative that foreign market participants, including online crypto asset trading platforms, make a real and meaningful effort to identify and comply with local securities laws prior to entering a jurisdiction.

2. Foreign companies in the business of online trading of securities or derivatives for Ontario residents are subject to Ontario securities law. The registration and prospectus requirements of the Act foster integrity, fairness and enhance protection for Ontario investors.

3. Aux Cayes Fintech Co. Ltd. (**Aux Cayes** or the **Respondent**) operates an online crypto asset trading platform under the trade name "OKX"[1] on which Ontario investors could trade in securities and derivatives based on exposure to underlying assets that included crypto assets.

4. Aux Cayes contravened sections 25 and 53 of the Act by operating as an unregistered dealer of securities to Ontario investors, without any exemption from the registration requirements, and issuing securities without a prospectus or any exemption from the prospectus requirements.

PART II – JOINT SETTLEMENT RECOMMENDATION

5. A Notice of Hearing was issued and a Statement of Allegations was published in respect of a proceeding against Aux Cayes (the **Proceeding**) on August 19, 2021.

6. The parties shall jointly file a request that the Capital Markets Tribunal (the **Tribunal**) issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S5, as amended (the **Act**), it is in the public interest for the Tribunal to make certain orders in respect of Aux Cayes described herein.

7. The Respondent agrees to the making of an order substantially in the form attached as Schedule "A" (the **Order**) based on the facts set out below. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, the Respondent agrees with the facts set out in Part III and the conclusions in Part IV of this Settlement Agreement (the **Settlement Agreement**).

PART III – AGREED FACTS

A. Aux Cayes

8. Aux Cayes is a corporation incorporated under the laws of the Republic of Seychelles on March 7, 2018.

9. Aux Cayes has never been registered with the Ontario Securities Commission (the **Commission**) to engage in the business of trading or obtained an exemption from the registration requirement. Aux Cayes has never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.

10. Aux Cayes operates the crypto asset trading platform www.okx.com[2] (the **OKX Platform**). The OKX Platform was launched on or about October 1, 2017 by Aux Cayes' predecessor company, OKEX Technology Company Limited. Aux Cayes assumed the operation of the OKX Platform upon Aux Cayes' incorporation.

11. Investors access the OKX Platform by first creating an account on the OKX Platform using an online account opening process. After opening an account, an investor may deposit crypto assets into the account. An investor makes a crypto asset deposit by transferring crypto assets to a wallet controlled by Aux Cayes. Through a "Buy/Sell crypto gateway" on the OKX Platform, an investor may also use fiat currency to purchase crypto assets, which are then credited to the investor's account and are held in a wallet controlled by Aux Cayes. (Aux Cayes does not handle customer fiat currency, but operates the "Buy/Sell gateway" in partnership with various vendors and fiat processors.)

[1] On January 18, 2022, the crypto asset trading platform was rebranded from OKEx to OKX.
[2] Formerly www.okex.com.

12. Investors may trade crypto assets credited to their account for a variety of other crypto assets. The crypto assets available on the platform include, among others, Bitcoin and Ether.

13. Aux Cayes maintains custody of crypto assets deposited and traded on the OKX Platform in wallets Aux Cayes controls. Investors do not have possession or control of crypto assets deposited or traded on the OKX Platform. Rather, they see a crypto asset balance displayed on their account on the OKX Platform. In order to take possession of crypto assets reflected in their OKX account balance, an investor must request a withdrawal and is dependent on Aux Cayes to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.

14. While Aux Cayes purports to facilitate trading of the crypto assets in its investors' accounts, in practice, Aux Cayes only provides its investors with instruments or contracts involving crypto assets. These instruments or contracts constitute securities and derivatives.

15. Investors may also trade crypto asset futures, swap and options contracts on the OKX Platform that constitute securities and derivatives. The OKX Platform allows investors to engage in leveraged trading of up to 125:1 on various futures and swap contracts.

16. Aux Cayes charges fees for trades made on the OKX Platform and a fee for crypto asset withdrawals.

B. Ontario Investors

17. Aux Cayes made the OKX Platform available to Ontario investors. There was no restriction in the OKX Platform's terms of service to disallow Ontario investors from using the OKX Platform. Aux Cayes' website indicated that investors may, through third-party payment providers, use Canadian fiat currency to purchase crypto assets on the OKX Platform. Ontario was also not identified in the list of restricted jurisdictions on Aux Cayes' website.

18. As of June 20, 2022, Aux Cayes and its predecessor company had opened approximately 21,292 accounts for investors resident in Ontario since the launch of its trading platform on or about October 1, 2017. Ontario investors deposited crypto assets into 1,534 of these accounts, and used these accounts to trade the products offered on the OKX Platform, as described above. The remaining 19,758 accounts opened by Ontarians did not receive any deposits and no trading was conducted in them.

19. The total revenue Aux Cayes and its predecessor company obtained from the 1,534 Ontario accounts that received deposits and were used for trading was approximately $514,950 USD as of June 20, 2022.

C. Communications with Aux Cayes

20. On March 29, 2021, the Commission issued a press release notifying crypto asset trading platforms that currently offer trading in derivatives or securities to persons or companies located in Ontario that they must bring their operations into compliance with Ontario securities law or face potential regulatory action. The press release included a deadline of April 19, 2021 for such platforms to start registration discussions. The press release followed regulatory guidance issued by the Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada on the application of securities legislation to crypto asset trading platforms.

21. Despite this warning, Aux Cayes did not contact the Commission by April 19, 2021 to start registration discussions.

22. In May 2021, the Commission took steps to inform Aux Cayes that it may be conducting registrable activity in Ontario. Aux Cayes responded to the Commission in June 2021 and advised that Aux Cayes would identify and close its Ontario accounts.

D. Aggravating Factors

23. In July 2021, the Commission requested information from Aux Cayes regarding its Ontario accounts including the information listed above in paragraphs 18-19. Aux Cayes represented to the Commission that the requested information was not available. Upon further inquiry by the Commission as to why it was not available, Aux Cayes did not provide an explanation. Aux Cayes's representation was incorrect.

24. In April 2022, Aux Cayes repeated its representation to the Commission that it no longer had the data that the Commission was inquiring about. Aux Cayes informed the Commission that the reason it did not have the data was because it had closed Ontario accounts, which had led to the deletion of customers' personal information pursuant to various data protection and privacy laws. This representation was incorrect.

25. In June 2022, Aux Cayes advised the Commission that the Ontario account information was available and that Aux Cayes was willing to provide it.

26. In July 2022, Aux Cayes provided the Commission with information regarding its Ontario operations, including the information set out in paragraphs 18-19 above.

E. Mitigating Factors

27. After being contacted by the Commission in May 2021, Aux Cayes took steps aimed at limiting Ontario investors' access to the OKX Platform, including:

    a) amending its Terms of Service in June 2021 to include Ontario in the list of restricted locations;

    b) by July 2021, blocking deposits by users attempting to make deposits in pre-existing accounts while connected to an Ontario IP address;

    c) by August 2021, implementing pop up notifications for users attempting to open new accounts while connected to an Ontario IP address, and for existing users attempting to trade on the OKX Platform while connected to an Ontario IP address;

28. Since late June 2022, Aux Cayes has maintained an open dialogue, expressed an interest in reaching a negotiated resolution and has provided all requested information promptly and in a transparent manner, making a disgorgement order possible.

29. Aux Cayes will take steps to explore the registration and compliance process with the Commission. To that end, Aux Cayes is prepared to give a comprehensive undertaking to restrict its Ontario business while it pursues registration, and to leave Ontario in an orderly fashion if registration discussions terminate (as further described below).

PART IV – BREACHES OF ONTARIO SECURITIES LAW

30. The Respondent admits and acknowledges that it breached Ontario securities law by, without lawful exemption:

    a) engaging in the business of trading in securities without registration in accordance with Ontario securities law, contrary to subsection 25(1) of the Act; and

    b) engaging in trading in securities which constitute distributions without a preliminary prospectus or a prospectus having been filed with the Commission, contrary to subsection 53(1) of the Act.

PART V – TERMS OF SETTLEMENT

31. The Respondent agrees to the terms of settlement listed below and consents to the Order in substantially the form attached hereto as Schedule "A", which provides that:

    a) the Settlement Agreement is approved;

    b) Aux Cayes is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

    c) Aux Cayes shall:

        (i) pay an administrative penalty in the amount of $600,000.00 CAD by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 9 of subsection 127(1) of the Act;

        (ii) disgorge $514,950.00 USD by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 10 of subsection 127(1) of the Act. This amount represents the total revenue earned from Ontario accounts up to June 20, 2022; and

        (iii) pay costs of the Commission's investigation in the amount of $25,000.00 CAD by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.

32. Aux Cayes has given the undertaking (the **Undertaking**) to the Commission attached as Schedule "B" to this Settlement Agreement, pursuant to which Aux Cayes undertakes as follows:

    a) Aux Cayes will take the steps outlined in the Undertaking to wind down its existing Ontario business in respect of Restricted Products (as defined in the Undertaking) for Retail Customers (as defined in the Undertaking);

b) Aux Cayes will engage in discussions with the Commission, with diligence and good faith, with a view to bringing the operations of the OKX Platform into compliance with Ontario securities law, on terms that include the following limitations while such discussions are ongoing:

(i) Aux Cayes will stop accepting new accounts for investors identified as residents of Ontario;

(ii) Aux Cayes will not offer any new products to existing accounts held by Ontario investors;

(iii) Aux Cayes will not engage in any marketing or promotional activities specifically directed at Ontario investors, which include marketing or promotional activities at events that take place in Ontario; and

(iv) Aux Cayes will comply with any additional restrictions that the Commission may require as a condition of continuing registration discussions, or if not prepared to comply with such additional restrictions, terminate registration discussions in accordance with the terms prescribed in the Undertaking;

c) If at any time during registration discussions, the Commission concludes and communicates to Aux Cayes that it will not be feasible for the OKX Platform to operate in a manner that is compliant with Ontario securities law, or Aux Cayes, acting in good faith, elects to terminate registration discussions, Aux Cayes will wind down its Ontario operations within the time frame and on the terms prescribed in the Undertaking;

d) Aux Cayes will donate to Prosper Canada Centre for Financial Literacy , ongoing revenues from Ontario accounts until Aux Cayes either (i) becomes registered, or (ii) has wound down its operations;

e) Aux Cayes will refrain from any non-compliance with Ontario securities law in the future.

33. Aux Cayes agrees to attend at the hearing before the Tribunal to consider the proposed settlement by video conference.

PART VI – FURTHER PROCEEDINGS

34. If the Tribunal approves this Settlement Agreement, no enforcement proceeding will be commenced or continued under Ontario securities law against Aux Cayes in relation to the facts set out in Part III of this Settlement Agreement, subject to paragraphs 35 and 36 below.

35. This Settlement Agreement is premised on, among other things, representations made by Aux Cayes, including about the number of Ontario accounts (approximately 21,292) and the amounts obtained by Aux Cayes and its predecessor company (approximately $514,950.00 USD in revenue from the Ontario accounts) as of June 20, 2022. If Aux Cayes and its predecessor company opened and operated materially more Ontario accounts or if Aux Cayes and its predecessor company obtained materially more funds than it represented, enforcement proceedings under Ontario securities law may be brought against the Respondent.

36. If the Respondent fails to comply with any term in this Settlement Agreement or the Undertaking, enforcement proceedings under Ontario securities law may be brought against the Respondent.

37. A proceeding referenced in paragraph 35 or 36 may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement or the Undertaking.

38. The Respondent waives any defences to a proceeding referenced in paragraph 35 or 36 that are based on the limitation period in the Act, provided that no proceeding referenced in paragraph 36 shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement or the Undertaking.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

39. The parties will seek approval of this Settlement Agreement at a public hearing (the **Settlement Hearing**) before the Tribunal, according to the procedures set out in this Settlement Agreement and the Tribunal's *Rules of Procedure and Forms*.

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

41. If the Tribunal approves this Settlement Agreement:

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

b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

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

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

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

    a) this Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing takes place will be without prejudice to either party; and

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

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

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this 22nd day of September, 2022.

AUX CAYES FINTECH CO. LTD.

"Jie Hao"
Director

I have authority to bind the corporation

ONTARIO SECURITIES COMMISSION

"Jeff Kehoe"
Director, Enforcement Branch

SCHEDULE "A" – DRAFT ORDER

FILE NO.: 2021-29

IN THE MATTER OF AUX CAYES FINTECH CO. LTD.

ORDER (Subsections 127(1) and 127.1)

WHEREAS on [date], the Capital Markets Tribunal (the **Tribunal**) held a hearing by videoconference to consider the request for approval of a settlement agreement dated September 22, 2022 (the **Settlement Agreement**) in the matter of *Aux Cayes Fintech Co. Ltd.* (**Aux Cayes**);

ON READING the Joint Request for a Settlement Hearing, including the Statement of Allegations dated August 19, 2021, the Settlement Agreement, and the written submissions, on hearing the submissions of the representatives for each of the parties, on considering that Aux Cayes has paid $600,000.00 CAD, $514,950.00 USD and $25,000.00 CAD to the Commission in accordance with the terms of the Settlement Agreement, and on considering the undertaking of Aux Cayes dated September 22, 2022 and attached as Schedule "A" to this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved pursuant to subsection 127(1) of the *Securities Act* (the **Act**)

2. Aux Cayes is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

3. Aux Cayes shall:

   a) pay an administrative penalty in the amount of $600,000 CAD, pursuant to paragraph 9 of subsection 127(1) of the Act;

   b) disgorge $514,950.00 USD to the Commission, pursuant to paragraph 10 of subsection 127(1) of the Act; and

   c) pay costs of the Commission's investigation in the amount of $25,000.00 CAD, pursuant to section 127.1 of the Act.

SCHEDULE "B" – UNDERTAKING

IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.

UNDERTAKING

1. This Undertaking is given by Aux Cayes Fintech Co. Ltd. (**Aux Cayes**) to the Ontario Securities Commission (the **Commission**) in connection with the settlement agreement dated September 22, 2022 in the matter of Aux Cayes Fintech Co. Ltd. (the **Settlement Agreement**).

2. For the purposes of this Undertaking:

   a) "**Restricted Products**" means any contracts that involve leverage, margin, or the extension of credit, including but not limited to contracts that are marketed/labelled by Aux Cayes as:

      (i) futures;

      (ii) forward contracts;

      (iii) OTC contracts on margin;

      (iv) perpetual swaps and futures;

      (v) rolling spot;

      (vi) contracts for difference;

      (vii) options; or

      (viii) leveraged tokens.

   b) "**Retail Customers**" means investors who are not "permitted clients" as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Undertaking in respect of Retail Customers

3. In respect of Retail Customers, Aux Cayes undertakes to:

   a) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), determine which existing Ontario accounts are held by Retail Customers, including implementing appropriate systems and procedures, acceptable to the Commission, to make that determination;

   b) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), implement systems and procedures, acceptable to the Commission, to prevent any Ontario Retail Customers from opening new positions in Restricted Products;

   c) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), notify existing Ontario Retail Customers, in a form acceptable to the Commission, that (i) they are only permitted to reduce their existing positions in Restricted Products, (ii) they must close out and settle their existing positions in Restricted Products (including for greater certainty, any margined positions) within 90 days from the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission); and (iii) any funds or assets remaining in Ontario Retail Customer accounts can continue to be used for non-Restricted Products or withdrawn from the OKX Platform.

Undertaking in respect of permitted clients

4. In respect of permitted clients (as defined in National Instrument 31-103), Aux Cayes undertakes to, within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), take steps, acceptable to the Commission, to determine which, if any, Ontario accounts are held by permitted clients, including implementing appropriate systems and procedures to make that determination;

Undertaking to engage in registration discussions regarding registrable business

5. Aux Cayes undertakes to engage in discussions with the Commission, with diligence and good faith, with a view to bringing the operations of the crypto asset trading platform www.okx.com (the **OKX Platform**) into compliance with Ontario securities law, on the following terms:

   a) While these discussions are ongoing, Aux Cayes will abide by the following limitations:

      (i) Aux Cayes will stop accepting new accounts for investors identified as residents of Ontario. Aux Cayes will maintain and implement the following procedures and controls to prevent Ontario investors from opening new accounts on the OKX Platform:

         1) Aux Cayes will maintain the language in the terms of use of the OKX Platform that indicates that residents of Ontario are not permitted to open new accounts on the OKX Platform;

         2) as of a date to be determined by Aux Cayes, but no later than 30 days from the approval of the Settlement Agreement, Aux Cayes will ensure that potential investors who identify themselves as residents of Ontario based on the address or identification provided through the account onboarding process are not permitted to open an account with Aux Cayes; and

         3) as of a date to be determined by Aux Cayes, but no later than 30 days from the approval of the Settlement Agreement, Aux Cayes will screen the IP address location of potential investors and ensure that potential investors accessing the OKX Platform from an Ontario based IP address are not permitted to open an account with Aux Cayes;

         (collectively, **the Enhanced Procedures and Controls**);

      (ii) Aux Cayes will not offer any new products to existing accounts held by Ontario investors;

      (iii) Aux Cayes will not engage in any marketing or promotional activities specifically directed at Ontario investors, which include marketing or promotional activities at events that take place in Ontario; and

      (iv) Aux Cayes will comply with any additional restrictions that the Commission may require as a condition of continuing registration discussions, or if not prepared to comply with such additional restrictions, terminate registration discussions in accordance with paragraph 6.

Undertaking to wind up Ontario operations if registration discussions fail

6. If at some time during registration discussions (the **Decision Date**) the Commission concludes and communicates to Aux Cayes that it will not be feasible for the OKX Platform to operate in a manner that is compliant with Ontario securities law, or Aux Cayes, acting in good faith, elects to terminate registration discussions, Aux Cayes undertakes to:

   a) identify the accounts on the OKX Platform associated with Ontario investors (**Ontario Accounts**) and report to the Commission on the number of Ontario Accounts and the aggregate holdings in the Ontario Accounts within 30 days of the Decision Date;

   b) cease trading in all Ontario Accounts with no funds or assets remaining in them and close those accounts within 30 days of the Decision Date;

   c) with respect to Ontario Accounts with funds or assets remaining in them (**Funded Ontario Accounts**), initiate steps to return all funds or assets to the account holders by completing the following steps:

      (i) send correspondence to account holders of the Funded Ontario Accounts within 30 days of the Decision Date, indicating that:

         1) no new deposits of funds or other assets shall be made in the Funded Ontario Accounts;

         2) account holders will have a grace period to trade and withdraw their existing holdings, which period expires within 90 days of the Decision Date;

         3) upon the expiry of the grace period, no further trading will be permitted in the Funded Ontario Accounts and any funds or assets remaining in the Funded Ontario Accounts will be returned to the account holders; and

         4) account holders must contact Aux Cayes to provide instructions regarding the return of funds or assets in their Funded Ontario Accounts.

(ii) attempt to contact the account holders by any other means provided by the account holder if no response to the correspondence referred to above is received within 30 days of sending the correspondence;

(iii) on instruction from the account holders, return the funds or assets in the Funded Ontario Accounts without charging fees;

(iv) close the Funded Ontario Accounts where the funds or assets have been returned to the account holders;

(v) provide email reminders to all remaining Funded Ontario Account holders every 30 days in relation to unreturned funds until all funds are returned;

(vi) deliver to the Commission, on the first and second anniversary of the Decision Date, certificates signed by a senior officer of Aux Cayes listing the Funded Ontario Accounts with funds or assets remaining in them and certifying that Aux Cayes has taken the steps set out above to attempt to obtain instructions from each account holder; and based on the senior officer's knowledge, after exercising reasonable due diligence, also certifying that:

1) Aux Cayes did not open any accounts for clients resident in Ontario since the Decision Date;

2) Aux Cayes has ceased trading in and closed all Ontario Accounts with no funds or assets remaining in them; and

3) the Enhanced Procedures and Controls remain in place on the OKX Platform; and

(vii) if Aux Cayes has not obtained instructions regarding the return of any remaining funds or assets in the Funded Ontario Accounts by the second anniversary of the Decision Date, Aux Cayes shall segregate and maintain control of the remaining funds or assets, or sufficient funds or assets to satisfy all claims by the holders of these accounts, and shall not dispose of them other than in accordance with the relevant user's instructions, or as required by law, or as agreed in writing by the Commission, and provide confirmation to the Commission that it has done so.

Undertaking to donate ongoing Ontario revenues

7. Aux Cayes shall donate, to Prosper Canada Centre for Financial Literacy, revenues earned from Ontario accounts between June 20, 2022 and either (i) the date registration discussions are successfully completed or (b) if registration discussions are terminated without registration, the date that Aux Cayes has ceased trading in and closed all Ontario accounts.

Undertaking to abide by Ontario securities law

8. Aux Cayes will refrain from any non-compliance with Ontario securities law in the future.

Dated this 22nd day of September, 2022.

AUX CAYES FINTECH CO. LTD.

_____

"Name"
"Title"

I have authority to bind the corporation

A.3.2 Mark Hamlin – s. 2(2) of the TARA, subrule 22(4) of the CMT Rules of Procedure and Forms

IN THE MATTER OF
MARK HAMLIN

File No. 2022-16

Adjudicators: Andrea Burke (Chair of the panel)
Timothy Moseley

October 06, 2022

ORDER
(Subsection 2(2) of
the *Tribunal Adjudicative Records Act*,
2019, SO 2019, c 7, Sch 60, and
Subrule 22(4) of
the Capital Markets Tribunal
Rules of Procedure and Forms)

WHEREAS on September 28, 2022, Staff of the Ontario Securities Commission requested that the Capital Markets Tribunal revoke paragraph 4 of the order of the Tribunal dated September 21, 2022, which provided among other things that material filed in connection with this application be kept confidential;

ON CONSIDERING that Hamlin is no longer seeking the confidentiality relief requested in paragraph 3 of his Application dated July 8, 2022, and that he takes no position on this request by Staff;

IT IS ORDERED THAT paragraph 4 of the order of September 21, 2022, is revoked.

"Andrea Burke"

"Timothy Moseley"

A.3.3 Mark Hamlin – s. 17

IN THE MATTER OF
MARK HAMLIN

File No. 2022-16

Adjudicators: Andrea Burke (Chair of the panel)
Timothy Moseley

October 12, 2022

ORDER
(Section 17 of the *Securities Act*, RSO 1990, c S.5)

WHEREAS Mark Hamlin applied under s. 17 of the *Securities Act* for an order authorizing him to make various disclosures in connection with a proceeding in the United States District Court for the Southern District of New York;

AND WHEREAS the Capital Markets Tribunal directed that Hamlin and Staff of the Ontario Securities Commission make written submissions on the preliminary question of whether the Capital Markets Tribunal has jurisdiction to grant the s. 17 order that Hamlin seeks;

ON READING the submissions from Hamlin and from Staff of the Ontario Securities Commission;

IT IS ORDERED THAT:

1. the preliminary question, whether the Capital Markets Tribunal has jurisdiction to grant the order sought, is answered in the affirmative, with reasons to follow; and

2. the balance of the application shall be heard on a date to be fixed by the Registrar.

"Andrea Burke"

"Timothy Moseley"

A.3.4 Mark Hamlin

IN THE MATTER OF
MARK HAMLIN

File No. 2022-16

Adjudicators: Andrea Burke (Chair of the panel)
Timothy Moseley

September 21, 2022

CONFIDENTIAL ORDER

WHEREAS on September 20, 2022, the Capital Markets Tribunal received submissions from representatives for Mark Hamlin and for Staff of the Ontario Securities Commission regarding a joint request for a proposed timetable and further submissions from the representative for Mark Hamlin on September 21, 2022 regarding his position on the relief sought in the application;

IT IS ORDERED THAT:

1. Staff serve and file submissions of no longer than three pages, to address the jurisdiction of the Tribunal to make the order requested in paragraph 1 of the Notice of Application, by no later than 12:00 p.m. on September 28, 2022;

2. the Applicant serve and file responding submissions, if any, of no longer than three pages, by no later than 9:00 a.m. on October 3, 2022;

3. Staff serve and file reply submissions, if any, of no longer than two pages, by 12:00 p.m. on October 7, 2022; and

4. pursuant to subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7, Sch 60, and Rule 22(4) of the *Rules of Procedure*, the material filed with the Tribunal in connection with this application, and this Order, shall be kept confidential, pending any further order regarding the confidentiality of this application.

"Andrea Burke"

"Timothy Moseley"

IN THE MATTER OF
MR. Y

CONFIDENTIAL APPLICATION OF MARK HAMLIN

(For Authorization to Disclose Information Under Section 17 of the *Securities Act*, RSO 1990, c S.5)

A. ORDER SOUGHT

The Applicant, Mark Hamlin ("**Hamlin**"), requests that the Tribunal make an order (the "**Section 17 Order**") pursuant to section 17 of the *Securities Act,* RSO 1990 c. S.5 (the "***OSA***" or the "***Act***") which provides that:

1. Hamlin is authorized to provide deposition testimony in the SDNY Action (as defined below) and make related disclosures to the United States District Court for the Southern District of New York (the "**SDNY Court")**, concerning the following topics:

   a. the Commission's investigation order which was issued in relation to this matter on April 2, 2019 pursuant to section 11 of the *OSA* (the "**Investigation Order**");

   b. Hamlin's compelled testimony given at an examination conducted on May 23, 2019 under section 13 of the *OSA* (the "**Hamlin Examination**");

   c. the transcript of the Hamlin Examination (the "**Hamlin Transcript**");

   d. any other document, correspondence, information or evidence relating to the Hamlin Examination and any related interactions with OSC Staff or the Commodity Futures Trading Commission's Division of Enforcement Staff ("**CFTC Staff**") that is subject to the confidentiality restrictions set out in section 16 of the *OSA* or by the Investigation Order;

2. Except as expressly provided for, nothing in the Section 17 Order shall abrogate any of the rights or privileges afforded to Hamlin under:

   a. the *OSA* in relation to the information described in paragraph 1 above or any other protections that may otherwise apply to this information pursuant to section 16 of the *OSA*;

   b. the Stipulated Protective Order of the Honourable Judge H. Paul Oetken dated July 30, 2020, or the Ontario Court Order (as each are defined below); and

   c. any other rights and privileges under the laws of Canada, Ontario, and the United States.

3. This application, the Tribunal's decision and the Section 17 Order shall remain confidential and shall not be made available to the public, but this does not prohibit the Tribunal's decision and the Section 17 Order from being disclosed as necessary in the Applicant's deposition in the SDNY Action, to the SDNY Court (redacted or filed under seal, if and as appropriate), or to the parties in the SDNY Action.

B. GROUNDS

The grounds for the request are:

I. Background

4. On April 2, 2019, at the request of CFTC Staff, the Ontario Securities Commission ("**OSC**" or the "**Commission**") issued an order authorizing certain members of the Commission's staff ("**OSC Staff**") and CFTC Staff to investigate and inquire into "possible violations of the United States *Commodity Exchange Act* and CFTC Regulations thereunder concerning manipulation of certain swap rates involving" a certain U.S. financial institution (the "**Investigation Order**").

5. On April 15, 2019, pursuant to the Investigation Order, Hamlin was issued a section 13 summons compelling his attendance at the Commission's offices on May 23, 2019.

6. On May 23, 2019, the Hamlin Examination was conducted by OSC Staff and CFTC Staff at the Commission's offices in Toronto.

7. On May 31, 2019, OSC Staff sent a letter to Hamlin's Canadian counsel, Usman Sheikh of Gowling WLG (Canada) LLP ("**Sheikh**"), advising him that OSC Staff had authorized the release of the Hamlin Transcript to Sheikh. Among other things, OSC Staff's letter excerpted subsection 16(1) of the *OSA* in its entirety and stated: "[p]lease note that section 16 of the Act prohibits the disclosure of information or evidence obtained under section 11."

II. The SDNY Action

8. On December 20, 2019, the CFTC commenced an action (the "**SDNY Action**") against Christophe Rivoire ("**Rivoire**") in the United States District Court for the Southern District of New York (the "**SDNY Court**"). Hamlin is not a party to the SDNY Action.

9. By Order of the SDNY Court dated May 26, 2022, in the SDNY Action (Docket No. 70), fact discovery in the SDNY Action, including any deposition of Hamlin, must be completed by no later than August 1, 2022.

III. The SDNY Letter of Request

10. On September 24, 2021, Rivoire filed an unopposed motion with the SDNY Court for the issuance of a letter of request to seek the assistance of the Ontario courts in order to compel Hamlin to provide deposition testimony in the SDNY Action.

11. On January 24, 2022, the SDNY Court granted Rivoire's motion pursuant to an order of the Honourable Judge J. Paul Oetken. On February 3, 2022, the SDNY Court signed and issued the Letter of Request (the "**Letter of Request"**).

12. On February 9, 2022, with Mr. Hamlin's consent, Rivoire applied to the Ontario Superior Court of Justice (the "**Ontario Superior Court**") to recognize and enforce Judge Oetken's Letter of Request. On March 8, 2022, the Ontario Superior Court issued an Order on consent recognizing the Letter of Request and directing Mr. Hamlin to give deposition testimony in the SDNY Action (the "**Ontario Court Order**").

IV. The CFTC's Disclosure of the Hamlin Examination to Rivoire's U.S. Counsel

13. During the pre-trial discovery phase of the SDNY Action, the Applicant learned that CFTC Staff had produced a copy of the Hamlin Transcript to Rivoire's US counsel during pre- trial discovery in the SDNY Action.

14. CFTC Staff did not request that the OSC issue an order under Section 17 of the *OSA* to disclose the Hamlin Transcript to Rivoire's counsel, and took the position that a Section 17 order was not required. Furthermore, CFTC Staff advised the Applicant that they intended to elicit deposition testimony from Hamlin concerning the Hamlin Examination and the Hamlin Transcript. Both the Hamlin Examination and Hamlin Transcript are subject to the confidentiality restrictions set out in section 16 of the *OSA*.

15. In March and April 2022, Hamlin's counsel requested guidance from OSC Staff as to whether answering questions concerning his prior testimony at the Hamlin Examination would be construed as a violation of the *OSA*. OSC Staff did not answer this question directly, but advised the Applicant that they did not believe it would be in the public interest to bring a proceeding against Hamlin for a breach of section 16 of the *OSA* in the circumstances. OSC Staff declined to provide further guidance and simply stated that Hamlin "may seek an order under subsection 17(1) of the [*Ontario Securities*] Act" and that, "if your client decides to bring a section 17 application, we expect that Staff would consent to an order permitting him to testify in the U.S. CFTC's proceeding."

16. Hamlin's deposition in the SDNY Action is currently scheduled for July 20, 2022.

17. As a current registrant who takes his obligations under Ontario securities laws seriously, Hamlin will

not answer questions about his prior testimony during the Hamlin Examination without express authorization from the Commission to do so.

18. On June 15, 2022, the Applicant's US counsel provided CFTC Staff with a copy of his draft materials in support of this Application. On June 17, 2022, CFTC Staff advised Applicant's US counsel that CFTC Staff consented to the relief requested herein (though not to the factual or legal assertions set forth herein).

19. On June 17, 2022, Mr. Sheikh emailed a copy of the draft application materials to OSC Staff for their consent.

20. On June 29, 2022, OSC Staff contacted Mr. Sheikh in response to his request for their consent. Instead of providing their consent, OSC Staff asserted its view that a section 17 Order "may not be required in relation to at least some of the relief being sought by Mr. Hamlin". OSC Staff further indicated that they would respond to Hamlin's application "in the ordinary course" rather than provide advanced consent as previously suggested.

21. In subsequent correspondence with OSC Staff on June 29 and 30, 2022, OSC Staff provided no further meaningful insight as to their apparent change in position.

V. Legal Basis For Order Sought

22. Subsection 11(1) of the *OSA* empowers the Commission to issue an order appointing one or more persons to investigate a matter "for the due administration of Ontario securities law or the regulation of the capital markets in Ontario" and also "to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction".

23. Section 13 of the *OSA* permits persons appointed under section 11 of the *OSA* to summons and compel a person to produce documents and/or provide testimony. That evidence is then protected by subsection 16(1)(b) of the *OSA* which provides that, except in accordance with section 17, no person shall disclose, except to his/her counsel:

> …the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13.

24. Subsection 17(1) of the *OSA* empowers the Commission to authorize the disclosure of information protected by section 16 if such authorization is in the "public interest".

25. In this proceeding, the Applicant submits that it is in the public interest to authorize Hamlin to answer questions related to his prior evidence given at the Hamlin Examination (and in relation to any correspondence with OSC Staff and CFTC Staff concerning the Hamlin Examination that may be protected by section 16 or the Investigation Order) for a number of reasons, including:

    a. it would allow Hamlin to provide full testimony under the Ontario Court Order and attend the deposition for the SDNY Action without being put in a position of breaching Ontario securities laws. Put simply, it is not in the public interest to put the Applicant in the position of being forced to choose between seeking a protective order from the SDNY Court enforcing the confidentiality restrictions of section 16 of the *OSA* and violating section 16 of the *OSA* by answering deposition questions about the Hamlin Examination in the presence of third-party counsel for Rivoire;

    b. it would allow Hamlin to attend the deposition and, thus, give effect to the Letter of Request from the SDNY Court. It is in the public interest to facilitate cooperation with foreign courts where appropriate, taking into consideration principles of comity, public policy and sovereignty;

    c. the Ontario Court Order sufficiently protects the interests of Hamlin by permitting him to rely on any rights contained within the Ontario and Canada *Evidence Acts*, the *Charter of Rights and Freedoms*, as well as the protections in the Stipulated Protective Order issued by Judge J. Paul Oetken of the SDNY Court dated July 30, 2020 (the "**US Protective Order**") and other protections under U.S. law. Under the Ontario Court Order, Hamlin may also assert any of the protections that would have otherwise been available to a party examined in a case pending in an Ontario court; and

    d. CFTC Staff has consented to the relief sought in this application.

26. For all of these reasons, it is in the public interest for the Tribunal to grant the relief sought in this application.

27. Rules 12(1), 12(2) and 23 of the Capital Markets Tribunal *Rules of Procedure and Forms*.

28. Sections 11, 13, 16 and 17 of the *OSA*.

C. EVIDENCE

The Applicant intends to rely on the following evidence at the hearing:

29. The affidavit of Matthew Coogan sworn July 8, 2022;

30. Such further other evidence as counsel may advise and this Tribunal may permit.

DATED this 8th day of July, 2022

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place,
100 King, St W., Suite 1600
Toronto ON M5X 1G5

Steven I. Sofer (LSO#: 27110G)
Email: steven.sofer@gowlingwlg.com
Tel: 416-369-7240

Usman M. Sheikh (52964H)
Email: usman.sheikh@gowlingwlg.com
Tel: 416-862-3627

Alex Zavaglia (57622J)
Email: alex.zavaglia@gowlingwlg.com
Tel: 416-369-7298

Lawyers for the Applicant

A.4
Reasons and Decisions

A.4.1 Xiao Hua (Edward) Gong

Citation: *Gong (Re)*, 2022 ONCMT 29
Date: 2022-10-11
File No. 2022-14

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

REASONS AND DECISION

Adjudicators:	Russell Juriansz (chair of the panel) Timothy Moseley Sandra Blake	
Hearing:	In writing	
Appearances:	Alice Zhou	For herself

REASONS AND DECISION

1. OVERVIEW

[1] Alice Zhou, a non-party to this proceeding, moved unsuccessfully for intervenor status. Upon seeing the decision dismissing her application, and the reasons for that decision, she brings this new application to keep the decision and reasons confidential. As we explain below, her application is improper, and we dismiss it summarily.

2. ANALYSIS

[2] On June 13, 2022, Staff of the Ontario Securities Commission filed a Statement of Allegations against the respondent Xiao Hua (Edward) Gong, alleging securities fraud and unregistered trading.

[3] On July 29, 2022, Zhou filed her motion seeking intervenor status in this proceeding. On October 5, 2022, following an oral hearing, we dismissed Zhou's motion.[1] Our decision and reasons were delivered to the parties and published by this Tribunal.

[4] The next day, Zhou brought this application under section 25.0.1 of the *Statutory Powers Procedure Act*[2], asking that our order and the reasons not be disclosed to the public. She submits that the panel misunderstood her submissions and that the reasons, as drafted, may impact investors and other concerned parties.

[5] Zhou's current application is improper. Zhou's only ground is that she is dissatisfied with the hearing, decision and reasons on her intervenor motion.

[6] We cannot re-hear Zhou's motion for intervenor status. Zhou has other avenues available to her if she is dissatisfied with our decision, but asking us to keep that decision from the public is not one of them.

[7] We therefore dismiss her current application summarily, without the need to hear from the parties to the proceeding (*i.e.*, Staff of the Ontario Securities Commission, and the respondent Gong).

Dated at Toronto this 11th day of October, 2022

"Russell Juriansz"

"Timothy Moseley"

"Sandra Blake"

1 *Gong (Re)*, 2022 ONCMT 27
2 RSO 1990, c S.22

A.4.2 Aux Cayes Fintech Co. Ltd. – ss. 127(1), 127.1

Citation: *Aux Cayes Fintech Co Ltd (Re)*, 2022 ONCMT 30
Date: 2022-10-12
File No. 2021-29

IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Timothy Moseley (chair of the panel) Russell Juriansz Sandra Blake	
Hearing:	By videoconference, October 12, 2022	
Appearances:	Aaron Dantowitz Vincent Amartey	For Staff of the Ontario Securities Commission
	Brad Moore Tina Cody	For Aux Cayes Fintech Co. Ltd.

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

[1] Staff of the Ontario Securities Commission has alleged that Aux Cayes Fintech Co. Ltd. contravened the *Securities Act*[1] (the **Act**) by engaging in the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement. Staff also alleges that Aux Cayes engaged in trades of securities that were distributions under the Act, without complying with or being exempt from the prospectus requirements.

[2] Staff and Aux Cayes seek approval of a settlement agreement they have entered into regarding these allegations. We conclude that it would be in the public interest to approve the settlement, for the following reasons.

[3] The factual background is set out in more detail in the settlement agreement, but we summarize the most important facts here.

[4] Aux Cayes operates an online crypto asset trading platform. Investors can open an account, and can trade in securities and derivatives based on exposure to underlying assets that include crypto assets. Whether the investor deposits crypto assets or uses fiat currency to purchase crypto assets, those assets are held in a wallet that Aux Cayes controls.

[5] The investors have neither possession of, nor control over, the crypto assets. Aux Cayes maintains custody. An investor who wants to take possession of their crypto assets must ask Aux Cayes for the assets and then transfer those assets to a wallet that the investor controls. What Aux Cayes actually provides to an investor is an instrument or contract involving crypto assets (*e.g.*, crypto asset futures contracts, swap and options contracts), as opposed to the crypto assets themselves. Aux Cayes admits that these instruments or contracts are securities and derivatives.

[6] From the time that Aux Cayes launched its platform on October 1, 2017, to June 20, 2022, Aux Cayes opened more than 21,000 accounts for Ontario investors. Ontario investors deposited crypto assets into 1,534 of these accounts, from which Aux Cayes obtained revenue of approximately 514,950 US dollars. The remaining accounts received no deposits, and no trading was conducted in them.

[7] Canadian securities regulators, including the Ontario Securities Commission, have publicized their concerns about unregistered crypto asset trading platforms. The Commission issued a news release in March 2021 advising that those platforms must bring their operations into compliance with Ontario securities law or they may face regulatory action. The press release included a deadline of April 19, 2021, for such platforms to begin registration discussions.

[8] Aux Cayes did not contact the Commission by the deadline set out in that news release. In May 2021, the Commission took steps to inform Aux Cayes that it may be conducting registrable activity in Ontario. Aux Cayes responded to the Commission in June 2021 and advised that Aux Cayes would identify and close its Ontario accounts.

[1] RSO 1990, c S.5

[9] Aux Cayes's misconduct was compounded by the fact that in later communications with the Commission, Aux Cayes made incorrect representations about what information was available regarding its Ontario accounts. Aux Cayes later corrected those misrepresentations.

[10] There are also mitigating factors. After being contacted by the Commission in May 2021, Aux Cayes took various steps aimed at limiting Ontario investors' access to their platform, including amending its Terms of Service to include Ontario in the list of restricted locations, and by adopting technology solutions to attempt to block Ontario investors.

[11] In addition, since late June 2022, Aux Cayes has maintained an open dialogue, expressed an interest in reaching a negotiated resolution and has provided all requested information promptly and in a transparent manner, making a disgorgement order possible. Aux Cayes is taking steps to explore the registration and compliance process with the Commission and has provided an undertaking to the Commission to restrict its business while it pursues registration and to leave Ontario in an orderly fashion if registration discussions terminate.

[12] The written undertaking provides, among other things, that until Aux Cayes either becomes registered or has wound down its operations, Aux Cayes will donate ongoing revenues from Ontario accounts to a payee named in the undertaking.

[13] Aux Cayes has admitted that its conduct breached the registration and prospectus requirements and that it thereby contravened ss. 25(1) and 53(1) of the Act. Staff and Aux Cayes have agreed that Aux Cayes will pay an administrative penalty of 600,000 Canadian dollars, will disgorge to the Commission the 514,950 US dollars that it obtained in the form of revenue, and will pay 25,000 Canadian dollars for costs of the Commission's investigation. Aux Cayes paid those amounts to the Commission before this hearing, and they are being held in escrow pending approval of the settlement.

[14] We have reviewed the settlement agreement in detail. In addition, we had the benefit of a confidential settlement conference with counsel for both parties.

[15] Our role at this settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the settlement.

[16] We have considered Aux Cayes's failure to obtain registration and to comply with the prospectus requirements, both of which requirements are cornerstones of securities regulation in Ontario. We have also considered the aggravating and mitigating factors I have mentioned.

[17] This Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties. In our view, given all the circumstances, including the avoidance of significant resource consumption that would be required for a contested hearing, it is in the public interest for us to approve the settlement.

[18] We will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 12th day of October, 2022

"Timothy Moseley"

"Russell Juriansz"

"Sandra Blake"

This page intentionally left blank

B. Ontario Securities Commission

B.1
Notices

B.1.1 OSC Staff Notice 81-733 – Summary Report for Investment Fund and Structured Product Issuers

OSC Staff Notice 81-733 – Summary Report for Investment Fund and Structured Product Issuers is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

ONTARIO SECURITIES COMMISSION

OSC Staff Notice 81-733

Summary Report for Investment Fund and Structured Product Issuers

October 19, 2022

Ontario

Contents

Director's Message

I am pleased to share this overview of the activities of the Investment Funds and Structured Products Branch (**IFSP**) of the Ontario Securities Commission (**OSC)** during this continuing period of unprecedented change and challenges. This Summary Report (**Report**) will cover the activities of IFSP during the 2021-2022 fiscal year.

The OSC is strongly committed to its mandate of investor protection. Investor profiles are diverse and wide-ranging, as are the investment fund products available today. More than ever, investors can benefit from competitive investment funds and product choices to meet their financial goals. We continue to facilitate investment fund offerings which provide different market and asset class exposure, objectives, and portfolio and risk management skills. Traditional and innovative products alike are reviewed to ensure that there is appropriate transparency to allow investors to make informed investment decisions. We enhanced consultation and communication with industry stakeholders to ensure emerging issues are managed to protect the interests of investors, while acknowledging and facilitating the innovation in the capital markets.

I am very proud of the accomplishments of IFSP during this fiscal year. I am even more proud of how IFSP worked collaboratively with stakeholders, recognizing different views, and embracing new skills and approaches, to accomplish our goals. I want to thank IFSP staff for their dedication and passion in their work.

Throughout the pandemic, the investment funds industry has continued to show its resilience and innovation. During the period of significant market volatility which occurred at the onset of the pandemic in March 2020, no public funds suspended redemptions and assets under management (**AUM**) were able to rebound over the course of several months. IFSP issued final prospectus receipts in connection with several novel investment funds, including those with exposure to crypto assets which were the first of their kind in the world. As we do with all novel products, IFSP is continuing to monitor developments in crypto asset funds closely.

Environmental, social and governance (**ESG**) funds are another emerging area which IFSP prioritized this year. OSC and IFSP staff have been extensively involved in domestic and international initiatives on disclosure practices related to ESG products and investor protection concerns. As a result of these initiatives, the Canadian Securities Administrators (**CSA**) published CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure.* With this first milestone for ESG-specific regulation of investment funds in Canada, we are hopeful that this guidance will bring greater clarity to ESG-related fund disclosure and sales communications and enable investors to make more informed investment decisions about ESG products.

In the policy area, IFSP has continued to work on rule proposals and amendments that align with our commitment to burden reduction while maintaining investor

protection. After years of consultation and collaboration, a series of amendments came into effect during the period which eliminate duplication, streamline regulatory processes, and codify frequently granted exemptions from certain requirements for investment fund issuers. Another notable achievement in the policy area is the ban on the deferred sales charge option which now harmonizes Ontario with the rest of the CSA.

Finally, IFSP is excited to be working with the new Digital Solutions Branch to use internal and external data to operationalize our oversight of larger market risks. Data obtained from the annual Investment Fund Survey will be a key input in developing a risk framework to help us identify higher risk issuers using key performance indicators.

We hope you find this Report helpful and informative. As always, if you have a question, comment, or would like to discuss regulatory matters, please reach out to us. Our Staff Contact Information has been included for your convenience.

Raymond Chan
Director, IFSP
Ontario Securities Commission

Part A: Introduction

This Report provides an overview of the key activities and initiatives of the IFSP Branch that impact investment fund and structured product issuers, and is organized into four broad areas:

1. **Operational highlights**
   - I. Prospectus filings
     - i) Pre-file process
     - ii) Data on prospectus filings
     - iii) Novel prospectus filings
     - iv) ESG-related funds
   - II. Exemptive relief applications
     - i) Data on exemptive relief applications
     - ii) Novel exemptive relief applications
   - III. Continuous disclosure reviews
     - i) Summary of completed reviews
2. **Regulatory policy initiatives**
3. **Emerging issues and initiatives**
4. **Stakeholder outreach**

These activities were conducted within the scope of IFSP's responsibilities and structure which are briefly described below, along with market composition data to provide context on the scale of the industry.

Responsibilities of the IFSP Branch

The OSC's mandate is to protect investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital markets and confidence in the capital markets, to foster capital formation, and to contribute to the stability of the financial system and the reduction of systemic risk.

In support of the OSC's mandate, the IFSP Branch is responsible for administering the regulatory framework for investment funds and structured products, including linked notes and scholarship plans, that are sold to Ontario investors. Ontario-based publicly offered investment funds account for over 80% of the approximately $2.39 trillion in publicly offered investment fund assets in Canada which are comprised of conventional mutual funds, non-redeemable investment funds, exchange traded funds (**ETFs**), and alternative mutual funds.

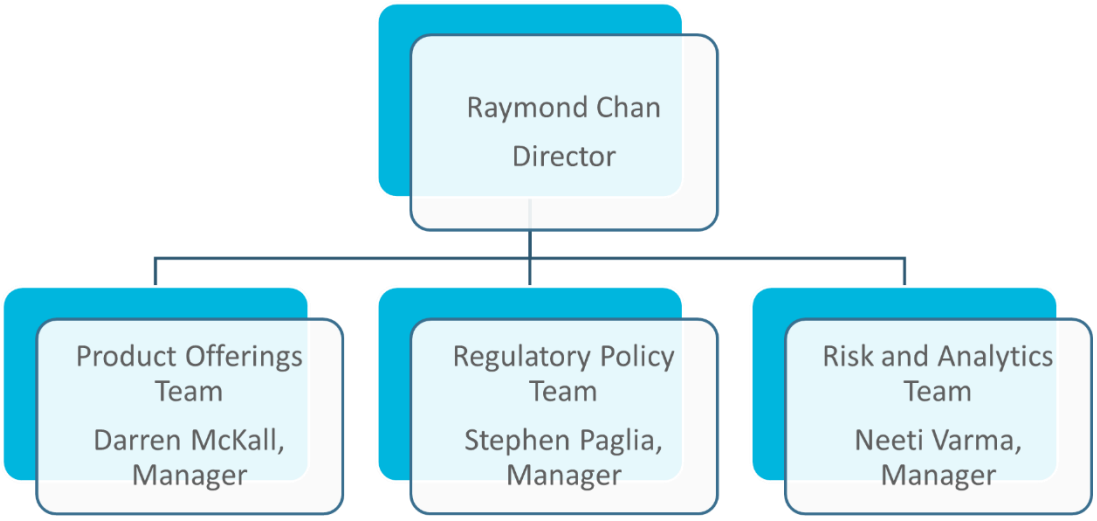
Our key functions include

- reviewing and assessing product disclosure for all types of investment funds,
- considering applications for discretionary relief from securities legislation,
- developing new rules and policies to adapt to changes in the investment funds industry,

- using data sources to identify and monitor risks, and
- monitoring and participating in investment fund regulatory developments globally, primarily through our work with the International Organization of Securities Commissions (**IOSCO**).

Structure of the IFSP Branch

In 2020, the IFSP Branch was reorganized from one operational group into three dedicated teams with the objective of streamlining and improving processes and proactively assessing and monitoring risks. Each team has its own Manager and staff which may include lawyers, accountants, a financial examiner, review officers, a business and market analyst and administrative assistants. The new structure is presented below:



Product Offerings Team

The Product Offerings team is responsible for reviewing all investment fund and structured note product filings. By streamlining the review of prospectuses and applications onto one team, the IFSP Branch is building efficiencies and identifying redundancies to improve the filings process while developing product offering expertise. On novel filings, members of the team interact directly with the CSA Investment Funds Operations Committee to brief and resolve any issues raised.

The OSC currently has a Service Commitment document on its website that sets out stakeholder expectations and service standards. The IFSP Branch is committed to ensuring that services are delivered efficiently and effectively, and in accordance with those standards. The service standards include timelines for prospectus filings and amendments, and the review of exemptive relief applications.

Regulatory Policy Team

The Regulatory Policy team is responsible for policy initiatives affecting investment funds and often collaborates with its CSA counterparts in other jurisdictions to work on rule proposals and amendments. The policy process includes research in the form of stakeholder consultations, drafting consultation papers and reviewing industry comments on proposed rules and amendments before final approvals and publication.

The team also monitors, reviews, and assesses regulatory proposals and product developments in Canada and abroad to determine possible impacts on our regulatory regime. The team regularly consults with industry associations, investor advocacy groups and OSC advisory committees on policy matters.

Risk and Analytics Team

The objective of the Risk and Analytics team is to assess and monitor the investment funds industry using risk and data analytics. The team considers available data to develop a risk-based approach to oversee this large segment of the market in an efficient and effective manner.

The team has three key functions:

- Assess and monitor risks at the enterprise level and the industry level
- Gather key data on the investment funds industry through internal and external sources, such as the Investment Fund Survey
- Quality control
    - Monitoring and reporting on internal processes
    - Developing and maintaining policies and procedures for key processes

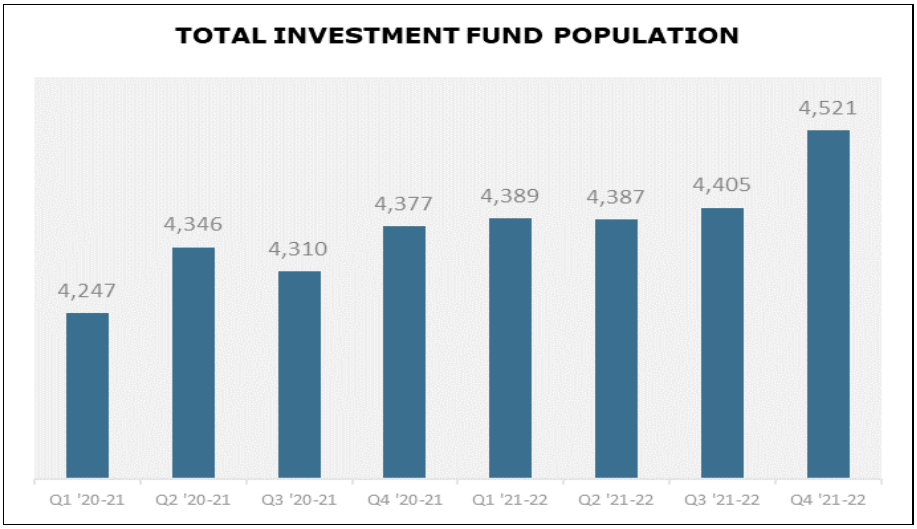
Market Composition

Investment funds in Canada currently have about $2.39 trillion in AUM[1]:

INVESTMENT FUND PRODUCTS	AUM as of March 31, 2022	Approximate % of Investment Fund AUM
Conventional Mutual Funds	$2.0 trillion	84%
ETFs	$352.8 billion	15%
Closed End Funds	$36.8 billion	1%

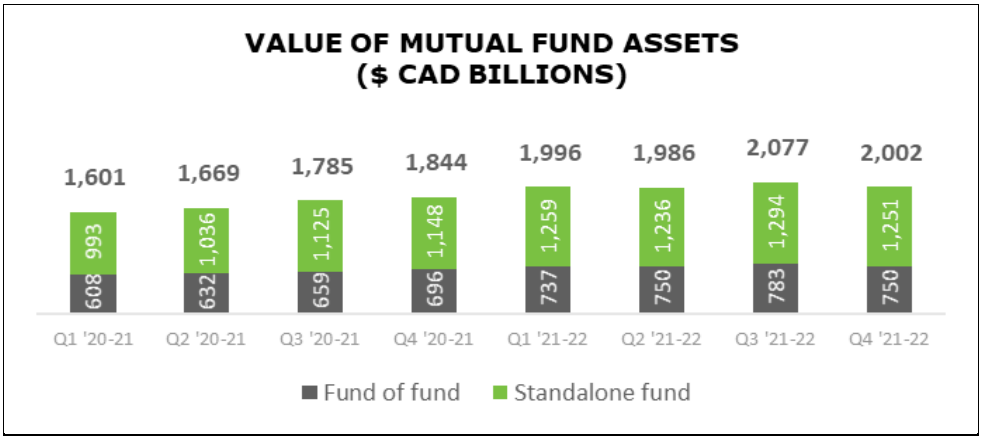
Structured notes outstanding as of March 31, 2022 are approximately $21.7 billion.

[1] Mutual funds and ETFs AUM obtained from Investor Economics and closed end fund AUM from TSX

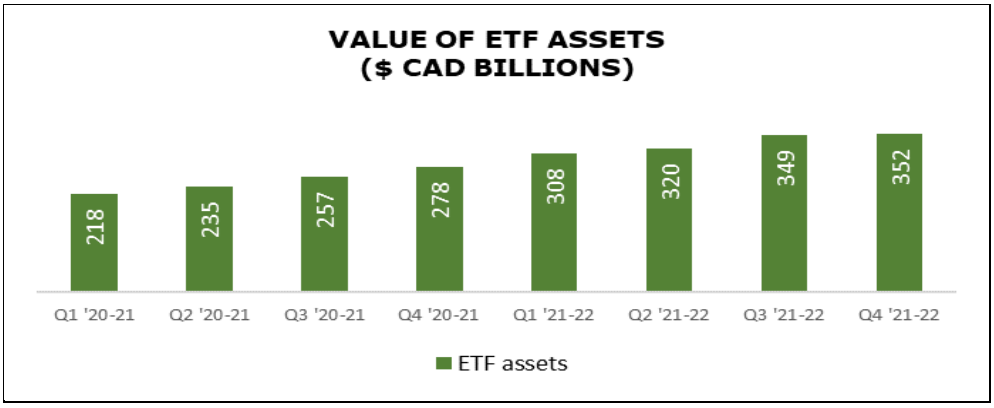


Source: Internal reporting issuer database showing investment funds active in Ontario

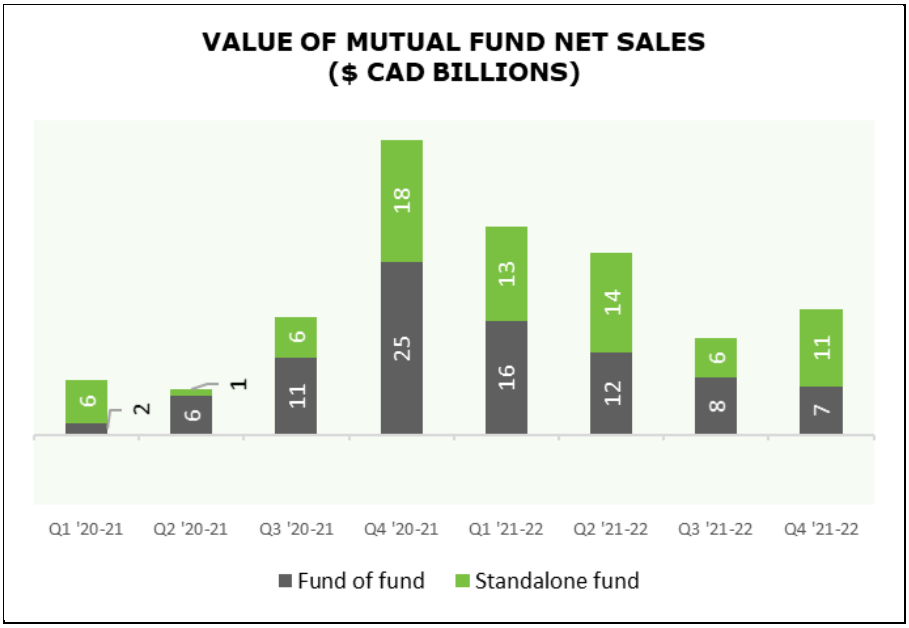
The creation of new ESG funds has remained steady at double digit growth through fiscal 2021/2022, ending the fiscal year with ESG funds making up 23% of new funds. Comparatively, the creation of new crypto asset funds has steadily declined making up less than 5% of new funds for the fiscal year.



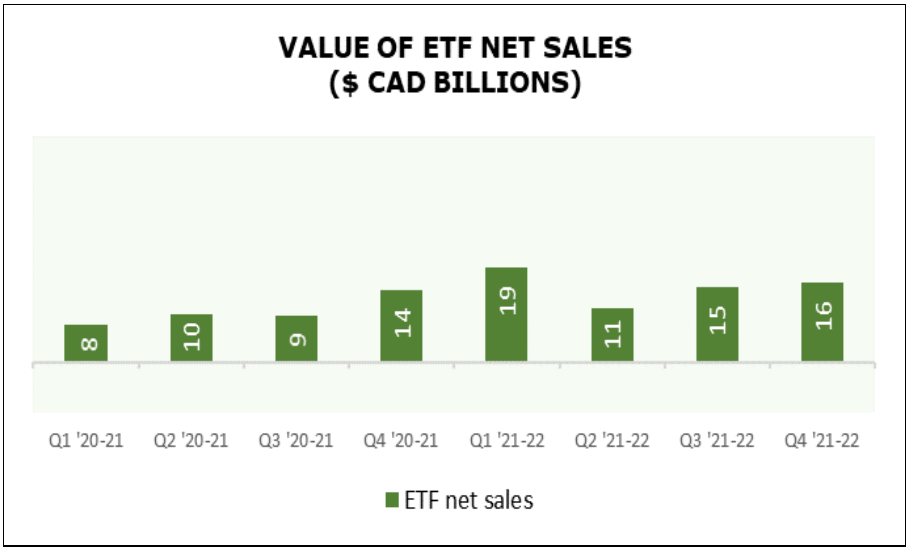
Source: Investor Economics



Source: Investor Economics



Source: Investor Economics



Source: Investor Economics

Consistent with the trend in the rising number of ESG investment funds, there has been a significant increase in ESG net sales in the last two years. In 2021, ESG net sales totalled $13.2 billion, which represented 11.7% of total industry net sales, and ESG ETF net sales totalled $4.2 billion, or 7.2% of total industry net sales.[2]

[2]IFIC 2021 Investment Funds Report

Part B: Operational Highlights

I. Prospectus Filings

One of our key operational functions is the intake and review of prospectuses and supplements in connection with the distribution of publicly offered investment funds and linked notes. Under Canadian securities law, an issuer must file and obtain a receipt for a prospectus to "distribute" securities to the public or rely upon a prospectus exemption.

Prospectus filings are categorized by IFSP into one of three review types: standard, issue-oriented or full review. Most prospectus filings are subject to standard review, as these generally relate to investment funds that are already in distribution and have been previously reviewed. An issue-oriented review targets a specific issue with the filing while a full review is undertaken when the prospectus is for a new fund or product that has features or characteristics that could raise novel issues. These filings may also be accompanied by a related application for exemptive relief.

Pre-File Process

For unique or novel products, we recommend that filers use the confidential pre-file process for prospectus and exemptive relief applications. Many filers who wish to launch a novel type of product in the market have used this process as it maintains the confidentiality of the product offering as the regulatory issues are resolved.

The pre-file process is optional and can be opted out of at any time by the filer by making a public filing. It can provide issuers with greater assurance and flexibility in planning the launch of a novel product. This process supports innovation in the capital markets by providing a mechanism for issuers to develop new products and seek staff's feedback without publicly disclosing details of those new products.

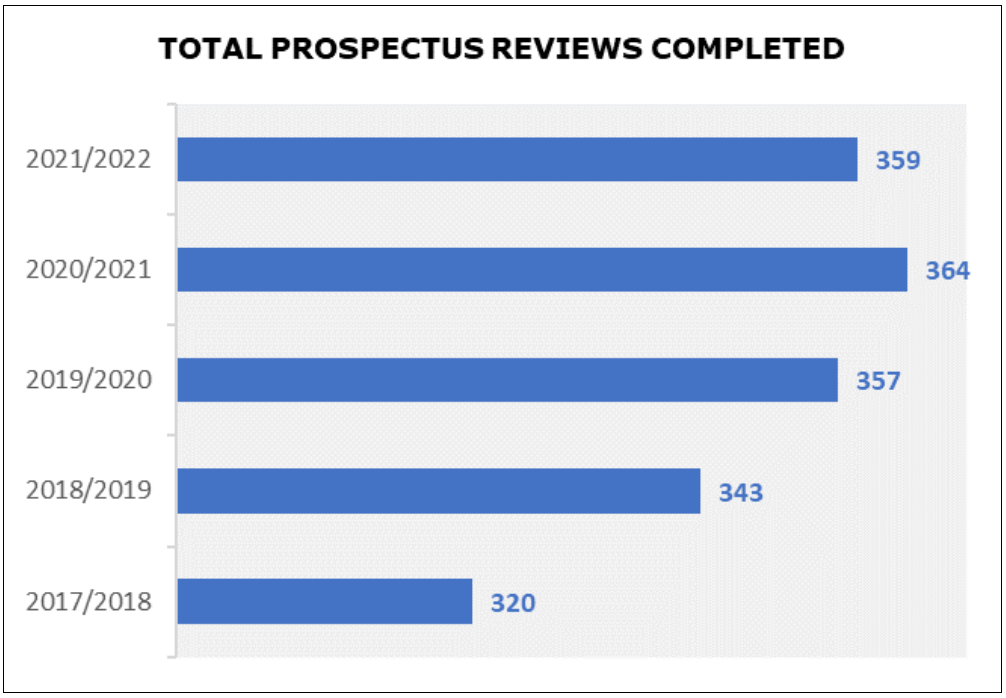
Review timelines for pre-filings progress as they would for a novel public filing and are not subject to the service standards. How quickly the pre-filing is resolved depends on several factors: the completeness and quality of the materials submitted, the complexity or novelty of the issues raised in the filing, the responsiveness of the issuer to staff's comments, and discussions with other CSA jurisdictions. All else being equal, filings whether pre-filed or not, are reviewed on a first-in, first-out basis. Staff work to ensure that all similar and concurrent filings are dealt with fairly based on these factors.

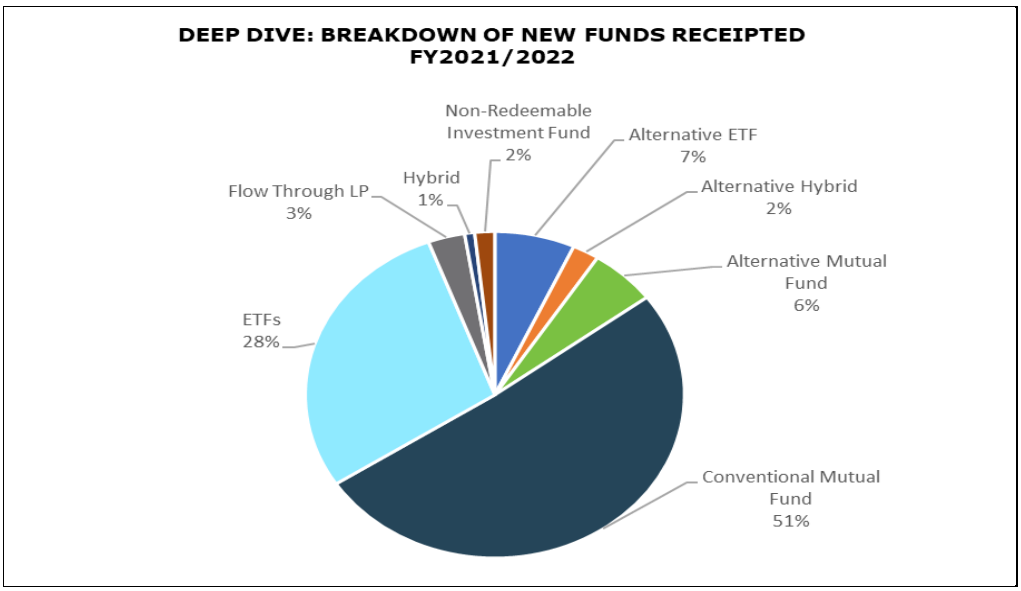
The pre-filing process concludes when all issues identified during staff's review of an issuer's pre-filing have been resolved. The filer is then able to make a public filing. Staff work to issue a "no comment" letter on the public filing as quickly as possible and clear the issuer to file its final prospectus after ensuring that the filing is consistent with the pre-filed materials. We encourage filers to provide a separate cover letter (that will be made public) that references the prefiling and its date to assist in staff's ability to issue a comment letter promptly. The review of the

preliminary prospectus may be assisted by providing a clear blackline to the pre-filing.

Fees charged in connection with a prospectus pre-filing are applied to the fees due upon the public filing of the preliminary prospectus or exemptive relief application.

Data on Prospectus Reviews





Novel Prospectus Filings

Some of the novel prospectus filings that were receipted during the fiscal period are summarized below, along with details on any related exemptive relief.

Crypto Asset Funds

During the fiscal year, IFSP issued final prospectus receipts in connection with five funds that hold substantially all their assets in ether. Four of these funds are exchange-traded funds, which were the first of their kind in the world, and one is a conventional mutual fund that is exposed to ether through a fund-of-fund structure. These funds are similar to the bitcoin ETFs that launched in the last quarter of the prior fiscal year.

As with all novel prospectus filings, the risk profile of the product is considered to determine the adequacy of the risk disclosure to investors and if any related exemptive relief is required. As innovation in this asset class continues, additional ETFs were recently launched that hold substantially of all their assets in bitcoin or ether. However, for the first time, the ETF's market makers will be able to pay the subscription price of new creation units of the ETF in bitcoin or ether, as applicable. The related exemptive relief is subject to several conditions, including that the ETFs will only accept subscriptions in-kind from market makers that source their crypto assets on platforms registered in the U.S. and in Canada that adhere to know your client and anti-money laundering regulations.

In total, there are 23 public investment funds with crypto asset exposure in Ontario offered by eight investment fund managers (**IFMs**), with assets under management totaling approximately $6.9 billion.[3] 17 of these funds were receipted during the fiscal year.

Income for Life Fund

During the fiscal year, a novel mutual fund product offering of an "income for life" option was receipted. The product was pre-filed and subject to extensive discussion with the CSA. This fund is designed for investors who are at, or approaching, retirement and aims to offer longevity risk protection for investors that anticipate a lengthy lifespan and are concerned about having sufficient income in the later years of their life.

The lifetime payments on the units are funded primarily through investment returns generated by the fund's portfolio and forced redemptions due to mortality. Investors who survive longer than the average person in their age cohort earn a "longevity benefit", which is reflected in ongoing annual increases to the lifetime income payments.

The CSA granted exemptive relief to the fund to permit it to calculate the redemption price of a security of a class of the fund at a price that may be less than

[3] As of March 31, 2022.

the net asset value (**NAV**) per security of that class, with specific disclosure requirements related to this feature. The decision also permits the fund facts document to include certain charts intended to assist investors in understanding the unique investment objective of the fund and assessing the appropriateness of the fund for their needs.

Interval Fund

The first interval fund was receipted by the CSA and is similar to the interval funds that have been available in the United States. The review of this non-redeemable investment fund was subject to an extensive pre-filing process with the filer and the CSA. As an "interval fund", it is structured to offer its units for purchase on a monthly basis and offers to repurchase units (effectively, redeem) on a quarterly basis. The repurchases are capped at 5% of its NAV per quarter. Investors will be paid out on a pro rata basis if the repurchase offer is oversubscribed.

The CSA granted exemptive relief to allow the fund to invest in illiquid private credit assets. Given the type of investments and the limited redemption features of the fund, the fund is for long-term investors who can bear the risks associated with the limited liquidity of the units. The fund is only distributed by dealers who are registered with the Investment Industry Regulatory Organization of Canada (**IIROC**).

The exemptive relief is subject to several conditions, including that an independent valuator must be used to calculate the monthly NAV of the private credit assets of the fund and that the prospectus and fund facts document for the fund has text box disclosure that highlights the unique features of the fund. The exemptive relief is subject to a five-year sunset clause.

Carbon Credit Futures Funds

Two IFMs launched funds with investment objectives to invest their assets in listed futures that reference carbon credits. These carbon credits (also known as carbon allowances) are tradeable credits that are used by companies in a "cap and trade" carbon emissions regime to offset their emissions output for the purposes of complying with emissions limits under the program. These funds specifically invest in futures that reference the largest and most liquid credit programs in the world: The EU Allowance, the California Carbon Allowance and the Regional Greenhouse Gas Initiative Allowance. The futures are standardized futures that trade on the ICE Exchanges, however, there are similar programs launching in other jurisdictions (including China) soon that will likely expand this market considerably.

This is a new asset class for retail funds in Ontario and a relatively new fund strategy worldwide, being used by only a small number of funds which mostly launched within the last few years. However, the futures in which these funds invest have over a decade of trading history, having launched shortly after the respective cap and trade programs and are highly liquid.

ESG-Related Funds

On January 19, 2022, the CSA published CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure* (the **ESG Staff Notice**). The ESG Staff Notice provides guidance for investment funds on their disclosure practices as they relate to ESG considerations, particularly funds whose investment objectives reference ESG factors and other funds that use ESG strategies (**ESG-Related Funds**).

The purpose of the guidance is to enhance the ESG-related aspects of the funds' regulatory disclosure documents and to ensure that the sales communications of such funds are not untrue or misleading and are consistent with the funds' regulatory offering documents.

During the prospectus review process, staff have been reviewing, and will continue to review, the prospectuses and related documents of ESG-Related Funds in accordance with the guidance provided in the ESG Staff Notice to assist IFMs in improving the disclosure of such funds.

The reviews have generally been focused on, but not limited to, the fund's:

- investment objectives and name
- fund type
- investment strategies
- proxy voting policies and procedures
- risk disclosure
- suitability disclosure

Comments raised during these reviews have covered a wide range of issues relating to ESG-related disclosure, but the most common issues raised so far have been in relation to:

- revising the investment objectives to ensure that the ESG-related focus of the fund is clearly and accurately stated; and
- revising the investment strategies disclosure to explain which ESG-related strategies are applied by the fund and to identify and explain the ESG factors considered by the fund.

As part of these reviews, staff are asking IFMs to provide copies of all sales communications relating to the ESG-Related Fund(s) in question that were disseminated recently and are reviewing those sales communications in accordance with the guidance provided in the ESG Staff Notice.

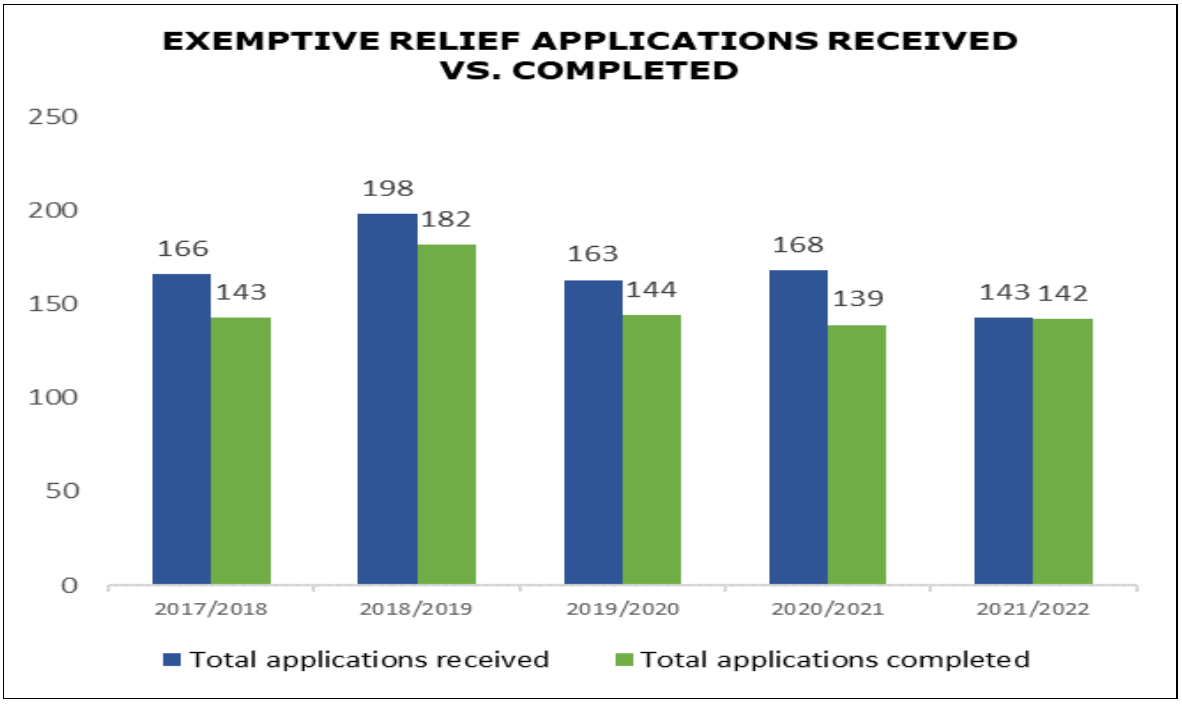
II. Exemptive Relief Applications

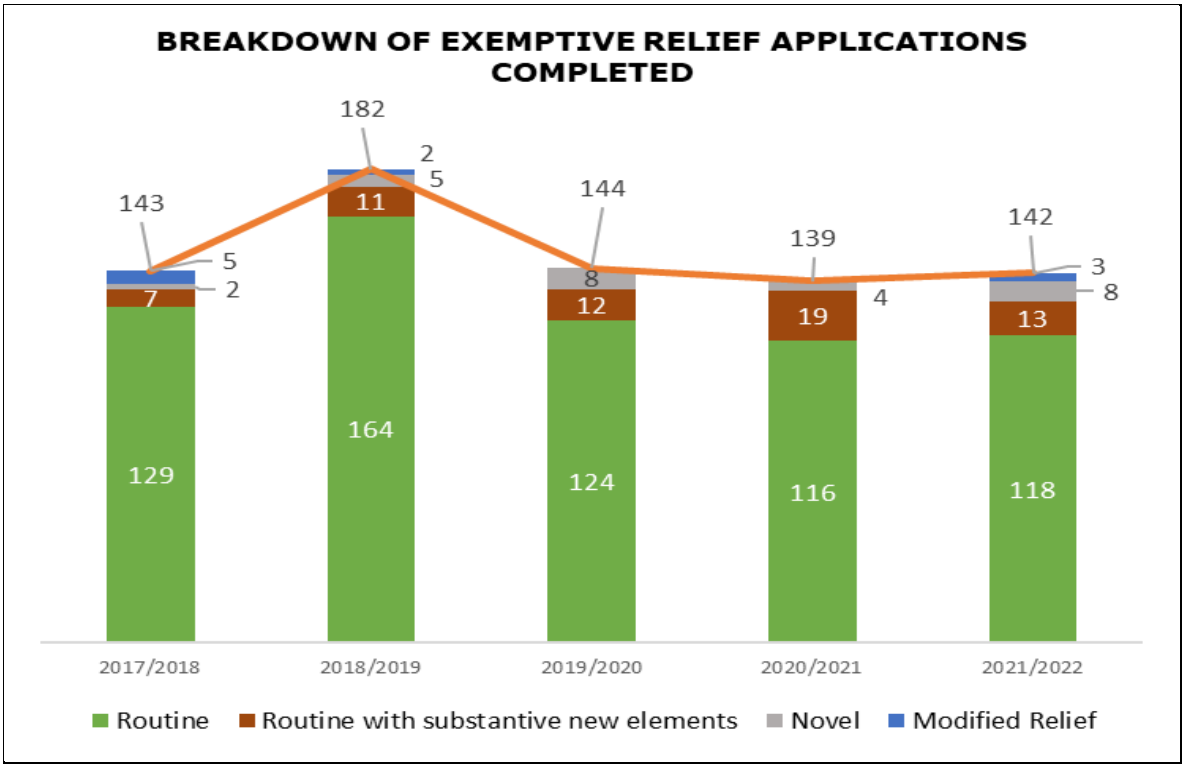
IFSP reviews applications for exemptive relief to determine whether granting the requested relief would not be prejudicial to the public interest and makes a recommendation on that basis. We receive exemptive relief filings that are

considered either routine or novel in nature. Routine applications generally mirror a prior decision and contain similar representations and conditions in the decision document as a previous decision. In some cases, routine applications contain changes that would be considered substantive new elements, and these are considered based on the fact patterns of the application to determine whether the same or modified conditions of the relief would be appropriate.

Novel applications generally consist of requests for relief that have not previously been granted or that deviate substantially from the fact patterns underlying any prior decisions. These applications generally take longer to review because of their nature and complexity, and we consult with the CSA on all novel applications.

Data on Exemptive Relief Applications





Novel Exemptive Relief Applications

In addition to the exemptive relief that was granted in relation to the novel prospectus filings discussed earlier, a summary of additional noteworthy exemptive relief granted during the last fiscal period is described below.

Inter-Fund Trading Relief

In May 2021, the CSA granted exemptive relief to a group of investment funds and a registered adviser to permit domestic and cross-border (U.S.) inter-fund trading. The relief granted gives investment funds more flexibility on how to comply with the market integrity requirements in section 6.1 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). The relief is expected to help investment funds execute transactions more efficiently and streamline their compliance procedures without compromising investor protection.

The relief permits the funds to comply with market integrity requirements by using either to execute an inter-fund trade: (a) a third-party IIROC registered dealer, or (b) a third-party broker or dealer domiciled and registered in the U.S provided certain additional conditions are met. Additionally, in certain circumstances, inter-fund trades in Canada-U.S. inter-listed securities executed by a third-party U.S. broker or dealer may be printed on a marketplace in Canada or in accordance with applicable U.S. market transparency obligations.

This relief exempts this particular group of funds from subsection 4.2(1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) and a registered adviser from subparagraphs 13.5(2)(b)(ii) and (iii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

The relief is subject to a three-year sunset clause and reporting requirements.

Canadian Depository Receipts

The CSA granted exemptive relief to a Schedule I Bank (**Bank**) to facilitate the distribution of Canadian Depositary Receipts (**CDRs**). CDRs trade over a Canadian marketplace and track the performance of large, highly liquid public companies in the United States. The product was subject to extensive prefiling discussions.

Investors can purchase CDRs in their Canadian dollar brokerage accounts and they are denominated in Canadian dollars. Also, the U.S. dollar exposure of the underlying U.S. company is hedged back to the Canadian dollar. CDRs are in continuous distribution and are subscribed for, and redeemed by, authorized participants in a similar way to exchange-traded funds. They are qualified for distribution under a base shelf prospectus and prospectus supplements.

The decision grants exemptive relief to the Bank from:

- the requirement to deliver to the purchaser of a CDR or its agent the latest prospectus or prospectus supplement (similar to exemptions provided to at-the-market distributions);
- certain prospectus form requirements relating to the statements regarding the delivery to purchasers of the prospectus or prospectus supplements and relating to the statement regarding purchasers' statutory rights of withdrawal and remedies of rescission or damages;
- the requirement to distribute securities under a prospectus at a fixed price to permit the CDRs to be issued at the current market price;
- the requirement to file a pricing supplement to distribute securities under a base shelf prospectus by way of a continuous distribution; and
- other technical relief to facilitate the proposed CDR structure.

The exemptive relief is subject to several conditions, including that CDRs not be used by U.S. companies to raise capital, and the Bank maintain a website that discloses certain specified information relating to the CDRs.

Under the exemptive relief, a U.S. company must be incorporated in the United States, be listed on the S&P 500 Index and have a market capitalization in excess of US$20 billion. The underlying shares must be listed on the NASDAQ or New York Stock Exchange, and the average daily trading volume of the shares in the month before the date of the first prospectus supplement for that CDR must exceed US$100 million.

III. Continuous Disclosure Reviews

IFSP regularly conducts reviews of the prospectus and continuous disclosure filings of Ontario-based investment funds. Risk-based criteria are used to select investment funds for reviews of their disclosure documents. We may also choose to conduct targeted reviews of a particular industry segment, on a particular issue or based on complaints received.

On a go-forward basis, IFSP is coordinating with the Digital Solutions Branch on using internal and external data sources to develop dashboards that will be used to identify investment fund outliers in key risk areas to identify higher risk fund issuers and conduct focused reviews. A major contributor to this information will be the data gathered as part of the annual Investment Fund Survey discussed in Part D of this Report.

Summary of Completed Reviews

Outlined below are the major reviews completed by IFSP during the fiscal period:

Liquidity Risk Management

In the first quarter, we completed a review on liquidity risk management for IFMs that experienced significant redemptions during the period January 1 to June 30, 2020. On July 9, 2020, a survey was sent to registrants on the impact of COVID-19 on their business. As part of the survey, IFMs were asked whether any of their prospectus qualified investment funds experienced redemptions which exceeded 10% of the fund's NAV on a redemption date during the specified period. A total of 38 IFMs responded "Yes" to the survey question, with 336 impacted funds. IFSP staff commenced a follow-up review of 12 of these IFMs in fiscal 2020-2021 to assess how they dealt with these significant redemption events and to obtain information on their liquidity risk management policies. The IFMs sampled included a range of small, mid-size and large firms and the impacted funds comprised ETFs, conventional mutual funds, closed end funds, and a labour sponsored investment fund. We found that all these IFMs were able to manage their funds' significant redemptions as part of the normal course of operations, without breaching any borrowing restrictions under NI 81-102 or requiring exemptive relief.

IFMs are reminded to review CSA Staff Notice 81-333 *Guidance on Effective Liquidity Risk Management for Investment Funds* for best practices in this area.

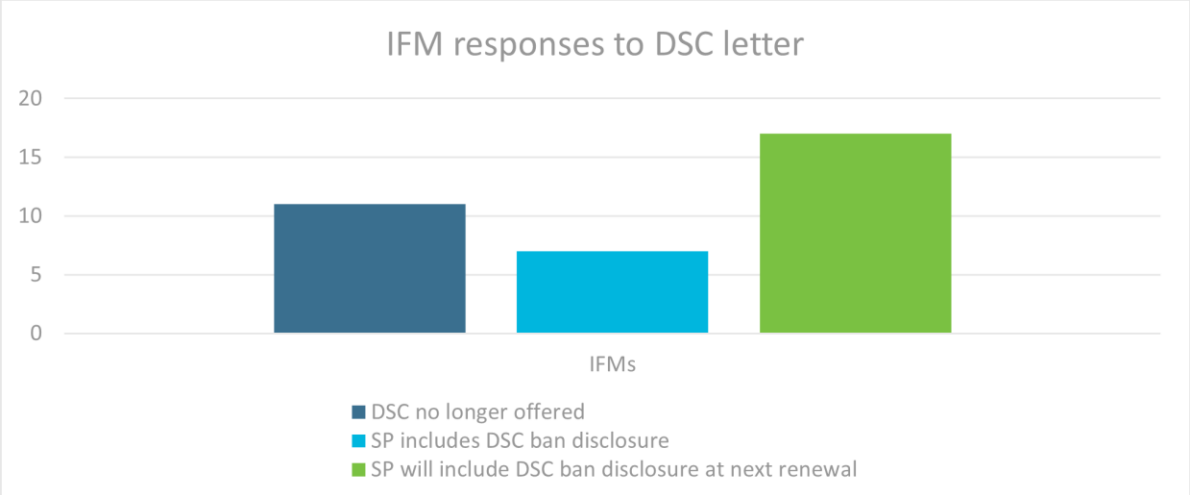
Crypto Asset ETFs

IFSP staff carried out an issue-oriented review on crypto asset ETFs considering the market volatility during the week of May 17, 2021 which arose partly due to concerns around digital assets by foreign regulators. The purpose of the review was to understand how IFMs managed their subscription and redemption activity, where they sourced the crypto assets, and how IFMs continued to accurately value their funds. Inquiries were made to 11 crypto asset ETFs managed by six IFMs with total assets under management of $2.7 billion as of May 21, 2021.

IFSP found that the majority of the crypto asset ETFs traded very close to their NAV during the period of volatility.

Compliance with DSC Ban

Effective June 1, 2022, IFMs will be prohibited from paying upfront sales commissions to dealers, which will result in the discontinuation of all forms of the deferred sales charge option (**DSC ban**). On September 10, 2021, IFSP sent letters to 35 IFMs who manage a material amount of mutual funds with the deferred sales charge (**DSC**) option to ascertain their readiness to comply with the DSC ban and whether their prospectus disclosure was being modified in anticipation of the upcoming ban. The letters asked the IFMs about the specific measures that will be taken to comply with the DSC ban prior to the effective date of June 1, 2022, and whether the DSC option will be discontinued. Of the responses received, the IFMs indicated that (1) the DSC option is no longer offered, (2) their prospectus already includes disclosure about the DSC ban and/or that the DSC option will no longer be available as of a date prior to the effective date of the DSC ban, or (3) at their next renewal, the prospectus will include disclosure about the DSC ban and/or that the DSC option will no longer be available as of a date prior to the effective date of the DSC ban.



ESG-Related Funds

Staff conducted a targeted continuous disclosure review of the regulatory disclosure documents and sales communications of 32 ESG-Related Funds managed by 23 different IFMs, as a follow-up to a similar continuous disclosure review of ESG-Related Funds conducted in 2020. The purpose of both the 2020 and 2021 reviews was to assess the quality of the fund's ESG-related disclosure, including whether the fund's disclosure of how ESG factors are integrated into its investment objectives and/or strategies in the fund's prospectus met the standard of full, true and plain disclosure of all material facts, and whether the fund's sales

communications were misleading. The reviews were also aimed at evaluating how well the current disclosure requirements address ESG-Related Funds and ESG-related disclosure to determine whether guidance was needed to explain how the current disclosure requirements apply to ESG-Related Funds and ESG-related disclosure.

In staff's view, the reviews indicated that, while the current disclosure requirements are broad enough in scope to address ESG-Related Funds and other ESG-related disclosure, regulatory guidance was needed to clarify how the current disclosure requirements apply to ESG-Related Funds and other ESG-related disclosure to improve the quality of ESG-related disclosure and sales communications. In addition, staff found that the disclosure of ESG-Related Funds would benefit from greater detail about the ESG-related aspects of the fund, particularly regarding disclosure on investment strategies, proxy voting and continuous disclosure.

Based on the findings of the reviews, staff's observations of ESG-related changes to existing funds, and recommendations from IOSCO's Sustainable Finance Task Force which are discussed further below under Part D, the CSA published the ESG Staff Notice. A more detailed summary of the findings from this review are included in Part E of the ESG Staff Notice.

As part of OSC staff's ongoing continuous disclosure review program, staff are reviewing, and will continue to review, the continuous disclosure documents of ESG-Related Funds in accordance with the guidance provided in the ESG Staff Notice to assist IFMs in improving the disclosure of such funds. For these reviews, the primary focus is on the summary of the results of operations in annual and interim management reports of fund performance. As part of these reviews, staff are also requesting copies of all sales communications relating to ESG-Related Fund(s) and are reviewing those sales communications in accordance with the guidance provided in the ESG Staff Notice.

Marketing Materials

Staff have received some complaints related to sales communications and have performed several ad hoc reviews in this area. The complaints have typically dealt with insufficient disclosure and exaggerated or misleading claims, particularly in internet advertising and on social media platforms like Facebook, Twitter, and LinkedIn. The use of social media has become more widespread and popular for marketing purposes by IFMs and their employees. However, content limitations with these types of media may prevent IFMs from providing clear, accurate and balanced messages which are necessary when these meet the definition of a sales communication under NI 81-102. Part 15 of NI 81-102 outlines requirements related to sales communications and prohibited representations which IFMs must comply with, irrespective of the type of media in which these communications are presented. Further, OSC Staff Notice 81-720 *Report on Staff's Continuous Disclosure Review of Sales Communications by Investment Funds* provides

additional guidance when the sales communication is presented with alternative media. The guidance states that "*Staff expect that all information, including disclaimers, should be easily comprehensible to the retail investor on their first viewing of the advertisement*." Further, investors should not be required to click more than once to view the required disclosures and warnings, which should be presented in an easily readable manner. These principles should be applied to both the IFM's social medial accounts, and those of its employees where they are using their personal platforms such as LinkedIn to market specific funds or performance. Staff expects that these should still contain all the required disclosure and warning language that are applicable to more traditional marketing platforms.

IFMs should review the use of personal social media with their employees who use their accounts to market investment funds to ensure that all information presented complies with Part 15 of NI 81-102, including the required warning language, appropriate performance data measurement periods and is not misleading. Where performance information is intended for "advisor use only" but is disseminated or available widely on social media, particularly by IFM wholesalers, the information presented should comply with NI 81-102. IFMs should also ensure that they have adequate policies and procedures related to the use and monitoring of social media, and that training is provided to employees where necessary.

Custodian Compliance Reporting

During 2021, we conducted reviews on more than half the submissions of custodian compliance reports. The findings from the review reveal that approximately 30% of the submissions require follow up with the IFMs due to non-compliance with the reporting requirements outlined in section 14.6 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) or section 6.7 of NI 81-102, as applicable.

The compliance issues found include late submissions of the custodian reports by the custodian and/or IFM, and submissions that did not contain the accompanying list of the names and addresses of the sub-custodians.

Other issues identified include:

- Custodian reports that contained the previous names of active investment funds;
- Submissions of custody reports on the incorrect SEDAR fund group number;
- Funds listed in the same custody report that have different year ends, which results in a late submission for certain of the funds listed, and;
- Incorrectly stating the section for which compliance is satisfied, for example funds qualified under the long form prospectus should be stating compliance with section 14.2 of NI 41-101.

All reports that are required to be delivered on behalf of investment funds, including the custodian reports, should be thoroughly reviewed for completeness and accuracy, and delivered to the Commission in a timely manner.

Cybersecurity Disclosure

As part of a desk review, we reviewed the cybersecurity risk disclosure for a sample of funds managed by small, medium and large IFMs based on assets under management. The review focused on whether there was some type of cybersecurity risk disclosure in the publicly filed fund documents, primarily the prospectus. Investment fund products and their service providers are susceptible to risks through breaches in cybersecurity. Cybersecurity breaches can cause major disruptions in the operation of a fund and may allow cybercriminal activity to occur.

IFMs generally included cybersecurity risk disclosure under the "What are the Risks of Investing in the Fund" section of the prospectus, with 80% of the prospectuses reviewed including some type of disclosure in this area. We also reviewed the funds' financial statements, management reports of fund performance, annual information forms and the IFMs' websites to identify any other information provided on cybersecurity risks, however, no particular trends on disclosure practices were noted in these documents.

Given the real threat of cybersecurity attacks due to the increased dependency by IFMs on technology and the growing sophistication of cyber criminals, all IFMs should review the risks disclosed in their funds' prospectus and perform a thorough risk assessment to determine whether cybersecurity risk is a material risk to its funds which merits disclosure in the prospectus. IFMs who do not include this type of disclosure in their funds' prospectus may be selected for a more in-depth review to explain the rationale for excluding this important risk disclosure in their funds' regulatory documents.

Part C: Regulatory Policy

IFSP has been engaged in numerous policy initiatives affecting investment funds. We are pleased that several of these major initiatives resulted in the publication of final rule amendments during the period. This section details the major policy initiatives that were completed or are in progress during the period:

Prohibition of Deferred Sales Charges

On June 3, 2021, the OSC published final amendments to National Instrument 81-105 *Mutual Fund Sales Practices* that prohibit the payment by fund organizations of upfront sales commissions to dealers, resulting in the discontinuation of all forms of the deferred sales charge option. The DSC ban took effect on June 1, 2022 in Ontario, which coincides with the effective date of the DSC ban in the other CSA jurisdictions.

Blanket Order Issued to Codify Permitted Means to Comply with the Trailer Ban for Order Execution Only (OEO) Dealers

On March 18, 2022, the OSC published Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers.* Other CSA jurisdictions also published exemptions in the form of local blanket orders. These orders codify the methods permitted to be used by industry to comply with the trailer ban in circumstances where forced redemptions may be harmful to investors. In September 2020, the CSA adopted final rules that implement a trailing commission ban to prohibit the payment of trailing commissions by fund organizations to dealers who do not make a suitability determination, such as OEO dealers (the **OEO Trailer Ban**). The OSC order came into force on June 1, 2022, the effective date of the OEO Trailer Ban, and expires on November 30, 2023.

The CSA consulted with industry stakeholders to identify temporary provisions which would enable IFMs and OEO dealers to implement the ban without penalizing investors who are holding trailer paying funds in their OEO dealer accounts.

OEO dealers and IFMs are permitted to facilitate dealer rebates of trailing commissions to clients holding mutual funds in OEO dealer accounts and process client transfers in certain circumstances. Under the terms and conditions of the temporary exemptions:

- Dealer rebates will be provided to clients where switches to an equivalent or a substantially similar series or class of mutual fund securities of the same fund are not available and where a management fee rebate of the trailing commission is also not available;
- OEO dealers and fund organizations will also be exempted from the OEO Trailer Ban for a period of up to 45 days upon the acceptance of client-

initiated transfers of mutual funds on or after June 1, 2022, to facilitate the processing of such transfers; and
- Affected clients of OEO dealers will receive communications about how their holdings will be impacted. The local blanket orders outline these client communication plans.

Reducing Regulatory Burden for Investment Fund Issuers

On October 7, 2021 the CSA published amendments that implement eight initiatives to reduce regulatory burden for investment funds. The changes eliminate duplicative requirements, streamline regulatory approvals and processes, and codify frequently granted exemptions from certain requirements. Most of the amendments came into force on January 5, 2022, with the remainder on January 6, 2022. There are exemptions available from some of the requirements to give issuers more time to comply.

These amendments complete the first stage of the CSA's initiative to reduce the regulatory burden on investment fund issuers. Subsequent stages will include further examination of the prospectus filing regime; modernizing the continuous disclosure regime; and exploring alternatives to the current requirements for delivering various investment fund related materials.

A summary of the eight amendment initiatives is as follows:

Consolidate the Simplified Prospectus and the Annual Information Form

Previously, investment funds had to file a simplified prospectus (**SP**) and an annual information form (**AIF**), among other documents, every 12 months to receive a prospectus receipt to allow them to distribute securities over the course of the next year. The requirements for the SP and AIF contained duplicative or similar information in several places, or information that was no longer considered necessary based on stakeholder feedback. The amendments consolidate the form requirements of the AIF into the form requirements for the SP such that investment funds in continuous distribution will now only need to file a single streamlined document annually.

Mandate each Reporting Issuer Investment Fund have a Designated Website

The amendments require investment funds to identify a website where their regulatory disclosures, previously in printed documents, will be posted. This formalizes existing industry practice, improves investor access to disclosure and potentially creates opportunities for additional burden and cost reduction initiatives.

Codify Exemptive Relief Granted in Respect of Notice-and-Access Applications

Securities rules require that when a person or company solicits proxies from a registered holder of securities of an investment fund, a notice of meeting and an information circular must be sent. The information circular can oftentimes be lengthy and therefore expensive to print and deliver. In 2016, securities regulators began granting discretionary exemptive relief to permit investment funds to use the notice-and-access system. The notice-and-access document provides instructions on how to obtain a copy of the information circular via a website or by requesting a paper copy. The amendments permit use of the notice-and-access system for investment funds without the need to file an exemptive relief application and pay the requisite fee.

Minimize Filings of Personal Information Forms

Securities rules require that when an investment fund seeks a receipt that will permit them to distribute securities, they must submit personal information forms as part of the process. The amendments eliminate the need for investment funds to file these forms for certain individuals, where comparable information is already available through the national registration system maintained by Canadian securities regulators.

Codify Exemptive Relief Granted in Respect of Conflicts Applications

Currently, securities rules do not permit investment funds to engage in certain transactions due to concerns that the entities managing the investment funds may engage in these transactions out of self-interest, instead of the interests of the investment fund. Despite the presence of these prohibitions, securities regulators have frequently granted investment funds and IFMs exemptive relief to engage in these transactions provided that certain conditions are met which mitigate the conflicts of interest and protect investment fund securityholders. The amendments permit investment funds to engage in eight transactions that were previously prohibited, without the need to apply for exemptive relief to do so.

Broaden Pre-Approval Criteria for Investment Fund Mergers

Securities rules require regulatory approval of a merger of investment funds before the merger is undertaken. However, exceptions to this requirement are available if certain conditions, known as “pre-approval criteria”, are met. The amendments broaden the pre-approval criteria for investment fund mergers so that there will be fewer instances where an investment fund must seek regulatory approval to engage in a merger.

Repeal Regulatory Approval Requirements for a Change of Manager, a Change of Control of a Manager, and a Change of Custodian that Occurs in Connection with a Change of Manager

Previously, investment funds had to undertake an approval process each time any of these changes occurred. The amendments eliminate the requirement to obtain regulatory approval of a change of manager of an investment fund, a change of control of a manager of an investment fund, or a change of custodian that occurs in connection with a change of manager of an investment fund.

Codify Exemptive Relief Granted in Respect of the Fund Facts Delivery Requirement and Corresponding Exemptions from the ETF Facts Delivery Requirement

The amendments provide exceptions from the Fund Facts and ETF Facts delivery requirements in the context of managed accounts, permitted clients, pre-authorized purchase plans, model portfolio products, portfolio rebalancing services, and automatic switch programs. Delivering a Fund Facts or ETF Facts in these situations may often be unnecessary and of no value to an investor as the Fund Facts or ETF Facts was initially delivered at the outset when the investment decision was made.

Proposed Modernization of the Prospectus Filing Model

On January 27, 2022, the CSA published for comment a two-staged proposal to modernize the prospectus filing model for investment funds for a 90 day comment period.

The first stage consists of proposed amendments that would allow investment funds in continuous distribution to file a new prospectus every two years instead of on an annual basis as they currently do. The requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus for all investment funds would also be repealed.

As part of the second stage, the CSA is seeking stakeholder comments on a consultation paper introducing a new shelf prospectus filing model which could apply to all investment funds in continuous distribution. The conceptual framework for this model is based on an adaptation of the current shelf prospectus system.

In keeping with current requirements, investor access to continuous disclosure documents as well as delivery of the Fund Facts and the ETF Facts remains unchanged. Investors will still be able to request the prospectus or access it online.

Blanket Relief for Proficiency Requirements to Distribute Alternative Mutual Funds

On February 24, 2022, the OSC published Notice of Commission Approval of OSC Rule 81-507 *Extension to Ontario Instrument 81-506 Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds* (**Rule 81-507**).

Rule 81-507 extends the blanket relief issued on January 28, 2021 by Ontario Instrument 81-506 *Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds* (the **OSC Blanket Order**) by 18 months. The OSC Blanket Order provides mutual fund restricted dealing representatives (**MFRIs**) in the Mutual Fund Dealers Association channel with additional proficiency options for distributing alternative mutual funds. Additional proficiency requirements are necessary to support appropriate know your product and suitability assessments of alternative mutual funds by MFRIs for their clients.

Alternative mutual funds were introduced to the Canadian retail market through amendments to NI 81-102 in 2019. These amendments aimed to provide retail investors with greater access to alternative investment strategies, while maintaining appropriate protections. Alternative mutual funds are permitted to invest in asset classes and use investment strategies that are not permitted for other types of mutual funds. The OSC Blanket Order and Rule 81-507 provide additional proficiency course options to better align proficiency requirements with information on alternative mutual funds, and to ensure MRFIs seeking to distribute alternative mutual fund securities have the education, training and experience that is necessary to understand the structure, features, and risks of any alternative mutual fund that they may wish to recommend to a client, to support investor protection.

The OSC Blanket Order ceased to be effective on July 28, 2022, and Rule 81-507 extends the relief provided in the OSC Blanket Order for an additional 18-month period from July 29, 2022 to January 29, 2024.

Part D: Emerging Issues and Initiatives

Environmental, Social and Governance Funds

On June 30, 2021, the Sustainable Finance Task Force (**STF**) of IOSCO published a consultation report titled *Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management* (the **IOSCO Consultation Report**). The OSC is a co-lead of the asset management workstream of the STF that produced the IOSCO Consultation Report, and as such, IFSP Branch staff have been involved extensively in the workstream. The IOSCO Consultation Report set out proposed recommendations for securities regulators and policymakers, as applicable, to improve sustainability-related practices, policies, procedures, and disclosure in asset management. The proposed recommendations covered asset manager practices, policies and procedures, product-level disclosure, supervision and enforcement, terminology, and financial and investor education.

On November 2, 2021, the STF published its final report titled Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management which sets out recommendations for securities regulators and policymakers, as applicable, that aim to improve sustainability-related practices, policies, procedures and disclosure in asset management.

As discussed earlier in the Report, the CSA published CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure* on January 19, 2022. As part of the process of preparing this ESG Staff Notice, OSC staff conducted a series of stakeholder consultations on ESG-related fund disclosure in August 2021. The CSA also hosted the CSA Roundtable on ESG-Related Regulatory Issues in Asset Management on September 27, 2021 as part of the consultation process for the ESG Staff Notice. The roundtable was a virtual public roundtable featuring a panel discussion about the benefits, challenges and experiences associated with ESG-related fund disclosure, marketing and other issues from the perspective of asset managers, ESG ratings providers and retail investors.

Investment Fund Survey

On April 26, 2021, the OSC issued its first annual data request seeking key information about investment funds managed by IFMs registered in Ontario (the **Investment Fund Survey**). The OSC published OSC Staff Notice 81-732 *Investment Fund Survey* which provided further background information on this initiative and explains the role of the Investment Fund Survey in data collection and analysis by the OSC. In the past, the OSC has collected and sourced data pertaining to investment funds through the Risk Assessment Questionnaire. The Investment Fund Survey complements this data collection and focuses on different key areas, including leverage, liquidity, and asset class exposures. The 2021 Investment Fund

Survey requested this information for the period from January 1, 2020 to December 31, 2020 and 100% of IFMs responded to the request. Moving forward, the OSC will collect data through the Investment Fund Survey on an annual basis. Accordingly, the 2022 Investment Fund Survey was launched January 12, 2022 with responses due on April 29, 2022.

The Investment Fund Survey is compatible with the OSC's ambition to aggregate, streamline, and modernize our data collection strategies. Staff is currently working with the Digital Solutions Branch to aggregate and analyse the received data as part of the development of a risk identification framework that will help deliver on our mandate. We will continue to consider ways in which this data collection can be further streamlined in future years, including by incorporating feedback received from stakeholders on the 2021 Investment Fund Survey to reduce regulatory burden, as appropriate, without sacrificing information necessary for regulatory oversight.

The data gathered will also allow for comprehensive and meaningful information sharing and interactions with regulatory partners, both domestically and internationally. The OSC collaborates its monitoring activities with other regulatory bodies with a shared interest in promoting financial stability. Domestically, the OSC is part of the Heads of Regulatory Agencies (**HoA**), which provides a forum for federal and provincial bodies to discuss financial sector issues. Globally, the OSC is a member of IOSCO and coordinates information sharing with bodies such as the Financial Stability Board (**FSB**). IOSCO requests information regarding leverage within investments funds on an annual basis, with an April reporting deadline.

To contribute to financial stability, we will consider making summary or aggregated data publicly available on a no-names basis. Aggregated data may also be shared with other regulatory partners such as through the HoA and the FSB. In addition, we may also share the information provided in this survey on a confidential basis with other CSA jurisdictions.

Exchange Traded Funds

In light of the continued growth of the ETF market, staff are considering whether the current regulations applicable to ETFs remain appropriate, or whether additional measures are needed. The areas of our focus are: (i) the ETF unit creation and redemption mechanism; (ii) the secondary market trading of ETFs; and (iii) the arbitrage mechanism that acts to keep the market price of ETFs close to the underlying value of its units. These areas are also being considered in the ETF project undertaken by IOSCO Committee 5. We continued to monitor the IOSCO ETF project:

I. we compared the findings in IOSCO's *Exchange Traded Funds Thematic Note - Findings and Observations during COVID-19 Induced Market Stresses*

(published in August 2021) with the experience of Canadian ETFs, concluding that Canadian ETFs exhibited similar performance as ETFs in other jurisdictions.

II. we considered the good practices proposed in IOSCO's *Exchange Traded Funds – Good Practices for Consideration* report published for consultation in April 2022, and also encouraged ETF managers to provide their feedback to the consultation.

We expect that any additional policy measures for ETFs will be informed by the IOSCO ETF Good Practices.

We have also started to develop a program to monitor the robustness of ETF trading and increase our current knowledge of ETF market practices, including reviewing the information about authorized dealer arrangements and portfolio transparency practices obtained through our annual Investment Fund Survey.

Finally, we are considering potential models for civil liability for misrepresentations in ETF prospectuses in connection with the consultation in the *Capital Markets Act* consultation draft.

Part E: Stakeholder Outreach

IFSP supports and encourages regular engagement and communication with our stakeholders to provide education and make improvements on our regulatory processes. The following are key IFSP outreach initiatives for our stakeholders:

IFSP Landing Page on OSC Website

The IFSP landing page of the OSC website contains information relevant for investment fund issuers and their respective IFMs. This is a good resource to obtain information on the following areas:

- Types of investment funds
- Prospectus offerings for investment funds in Ontario
- Operating an investment fund in Ontario
- Ongoing disclosure requirements for investment funds in Ontario
- Marketing and sales of investment funds
- IFSP eNews publications
- Applying for discretionary relief
- Investment fund survey
- Latest policy developments affecting investment funds
- Latest orders, rulings and decisions involving investment funds

Launch of IFSP eNews

On February 24, 2021, the IFSP branch launched IFSP eNews, a web-based publication which aims to provide timely information about regulatory news and issues to investment fund and structured product issuers and their advisors in the form of articles published on a timely, as-needed basis. IFSP eNews replaces the Investment Funds Practitioner as IFSP's primary method of stakeholder communication. IFSP eNews articles are posted on a dedicated page on the OSC website, while IFSP branch email list subscribers also receive each eNews article via an e-mail blast. Registration for email subscription can be done here. Articles that remain relevant from the Investment Funds Practitioner are now included in the list of IFSP eNews articles.

During the fiscal year, we published several eNews articles that cover topics already discussed throughout the Report:

June 3, 2021: OSC adopts ban on deferred sales charges

June 16, 2021: Relief from redemption price requirement for "income for life" mutual fund

June 18, 2021: Relief granted to permit domestic and cross-border (U.S.) inter-fund trading

July 5, 2021: IFSP Branch encourages stakeholders to provide comments on recent IOSCO Sustainable Finance Task Force consultation report

July 15, 2021: OSC publishes staff notice on recent investment fund survey

August 27, 2021: Relief granted to permit distribution of Canadian Depository Receipts

October 15, 2021: Capital Markets Act consultation on civil liability framework for misrepresentations in ETF prospectuses

November 4, 2021: IOSCO Sustainable Finance Task Force publishes final report on sustainability-related practices and disclosure in asset management

November 26, 2021: OSC encourages stakeholders to provide comments on proposed MFDA Policy No. 11 *Proficiency Standards for the Sale of Alternative Mutual Funds*

January 26, 2022: Prospectus, continuous disclosure and sales communication reviews of ESG-related funds

February 24, 2022: OSC extends blanket relief providing additional proficiency options for distributing alternative mutual funds

Stakeholder Survey

In November 2020, IFSP launched a pilot stakeholder survey which coincided with the publication of the OSC's enhanced service standards. The survey complements the service standards by allowing us to maintain and improve the quality of how we deliver our work. The survey is designed to solicit input from stakeholders about their experience during a recent regulatory interaction with IFSP, with a focus on key qualitative elements such as the timeliness and clarity of communication.

Initially, the survey was delivered via email upon the completion of a prospectus or application file or a continuous disclosure review. Since July 5, 2021, we have been directing stakeholders, upon the completion of a file, to our landing page on the OSC website where the link to the survey is posted.

Since the implementation of the survey, we have seen positive results about our regulatory interactions with stakeholders and have not identified any negative trends.

Investment Funds Technical Advisory Committee

The Investment Funds Technical Advisory Committee (**IFTAC**) provides an opportunity for stakeholders to engage with the OSC to further effective regulation in the investment funds and structured products space. The IFTAC advises OSC staff on technical compliance challenges in the investment funds product regulatory

regime and highlights opportunities for improving alignment between investor, industry, and regulatory goals.

IFTAC meets four times a year with members participating for two-year terms.

Topics discussed by IFTAC over the past year included:

- Perspectives on portfolio management
- Diversity and Inclusion
- Liquidity Risk Management
- ESG
- Fund Governance
- Product innovation

Staff Contact Information

Contact Area	Staff Contact Information
Management Team	Raymond Chan, Director rchan@osc.gov.on.ca (416) 593-8128 Darren McKall, Manager, Product Offerings dmckall@osc.gov.on.ca (416) 593-8118 Stephen Paglia, Manager, Regulatory Policy spaglia@osc.gov.on.ca (416) 593-2393 Neeti Varma, Manager, Risk and Analytics nvarma@osc.gov.on.ca (416) 593-8067
Preliminary Prospectus Receipts	Joan De Leon, Lead Review Officer jdeleon@osc.gov.on.ca (416) 593-8246 Rosni Alamsjah, Review Officer ralamsjah@osc.gov.on.ca (416) 204-8978
Administrative Matters and Reports of Exempt Distribution	Silvia Do Vale, Branch Administrator sdovale@osc.gov.on.ca (416) 204-8964

OSC ONTARIO SECURITIES COMMISSION

Contact Information

Ontario Securities Commission

Inquiries and Contact Centre

1-877-785-1555 (Toll-free)

(416) 593-8314 (Local)

inquiries@osc.gov.on.ca

The OSC Inquiries & Contact Centre operates from 8:30 a.m. to 5:00 p.m. Eastern Time, Monday to Friday, and can also be reached on the Contact Us page on the OSC website.

You may also refer to the OSC Phone Directory on the OSC website to contact staff members from other branches and offices at the OSC.

If you have questions or comments about this Report, please contact:

Raymond Chan
Director
Investment Funds and Structured Products
rchan@osc.gov.on.ca
(416) 593-8128

Neeti Varma
Manager
Investment Funds and Structured Products
nvarma@osc.gov.on.ca
(416) 593-8067

Noulla Antoniou
Senior Accountant
Investment Funds and Structured Products
nantoniou@osc.gov.on.ca
(416) 595-8920

B.1.2 OSC Staff Notice 33-754 – Compliance and Registrant Regulation Branch – Summary Report for Dealers, Advisers and Investment Fund Managers

OSC Staff Notice 33-754 – Compliance and Registrant Regulation Branch – Summary Report for Dealers, Advisers and Investment Fund Managers is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

ONTARIO SECURITIES COMMISSION

OSC Staff Notice 33-754

Compliance and Registrant Regulation Branch

Summary Report for Dealers, Advisers and Investment Fund Managers

October 14, 2022

Ontario

Table of Contents

Director's Message

We are pleased to share this year's Summary Report for Dealers, Advisers and Investment Fund Managers, which provides an overview of our work during the 2021-2022 fiscal year.

As we return to the office in a hybrid model, staff of the Compliance and Registrant Regulation Branch and from across the Ontario Securities Commission are adjusting work practices to support effective and efficient oversight, guidance, and outreach. We continue to carry out compliance, financial disclosure and conduct reviews through a combination of electronic means. However, we are discussing how to reincorporate in-person meetings with registrants into our hybrid compliance review process and registrant conduct activities. We will keep registrants updated as to when in-person activity will resume.

Highlights from the past year include a compliance sweep of online adviser firms and reviews of firms with limited compliance staffing as compared to their assets under management. We also worked with industry stakeholders on the Client Focused Reforms Implementation Committee to publish comprehensive FAQs to assist the financial industry with operationalizing these important reforms.

Together with the Canadian Securities Administrators, the OSC continues to develop the regulatory framework for the rapidly evolving crypto asset trading industry. Current registrants considering the use of crypto assets are reminded to inform the regulator of this change to their business model. We intend to apply a consistent approach for both new registrants engaged in crypto-related securities activity and existing registrants that are modifying their business models to include crypto assets for the first time.

Looking ahead, our compliance review activity for 2022-2023 will prioritize:

- Assessing the effectiveness of the implementation of the Client Focused Reforms. This multi-year priority will start with a review of conflicts of interest and later transition to a review of KYC, KYP and suitability.
- Compliance reviews of high-risk firms, following the analysis of the data collected in response to the 2022 Risk Assessment Questionnaire.
- Compliance reviews of crypto asset trading platforms.

Our Registrant Outreach program remains a priority, and we continue to provide tools and programs to help registrants with their compliance obligations. Visit the Registrant Outreach webpage to access the Topical Guide for Registrants, Director's decisions, and calendar of events for past and upcoming educational webinars.

If you have a question, comment, or would like to discuss regulatory matters, please feel free to reach out to us. As always, we look forward to engaging with you.

Debra Foubert
Director, Compliance and Registrant Regulation

Glossary of legislative references

Act: *Securities Act*, RSO 1990, c. S. 5

Form 13-502F4: Form 13-502F4 *Capital Markets Participation Fee Calculation*

Form 13-502F5: Form 13-502F5 *Adjustment of Fee for Registrant Firms and Unregistered Capital Markets Participants*

Form 31-103F1: Form 31-103F1 *Calculation of Excess Working Capital*

Form 33-109F4: Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*

Form 33-109F5: Form 33-109F5 *Change of Registration Information*

Form 33-109F6: Form 33-109F6 *Firm Registration*

NI 21-101: National Instrument 21-101 *Marketplace Operation*

NI 23-101: National Instrument 23-101 *Trading Rules*

NI 23-102: National Instrument 23-102 *Use of Client Brokerage Commissions*

NI 23-103: National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*

NI 24-101: National Instrument 24-101 *Institutional Trade Matching and Settlement*

NI 31-103: National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations

NI 31-103CP: Companion Policy to NI 31-103

NI 33-105: National Instrument 33-105 Underwriting Conflicts

NI 33-109: National Instrument 33-109 Registration Information

NI 45-106: National Instrument 45-106 Prospectus Exemptions

NI 45-106CP: Companion Policy to NI 45-106

NI 81-102: National Instrument 81-102 Investment Funds

NI 81-105: National Instrument 81-105 *Mutual Fund Sales Practices*

NI 81-107: National Instrument 81-107 Independent Review Committee for Investment Funds

OSC Rule 13-502: OSC Rule 13-502 *Fees*

OSC Rule 31-505: OSC Rule 31-505 Conditions of Registration

OSC Rule 91-507: OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting

Introduction

Who we are

The Compliance and Registrant Regulation (**CRR**) Branch of the Ontario Securities Commission (**OSC**, **Commission**) is responsible for the registration and ongoing regulation of firms and individuals who are in the business of trading in, or advising on, securities or commodity futures and firms that manage investment funds in Ontario. The OSC's mandate is to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair, efficient and competitive capital markets and confidence in capital markets,
- foster capital formation, and
- contribute to the stability of the financial system and the reduction of systemic risk.

CRR's activities are integral to the OSC's vision of being an effective and responsive securities regulator, fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

The purpose of this report

This Summary Report for Dealers, Advisers and Investment Fund Managers (**Summary Report**) prepared by staff of the CRR Branch is designed to assist registrants with information on the following:

Education and outreach

Part 1 of this report provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.

Regulatory oversight activities and guidance

Part 2 of this report can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision.

Impact of upcoming initiatives

Part 3 of this report provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

Registrant conduct activities

Part 4 of this report is intended to enhance a registrant's understanding of our expectations for conduct of registrants and applicants for registration. This section also provides insight into the types of regulatory actions the CRR Branch may take to address non-compliance.

Who this report is relevant to

This Summary Report provides information for registrants that are directly regulated by the OSC. These registrants primarily include investment fund managers (**IFMs**), portfolio managers (**PMs**), exempt market dealers (**EMDs**) and scholarship plan dealers (**SPDs**). At present, registrants overseen by the OSC include:

Firms	Individuals
1,142[1]	68,626

IFMs	PMs	EMDs	SPDs
563[2]	313[3]	262[4]	4[5]

In general, firms must register with the OSC if they conduct any of these activities in Ontario:

- are in the business of trading in, or advising on, securities (this is referred to as the "business trigger" for registration)
- direct the business, operations or affairs of an investment fund
- act as an underwriter
- conduct trading or advising activities involving commodity futures contracts or commodity futures options

Individuals must register if they trade, advise or underwrite on behalf of a registered dealer or adviser, or act as the Ultimate Designated Person (**UDP**) or Chief Compliance Officer (**CCO**) of a registered firm.

---

1 Excludes firms registered solely in the category of MFD, ID, commodity trading adviser, commodity trading counsel, commodity trading manager and futures commission merchant.

2 Includes firms registered only as IFMs and IFMs also registered in other registration categories (with the exception of SPD).

3 Includes firms registered only as PMs, RPMs, and PMs/RPMs also registered in other registration categories (with the exception of IFM).

4 Includes firms registered only as EMDs, RDs, and EMDs/RDs also registered in other registration categories (with the exception of IFM or PM).

5 Includes firms registered only as SPDs and SPDs also registered in other registration categories.

There are seven dealer and adviser categories for firms trading in or advising on securities, or acting as an underwriter, as applicable:

- EMD
- SPD
- restricted dealer (**RD**)
- PM
- restricted portfolio manager (**RPM**)
- investment dealer (**ID**), who must be a member of the Investment Industry Regulatory Organization of Canada (**IIROC**)
- mutual fund dealer (**MFD**), who must, except in Quebec, be a member of the Mutual Fund Dealers Association of Canada (**MFDA**)

There are four dealer and adviser categories for firms trading in or advising on commodity futures:

- commodity trading adviser
- commodity trading counsel
- commodity trading manager
- futures commission merchant

IFM is a separate category for firms that direct the business, operations or affairs of investment funds.

Although firms registered in the category of MFD, ID or futures commission merchant, and their registered individuals, are directly overseen by the self-regulatory organizations (**SROs**) (the MFDA and IIROC), the OSC approves the registration of firms in these categories and approves the registration of individuals sponsored by a MFD. Applications for firm registration are reviewed by CRR staff, but we remind firms seeking registration in the category of MFD, ID or futures commission merchant to also apply separately for membership with the relevant SRO.

While this report focuses primarily on registered firms and individuals directly overseen by the OSC, firms directly overseen by the SROs are encouraged to review the Summary Report as certain information is applicable to them as well.

Service standards

The CRR Branch is committed to accountability and transparency, and to ensuring services are delivered in the most efficient and effective ways possible. All CRR service standards and timelines are incorporated into the OSC Service Commitment. Information about CRR-specific service standards and timelines can also be accessed at:

- Exemption Application
- Registration Materials
- Notices of Termination
- Compliance Reviews: Registrants

Organizational structure

The CRR Branch is led by the Director, Debra Foubert. The Director is supported by:

- Elizabeth King, Deputy Director, Registrant Conduct
- Felicia Tedesco, Deputy Director, Operations

The CRR Branch consists of six teams:

- Operations, which comprises three compliance teams
- Registrant Conduct Team
- Data Strategy and Risk Team
- Registration Team

Contact information for directors, managers and staff within the branch can be found in the staff contact information table below.

Operations

Operations is comprised of three teams of lawyers and accountants and is responsible for conducting compliance field reviews, reviewing applications for exemptive relief and working on policy initiatives. The three teams are:

- Investment Fund Manager Team
- Portfolio Manager Team
- Dealer Team

Operations staff also act as subject matter experts in support of registration files.

Registrant Conduct Team

The Registrant Conduct Team handles files referred from other CRR teams and other OSC branches for matters that require further regulatory action to remediate registrant misconduct or to review higher-risk registration applications.

Registrant misconduct may be addressed by applying terms and conditions to registration, suspension of registration or being referred to the Enforcement Branch. This team is also responsible for working on policy initiatives.

Data Strategy and Risk Team

The Data Strategy and Risk Team performs financial analysis of registrants' interim and annual financial statements and capital calculations, leads the Capital Markets Participation Fee process and oversees all fee matters. This team also supports CRR's data requirements and conducts data analytics.

Registration Team

The Registration Team focuses on the initial registration of firms and individuals, subsequent changes to registration, including the surrender of registration, and ongoing maintenance of registration information.

This team is also responsible for processing registration-related applications for exemptive relief and working on registration-related policy initiatives.

Staff contact information

Name	Title	Phone
Debra Foubert	Director	416-593-8101
Elizabeth King	Deputy Director, Registrant Conduct	416-204-8951
Felicia Tedesco	Deputy Director, Operations	416-593-8273
Louise Brinkmann	Manager, Data Strategy and Risk	416-596-4263
Michael Denyszyn	Manager, Registrant Conduct	416-595-8775
Vera Nunes	Manager, Investment Fund Manager Team	416-593-2311
Dena Staikos	Manager, Dealer Team	416-593-8058
Elizabeth Topp	Manager, Portfolio Manager Team	416-593-2377
Kamaria Hoo	Registration Supervisor, Registration Team	416-593-8214
Feryal Khorasanee	Registration Supervisor, Registration Team	416-595-8781
Jenny Tse Lin Tsang (jtselintsang)	Registration Supervisor, Registration Team	416-593-8224

The format for our e-mail addresses is first initial and last name(s): First Last, flast@osc.gov.on.ca.

For registration or fee inquires, please use the following contact information:

- Registration inquiries: registrations@osc.gov.on.ca
- Fees inquires: annualfees@osc.gov.on.ca

Part 1: Outreach

1.1 Outreach program and resources

We interact with our stakeholders through our Registrant Outreach program. The objectives of our Registrant Outreach program are to strengthen communication with Ontario registrants that we directly regulate and with other industry participants (such as lawyers and compliance consultants), to promote strong compliance practices and to enhance investor protection.

Registrant Outreach statistics since inception

Sessions (in-person and webinars)	Replays viewed	Individual attendance	Topical Guide for Registrants – annual page views
72	7,480	15,278	>10,800

Interested in attending an upcoming Registrant Outreach seminar?

Click here for our calendar of upcoming events.

Looking for information about regulation matters?

Take a look at our Registrant Outreach program webpage or our Topical Guide for Registrants for help with key compliance issues and policy initiatives.

Want to be informed about newly released guidance?

Register to receive our e-mail alerts here.

Looking for a listing of recent e-mail alerts and links to each?

Refer to the Compliance-related reports, staff notices and email notifications webpage.

Interested in reading previously published Director's decisions?

Refer to the Opportunity to be heard and Director's decisions webpage.

If you have questions related to the Registrant Outreach program or have suggestions for seminar topics, please send an e-mail to RegistrantOutreach@osc.gov.on.ca.

1.2 Registration

a) Registration Outreach Roadshow

The Registration Team completed another successful Registration Outreach Roadshow (the **Roadshow)** in early 2022. Once again, we hosted virtual sessions. This expanded reach allowed CRR to continue to build working relationships with the registration teams of the firms we have the most interaction with, as well as disseminate information to smaller firms that we do not interact with as often.

The registered firms and group of law firms that we met with were positive about the experience and appreciated the opportunity to have informal sessions with us to better understand our expectations, discuss registration best practices and discuss how to better integrate the registration process with their business needs.

Reviewing Form 33-109F4 during these sessions, with a focus on common deficiencies and deficiencies that impede the review process, continued to be a welcomed addition to the agenda. We see significant value in these Roadshows and gained useful feedback from our post-meeting survey to the participants, which will be taken into consideration for future Roadshows.

b) Common National Registration Database (**NRD**) Issues and Tips

On January 25, 2022, the OSC conducted a seminar that provided a general overview of the NRD online system. This included a presentation on how to navigate the system and an introduction to:

- the most common types of submissions which are filed on the system for the regulators' review
- the most common types of reports which can be generated
- how fees are submitted

This seminar identified common NRD issues encountered as well as provided general tips on completing and filing NRD submissions. To review this webinar, please refer to the National Registration Database 101 webpage on the OSC website.

1.3 Registrant Advisory Committee

Established in January 2013, the Registrant Advisory Committee (**RAC**) is in its fifth term. It is comprised of nine external members and is chaired by the Director of CRR, Debra Foubert. The RAC meets quarterly, with members serving a minimum two-year term.

The RAC's objectives are to:

- advise on issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including matters related to registration and compliance
- provide feedback on the development and implementation of policy and rule-making initiatives that promote investor protection, fair and efficient capital markets, and contribute to the stability of the financial system

Discussion topics over the past year included:

- Amendments to NI 33-109
- the OSC's inclusion and diversity initiative
- CSA Position Paper 25-404 - *New Self-Regulatory Organization Framework*
- Client Focused Reforms (**CFRs**)
- Capital Markets Act consultation draft

Part 2: Information for dealers, advisers and investment fund managers

How to navigate Part 2 of the Summary Report

Part 2 of the Summary Report provides an overview of the key findings and outcomes from compliance reviews conducted during the 2021-2022 fiscal year.

Section 2.1 discusses the annual highlights of the work completed by CRR during the 2021 – 2022 fiscal year. Section 2.2 discusses key or novel issues, suggests best practices, and specifies applicable legislation and relevant guidance to assist firms in addressing each of the topic areas. For ease of reference, registration categories are listed beside each deficiency heading to indicate that the information is relevant to firms registered in those categories.

We encourage registrants to review all the information set out in Part 2 of this report as the guidance presented may be helpful to registration categories other than those listed.

2.1 Annual highlights

2.1.1 High risk firms

2.1.2 High impact firms

2.1.3 Online adviser sweep

2.1.4 Firms with limited compliance staff sweep

2.1.5 Registration of Crypto Asset Trading Platforms (CTPs)

2.1.6 FX conversion services dealer review

2.1.1 High risk firms (All)

In 2021, we commenced compliance reviews of firms that were risk-ranked as 'high' based on information collected from the 2020 risk assessment questionnaire (the **RAQ**). A firm may be risk-ranked as high based on a variety of factors, including: the broad nature of the firm's business activities, a large amount of client assets under management (**AUM**), the size of the firm, the number of clients and/or the type of clients serviced by the firm.

We reviewed registrants that were identified as high-risk and, where appropriate, issued warning letters and took further regulatory action to remediate identified deficiencies.

2.1.2 High impact firms (IFM / PM)

As part of our risk-based approach to selecting firms for review, we select firms that, given the size of their AUM, could have a significant impact on the capital markets if there was a breakdown in their compliance structure or key operations (**high impact firms**).

In 2021, we commenced compliance reviews of six high impact firms with a combined AUM of approximately $900 billion as of December 31, 2020. We apply a modified approach to reviewing high impact firms as part of our continued efforts to assess the most effective way to oversee our registrant population. Specifically, the reviews for high impact firms focus on assessing each firm's ability to identify and effectively manage its regulatory and compliance risks by reviewing each firm's:

- governance structure
- risk framework, including the risk identification and risk management process
- identified compliance issues during the review period, including how any non-compliance was remediated and what steps were put in place to prevent reoccurrence

2.1.3 Online adviser sweep (PM)

In 2021, we began a compliance sweep of PMs that provide discretionary investment management services to retail investors through an interactive website (**online adviser sweep**). Our sample consists of PMs for which the OSC is the principal regulator.

The purpose of the online adviser sweep is to assess the processes used by PMs who provide advice using an online platform. Staff are focused on certain processes which include know-your-client (**KYC**) and suitability, marketing, and the composition of investor profiles and model portfolios offered to investors.

We continue to execute these reviews and following the conclusion of the sweep, consideration will be given to publishing our findings and observations.

Registrants are reminded that the OSC must be notified when there is a material change to the firm's business model. This would include adopting an online advice platform or making a significant change in the way an existing online advice platform operates. As noted in CSA Staff Notice 31-342 *Guidance for Portfolio Managers Regarding Online Advice*, a registrant is required to submit a Form 33-109F5 if it changes its primary business activities, target market, or the products and services it provides to clients to something different than what is described in the firm's current Form 33-109F6 filing.

2.1.4 Firms with limited compliance staff sweep (All)

In late 2021, we began a sweep of firms that have AUM of at least $25 million and a small number of compliance staff (less than or equal to one full-time employee). Firms registered as either IFM, PM, EMD or a combination of these registration categories are included in this sweep.

The purpose of this sweep is to determine whether:

- firms with limited compliance staff have adequate resources and an effective compliance system to provide reasonable assurance that the firm and each individual acting on the firm's behalf complies with securities law
- these firms pose a higher risk of non-compliance with securities law
- there are trends in the type of deficiencies arising from this business model

To date, some of the common deficiencies identified from this sweep include:

- inadequate written policies and procedures
- inadequate cyber security internal controls
- incorrect calculation of the firm's excess working capital
- trade confirmations missing required information
- investment performance report missing required information
- various statements delivered to clients (i.e. trade confirmation, account statements, investment performance reports) which did not include the firm's letterhead or legal name

As this compliance sweep is in progress, additional findings may be communicated in next year's Summary Report.

2.1.5 Registration of Crypto Asset Trading Platforms (CTPs)

In 2021, the Canadian Securities Administrators (**CSA**) and IIROC issued Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements*, which sets out how securities legislation applies to CTPs that facilitate the trading of security tokens (crypto assets that are securities) or of crypto contracts (instruments or contracts involving crypto assets). This notice stated that CTPs may seek time-limited registration as a restricted

dealer as an interim step to seeking registration as an ID and obtaining membership with IIROC.

The OSC also issued a press release in 2021 notifying CTPs that currently offer trading in derivatives or securities to persons or companies located in Ontario, that they must bring their operations into compliance with Ontario securities law or face potential regulatory action.

This is a multi-branch initiative involving teams from various branches within the OSC that are reviewing and granting exemptive relief where appropriate, including from:

- the suitability determination requirements in NI 31-103
- the prospectus requirements in respect of CTPs entering into crypto contracts with clients to purchase, hold and sell crypto assets that are not themselves securities or derivatives
- certain reporting requirements in Part 3 of OSC Rule 91-507
- requirements in NI 21-101, NI 23-101 and NI 23-103

As part of the exemptive relief decisions for registered CTPs, the following, among other requirements, are to address investor protection concerns:

- disclosure requirements
- the CTP must assess whether it is appropriate for an account to be opened for a client
- the establishment of loss limits for each client
- the imposition of investment limits
- the use of third-party custodians
- regular reporting to the Principal Regulator

As of March 31, 2022, the OSC was in the process of prioritizing the review of 20 applications received for dealer registration and relief. During the past fiscal year, four CTPs were registered and received exemptive relief to offer crypto products to investors in Ontario, bringing the total number of registered CTPs to eight as of June 30, 2022. We continue to assess the appropriate path to registration in Ontario for CTPs that have initiated discussions with staff.

For a listing of registered CTPs and the associated exemptive relief decisions, please refer to the Registered crypto asset trading platforms webpage on the OSC website.

2.1.6 FX conversion services dealer review

During the 2021/2022 fiscal year, a joint team from the OSC's Derivatives and CRR Branches conducted a review of certain market participants who offer foreign exchange (**FX**) conversion services tied to securities transactions. The market participants included were bank and non-bank owned dealers, contracts for difference providers and money service businesses.

The purpose of this review was to determine:

- if the FX rate/spread charged to retail clients was disclosed
- whether the FX rate/spread charged to retail clients was fair and consistent with the disclosure provided to clients

Staff collected information related to the procedures, disclosure and execution of FX rates/spreads associated with securities transactions. The information collected was used to understand the process to determine the FX rate/spread charged to clients, and how it was disclosed and applied to securities transactions.

CRR staff will continue to collaborate with the Derivatives Branch to communicate any findings to firms that were reviewed.

2.2 Registration and compliance deficiencies

2.2.1 Restriction on self-custody (IFM)

The custody provisions in NI 31-103 prohibit self-custody by registered firms except for certain limited exceptions. During our reviews, we noted instances where an IFM chose to self-custody certain portfolio securities of their prospectus-exempt investment funds, but it was unclear how the IFM qualified for an exemption from the restriction on self-custody. If a "qualified custodian" (as defined in NI 31-103) is not used to custody a fund's assets, then the IFM must be able to rely on an available exemption in subsection 14.5.2(7) of NI 31-103. If an IFM is relying on an exemption to engage in self-custody, the firm should assess the risks, comply with the requirements of section 14.6 of NI 31-103, and have policies and procedures that illustrate how the portfolio securities qualify for self-custody.

We continue to note instances where an IFM does not have a written custodial agreement in respect of the prospectus-exempt funds managed by the IFM. Written custodial agreements should cover the location of portfolio assets, any appointment of a sub-custodian, the method for holding client assets, the standard of care of the custodian and the responsibility of loss.

IFMs should:

- ✓ if considering self-custody, consult with legal counsel about whether they qualify for an exemption in subsection 14.5.2(7) of NI 31-103
- ✓ review and, if required, update existing custodial agreements to include all relevant and material requirements of the custody arrangement

Legislative references and guidance

- The Act, s. 19(1) *Record keeping*
- NI 31-103 and related NI 31-103CP, s. 11.5 *General requirements for records*
- NI 31-103 and related NI 31-103CP, s. 14.5.2 *Restriction on self-custody and qualified custodian requirement*
- NI 31-103 and related NI 31-103CP, s. 14.6 *Client and investment fund assets held by a registered firm in trust*
- OSC Staff Notice 33-749 *2018 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, page 72

2.2.2 Related party receivables in excess working capital calculations (All)

As part of our normal course compliance review process, we review the excess working capital calculations of registrants. Current assets that are included in Line 1 of Form 31-103F1 but are not readily convertible into cash should be deducted on Line 2 of Form 31-103F1.

Related party receivables, like shareholder loans, are considered higher risk when included in regulatory capital calculations as firms may loan funds to related parties

with solvency issues. During the year, we noted instances where firms were unable to provide support for related party receivables included in the current assets figure in Line 1 of Form 31-103F1. These firms did not maintain adequate evidence to support that shareholder loans were readily convertible into cash and therefore appropriately classified as a current asset in the firm's calculation of excess working capital.

We also identified frequently recurring transactions, whereby a shareholder loan was repaid to the firm, but the shareholder subsequently borrowed a similar loan amount shortly thereafter. In staff's view, the economic substance of these transactions was that the loan obligation to the firm was not settled, and the receivable balance remained uncollected. Frequently recurring transactions of this nature suggests that it is not appropriate to exclude the related party receivable balance as a deduction on line 2 of Form 31-103F1.

Registered firms should:

- ✓ maintain a record of all related party loans included in excess working capital calculations and their duration (the date the loan was made and the date it was repaid)
- ✓ document the terms of each related party loan, including the parties involved, the purpose of the loan, dollar amount, interest rate, and repayment terms and timeline
- ✓ retain documentation to support that the related party receivable can be readily convertible into cash (e.g. evidence that the loan is payable on demand)

Legislative references and guidance

- NI 31-103 and related NI 31-103CP, s. 12.1 *Capital requirements*
- Form 31-103F1
- OSC Staff Notice 33-742 *2013 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 33-35

2.2.3 Prohibited investments (IFM / PM)

We noted instances where PMs acting for investment funds knowingly directed a trade in portfolio securities to another investment fund for which the PM also acts as an adviser. These trades were conducted without a valid exemption.

In one instance, a PM, who was appointed as a sub-adviser to an investment fund that was winding down, purchased certain private securities from the fund's portfolio for the portfolio of another investment fund for which it acted as PM. Although the PM obtained consent from the directors of the terminating fund, this transaction was still not permitted under paragraph 13.5(2)(b) of NI 31-103.

In another example, a PM caused an investment fund it advised to enter into trades with another investment fund it advised. The IFM of both investment funds is affiliated with the PM and the firms operate closely. The trades conducted by the PM was prohibited as the PM acts as adviser for both funds. The IFM also did not identify the trades as being prohibited and relied solely on the PM's policies and procedures with respect to the inter-fund trade prohibition.

Paragraph 13.5(2)(b) of NI 31-103 prohibits inter-fund trading between two investment funds that have the same adviser. An inter-fund trade occurs when an adviser for an investment fund knowingly directs a trade in portfolio securities to another investment fund that it acts for or instructs the dealer to execute the trade with the other investment fund. An exemption from this prohibition may be available in section 6.1 of NI 81-107, but only if certain conditions are met.

PMs should:

- ✓ have policies and procedures in place to comply with the requirements of paragraph 13.5(2)(b) of NI 31-103
- ✓ for an inter-fund trade, consider whether the firm can rely on the exemption in NI 81-107 or exemptive relief from paragraph 13.5(2)(b) of NI 31-103 is required

IFMs should:

- ✓ as part of their oversight, verify that the adviser of the funds has appropriate inter-fund trading policies and procedures

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 13.5(2)(b) *Restrictions on certain managed account transactions*
- NI 81-107, s. 6.1 *Inter-fund trades*
- OSC Staff Notice 33-746 *2015 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 73-74

2.2.4 Suitability and client instructions (PM / EMD)

PMs and EMDs may receive instructions from clients to buy, sell, or hold a specific security. These requests are sometimes referred to as client directed trades or unsolicited orders (**client instructions**).

If a registrant receives client instructions, they must make a suitability determination by taking into consideration the impact of the action on the client's account, the impact of potential and actual costs on the return on investment and compare this information to reasonable alternative actions available when making the determination. If a registrant intends to take an action based on client instructions that would not be suitable for the client, they must take the measures set out in subsection 13.3(2.1) of NI 31-103.

a) Delegation of PM obligations when receiving client instructions (PM)

In some cases, we observed PMs communicating to clients that trades in response to a client instruction fall outside the client's normal relationship with the firm. In one case, a firm stated in its investment management agreement (**IMA**) that it does not have a fiduciary relationship with the client in respect of these trades.

We remind PMs that a registered firm has a duty to treat its clients fairly, honestly and in good faith. This duty applies to both advice given within a managed account and advice given in response to client instructions. It is not appropriate for PMs to suggest that trades made in response to client instructions, which do not follow subsection 13.3(2.1) of NI 31-103, fall outside the normal PM-client relationship or the duties owed by the PM to the client are any less with respect to these trades.

b) Inadequate measures when receiving client directed trades (EMD)

We identified instances where EMDs took inadequate measures when client directed trades were received. In certain cases, the EMD received and carried out client instructions, but the client was not clearly informed that the action was not suitable. In other cases, the client was not adequately informed of the basis for the EMD's suitability determination, and instead the client received an acknowledgement form to complete that included boilerplate language as to why the action may be unsuitable. We also noted that some EMDs who carried out client directed trades did not retain evidence of the client's instructions.

PMs and EMDs should:

- ✓ develop policies and procedures consistent with subsection 13.3(2.1) of NI 31-103 to be followed when client instructions are received
- ✓ refrain from contracting-out of their obligations to clients
- ✓ use clear and tailored language when informing the client of its suitability assessment
- ✓ maintain records to demonstrate compliance with its suitability obligations
- ✓ adhere to the duty to deal fairly, honestly and in good faith with clients

Legislative reference and guidance

- OSC Rule 31-505, s. 2.1(1) *General duties*
- NI 31-103, s. 11.5(1)(a) *General requirement for records*
- NI 31-103 and related NI 31-103CP, s. 13.2 *Know your client*
- NI 31-103CP, s. 13.2.1 *Transfers in and client directed trades*
- NI 31-103 and related NI 31-103CP, s.13.3 *Suitability determination*
- CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations*, pages 15-17
- OSC Staff Notice 33-751 *2020 Summary Report for Dealers, Advisers and Investment Fund Managers*, page 35

2.2.5 Prospectus exemptions misuse (EMD)

Offering memorandum exemption (OM exemption)

During compliance reviews, we identified instances of EMDs not complying with the prescribed $30,000 investment limit for eligible investors when relying on the OM exemption. In some cases, EMDs assessed their clients' trades as unsuitable but proceeded with the trades, which exceeded the $30,000 investment limit, after obtaining a client directed trade form. To exceed the $30,000 investment limit, eligible investors must receive advice that their investment is suitable.

Some EMDs informed staff that, after a client directed trade form was received, the EMD subsequently determined that the client's investment was suitable. In these instances, there was no evidence of the EMD's suitability assessments. Firms are reminded to retain documentation to evidence that it complied with its obligations, including suitability.

We also remind EMDs that completion of a risk acknowledgement form alone is not adequate documentation to evidence that the firm met its obligations to assess suitability and provide eligible investors with advice that their investment is suitable.

Family, friends and business associates exemption

We found instances where EMDs relied on the family, friends and business associates (**FFBA**) exemption to distribute securities to clients who did not meet the relationship criteria required by the exemption. For an EMD to rely on the FFBA exemption, the client must have a relationship specified in subsection 2.5(1) of NI 45-106.

We also found that some EMDs did not collect and document adequate information about their clients and their relationships with the issuer and/or its principals. For example, some registrants relied solely on representations made by the purchaser verbally or in the risk acknowledgement form and did not ask questions or document the responses to the questions to confirm the nature and length of the relationship. EMDs should obtain information to confirm the purchaser meets the conditions of the exemption and keep documentation of the steps taken to establish the purchaser met the conditions of the exemption.

Asset acquisition exemption

Staff identified instances where an EMD relied on the asset acquisition exemption without ensuring that the conditions of the exemption were met. In these cases, investors exchanged securities they owned that were valued at less than $150,000 in return for securities of an issuer. A condition of the exemption is that the assets transferred by the investor, as consideration for the securities, must have a fair value of at least $150,000.

Staff also observed that, when the value of the securities transferred by an investor was less than $150,000, the client's investment was combined with other purchases of the issuer, either by the same investor, a related family member or a related corporate entity. These other investments, made on different dates, were combined by the EMD to reach a value greater than $150,000. This "layering" of investments is not permitted under the asset acquisition exemption. The exemption requires that assets transferred have a fair value of at least $150,000 at the time of distribution; it is not permissible to layer investments occurring on different dates to meet the $150,000 minimum required value.

EMDs should:

- ✓ take reasonable steps to confirm and document that the conditions of prospectus exemptions relied on are met
- ✓ when relying on the OM exemption for an eligible investor investing greater than the $30,000 investment limit, conduct a suitability analysis and maintain documentation to evidence why the trade was suitable
- ✓ when relying on the FFBA exemption, collect and document information about the individuals, including the nature of the relationship, the frequency of contact, and the level of trust and reliance between the individuals
- ✓ establish clear policies and procedures for all of the above

Legislative reference and guidance

- NI 45-106, s. 2.5(1) *Family, friends and business associates*
- NI 45-106, s. 2.9(2.1) *Offering memorandum*
- NI 45-106CP, s. 1.9 *Responsibility for compliance and verifying purchaser status*
- NI 45-106CP, s. 2.7 *Close personal friend*
- NI 45-106CP, s. 2.8 *Close business associate*
- NI 45-106CP, s. 3.8(1.1) *Eligibility criteria and investment limits*
- OSC Staff Notice 33-748 *2017 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 50-55
- OSC Staff Notice 33-751 *2020 Summary Report for Dealers, Advisers and Investment Fund Managers*, page 36

2.2.6 Common issues identified in pre-registration reviews of CTPs

The "Registration as the First Compliance Review", also referred to as the pre-registration review, involves gathering information through written inquiries, requests for documentation and/or interviews of a firm's key representatives. The purpose of the pre-registration review is to assess compliance with Ontario securities law at the time of registration. The following sections highlight common areas where we have identified issues and includes guidance for CTPs applying for registration in a dealer category.

a) Insurance

During the pre-registration reviews of CTPs, we identified CTP firms whose insurance bonding policies were not compliant with the prescribed insurance requirements. For example:

- Insurance bonding policies did not include all bonding and insurance clauses as specified in Appendix A to NI 31-103.
- The CTP held or had access to crypto assets, but the insurance bonding policy only provided coverage for certain assets (e.g. cash and securities) and crypto assets were not covered by the insurance bonding policy.
- The insurance bonding policy only provided insurance coverage for crypto assets held in a specific type of wallet. The CTP had access to crypto assets maintained in hot wallets, but the insurance bonding policy only provided coverage for crypto assets held by the CTP in cold wallets.
- In determining total client assets held to which the CTP had access, the CTP only considered crypto assets held in certain wallets and, as a result, the coverage amounts provided by the insurance bonding policy did not meet the prescribed insurance requirements.

CTP dealer applicants should:

- ✓ verify that the insurance bonding policy includes coverage for all the required clauses specified in Appendix A to NI 31-103
- ✓ review the insurance bonding policy for coverage exclusions and limitations, especially where the insurance bonding policy specifically excludes coverage for certain types of client assets or includes limitations whereby insurance coverage is only available for crypto assets which are held in a specific manner
- ✓ assess the adequacy of coverage limits at the time of policy issuance, and have policies and procedures to review coverage limits regularly and at the time of renewal

Legislative reference and guidance

- NI 31-103, s. 12.3 *Insurance – dealer*
- NI 31-103, *Appendix A – Bonding and Insurance Clauses*

b) Custody

While the requirement to use a qualified custodian does not apply to firms holding crypto assets that are not themselves securities, section 14.6 of NI 31-103 requires firms to hold assets with an appropriate custodian, separate and apart from its own property and in trust for its clients.

As with custodians for other commodities (e.g. bullion), certain specialized custodians possess unique technical knowledge, skills and expertise in holding

crypto assets that a traditional custody institution may not have. Safeguarding crypto assets may require the use of specialized technology solutions to effectively address custodial risks. For example, a custodian specializing in holding crypto assets may use encryption techniques, cold storage and proprietary hardware devices to maintain the safekeeping of the crypto assets. Accordingly, there may be custodians that do not meet the definition of a "qualified custodian" (as defined in section 1.1. of NI 31-103) but have proficiency and experience in holding crypto assets.

During our pre-registration reviews of CTPs, we noted instances where CTP firms did not:

- hold client assets separate and apart from their own property and in trust for their clients
- have policies and procedures related to custodial arrangements and how the CTP will oversee outsourced functions such as custody
- maintain an effective system of controls and supervision to address custodial risks and safeguard crypto assets held in its custody

CTP dealer applicants should:

- ✓ when maintaining custody of client crypto assets,
  - maintain policies and procedures on how crypto assets will be safeguarded and monitored, including:
    - what approvals are required when crypto assets are transferred internally between the CTP's wallets or to client wallets
    - how the CTP will verify that its internal ledger reconciles to the amount of crypto assets held
    - what due diligence will be performed prior to using a third-party wallet service provider
  - establish safeguards to address cyber security, privacy and business interruptions
- ✓ have policies and procedures to address custodial arrangements, which include:
  - ensuring the written custodial agreement clearly sets out the roles and responsibilities of each party to the arrangement
  - conducting initial and ongoing assessments of the custodian including its expertise in holding crypto assets, financial condition and internal controls to safeguard crypto assets
  - if the CTP has terms and conditions on the amount of crypto assets to be held with a qualified custodian, how the CTP will monitor and verify that the amount of crypto assets held with a qualified custodian(s) is not less than what is specified by the terms and conditions on its registration

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 14.6 *Client and investment fund assets held by a registered firm in trust*
- NI 31-103 and related NI 31-103CP, Part 11, *Division 1 – Compliance*

c) Marketing

In September 2021, CSA and IIROC staff released CSA/IIROC SN 21-330*,* which provided guidance for CTPs relating to advertising and marketing.

During pre-registration reviews of CTPs, we identified the following concerns in the advertising, marketing and social media for CTPs:

Exaggerated and unsubstantiated claims

Some CTPs made exaggerated and unsubstantiated claims related to the performance of crypto assets. For example, in certain advertisements and social media posts, we identified claims from CTPs which suggest that crypto asset returns were greater than returns in public markets, or that the returns for a crypto asset were "going to the moon" (implying extremely high returns). In these instances, the claims were exaggerated and there was no evidence to substantiate the claims made.

Misleading, incorrect, or false statements

We identified statements in advertisements and marketing materials for some CTPs that could be considered false or misleading. For example, we often saw that on websites, and in other advertisements, CTPs promoted commission-free trades. This could be false or misleading to investors because, in these instances, the CTPs would instead charge a markup on the price it is able to obtain or take a spread on trades where it acts as market maker (e.g. when selling crypto assets to a client).

Improper claims related to registration or compliance with securities laws

We noted instances where CTPs included improper claims related to their registration status or compliance with securities laws. On the websites for some CTPs, we identified the following claims: "compliant"; "approved by the OSC"; "platform is approved"; and "we meet all regulatory requirements". In these instances, the CTPs were not registered with any securities regulator in Canada. These claims may be false or misleading to investors as it could suggest that the CTP is registered with a securities regulator and in compliance with securities legislation.

Use of another CTP's name in advertisements

We observed CTPs directly referencing other CTPs by name in advertisements such as in social media posts. For instance, a CTP used its social media account to create a post which included the name of another CTP. The CTP did not obtain

authorization from the other CTP to do so. Unless a CTP can comply with section 43 of the Act, a CTP shall not use the name of another CTP in its advertisements.

CTP dealer applicants should:

- ✓ check that statements made in advertisements are accurate and can be substantiated
- ✓ provide adequate context and references to the information supporting claims, including third-party sources
- ✓ if using the name of another CTP, confirm that the requirements of section 43 of the Act are met
- ✓ have policies and procedures in place to review and approve advertising and marketing materials for compliance with securities law

Legislative reference and guidance

- The Act, s. 43 *Use of name of another registrant*
- OSC Rule 31-505, s. 2.1(1) *General Duties*
- *CSA-IIROC Staff Notice 21-330 Guidance for Crypto-Trading Platforms - Requirements relating to Advertising, Marketing and Social Media Use*
- OSC Staff Notice 33-752 *2021 Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 23-25

2.2.7 Conflicts of interest (All)

The CFR amendments related to conflicts of interest came into force on June 30, 2021. As part of our normal course compliance reviews, staff have started to review registrants' implementation of the new requirements, and we have noted instances where firms:

- did not identify existing material conflicts of interest, or material conflicts of interest that are reasonably foreseeable
- did not address material conflicts of interest in the best interest of the client
- did not provide clients with the required disclosure of material conflicts of interest
- did not adequately update their policies and procedures to implement the CFR amendments to the conflicts of interest requirements

Firms were required to review their policies, procedures and controls and implement any changes necessary to reflect the new conflicts of interest CFR requirements by June 30, 2021. Firms were also required to update any training programs provided to their staff.

Additionally, the CSA and the SROs are currently conducting a targeted sweep of registered firms' compliance with the conflicts of interest amendments.

Registered firms should:

- ✓ implement adequate processes to identify existing and reasonably foreseeable material conflicts of interest between the firm and the client, and between each individual acting on the firm's behalf and the client
- ✓ avoid material conflicts of interest or use controls to mitigate those conflicts sufficiently so that the conflict is addressed in the client's best interest
- ✓ provide training to their staff on the conflicts of interest amendments
- ✓ maintain records to demonstrate compliance with the conflicts of interest requirements (e.g. maintain an inventory of all conflicts identified and the assessment that the controls in place are sufficient to address material conflicts in the best interest of clients)
- ✓ provide prominent and specific disclosure to clients regarding material conflicts of interest at a time and manner that will be meaningful to the client

Legislative references and guidance

- NI 31-103 and related NI 31-103CP, s. 11.5 *General requirements for records*
- NI 31-103 and related NI 31-103CP, s. 13.4 *Identifying, addressing and disclosing material conflicts of interest – registered firm*
- NI 31-103, s. 13.4.1 *Identifying, reporting and addressing material conflicts of interest – registered individual*
- NI 31-103, s. 13.4.2 *Investment fund managers*
- CSA website with Client Focused Reforms Frequently Asked Questions

2.2.8 Marketing review (IFM / PM / EMD)

In 2020, we conducted a desk review of the marketing practices of IFMs, PMs and EMDs (the **marketing review**). At the conclusion of the marketing review, we identified deficiencies which had been previously discussed in past guidance and deficiencies which related to novel areas.

a) Use of hypothetical illustrations (PM)

We noted instances where PMs used illustrations incorporating hypothetical information which were presented to retail investors for informational or educational purposes. For example, PMs posted illustrative graphs on their websites explaining the benefits of compounding or the impact of lower fees on portfolio returns over a period of time. These examples were accessible to all investors including retail investors. The performance inputs used in these illustrations were hypothetical as they did not reflect performance data from actual client portfolios.

In certain cases, we had concerns that the illustration's educational purpose or objective was unclear and that an investor could misinterpret an illustration as presenting potential performance returns available to clients.

As highlighted in CSA Staff Notice 31-325, we have concerns with the presentation of hypothetical performance data to clients lacking sophisticated investment knowledge (i.e. when the information is widely disseminated on a website or advertisement). However, we acknowledge that providing educational illustrations or tools that explain key investing concepts, such as compounding or the impact fees have on investment returns, can be beneficial, especially to investors that may not be sophisticated. As such, it may be appropriate to use hypothetical illustrations for general informational and educational purposes. Hypothetical illustrations used to educate investors should be accompanied by adequate explanations and disclosure that clearly describe the illustration to prevent misleading investors and reduce the potential for client confusion.

PMs should:

- ✓ label the illustrations as "hypothetical" in a clear and prominent manner
- ✓ provide clear and meaningful disclosure which explains the educational purpose or objective of providing the illustration to investors
- ✓ disclose the underlying assumptions used, the calculation methodology and any other relevant factors
- ✓ include a description of the inherent risks and limitations of the data

Legislative reference and guidance

- The Act, s. 44(2) *Representation prohibited*
- OSC Rule 31-505, s. 2.1(1) *General Duties*
- CSA Staff Notice 31-325 - *Marketing Practices of Portfolio Managers*

b) Use of Exchange Traded Funds (ETFs) as benchmarks (PM)

We noted instances where PMs used ETFs as benchmarks to compare to the PM's investment strategy or performance. We did not identify concerns with the use of ETFs as benchmarks provided that the ETFs used were comparable to the PM's investment strategy and were accompanied by sufficient disclosure to allow investors or clients to draw correct conclusions from the comparison. PMs must comply with their obligation to deal fairly, honestly and in good faith with their clients when presenting benchmarks, including ETFs as benchmarks, in their marketing materials.

PMs should:

- ✓ use ETFs that provide a meaningful and relevant comparison to their investment strategy
- ✓ provide sufficient disclosure to accompany the presentation of the ETFs as benchmarks, including:
    - the full name of the ETF, and if using a blended benchmark, the specific weighting of each component ETF within the blended benchmark

- an explanation of the material differences between the ETF as a benchmark and the investment strategy
- the reason ETFs are used rather than the underlying indices tracked by the ETFs, and disclosure that ETF tracking errors may result in a difference between the benchmark returns and the returns of the underlying indices
- whether the ETF returns used are gross or net of fees and other costs, and, if net of fees, the ETFs' expense ratios
- if ETF returns are based on market prices or net asset values
- any other information necessary to make the comparison fair and meaningful

Legislative reference and guidance

- The Act, s. 44(2) *Representation prohibited*
- OSC Rule 31-505, s 2.1(1) *General Duties*
- CSA Staff Notice 31-325 - *Marketing Practices of Portfolio Managers*

c) Inadequate policies and procedures on the review and approval of marketing materials (All)

We continue to identify firms with inadequate policies and procedures governing:

- the preparation, use and approval of marketing activities
- the independent review and approval of marketing materials

We also noted that some firms did not adhere to their own policies and procedures on marketing practices.

Registrants must establish, maintain and apply policies and procedures to establish an effective system of controls and supervision to ensure compliance with securities legislation and manage risks associated with their business in accordance with prudent business practices.

Registered firms should:

- ✓ establish, maintain and apply clear policies and procedures that are tailored to their marketing activities
- ✓ prior to dissemination of the marketing materials, establish controls to ensure that marketing materials are adequately reviewed and approved by an independent individual other than the preparer
- ✓ have processes in place to verify that policies and procedures related to marketing practices are adhered to

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- CSA Staff Notice 31-325 - *Marketing Practices of Portfolio Managers*

d) Unsubstantiated claims in marketing materials (All)

We identified instances where registered firms included claims or statements in their marketing materials that were unsubstantiated. A marketing claim or statement is considered unsubstantiated if there is inadequate evidence to verify the claim.

Registered firms must ensure that all claims or statements included in their marketing materials are supported by facts to substantiate or validate each statement made.

Registered firms should:

- ✓ maintain adequate support to substantiate claims or statements made in their marketing materials
- ✓ provide adequate references to the information supporting the claims or statements to allow investors to assess the merits of each claim
- ✓ ensure the claims are reviewed and approved by an individual independent of the preparer prior to their use in marketing materials
- ✓ have written policies and procedures to address all the above

Legislative reference and guidance

- The Act, s. 44(2) *Representation prohibited*
- OSC Rule 31-505, s. 2.1(1) *General Duties*
- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- CSA Staff Notice 31-325 - *Marketing Practices of Portfolio Managers*

2.2.9 Limitation of liability clauses (PM)

We noted registrants are including language in IMAs and other disclosure documents that attempts to limit the liability of the registrant or its representatives in its dealings with clients.

In some cases, registrants attempted to limit their liabilities to losses caused by breaches of securities laws. A provision of this kind could be interpreted as placing the onus on the client to prove a breach of securities law before a registrant can be found liable, which may require a finding by a regulatory tribunal, and implies that the registrant is not liable for negligence, willful misconduct, or bad faith conduct. In addition to securities laws, there may also be other regulatory or statutory requirements that apply to a registrant's business.

In other cases, registrants attempted to expressly exclude liabilities due to losses caused by their negligence or other material failures that are within their control.

These kinds of liability clauses are not consistent with normal expectations that a client would have with respect to a managed account relationship, and they are contrary to the standard of care under Ontario securities law, which is for registrants to deal fairly, honestly and in good faith with their clients.

PMs should:

- ✓ implement policies and procedures for the drafting, review and approval of disclaimers or other limiting clauses prior to their use, to ensure that they do not inappropriately purport to limit liability for losses, including losses resulting from negligence, willful misconduct or bad faith conduct
- ✓ remove inappropriate disclaimer language from the IMA and/or other disclosure documentation
- ✓ where previously disclosed disclaimer language has been removed, send a letter to all existing clients who had previously received the language to advise them that the language has been removed and that the registrant would not seek to rely on any inappropriate limitation of liability

Legislative reference and guidance

- OSC Rule 31-505, s. 2.1 *General Duties*
- OSC Staff Notice 33-740 *Report on the Results of the 2012 Targeted Review of Portfolio Managers and Exempt Market Dealers to Assess Compliance with the Know-Your-Client, Know-Your-Product and Suitability Obligations*, page 4
- OSC Staff Notice 33-747 *2016 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, page 39

2.2.10 Inadequate policies and procedures (All)

During our reviews, we often noted instances where firms did not have a written policies and procedures manual that was appropriately tailored to their operations and adequately covered the processes and procedures that the firm should have in place to establish an adequate compliance system. The written manual also did not reflect the changes to the firm's policies and procedures as a result of changes in securities law (e.g. changes as a result of the CFR amendments).

Generally, we found written policies and procedures to be lacking in the areas of:

- marketing, particularly the review and approval process for marketing material, use of benchmarks, presentation of hypothetical information and use of social media
- conflicts of interests including the process to identify material conflicts, implement controls to address the material conflict in the best interest of clients and disclose the material conflicts as required
- risk management including cyber security and business continuity plans

Other common areas where firms' written policies and procedures did not contain sufficient details included:

IFM activities

- fund accounting including detailed valuation policies, NAV error treatment, expense policies and oversight of service providers
- transfer agency including reconciliation of units outstanding and oversight of service providers
- trust accounting and oversight of service providers
- detailed policies on the firm's process to comply with NI 81-102 and NI 81-105 where applicable

PM activities

- KYC and suitability including timely updating of KYC information, documentation to support suitability of trades and communicating with vulnerable investors
- portfolio management including supervision of registered representatives and oversight of portfolios
- client reporting including account statements, additional statements, report on charges and other compensation, and investment performance reports
- trading and brokerage including selection of brokers, trade error policy and best execution

EMD activities

- KYC and suitability including when KYC information is to be updated and communicating with vulnerable investors
- how the firm uses different prospectus exemptions
- suitability including the use of internal concentration thresholds
- Know-your-product (**KYP**) including product review and due diligence process

Registered firms should:

- ✓ establish, maintain and apply policies and procedures that are tailored to their respective business operations to establish a system of controls and supervision
- ✓ have a process in place to ensure that written policies and procedures are regularly updated for changes in the firm's business operations, industry practice and securities law

Legislative references and guidance

- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- OSC Staff Notice 33-745 *2014 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 43-44
- OSC Staff Notice 33-749 *2018 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 36-40
- OSC Staff Notice 33-752 *2021 Summary Report for Dealers, Advisers and Investment Fund Managers*, page 21

2.2.11 Cyber security risks (All)

Cyber security risks to registered firms continue to be a concern. Staff are aware of instances where a scammer designed and posted marketing material on the internet, which was intended to fool investors and clients into visiting a malicious website, that looked similar to a registered firm's website.

Staff found many firms to be deficient in preparing for the risk of cyber attacks and cyber incidents.

Specifically, staff found that firms did not have or had inadequate:

- written policies and procedures for protecting the firm's electronic devices and networks
- assessment of the data and systems the firm needed to protect and the controls in place to protect these areas
- documented incident response plan to address cyber security incidents

Registered firms should:

- ✓ document policies and procedures to address:
  - use of electronic communications (e.g. types of information that may be collected or sent through email)
  - use of firm-issued electronic devices
  - loss or disposal of an electronic device
  - use of public electronic devices or public internet connections to remotely access the firm's network and data
  - detection of unauthorized internal or external activity on the firm's network or electronic devices (e.g. hacking attempts)
  - updating software, including anti-virus programs, in a timely manner
- ✓ regularly conduct a risk assessment and inventory of information and systems that require protection and outline the controls to protect these areas
- ✓ adequately train staff, as they are the first line of defense against an attack
- ✓ document an incident response plan to prepare for a cyber security attack or incident

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- CSA Staff Notice 33-321 *Cyber Security and Social Media*
- CSA Investor Alert: *Investment scams imitating well-known financial brands*

2.2.12 Registration and Commission filings

a) Changes in business activities or organizational structure – impact and obligations (All)

Changes to a firm's business activities or organizational structure are required to be reported using Form 33-109F5 to update previously reported information.

For example, changes to a firm's business, a revised description of the business activities, target market, or products and services may need to be provided to update information previously provided in item 3.1 of Form 33-109F6. In some cases, staff may ask for a revised business plan to better understand the change to the business.

While NI 33-109 requires that this information be provided within a set time frame after the change, certain changes may impact the firm's overall suitability for registration, such as changes in ownership or business activities. In some cases, additional filings are required from the firm, and these filings are required in advance of the change (e.g. a change in ownership resulting in a new major shareholder may require a filing under section 11.9 or section 11.10 of NI 31-103).

We encourage firms to contact staff in advance of a change to assist staff in understanding the change, and if additional steps are necessary, to verify the firm remains suitable for registration after the change has occurred. Staff may ask for additional information or documents to assess the firm's ongoing suitability for registration.

Registered firms that plan to establish, manage, advise and/or trade in securities of investment funds with portfolios of crypto assets and/or to facilitate transactions relating to crypto assets may need to report changes in their business activities by filing a Form 33-109F5 and updating information previously reported in item 3.1 of Form 33-109F6 to include a description of the crypto asset products and/or services. Staff will review the information provided and analyze the proposed product(s) or services. In some cases, we may impose terms and conditions on the firm's registration to ensure adequate investor protection.

With respect to new firm registration applications, significant changes to a firm's business activities, organizational structure or key personnel during the application process may contribute to delays in the review process. Depending on the extent of the changes, these applications may be considered non-routine applications. During the application review process, any significant changes which have been made to the original application (i.e. Form 33-109F6 and/or Form 33-109F4) should be communicated to staff on a timely basis and before registration is granted.

b) Time-limited relief granted to foreign broker-dealer to provide outsourced trading service to Canadian asset managers (EMD)

In April 2022, CRR staff, in consultation with staff from the Market Regulation Branch and staff from IIROC, finalized an application for time-limited dealer registration relief by a United States (**U.S.**) registered broker dealer (the **Filer**) that sought to provide an "outsourced trading service" (the **trading service**) to asset managers in Canada to assist the asset managers in achieving best execution.

The trading service involves the communication of trade orders relating to Canadian securities received from asset managers to their executing broker-dealers for execution, clearance and settlement but does not include the execution of trades in securities. Execution of trades in securities of Canadian issuers are made by executing brokers that have an existing relationship with the asset managers.

Prior to the granting of the relief, the Filer was able to provide its trading service to asset managers in Canada in relation to transactions involving foreign securities and certain debt securities of Canadian issuers but not Canadian equity securities in reliance on the international dealer exemption in section 8.18 of NI 31-103. The Filer sought exemptive relief by analogy to the "prime services" line of decisions to be able to provide its trading service for all types of securities to Canadian asset managers.

The relief was granted based on the regulatory framework established in the U.S. for this type of service and on the basis of the additional terms and conditions set out in the relief. Asset managers that use this type of service are reminded they must be able to reasonably conclude that the use of this type of service is consistent with the firm's best execution and conflicts of interest obligations and must comply with all disclosure requirements applicable to these types of services, including Part 4 of NI 23-102. A three-year sunset clause was included to allow OSC staff, in consultation with IIROC and CSA staff, to review our experience with filers offering this type of service. OSC staff continue to view this type of business model as novel and filers seeking to provide outsourced trading services in relation to securities and/or exchange-traded derivatives (commodity futures contracts and commodity futures options) and over-the-counter (OTC) derivatives are encouraged to make a pre-file with staff.

For more information, see Re Meraki Global Advisors LLC dated April 11, 2022.

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 8.18 *International dealer*
- NI 23-101, s. 4.2 *Best execution*
- NI 23-102, Part 3 *Commissions on Brokerage Transactions* and Part 4 *Disclosure Obligations*

c) Unregistered individuals conducting registerable activities at investment consulting firms (PM / EMD)

Staff conducted reviews of registered firms operating with an investment consulting services business model. These firms typically advise institutional clients (e.g. pensions, foundations, etc.) on asset allocation strategy and portfolio manager selection, and perform oversight of portfolio managers.

During our reviews, we noted some consultants were conducting activities similar to advising representatives (**ARs**) at the firm, but they were not appropriately registered. These activities included:

- dealing directly with clients
- responding to and presenting requests for proposals
- providing investment advice and/or investment options to clients
- assisting clients in the development of investment policy statements

We raised concerns that these firms were not adequately supervising their unregistered consultants. A firm should apply consistent criteria when assessing whether AR or associate advising representative (**AAR**) registration is required for its consultants, and not allow unregistered consultants to conduct registerable activities. Once the firm is registered, it must have adequate procedures and controls in place to ensure that all individuals are appropriately registered.

In last year's summary report, we provided information on how individuals acting solely as client relationship managers (**CRMs**) can choose to register as an AR specializing in CRM activity.

PMs and EMDs should:

- ✓ take adequate steps to understand and comply with the registration requirements in Ontario by consulting compliance and/or legal advisors before commencing registerable activities in Ontario
- ✓ have adequate internal controls in place to ensure that only registered individuals are performing duties related to the firm's obligations as a registrant
- ✓ provide adequate training to employees on the registration requirements in Ontario

Legislative reference and guidance

- The Act, s. 25 *Registration*
- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- NI 31-103CP, s. 1.3 *Fundamental concepts*
- *Client Relationship Management specialists*, webpage on osc.ca
- CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers*

- OSC Staff Notice 33-750 *2019 Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 27-28
- OSC Staff Notice 33-752 *2021 Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 12-13

d) Inadequate supervision of ARs and/or AARs (PM)

We noted a number of cases where a PM firm did not adequately supervise its ARs and/or AARs.

In one case, a PM's sole AR failed to supervise the activities of the firm's only AAR. For example, the firm did not:

- establish adequate policies and procedures to supervise the firm's AAR
- maintain evidence that the AR pre-approved investment decisions that the AAR had made for clients' managed accounts
- perform due diligence to fully understand the structure, features and risks of each trade suggested by the AAR
- establish personal trading policies and procedures requiring the AAR to obtain pre-clearance for personal trades and submit brokerage statements for review
- provide training to the AAR so they understood the limitations of their role

Without adequate supervision, the AAR was able to provide investment advice to clients through verbal and electronic communications without first obtaining pre-approval of the investment decisions.

PMs are required to maintain a control and supervisory system sufficient to ensure compliance with securities law and to manage business risks. A PM's system of control and supervision should apply to all firm individuals acting on its behalf (i.e. ARs, AARs, unregistered individuals) and ensure individuals do not act independently of the firm's system of controls and supervision.

PMs should:

- ✓ establish controls to monitor the activities of the firm's ARs and AARs which include:
  - client onboarding and servicing
  - KYC and KYP
  - outside business activities reporting
  - social media use
  - personal trading
- ✓ develop procedures that outline how ARs responsible for supervising the advice of AARs will document their pre-approval of the AAR's advice
- ✓ train registered staff on the activities they are permitted to perform (and restrictions, if applicable) under their category of registration

Legislative reference and guidance

- The Act, s. 25(3) *Registration, advisers*
- The Act, s. 32(2) *Duty to establish controls, etc.*
- NI 31-103 and related NI 31-103CP, s. 4.2 *Associate advising representatives – pre-approval of advice*
- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- OSC Staff Notice 33-742 *2013 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 49-51

e) Common mistakes when filing Form 13-502F4 (All)

As required by Part 3 of OSC Rule 13-502, a registrant firm or an unregistered capital markets participant must, by December 1 in each year, file a completed Form 13-502F4 showing the information required to determine the participation fee.

A desk review of a sample of Form 13-502F4 conducted each year revealed some common mistakes made by firms.

Firms based their calculation on the wrong financial year

"Previous financial year" means the financial year ending in the current calendar year. For example, if the Form 13-502F4 is due December 1, 2022, firms should be using their financial year ending in 2022. If a firm's annual financial statements for a previous financial year are not completed by December 1, then a good faith estimate is used to complete Form 13-502F4. If a registrant firm's or an unregistered capital markets participant's participation fee, determined within 90 days after the end of its previous financial year, is less than the amount paid on December 31 then the firm or participant is entitled to a refund from the Commission of the excess fee paid. The request for a refund must be made within 90 days after the end of its previous financial year.

Form was not completed in thousands (000's) or in Canadian dollars

Dollar amounts should be entered in thousands and foreign currency balances should be translated to Canadian dollars using the Bank of Canada's exchange rate at the date of the filing or December 31st (whichever is later).

Incorrect application of the Ontario percentage definition

The definition of "Ontario percentage" is set out in section 1.1 of OSC Rule 13-502 and specifies that for firms with:

- a permanent establishment in Ontario and no permanent establishment elsewhere - must use 100%
- a permanent establishment in Ontario and elsewhere - the Ontario percentage is calculated based on taxable income earned in the year in Ontario (utilizing Schedule 5 of the firm's corporate income tax return)

- no permanent establishment in Ontario - the Ontario percentage is based on total revenues attributable to capital market activities in Ontario

Deductions were incorrectly made for non-Ontario revenues

Deductions were incorrectly made for non-Ontario revenues and instead a net revenue was reported on line 1 of Form 13-502F4, then an Ontario percentage less than 100% was applied, over-diluting the Ontario revenue. We remind firms that:

- Gross revenues must be reported under line 1 of Form 13-502F4 and align to the firm's gross revenues as shown in their financial statements or earned from all the firm's activities. For unregistered capital markets participants, line 1 of Form 13-502F4 is typically the firm's global revenues.
- The Ontario specific percentage must be calculated in accordance with the definition set out in section 1.1 of the OSC Rule 13-502 (see above).

Some firms also made inappropriate deductions under line 4, line 5 and/or line 6 of Form 13-502F4. These deductions are to prevent double counting of revenues for the purposes of calculating capital markets participation fees and are only allowed as a deduction when the firm pays these to another registrant firm or unregistered exempt international firm that include these fees as revenues in their Form 13-502F4.

We highlight the importance of accurate and timely fee calculations as there are deadlines which impact the firm, including:

- Registrant firms and unregistered capital market participants must, by December 31 of each year, pay the calculated fee.
- If an estimate was made for the Ontario specific revenues, firms must file a completed Form 13-502F4 and Form 13-502F5 and pay any amounts owing or request a refund for any overpayment no later than 90 days after the end of the previous financial year.
- Late filing of the Form 13-502F4 and late payment will subject the firm to late fees calculated in accordance with OSC Rule 13-502. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees on whether the firm is suitable for registration.

Legislative reference and guidance

- OSC Rule 13-502
- Form 13-502F4
- Form 13-502F5

f) Tips for using the 11.9 and 11.10 standard form (All)

In February 2021, CRR staff published a template form that can be used for notices of acquisition that are required to be filed pursuant to sections 11.9 or 11.10 of NI 31-103. The purpose of the template notice was to make it easier for firms to prepare and submit the notice, and to provide direction on the type of information staff typically require when reviewing transactions. Several template notices were

filed this fiscal year, and in general, the form has worked well to provide the information necessary to complete a review. However, we identified instances where filers did not provide sufficient information in the template form to enable staff to complete a review. While the template is drafted to focus on key information, some filers did not provide sufficient detail in response to the standard form questions, which then required staff to contact filers with follow up questions.

If firms intend to use the template form, they must ensure that all sections are completed and that all parties to the transaction are referenced in the appropriate sections of the form, with all requested information provided. In addition, where there is space for additional text, firms should provide sufficient detail to describe the requested information. One word or overly abbreviated answers may not be clear enough for staff to understand the response and could result in follow up questions and delay our review.

The template form can be accessed from the Registration forms and documents webpage (refer to "Exemptions and applications for exemptive relief") on the OSC website.

Part 3: Initiatives impacting registrants

3.1 Client Focused Reforms

The CFRs introduced significant enhancements to the registrant conduct obligations which came into force in two stages in 2021. The CFR conflicts of interest requirements came into force on June 30, 2021. The remainder of the CFR requirements (i.e. KYC, KYP, suitability and relationship disclosure information reforms) came into force on December 31, 2021. These amendments to NI 31-103 are relevant to all categories of registered dealer and registered adviser, with some application to IFMs. The CFRs have also been incorporated into SRO member rules and guidance. All registrants should have reviewed their operating practices and implemented changes necessary to bring themselves into alignment with the CFRs.

The CFRs demonstrate a shared commitment by the CSA and the SROs to changes that require registrants to promote the best interests of clients and put clients' interests first. The CFRs are based on the fundamental concept that, in the relationship between registrants and their clients, clients' interests must come first.

Registrants are now required to have a process in place for identifying material conflicts of interest that arise at both firm and individual registrant levels, including those resulting from compensation arrangements and incentive practices, and ensuring that those material conflicts of interest are addressed in the best interests of their clients. They are also required to have implemented the KYC, KYP, suitability and relationship disclosure information reforms. Among other things, this includes having a framework to put clients' interests first when making suitability determinations. Firms are required to operationalize changes in the areas of KYC and KYP to support the enhanced suitability determination requirements, collect sufficient information about a client, and ensure that products and services made available to clients are assessed, approved and monitored for significant changes.

The CFRs Implementation Committee and your questions

The CFRs Implementation Committee, composed of staff from the CSA and the SROs, has published guidance on the CFRs FAQs webpage on operational issues and questions shared by industry stakeholders.

Implementation, compliance and enforcement

As outlined in our latest OSC Statement of Priorities, one of our priorities is ongoing compliance and oversight related to the implementation of the CFRs. The CSA and SROs are conducting reviews to test for compliance with all CFR requirements, including a targeted sweep of registered firms' compliance with the conflicts of interest amendments and identifying where processes need improvement. As with all registrant conduct requirements, the compliance review process is supported by the appropriate regulatory actions along the compliance-enforcement continuum.

3.2 2022 Risk Assessment Questionnaire

In May 2022, firms registered with the OSC in the categories of IFM, PM, RPM, EMD and RD were asked to complete the 2022 RAQ, which consisted of questions covering various business operations related to the different registration categories. The RAQ is a fundamental component of the risk-based approach used to select firms for compliance or targeted reviews.

Each response in the RAQ is assigned a risk score which is aggregated up to the firm level. This is done to identify firms whose business activities we perceive to be of higher risk. This aggregate risk score is an input in determining whether a firm will be recommended for a compliance review. In addition, responses to the RAQ are aggregated based on areas of interest and firms are selected for review based on their responses to questions in these areas of interest.

We continue to modify the RAQ process based on feedback we receive from firms; this includes continuing to pre-populate certain non-financial information in the RAQ, based on a firm's previous responses, and enhancing security by requiring both the firm's CCO and UDP to each create their own unique account in our system to access the 2022 RAQ.

3.3 CSA amendments to enhance protection of older and vulnerable clients

Amendments to NI 31-103 came into force on December 31, 2021. These amendments are intended to enhance the protection of older and vulnerable clients by providing registrants with tools and guidance to address situations involving financial exploitation or diminished mental capacity of their clients.

Registrants can be in a unique position to notice signs of financial exploitation, vulnerability or diminished mental capacity because of the interactions they have with their clients and the knowledge they acquire through the client relationship. The CSA acknowledges that, in order to protect older and vulnerable clients, it is important to provide registrants with tools and guidance they can use or rely on to take action against financial exploitation and to address issues arising from a client's diminished mental capacity, while being mindful of the importance of upholding client autonomy. It is also important to provide clients with avenues and the autonomy to protect themselves in vulnerable situations.

The amendments strengthen protection of older and vulnerable clients through two main components:

Trusted Contact Person (TCP)

Registrants will be required to take reasonable steps to obtain the name and contact information of a TCP from individual clients, and written consent for the TCP to be contacted in specified circumstances (e.g. if the registrant has concerns about possible financial exploitation of a client who is vulnerable or about the client's

mental capacity to make decisions involving financial matters). A TCP does not have authority to make transactions on the account but is intended to be a resource to assist registrants in protecting a client's financial interests or assets in these circumstances. While clients are not required to identify a TCP in order to open an account, registrants will be required to take reasonable steps to obtain and update TCP information as part of the KYC process.

Temporary holds

The amendments create a regulatory framework for registrants who place a temporary hold on trades, withdrawals or transfers in circumstances where the registrant has a reasonable belief that there is financial exploitation of a vulnerable client or where there are concerns about a client's mental capacity to make decisions involving financial matters.

Legislation, guidance and resources

We encourage registrants to refer to sections 13.2.01 and 13.19 of NI 31-103 and the related NI 31-103CP for more information on these requirements.

On October 5, 2021, the OSC presented a webinar relating to the amendments entitled Regulatory Framework and Resources to Enhance Protection of Older and Vulnerable Clients. To review this webinar, please refer to the Regulatory Framework and Resources to Enhance Protection of Older and Vulnerable Clients webpage on the OSC website.

In addition, the OSC has developed resources to assist registered firms and representatives with addressing the needs of older and vulnerable investors. These white label materials, developed by the Investor Office at the OSC, are intended to be resources that firms may refer to or choose to adapt, brand and deploy, at their discretion, to support their interactions with older and vulnerable clients, which may mitigate the burden of developing materials entirely independently. The white label materials also include a form intended for registrants to adapt and provide to their clients, which may then be completed and shared by a client with their trusted contact person. The form lets the TCP know that they have been named as the client's TCP and provides the TCP with an overview of what this means, in addition to providing them with the registered firm and representative's contact information.

Please refer to the Working with older and vulnerable clients webpage on the OSC website to access these resources.

3.4 NI 33-109 amendments

Amendments to NI 33-109 came into force on June 6, 2022. The amendments establish a more efficient registration and oversight process for firms, individuals and regulators by simplifying and streamlining certain regulatory requirements. The changes also provide firms and individuals with greater clarity on the information

required as part of the registration process, while improving the quality of information received by regulators.

With NI 33-109 amendments coming into force, registrants must now update their information on NRD.

Some highlights from the amendments include:

- establishing a new framework for reporting outside activities to regulators
- codifying existing requirements regarding outside activities that are positions of influence
- extending some deadlines to report changes in registration information
- implementing a new rule to reduce multiple filings of the same information
- amending certain registration requirements to reduce common errors
- clarifying the language on certain forms
- updating and improving the privacy notice to provide greater clarity on how personal information is collected and used by the CSA and SROs
- implementing a new requirement to report the business titles and professional designations used by registered firms and individuals

The amendments are not intended to change the nature of the registration process, the requirement to register or the assessment of suitability for registration.

For additional information, please refer to:

- Implementation Guide to Amendments to National Instrument 33-109: *Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting and Updating Filing Deadlines*
- FAQs (Annex C) included in the publication of the final amendments
- the Registrant Outreach webinar relating to the amendments entitled Amendments Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines

3.5 Institutional Trade Matching and Settlement

As part of the OSC's efforts to reduce regulatory burden, amendments to NI 24-101 came into force July 1, 2020, and provide a three-year moratorium on the applicability of section 4.1. Specifically, the reporting requirements under section 4.1 of NI 24-101 do not apply to a registered firm beginning on July 1, 2020 and ending on July 1, 2023.

Notwithstanding the moratorium, registered firms must still comply with all other requirements in NI 24-101 including establishing, maintaining and enforcing policies and procedures to achieve the matching threshold for institutional trades.

NI 24-101 provides a framework for efficient and timely settlement processing of institutional trades by registered firms. The institutional trade matching

requirements apply to a PM that places a DAP/RAP trade[6] in an equity or debt security with a dealer for one or more of its clients with DAP/RAP trading privileges. Clients having DAP/RAP trading privileges typically include institutional clients such as investment funds and pension plans but may also include clients that are individuals.

For further information, please refer to the notice.

3.6 Virtual business locations on NRD

On September 7, 2022, we issued an e-mail blast to UDPs, CCOs and persons on the Registrant Outreach subscriber list that introduced flexibility for firms to create virtual business locations on NRD.

Virtual business locations will allow firms, under certain circumstances, to open a branch location in a province or territory (or region of a province or territory) on NRD. Registered and permitted individuals of a firm who are not otherwise assigned to a business location in the province or territory of their residence and are working from home can select as their location of employment the virtual business location using Item 9 *Location of employment* of Form 33-109F4.

For further information, please refer to the procedural guidance included in the email blast.

3.7 Exemption from underwriting conflicts disclosure requirements

On March 1, 2022, the OSC made as a rule under the Act OSC Rule 33-508 *Extension to Ontario Instrument 33-507 Exemption from Underwriting Conflict Disclosure Requirements* (the **Rule**).

The Rule extends the blanket relief issued on February 18, 2021 by Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements (Interim Class Order)* (the **OSC Blanket Order**) by 18 months. The OSC Blanket Order ceased to be effective after August 17, 2022.

The OSC Blanket Order eliminates the underwriting conflicts disclosure requirements that would otherwise apply under Ontario securities law in circumstances where foreign securities are offered to institutional investors in Ontario as part of a global offering and thereby facilitates participation by institutional investors in Ontario in such global offerings. Specifically, the OSC Blanket Order provides an exemption from the underwriting conflicts disclosure requirements in NI 33-105 if:

- the distribution is made under an exemption from the prospectus requirement

[6] See the definition of "DAP/RAP trade" in section 1.1 of NI 24-101.

- the distribution is of a security that is an "eligible foreign security" as defined in NI 33-105
- each purchaser in Ontario that purchases a security pursuant to the distribution through such person or company is a "permitted client" as defined in section 1.1 of NI 31-103.

The OSC issued the OSC Blanket Order following discussions between CRR and Corporate Finance staff and various institutional investors who advised staff that the underwriting conflicts disclosure requirement in NI 33-105 created barriers that prevent institutional investors in Ontario from participating in global offerings on a timely basis.

The Rule causes the blanket relief provided in the OSC Blanket Order to be in force for an additional 18-month period from August 18, 2022 to February 17, 2024. OSC staff are continuing to review options for a more permanent solution and may propose an amendment to NI 33-105 at a later date.

Part 4: Acting on registrant misconduct

4.1 Annual highlights and trends

The Registrant Conduct Team is responsible for investigating conduct issues involving individual and firm registrants, recommending regulatory action where appropriate, and conducting opportunity to be heard (**OTBH**) proceedings before the Director.

Before a Director of the OSC imposes terms and conditions on registration, refuses an application for registration, or suspends a registration, an applicant or registrant has the right under section 31 of the Act to request an OTBH before the Director. A registrant or applicant may also request a hearing and review by the Capital Markets Tribunal (the **Tribunal**) of a Director's decision under section 8 of the Act.

Identifying and acting on registrant misconduct

Potential registrant misconduct is identified through compliance reviews, applications for registration, disclosures on NRD, and by other means such as complaints, inquiries or tips. CRR staff also identifies registrant misconduct through background and solvency checks on individual registrants or individual applicants, responses to the RAQ, and referrals from SROs and other organizations.

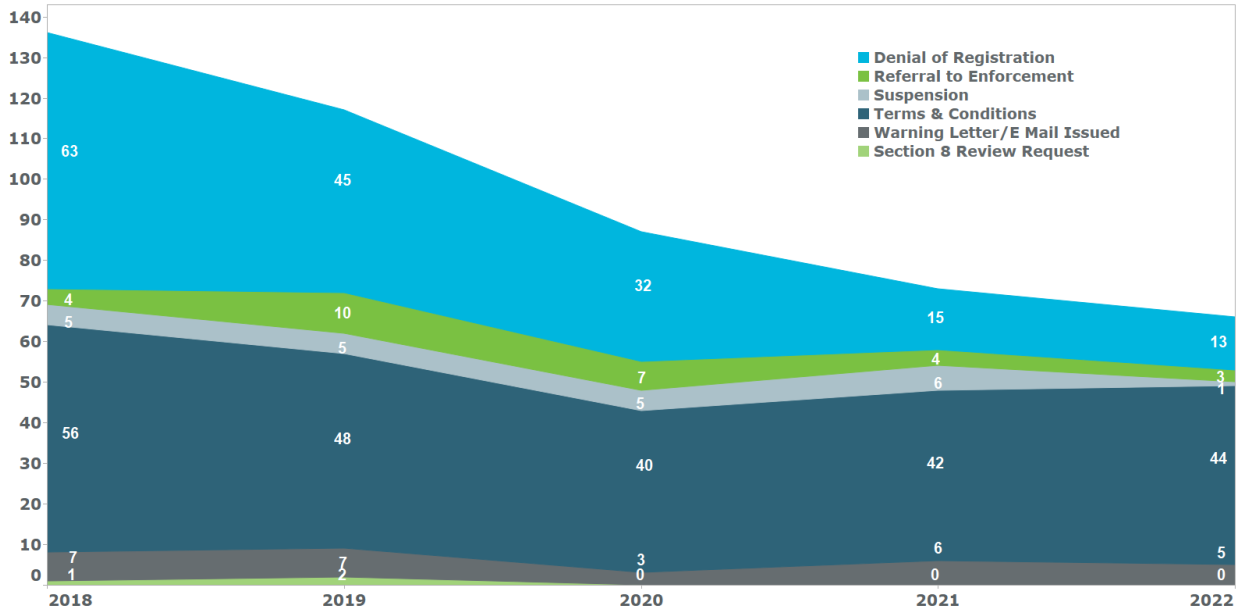
Acting on registrant misconduct matters is central to effective compliance oversight. It also promotes confidence in Ontario's capital markets, both among the investing public and among the registrants who make best efforts to comply with Ontario securities law. Registrants must remain alert and monitor for potential misconduct by enacting and implementing appropriate policies and procedures, and ensuring that controls are in place to detect and address instances of misconduct.

The Registrant Conduct Team is also responsible for overseeing terms and conditions on registered firms and individuals as a result of a regulatory decision, including a Director's decision or Tribunal Order (formerly, Commission Order). For registered firms, terms and conditions might require them to engage an independent compliance consultant or restrict business activity that is not compliant while remediation takes place. Terms and conditions might also require specific reporting by registered firms to the OSC.

In cases where there appear to be issues with an application that could bear on the individual's suitability for registration, such as past misconduct or untrue or misleading information given in the application itself, the file may be referred by the Registration Team to the Registrant Conduct Team for further investigation, requiring a longer review time. Each phase in the registration process when applications transition from the Registration Team to the Registrant Conduct Team are illustrated in this process chart.

The following chart summarizes the regulatory actions taken by CRR staff against firms or individuals engaged in registrant misconduct or serious non-compliance with Ontario securities law.

CRR Regulatory Actions FYE 2018 - 2022[7]



The chart illustrates that CRR makes use of regulatory actions along the compliance-enforcement continuum, the action being commensurate with the magnitude of misconduct or non-compliance in a given situation. Terms and conditions, denials of registration, and suspensions or revocations of registration are all tools available to CRR staff to address serious non-compliance.

While most categories of CRR regulatory actions have remained fairly constant, there were fewer denials of registration and suspensions in fiscal 2021-2022. For firms, staff will sometimes use business restrictions and other terms and conditions to permit a firm which engaged in significant non-compliance to remediate its deficiencies. For individuals, sponsoring firms will occasionally make a business decision to dismiss registered individuals when they become aware of misconduct being investigated by staff. Ultimately, staff remains committed to taking timely and effective regulatory action where misconduct is identified, and will recommend suspension or revocation of registration, subject to a registrant's right to request an OTBH before the Director, when warranted.

Staff continued to identify non-disclosure of material information by applicants and registrants, including instances where solvency events such as bankruptcies, requirements to pay and consumer proposals were not disclosed. Under the amendments to NI 33-109, we have updated our forms to further clarify that consumer proposals are among the financial events that are required to be disclosed, and that any relevant solvency events must be disclosed regardless of

[7] Figures for 2020 have been revised to correctly include the regulatory actions for the 2019-2020 fiscal year.

how long ago they occurred. We anticipate that these updates will reduce the number of undisclosed solvency events in registration applications.

Although the most common concern with individual applicants and registrants is non-disclosure of material information, a significant number of files were opened based on dismissals for cause or other identified misconduct by individuals while registered with former sponsoring firms. In these cases, staff do not pre-judge applications, but will make inquiries of both the applicant and the former sponsoring firm to determine whether the identified conduct bears on the applicant's suitability for registration. Typically, staff will conduct an interview of the applicant before making a recommendation. The timely co-operation of registered firms in these investigations is both appreciated and vitally important (see section 4.3).

Referrals are made to the Enforcement Branch in cases where the appropriate tool is a power that can only be exercised by the Commission (now, the Tribunal). In fiscal 2021-2022, there were three referrals to the Enforcement Branch.

4.2 Prompt and effective regulatory action

Where appropriate, staff will recommend that terms and conditions be placed on the registration of a firm where staff has identified an inadequate compliance system, or an error or oversight that creates undue risks or losses for its clients. These are situations where a firm is not unsuitable for registration such that staff will recommend suspension, but where terms and conditions are nonetheless necessary to protect investors and remediate identified compliance deficiencies.

Over the past fiscal year, staff obtained, on consent, several sets of innovative terms and conditions designed to address complex compliance concerns. These terms and conditions have been drafted to increase the likelihood of compliance remediation succeeding, to the benefit of present and future clients; while promoting fairness in the capital markets.

Some examples of novel terms and conditions imposed on consent include:

- **Addressing unregistered advising:** A firm partnered with unregistered entities to provide portfolio management services. Terms and conditions were imposed which required the registered firm to execute new agreements with its partner firms clarifying that registerable activities, marketing, trade names and fee schedules would be handled solely by the registered firm and its registered individuals.
- **Addressing unregistered dealing:** A firm dealt with Canadian clients through a non-Canadian affiliate before becoming registered in Canada. Terms and conditions were imposed upon the firm being registered that required the firm to contact Canadian clients to ensure that they transferred their accounts to the registered firm, or closed the accounts by either

liquidating the account's assets or transferring the assets to another registered dealer in Canada.

- **Addressing inadequate documentation of client-directed trades:** A firm improperly relied on client-directed trades. Terms and conditions, requiring a consultant and monitor, specifically required the criteria for compliant client-directed trades to be adequately documented before the trades would be permitted to proceed.
- **Addressing repeat deficiencies:** Repeat compliance deficiencies were identified at a firm, despite a compliance consultant already revising the firm's policies and procedures. Terms and conditions were imposed which required the firm's UDP and CCO to both personally sign a monthly attestation on the firm's compliance in areas where the deficiencies were identified.

4.3 Timely cooperation with staff information requests

When individuals seek to reactivate their registration, staff considers the circumstances under which the individual ceased working for their prior sponsoring firm. In particular, terminations or departures following allegations of misconduct, whether or not the individual was dismissed for cause, can give rise to integrity and proficiency concerns. In those cases, the Registrant Conduct Team needs to examine the circumstances of a past termination or departure, in order to assess possible concerns and provide all the relevant information to the Director before a decision is made with respect to the individual's registration.

In addition to reviewing the information in the Notice of Termination, staff may seek additional details relating to the Notice of Termination, supporting documents or, in some cases, an opportunity to interview a firm's representative.

Staff expect registered firms to make reasonable efforts to ensure that the information included in Notices of Termination filed through NRD are truthful and complete. For example, for individuals that were dually employed by a registered firm and a parent financial institution or an affiliate insurance firm, the Notices of Termination sometimes include disclosure that an individual was terminated by the parent bank or the affiliate, with no further details provided. Firms are required to make reasonable efforts to obtain additional details from the relevant parties and include them in the Notices of Termination.

Furthermore, it is important for firms to provide timely cooperation with staff's requests for further information and documents relating to a formerly sponsored individual's termination or departure. Failure by firms to cooperate can delay the review of applications for registration. Staff generally requests that the relevant information be delivered by a specified deadline, taking into consideration the nature and volume of information sought. All registered firms would benefit from firms promptly delivering requested information about formerly sponsored

individuals, so as to avoid unnecessary delays in reviewing present and future registration applications.

Staff acknowledges that firms may have privacy-related concerns with respect to providing personal information about formerly sponsored individuals. However, by submitting Form 33-109F4, applicants for registration consent to the collection by staff of personal information relevant to their application and their fitness for registration, including employment records and information obtained from an employer.

When staff is authorized to collect personal information, it is for the purpose of carrying out its duties and exercising its powers under securities legislation and/or derivatives legislation (including commodity futures legislation). The collection, use and disclosure of personal information are done in accordance with applicable freedom of information and privacy legislation.

We request that firms voluntarily provide termination information with respect to formerly sponsored individuals. However, staff can compel this information, if necessary, under authority provided in the Act. For example, the Director has broad authority under section 33.1 of the Act to require information to be submitted by a registrant within a specified time. In addition, section 19 of the Act requires market participants, including registered firms, to keep various books, records and other documents and to deliver them to the OSC at the specified time.

4.4 Director's decisions and settlements

Director's decisions on OTBH proceedings are published in the OSC Bulletin and on the OSC website at Opportunity to be heard and Director's decisions, where they are presented by topic and by year. Director's decisions can be used as an important resource for registrants, as they highlight matters of concern to the OSC, as well as the regulatory action that was taken as a result of misconduct and non-compliance. The publication of Director's decisions also ensures that CRR's response to serious misconduct is visible to market participants and investors.

Four Director's decisions were published in the fiscal year 2021-2022 on registrant conduct issues. There were no contested OTBHs. One decision was issued where the registrant did not request an OTBH, and three decisions approved settlement agreements between staff and the registrant. A settlement agreement typically contains an agreed statement of facts and a joint recommendation to the Director. Proceeding by way of a settlement agreement with staff allows the registrant to participate in setting out the factual narrative that becomes the basis for the Director's decision.

A summary of all Director's decisions and settlements by topic published since the decisions and settlements included in last year's summary report follows.

Firminvest Asset Management Canada Inc. and David Ratcliffe (February 25, 2022)

Topics: Compliance system and culture of compliance; Duty to supervise

Firminvest Asset Management Canada Inc. (Firminvest), a PM firm, through its UDP/CCO/sole AR David Ratcliffe, entered into a memorandum of understanding (MOU) with a Swiss asset manager with clients in Ontario and elsewhere in Canada. Pursuant to this MOU, the Swiss entity introduced its Canadian clients to Firminvest for discretionary portfolio management services in return for a stipulated fee. Through the MOU, the Swiss firm purported to retain the client-adviser relationship with all introduced clients. A partner of the Swiss firm became registered as an AAR with Firminvest and advised the introduced clients without appropriate oversight by Ratcliffe. In a settlement agreement approved by the Director, Firminvest's registration is to be revoked after an appropriate transition period, and Ratcliffe's registration as UDP/CCO was suspended for 4 years, but he was permitted to continue as an AR under the supervision of a different registered firm. In the settlement agreement, Ratcliffe admitted that he did not discharge his suitability obligations or his obligations as UDP/CCO.

Gross Securities Corp. (October 15, 2021)

Topic: Failure to comply with Director's summons

The UDP of Gross Securities Corp. (Gross) was served with a summons issued by the Director requiring him to attend an examination under oath regarding bankruptcy proceedings involving an entity related to Gross. Staff sought to conduct this examination because certain allegations were relevant to the firm's ongoing suitability for registration. Counsel for the UDP informed staff that he had concerns about the UDP attending the examination because, among other reasons, the examination might elicit testimony regarding issues relating to the bankruptcy proceedings, but that testimony was not the subject of any statutory confidentiality protection. The Director suspended Gross on the basis that the firm's ongoing registration was objectionable since the proposed examination did not occur.

John Kodric (September 2, 2021)

Topics: KYC, KYP, and suitability; Outside business activity (including off-book dealing); Rehabilitation of fitness for registration; Trading or advising without appropriate registration

John Kodric applied to reactivate his registration as a mutual fund dealing representative. In 2015, the Director issued a decision with respect to Kodric's prior application to reactivate his registration. In that decision, the Director refused the registration but also found that Kodric may be suitable for registration in the future subject to: (a) terms and conditions (including strict supervision by Kodric's sponsoring firm and prohibiting the use of leverage); (b) Kodric demonstrating remorse for the misconduct set out in the 2015 Director's decision; and (c) Kodric demonstrating that he has taken courses to better understand his obligations as a registrant.

Staff found that Kodric met the specified requirements and recommended that his registration be granted subject to terms and conditions of strict supervision and prohibiting the use of leverage, consistent with the 2015 Director's decision. Kodric consented to the recommended terms and conditions of registration.

Michelle Kamerman (June 14, 2021)

Topic: Conflicts of interest

Michelle Kamerman was a mutual fund dealing representative working in a financial planning office owned by John Doe[8], another dealing representative. Kamerman's primary responsibility was to assist John Doe in the management of his book of business. John Doe engaged in personal financial dealings with some of his mutual fund clients, and Kamerman facilitated some of those dealings and did not report them to John Doe's firm. John Doe and Kamerman resigned from their sponsor firm and applied to reregister with another firm. The Director approved a Settlement Agreement pursuant to which Kamerman would not be registered for a period of six months and would be subject to certain supervisory terms and conditions upon her re-registration.

Ardenton Financial Inc. (March 15, 2021)

Topic: Compliance with securities laws of foreign jurisdictions

Ardenton Financial Inc. (Ardenton Financial) was registered under the securities laws of all of the provinces of Canada. The British Columbia Securities Commission (BCSC) was its principal regulator. On March 8, 2021, the BCSC suspended the firm's registration with Ardenton Financial's consent, after the firm reported to the BCSC that it had ceased conducting registrable activities because a related firm, Ardenton Capital Corporation, the source of Ardenton Financial's income, had petitioned for protection from its creditors under the Companies' Creditors' Arrangement Act on March 5, 2021.

Staff recommended to the Director that the firm also be suspended in Ontario due to the regulatory action taken by the principal regulator. The firm advised staff that it had no objection to the proposed regulatory action and the Director suspended the firm on the basis that it would be objectionable for the firm to remain registered in Ontario when its registration was suspended in all other Canadian jurisdictions where it was registered.

[8] For privacy reasons and in the published Director's Decision, this individual was referred to as "John Doe" to protect their identity.

OSC ONTARIO SECURITIES COMMISSION

Contact us

OSC Inquiries and Contact Centre

8:30 a.m. to 5:00 p.m. Eastern Time, Monday to Friday

1-877-785-1555 (Toll-free)

416-593-8314 (Local)

inquiries@osc.gov.on.ca

You can also use our online form located on the Contact us webpage on the OSC website:

www.osc.ca

If you have questions or comments about this report, please contact:

Lisa Piebalgs

Accountant

Compliance and Registrant Regulation

lpiebalgs@osc.gov.on.ca

(416) 593-8147

This page intentionally left blank

B.2
Orders

B.2.1 Ignite International Brands, Ltd.

Headnote

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

Applicable Legislative Provisions

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

October 11, 2022

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

AND

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

AND

IN THE MATTER OF
IGNITE INTERNATIONAL BRANDS, LTD.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2022/0436

B.2.2 Alexco Resource Corp.

Headnote

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

Applicable Legislative Provisions

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

October 11, 2022

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

AND

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

AND

IN THE MATTER OF
ALEXCO RESOURCE CORP.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Gordon Smith"
Associate Manager,
Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2022/0422

B.2.3 Clearford Water Systems Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications and National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – application for order that issuer is not a reporting issuer and for full revocation of failure-to-file cease trade order – issuer cease traded due to failure to file annual audited financial statements and annual management's discussion and analysis and related certifications – issuer has completed reorganization under the Bankruptcy and Insolvency Act – issuer has applied for a full revocation of the cease trade order – issuer has applied to cease to be a reporting issuer in each jurisdiction where it is a reporting issuer – full revocation of the failure-to-file cease trade order and cease to be reporting issuer application granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(10)(a)(ii) and 144.
National Policy 11-206 Process for Cease to be a Reporting Issuer Applications.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

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

AND

IN THE MATTER OF
A REVOCATION OF
A FAILURE-TO-FILE CEASE TRADE ORDER AND
IN THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
CLEARFORD WATER SYSTEMS INC.
(the Issuer)

ORDER

Background

The Issuer is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Decision Maker**) on May 6, 2022.

The Issuer has applied to the Decision Maker under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**NP 11-207**) for a revocation of the FFCTO (**FFCTO Revocation Order**) pursuant to section 144 of the *Securities Act* (Ontario) (the **Legislation**) to take effect as at the Effective Date (as defined below).

The Decision Maker also received an application (**Cease to be a Reporting Issuer Application**) from the Issuer for an order (the **Cease to be a Reporting Issuer Order**) under section 1(10)(a)(ii) of the Legislation that the Issuer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Jurisdictions**) pursuant to section 21 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (**NP 11-206**) to take effect at the Effective Date.

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

(a) the Decision Maker is the principal regulator for this application; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NP 11-206, NP 11-207 and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. The Issuer is a "reporting issuer" in the provinces of British Columbia, Alberta and Ontario (the **Reporting Jurisdictions**).

2. The Issuer was formed on January 26, 2006 in accordance with a Certificate of Amalgamation filed in respect of Clearford Industries Inc., Innovative Sewage Systems Inc. and Brooklin Concrete Inc. pursuant to the provisions of the Canada Business Corporations Act (the **CBCA**) and originally named "Clearford Industries Inc." On June 19, 2014, the name of the Issuer was changed to "Clearford Water Systems Inc." pursuant to a Certificate of Amendment.

3. The head office of the Issuer is located at 300-1545 Carling Ave, Ottawa, ON, Canada K1Z 8P9.

4. The authorized capital of the Issuer consists of an unlimited number of shares of a class designated as "New Common Shares" (the **New Common Shares**), an unlimited number of shares of a class designated as "Non-Voting Common Shares" (the **Non-Voting Common Shares**, and together with the New Common Shares, the **New Shares**) and an unlimited number of shares of a class designated as "Redeemable Shares" (the **Redeemable Shares**), of which 6,000 New Common Shares, 4,000 Non-Voting Common Shares and no Redeemable Shares are issued and outstanding as of the date hereof.

5. On April 28, 2022, the Issuer filed a Notice of Intention to Make a Proposal (**NOI**) pursuant to the provisions of Part III of the *Bankruptcy and Insolvency Act* (Canada) (the **BIA**). Pursuant to the NOI, KSV Restructuring Inc. was appointed as the proposal trustee (the **Proposal Trustee**) to assist the Issuer in its restructuring efforts.

6. The Proposal Trustee reported that as of the date of the filing of the NOI, based on the Issuer's books and records, the Issuer had secured creditor obligations of approximately $16.5 million (excluding vehicle specific fleet financing which was unaffected by the Proposal (as defined below)), 100% of which secured creditor obligations was owed to the Sponsors, and known unsecured creditor obligations of approximately $29.5 million, being an aggregate of approximately $46 million of creditor obligations. The Issuer estimated that its assets, at net book value, are approximately $5.4 million, principally comprised of its interest in its operating subsidiaries. As a result, the Issuer was wholly insolvent.

7. On May 12, 2022, the Issuer filed a proposal (the **Proposal**) pursuant to the provisions of Part III of the BIA. The Proposal was developed with the support of certain senior secured creditors of the Issuer (the **Sponsors**) and intended to restructure and compromise the Issuer's obligations to both its unsecured creditors and the Sponsors (together, the **Creditors**), as well as to continue its business as a going concern. Under the terms of the Proposal, trade creditors and terminated employee creditors were to receive a pro rata distribution from the Unsecured Creditor Cash Amount (funded by the Sponsors), in full satisfaction of their claims, and the Sponsors and other creditors (through the Issuer's subsidiaries' intercompany claims), were to be issued a participating interest in an unsecured contingent value note (the **Contingent Value Note**) to be issued by the Issuer on implementation of the Proposal, recoveries under which are dependent on the Issuer's future revenue. The Contingent Value Note provides for repayment to the participants thereunder up to a maximum principal amount of approximately $46 million (which corresponds to the aggregate amount of the Issuer's creditor obligations), without interest, from the following: (A) all of the Issuer's annual distributable cash flow (net cash flow less various reserves required for continued operations) if any, in any fiscal year for the period commencing on January 1, 2023 and ending on the earlier of (i) December 31, 2033, and (ii) a sale or merger in respect of the Issuer; (B) all subsidiary transaction proceeds, being the net consideration paid to or received by the Issuer resulting from a transaction or series of any related transactions with an arm's-length party involving (i) all or substantially all of the shares of Clearford Water Works Inc. (**CWW**) and/or the shares of UV Pure Technologies Inc. (**UV Pure**), the two principal operating subsidiaries of the issuer, or (ii) a sale of all or substantially all of the assets or undertaking of CWW and/or UV Pure; and (C) all sponsor transaction proceeds, being the net consideration or proceeds received by the Sponsors (as holders of New Common Shares of the Issuer as a result of the Corporate Reorganization (as defined below)) from any transaction or series of any related transactions with an arm's-length party involving all or substantially all of the New Common Shares, payable by the Sponsors pursuant to the Contingent Value Note.

8. On May 12, 2022, the Issuer and the Sponsors executed an agreement (the **Restructuring and Support Agreement**) in which the Sponsors outlined the terms of their support for the compromises, arrangements and transactions contemplated by the Proposal and agreed to continue to fund the Issuer through to the conclusion of the restructuring process. Under the Restructuring and Support Agreement, the Sponsors agreed to give up their first ranking security interest and participate in the Contingent Value Note as an unsecured creditor, and agreed to provide certain cash payments contemplated under the Proposal, in return for which the Sponsors would have all of the New Shares (as defined below) of the Issuer issued to them on implementation of the Proposal.

9. On June 2, 2022, a meeting of the Issuer's creditors (the **Meeting**) was held to consider and vote on the Proposal, and at the Meeting, 100% of the creditors attending in person or by proxy voted in favour of the Proposal.

10. On July 13, 2022, the Ontario Superior Court of Justice in Bankruptcy and Insolvency (the **Court**) granted an order (Estate/Court File no. 33-2825753) (the **BIA Order**) approving: (i) the Proposal; (ii) a reorganization of the capital structure of the Issuer in accordance with section 59(4) of the BIA (the **Corporate Reorganization**); and (iii) the First Report of the Proposal Trustee dated June 29, 2022 and the actions of the Proposal Trustee described therein.

11. The Corporate Reorganization included the amendment of the Issuer's constating documents to, inter alia, effect the redemption or cancellation of all common shares of the Issuer (the **Old Common Shares**) outstanding immediately prior to effective date of the Corporate Reorganization, and authorized the issuance of New Shares to the Sponsors or their designated assignee. The principal steps of the Corporate Reorganization included, among other things, the following:

    (i) to amend the authorized share capital of the Issuer to: (A) create an unlimited number of shares of New Common Shares; (B) create an unlimited number of Non-Voting Common Shares; and (C) create an unlimited number of Redeemable Shares;

    (ii) to change each Old Common Share into 0.000001 (one-millionth) of a Redeemable Share;

    (iii) to remove the authorized but unissued Old Common Shares and the Class A Special Share outstanding immediately prior to the effective date of the Corporate Reorganization and all rights, privileges, restrictions and conditions attaching thereto;

    (iv) to declare that the capital of the Issuer after giving effect to the foregoing shall consist of an unlimited number of New Common Shares, an unlimited number of Non-Voting Common Shares and an unlimited number of Redeemable Shares;

    (v) to include a provision in the articles of reorganization to be filed with Corporations Canada (the **Articles of Reorganization**) to introduce limitations on the number of shareholders permitted and restrictions on transfer in order to qualify it as a "private issuer" for the purposes of National Instrument 45-106 *Prospectus Exemptions*, which limitations will provide that the issue, transfer or ownership of shares shall be restricted in that no shares shall be transferred without either: (A) the consent of the directors of the Issuer expressed by a resolution passed or by an instrument in writing signed by the majority of the directors; or (B) the consent of the holders of shares of the Issuer to which are attached at least a majority of the votes attaching to the shares;

    (vi) to automatically redeem all Redeemable Shares, into which the Old Common Shares and fractional interests therein outstanding are changed pursuant to the Proposal, on payment of $0.01 for each whole Redeemable Share; and

    (vii) to issue New Shares to the Sponsors, which will be subject to the resale restrictions set out in section 2.6 of National Instrument 45-102 *Resale of Securities*.

12. The effective date of the Corporate Reorganization was [●], 2022 (the **Effective Date**).

13. Immediately prior to the Effective Date, the authorized capital of the Issuer consisted of an unlimited number of Old Common Shares and one Class A Special Share, of which 102,027,729 Old Common Shares and no Class A Special Shares were outstanding. In addition, immediately prior to the Effective Date, the Issuer had: (i) approximately $7.4 million of secured debt owing to Morebath Limited pursuant to (a) a convertible debenture and share pledge in the principal amount of $500,000 dated November 5, 2018, as amended by an undated amending agreement, (b) a convertible debenture and share pledge in the principal amount of $1.65 million dated May 15, 2018, as amended by an undated amending agreement, and (c) a convertible debenture and share pledge in the principal amount of $3.5 million dated August 5, 2015, as amended by an amending agreement dated August 5, 2017 and an undated second amending agreement; (ii) approximately $5.35 million of secured debt owing to Sustainable Water Projects Inc. (**SWP**), comprised of (a) a loan in the principal amount of $3.25 million pursuant to a loan agreement dated November 19, 2014 originally advanced by Canadian Water Projects Inc. (**CWP**) on or about November 19, 2014, and assigned by CWP to SWP on or about September 30, 2016 and (b) a loan in the principal amount of approximately US$1.47 million pursuant to a loan agreement dated May 19, 2016; (iii) approximately $3.7 million of secured debt owing to Lexus Continental Ltd. pursuant to a convertible debenture and share pledge in the principal amount of $2.975 million dated November 1, 2017, as amended by an undated amending agreement; and (iv) approximately $4.5 million of unsecured debt owing to SW Everett Inc. pursuant to an unsecured loan in the principal amount of USD$3.35 million advanced under a loan agreement dated November 19, 2016. Immediately prior to the Effective Date, all other debt obligations of the Issuer was comprised of intercompany debt as well as trade debt (i.e. vendor claims and amounts due to professional advisors).

14. As of and since the Effective Date, the authorized share capital of the Issuer consists solely of an unlimited number of shares of New Common Shares, an unlimited number of Non-Voting Common Shares and an unlimited number of Redeemable Shares, of which 6,000 New Common Shares, 4,000 Non-Voting Common Shares and no Redeemable Shares are issued and outstanding as of the date hereof.

15. As of and since the Effective Date, the Issuer only has three registered and beneficial securityholders, namely the Sponsors.

16. The rights of the shareholders of the Issuer are governed by and subject to the Issuer's share terms, which are set forth in (a) the Articles of Reorganization, and (b) a shareholders' agreement to which all of the shareholders of the Issuer are parties following completion of the Corporate Reorganization and implementation of the Proposal.

17. There is no obligation in any of the Proposal, the Articles of Reorganization or the shareholders' agreement for the Issuer to maintain its status as a reporting issuer and no prohibition on ceasing to be a reporting issuer.

18. The prior holders of Old Common Shares ceased to have any economic interest in the Issuer upon completion of the Corporate Reorganization.

19. The Old Common Shares were previously listed for trading on the TSX Venture Exchange (the **TSXV**) under the symbol "CLI" and on April 29, 2022, the TSXV issued a bulletin indicating that trading in the Old Common Shares had been halted and effective at the opening on May 3, 2022, the Issuer was transferred to NEX, its Tier classification was changed from Tier 2 to NEX, and the Filing and Service Office was changed from Toronto to NEX. In connection with the migration to the NEX, the trading symbol for the Old Common Shares changed from "CLI" to "CLI.H". In connection with the completion of the Proposal and the Corporate Reorganization, the Issuer submitted an application to delist the Old Common Shares from trading on the TSXV and the NEX.

20. On the Effective Date, the Old Common Shares were delisted from the NEX and TSXV, following which no securities of the Issuer, including debt securities, have been traded in Canada, the United States or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

21. The Issuer has no current intention to seek public financing by way of an offering of securities in Canada or elsewhere or to make or maintain a market in securities of the Issuer.

22. The securities of the Issuer are subject to a FFCTO issued by the Decision Maker on May 6, 2022 that is applicable in certain other Reporting Jurisdictions for its failure to file, subsequent to the date of the NOI and the appointment of the Proposal Trustee, Filings (as defined below) under applicable securities laws.

23. The Issuer is applying for an order revoking the FFCTO and an order that the Issuer has ceased to be a reporting issuer in all of the Reporting Jurisdictions.

24. As of the date hereof, the Issuer is not in default of any of the requirements of securities legislation in the Reporting Jurisdictions, or the rules and regulations made pursuant thereto, except (the following, the **Defaults**):

    (i) the obligation to file the following periodic disclosure documents (the **Filings**):

        1. audited annual financial statements for the year ended December 31, 2021 (the Annual Financials), management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2021 (the Annual MD&A) and certification of the foregoing filings (together with the Annual Financials and the Annual MD&A, the Annual Filings) as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* NI 52-109);

        2. interim financial statements for the three month period ended March 31, 2022, management's discussion and analysis relating to the interim financial statements for the three month period ended March 31, 2022 and certification of the foregoing filings as required by NI 52-109; and

        3. interim financial statements for the three and six month period ended June 30, 2022, management's discussion and analysis relating to the interim financial statements for the three and six month period ended June 30, 2022 and certification of the foregoing filings as required by NI 52-109, all of which Filings became due after the appointment of the Proposal Trustee;

    (ii) in filing the Proposal, which contemplates, among other things, the Corporate Reorganization, the Issuer may have engaged in certain acts in furtherance of trades in the securities of the Issuer, which may be in violation of the requirements of the FFCTO; and

    (iii) in acting in compliance with the BIA Order in completing the Corporate Reorganization, the Issuer may have engaged in certain trades and acts in furtherance of trades in the securities of the Issuer in violation of the

requirements of the FFCTO, which acts were taken at the direction and with the approval of, and under the supervision of, the Court.

25. But for the Defaults, the Issuer would qualify for the simplified procedure set out in NP 11-206 on the basis that:

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

(ii) the outstanding securities of the Issuer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide; and

(iii) the Issuer's outstanding securities, including debt securities, are not traded in Canada or another country on a marketplace, as defined in NI 21-101, or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

26. The Issuer acknowledges that, in granting the relief sought, the Decision Maker is not expressing any opinion or approval as to the terms of the Corporate Reorganization.

Order

The Decision Maker is satisfied that FFCTO Revocation Order and the Cease to be a Reporting Issuer Order meet the tests set out in the Legislation for the Decision Maker to make the order

The decision of the Decision Maker under the Legislation is that the FFCTO Revocation Order and the Cease to be a Reporting Issuer Order are granted.

DATED this 7th day of October, 2022

"David Surat"
Manager (Acting), Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0411

B.2.4 Ontario Genomics Institute – s. 74(1)

Headnote

Application by a not-for-profit corporation pursuant to subsection 74(1) of the Securities Act (Ontario) – Applicant's mandate relates to funding research and development projects based in genomics, engineering biology or associated technologies (Eligible Projects) – Applicant does not fall within any of the enumerated classes of "accredited investor" in section 73.3 of the Securities Act (Ontario) and National Instrument 45-106 Prospectus Exemptions - Applicant will only invest in securities of Eligible Projects (Eligible Project Securities) – Applicant's staff are experts in the field of genomics and related life sciences and are qualified to determine the quality and viability of the projects in which the Applicant invests – All investments and divestitures in Eligible Project Securities will be reviewed by the Applicant's Private Sector Advisory Committee, the members of which, individually and collectively, have significant knowledge and experience in investment matters - Order that the prospectus requirements in section 53 of the Securities Act (Ontario) of the do not apply in respect of a trade in Eligible Project Securities to the Applicant granted, subject to conditions – Order expires in two years.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 73.3 and 74(1).
National Instrument 45-106 Prospectus Exemptions, s. 1.1, 6.1.
Form 45-106F1 Report of Exempt Distribution and National Instrument 45-102 Resale of Securities, s. 2.5.

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

AND

IN THE MATTER OF
ONTARIO GENOMICS INSTITUTE

ORDER
(Subsection 74(1))

WHEREAS Ontario Genomics Institute ("**OGI**") has filed an application (the "**Application**") with the Ontario Securities Commission (the "**Commission**") for recognition as an accredited investor for the purposes of securities legislation;

AND WHEREAS the Commission may, pursuant to subsection 74(1) of the Act, rule that any trade, intended trade, security, person or company is not subject to section 53 of the Act (the "**Prospectus Requirement**") where it is satisfied that to do so would not be prejudicial to the public interest;

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

AND UPON it being represented by OGI to the Commission that:

1. OGI was established by letters patent on October 18, 2000 under the *Canada Corporations Act* as a non-profit corporation and was continued under the *Canada Not-For-Profit Corporations Act* on October 31, 2013.

2. OGI's offices are located at 661 University Avenue, Suite 490, Toronto, Ontario, M5G 1M1.

3. OGI's mandate is to fund world-class research to create strategic genomics resources and accelerate Ontario's development of a globally-competitive life sciences sector.

4. OGI primarily receives its funding from Genome Canada (a not-for-profit corporation which is funded by Innovation, Science and Economic Development) and from the Government of Ontario.

5. OGI receives separate funding for: (i) operation, administration and business development of OGI ("**Operations Funding**"), and (ii) investment in genomics research and development projects ("**Project Funding**").

6. In its most recently completed fiscal year (the fiscal year ended March 31, 2022), OGI received $3.4 million of Operations Funding and $26.3 million of Project Funding.

7. The business development mandate at OGI is to catalyze access to, and the impact of, genomics capacity and applicable resources. One of the ways that OGI does this is through early stage company investments, the principal purpose of which is to enhance progress towards the marketplace for genomics outcomes or genomics-related technologies and to thereby assist the relevant scientific founder in formative efforts to commercialize that early stage research.

8. OGI wishes to structure the funding of, and/or investments in, research and development projects based in genomics, engineering biology or associated technologies ("**Eligible Projects**") being conducted on a for-profit basis through an investment by OGI from its Operations Funding in the corporate entity undertaking each such Eligible Project and, in return for providing funding and other resources to such corporate entity, OGI would receive equity (or convertible debt) or other securities in the corporation ("**Eligible Project Securities**").

9. OGI only enters into funding arrangements in respect of Eligible Projects after careful research and consideration by experts in the industry and has designed its business development program to use the same careful analysis and metrics.

10. OGI staff are experts in the field of genomics and related life sciences and are qualified to determine the quality and viability of the projects in which OGI invests.

11. All investments in, and divestitures of, Eligible Project Securities by OGI will be reviewed by OGI's Private Sector Advisory Committee. The members of OGI's Private Sector Advisory Committee, individually and collectively, all have significant knowledge and experience in investment matters.

12. OGI does not fall within any of the enumerated classes of accredited investors set forth in the definition of "accredited investor" in section 73.3 of the *Securities Act* (Ontario) and in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*.

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

NOW THEREFORE the Commission orders that the Prospectus Requirement does not apply in respect of a trade in Eligible Project Securities to OGI as if OGI were an accredited investor, provided that:

(a) OGI purchases as principal;

(b) if the trade is a distribution, the issuer of the Eligible Project Securities files a Form 45-106F1 - *Report of Exempt Distribution* in Ontario on or before the tenth day after the distribution;

(c) the first trade in such Eligible Project Securities will be deemed to be a distribution that is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*; and

(d) this order expires two years from the date of this order, unless earlier renewed.

DATED at Toronto, Ontario on this 14th day of October, 2022.

"David Surat"
Manager (Acting), Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0458

This page intentionally left blank

B.3
Reasons and Decisions

B.3.1 Brookfield Asset Management Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from requirement in restricted securities provisions of securities legislation to refer to restricted securities using a non-prescribed restricted security term – relief granted subject to conditions, including condition that specified alternate term is used.

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
BROOKFIELD ASSET MANAGEMENT LTD.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Asset Management Ltd. (the **Filer**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) the requirements in section 12.2 of National Instrument 41-101 – *General Prospectus Requirements* (**NI 41-101**) to refer to the class A limited voting shares (**Class A Shares**), the class B limited voting shares (**Class B Shares**) and the special shares, series 1 (**Special Limited Voting Shares**) of the Filer using a term that includes appropriate restricted security terms and not to refer to the Class A Shares by a term that includes "common" unless the securities are common shares shall not apply in connection with: (i) a final long form prospectus in connection with the Special Distribution (as defined below) (the **Special Distribution Prospectus**); and (ii) other prospectuses that may be filed by the Filer under NI 41-101 or National Instrument 44-101 – *Short Form Prospectus Distributions*, including a prospectus filed under National Instrument 44-102 – *Shelf Distributions* (together with the Special Distribution Prospectus, the **Prospectuses** and each a **Prospectus**) (the **Prospectus Disclosure Exemption**);

(b) the requirements in Part 10 of National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**) to refer to the Class A Shares, the Class B Shares and the Special Limited Voting Shares in prescribed continuous disclosure documents using a term that includes appropriate restricted security terms and not to refer to the Class A Shares, the Class B Shares or the Special Limited Voting Shares by a term that includes "common" unless the securities are common shares shall not apply (the **NI 51-102 Exemption**); and

(c) the requirements in (i) Part 2 of OSC Rule 56-501 – *Restricted Securities* (**OSC Rule 56-501**) in respect of disclosure relating to the Class A Shares, the Class B Shares and the Special Limited Voting Shares in dealer and advisor documentation and rights offering circulars or offering memoranda of the Filer and (ii) Part 3 of OSC Rule 56-501 in respect of future stock distributions (as defined in OSC Rule 56-501) of Class A Shares or securities that are directly or indirectly convertible into or exercisable or exchangeable for Class A Shares shall not apply (the **OSC Rule 56-501 Exemption**, together with the Prospectus Disclosure Exemption and the NI 51-102 Exemption, the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 41-101, NI 51-102 and OSC Rule 56-501 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer was incorporated on July 4, 2022 by Brookfield Asset Management Inc. (**Brookfield**) pursuant to an incorporation agreement dated the same date under the laws of British Columbia.

2. The head office of the Filer is located at EP 100, Brookfield Place, 181 Bay Street, Toronto, Ontario M5J 2T3 and the registered office of the Filer is located at 1055 West Georgia Street, Suite 1500, P.O. Box 11117, Vancouver, British Columbia V6E 4N7.

3. The Filer expects to file a preliminary long form prospectus with the securities regulatory authorities in each of the provinces and territories in Canada in connection with the planned special distribution (the **Special Distribution**) by Brookfield Asset Management Reinsurance Partners Ltd. (**Brookfield Reinsurance**) to the holders of its class A exchangeable limited voting shares (**Brookfield Reinsurance Class A Shares**) and class B limited voting shares (**Brookfield Reinsurance Class B Shares**) of Class A Shares of the Filer.

4. The Filer was established by Brookfield as a company through which investors, including the existing shareholders of Brookfield and Brookfield Reinsurance, can directly access its leading, pure play global alternative asset management business, to be owned and operated through Brookfield Asset Management ULC. Immediately before Brookfield Reinsurance effects the Special Distribution, Brookfield intends to implement a court approved plan of arrangement (the **Arrangement**). On completion of the Arrangement, (i) the shareholders of Brookfield will become shareholders of the Filer while retaining their shares of Brookfield, and (ii) Brookfield will change its name to “Brookfield Corporation”.

5. The Filer is not a “reporting issuer” under the *Securities Act* (Ontario) or applicable securities legislation in any Non-Principal Jurisdiction. The Filer expects to become a reporting issuer in each of the provinces and territories of Canada upon obtaining a receipt for the Special Distribution Prospectus.

6. The Filer is not in default of the requirements of applicable securities legislation in the Jurisdictions.

7. The authorized share capital of the Filer currently consists of (a) an unlimited number of preference shares designated as Class A preference shares (issuable in series) (**Class A Preference Shares**), (b) an unlimited number of Class A Shares, (c) 85,120 Class B Shares and (d) an unlimited number of special shares (issuable in series), which an unlimited number of Special Limited Voting Shares have been authorized.

8. On completion of the Arrangement, the Class A Shares are expected to be listed on the Toronto Stock Exchange and the New York Stock Exchange.

9. The terms and conditions of the Class A Shares and Class B Shares are substantially equivalent, except for the differing voting rights attached to the two classes of shares, and are intended to be the same as the terms and conditions of Brookfield’s class A limited voting shares (**Brookfield Class A Shares**) and Brookfield’s class B limited voting shares (**Brookfield Class B Shares**).

10. The terms and conditions of the Special Limited Voting Shares will be substantially equivalent to the Class A Shares, except that the Special Limited Voting Shares are convertible into Class A Shares at any time at a conversion rate equal to one Class A Share for each Special Limited Voting Share. The holders of Special Limited Voting Shares are entitled to one vote per share and vote with the Class A Shares, as a class, with respect to any matters to be voted on by shareholders, including with respect to the election of one-half of the board of directors of the Filer (the **Board**).

11. Subject to the prior rights of the holders of the Class A Preference Shares and any other senior-ranking shares outstanding from time to time, holders of Class A Shares, Class B Shares and Special Limited Voting Shares rank on a parity with each other with respect to the payment of dividends (if, as and when declared by the Board) and the return of

capital on the liquidation, dissolution or winding up of the Filer or any other distribution of the assets of the Filer among its shareholders for the purpose of winding up its affairs.

12. The Special Limited Voting Shares will be transitory in that they will be issued and then converted into Class A Shares as part of the Arrangement, which will be described in detail in the circular for the meeting of shareholders of Brookfield to approve the Arrangement (the **Circular**). The Special Limited Voting Shares will be issued to holders of Brookfield Class A Shares that elect to receive Class A Shares for their fair market value rather than on a rollover basis (each, an **Electing Holder** and, collectively, the **Electing Holders**). Immediately following completion of the Arrangement, the class of special shares and the Special Limited Voting Shares will be removed from the Filer's authorized capital such that its authorized share capital will consist of (i) an unlimited number of Class A Preference Shares, issuable in series (no series of which will be authorized), (ii) an unlimited number of Class A Shares and (iii) 85,120 Class B Shares.

13. Subject to applicable law and in addition to any other required shareholder approvals, all matters to be approved by shareholders of the Filer (other than the election of directors), must be approved by both: (i) a majority or, in the case of matters that require approval by a special resolution of shareholders, at least 66 2/3%, of the votes cast by holders of the Class A Shares who vote in respect of the resolution; and (ii) a majority or, in the case of matters that require approval by a special resolution of shareholders, at least 66 2/3%, of the votes cast by holders of the Class B Shares who vote in respect of the resolution. In addition, the holders of the Class A Shares will be entitled to elect one-half of the Board and the holders of the Class B Shares will be entitled to elect one-half of the Board.

14. The Class A Shares, the Class B Shares and the Special Limited Voting Shares qualify as "restricted securities" under NI 41-101 and NI 51-102 and as "restricted shares" under OSC Rule 56-501 (together, the **Restricted Securities Provisions**) because the Filer's constating documents contain provisions that restrict the voting rights of such securities in any election of the Board. Specifically, pursuant to the Filer's constating documents: (i) the holders of Class A Shares, together with the Special Limited Voting Shares, are entitled to elect one-half of the Board; (ii) the holders of Class B Shares are entitled to elect the other one-half of the Board; and (iii) neither the Class A Shares nor the Class B Shares, on their own right, have the right to vote for the entire Board.

15. The Filer believes that none of the "restricted security terms" or "restricted share terms" referred to in the Restricted Securities Provisions, namely, "non-voting security", "restricted voting security" and "subordinate voting security", accurately describe the Class A Shares, the Class B Shares or the Special Limited Voting Shares. It is submitted that, while the term "limited voting" is not enumerated as a category of restricted security in the Restricted Securities Provisions, in the circumstances it is the appropriate term to describe the Class A Shares, the Class B Shares and the Special Limited Voting Shares.

16. In any Prospectus and its other disclosure documents the Filer will refer to:

    (a) the Class A Shares as "class A limited voting shares" and/or "class A shares";

    (b) the Class B Shares as "class B limited voting shares" and/or "class B shares";

    (c) the Class A Shares and the Class B Shares collectively as "shares" and the collective holders of those shares as "shareholders"; and

    (d) the Special Limited Voting Shares once as "special shares, series 1" and then as "Manager Special Limited Voting Shares" or "Special Limited Voting Shares";

17. In any Prospectus and its other disclosure documents the Filer will refrain from: (a) using the terms "common share" or "per common share" when referring to the Class A Shares, the Class B Shares and/or the Special Limited Voting Shares; and (b) using the term "common equity" except for in the limited circumstances when it is discussing equity amounts as opposed to share numbers (e.g., dollar amounts and the values used in debt to capitalization ratios).

18. Referring to the Class A Shares and the Class B Shares using the terms set out in paragraph 16 above, which are used by Brookfield in its disclosure documents to refer to the Brookfield Class A Shares and the Brookfield Class B Shares, provides consistency in disclosure as the Class A Shares and the Class B Shares are intended to have the same terms and conditions as the Brookfield Class A Shares and the Brookfield Class B Shares.

19. Together, following completion of the Arrangement, holders of the Class A Shares and the Class B Shares will have all of the voting and other rights typically attached to common equity, including the right to elect all of the members of the Board.

20. Referring to the Class A Shares and Class B Shares collectively as "common equity" allows the Filer to delineate between the preference and non-preference equity in a manner that is familiar to the market, all while meeting the requirements of not referring to the Class A Shares or Class B Shares as "common" shares.

21. The Filer otherwise complies with Part 12 of NI 41-101 and Part 10 of NI 51-102.

Decision

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

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

1. in connection with the Prospectus Disclosure Exemption, as it applies to any Prospectus filed by the Filer:

   (a) representations 16 and 17 above continue to apply;

   (b) the Filer has no restricted securities (as defined in section 1.1 of NI 41-101) issued and outstanding other than the Class A Shares, the Class B Shares and the Special Limited Voting Shares;

   (c) the Prospectus includes disclosure consistent with representations 16 and 17 above;

   (d) the Circular includes disclosure consistent with representations 10 and 12 above; and

   (e) no special shares of the Filer, including the Special Limited Voting Shares, are issued other than the Special Limited Voting Shares to be issued to Electing Holders pursuant to the Arrangement and, upon completion of the Arrangement, all Special Limited Voting Shares will have been converted into Class A Shares and the class of special shares and the Special Limited Voting Shares will have been removed from the Filer's authorized capital.

2. in connection with the NI 51-102 Exemption, as it applies to disclosure documents filed by the Filer under NI 51-102:

   (a) representations 16 and 17 above continue to apply;

   (b) the Filer has no restricted securities (as defined in section 1.1(1) of NI 51-102) issued and outstanding other than the Class A Shares, the Class B Shares and the Special Limited Voting Shares;

   (c) the Circular includes disclosure consistent with representations 10 and 12 above; and

   (d) no special shares of the Filer, including the Special Limited Voting Shares, are issued other than the Special Limited Voting Shares to be issued to Electing Holders pursuant to the Arrangement and, upon completion of the Arrangement, all Special Limited Voting Shares will have been converted into Class A Shares and the class of special shares and the Special Limited Voting Shares will have been removed from the Filer's authorized capital.

3. in connection with the OSC Rule 56-501 Exemption, at the time the Filer relies on the Exemption Sought:

   (a) representations 16 and 17 above continue to apply;

   (b) the Filer has no restricted securities (as defined in section 1.1 of OSC Rule 56-501) issued and outstanding other than the Class A Shares, the Class B Shares and the Special Limited Voting Shares;

   (c) the Circular includes disclosure consistent with representations 10 and 12 above; and

   (d) no special shares of the Filer, including the Special Limited Voting Shares, are issued other than the Special Limited Voting Shares to be issued to Electing Holders pursuant to the Arrangement and, upon completion of the Arrangement, all Special Limited Voting Shares will have been converted into Class A Shares and the class of special shares and the Special Limited Voting Shares will have been removed from the Filer's authorized capital.

"David Surat"
Manager (Acting), Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0366

B.3.2 Orla Mining Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102, s. 13.1 – Continuous Disclosure Obligations – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The acquired company filed an information circular before the date of the acquisition; the information circular included financial information for a period that ended not more than one interim period before the financial information that the issuer would be required to include in its BAR; the issuer could rely on the exemptions in subsections 8.4(4) and (6) but for the fact that the acquired company, and not the issuer, filed the information circular; the issuer will file the information circular under its SEDAR profile and will include in the BAR all of the relevant financial statements included in the information circular.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.

October 5, 2022

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

AND

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

AND

IN THE MATTER OF
ORLA MINING LTD.
(the Filer)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in the Legislation to include certain interim financial statements in a business acquisition report in connection with the Acquisition (as defined herein) required under Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (the Exemption Sought).

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

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

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

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

Interpretation

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

Representations

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

1. the Filer is a company governed by the *Canada Business Corporations Act*;

2. the Filer's head office is located at 1010-1075 West Georgia Street, Vancouver, British Columbia, V6E 3C9;

3. the authorized capital of the Filer consists of an unlimited number of common shares and Class A preferred shares;

4. the common shares of the Filer are listed for trading on the Toronto Stock Exchange (TSX) under the trading symbol (OLA) and on the NYSE American under the trading symbol (ORLA);

5. the Filer is a reporting issuer in each jurisdiction of Canada;

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

7. the Filer is engaged in the acquisition, exploration, development and production of mineral properties in Mexico, Panama and the United States;

8. Gold Standard Ventures Corp. (GSV) was incorporated under the laws of British Columbia;

9. GSV is engaged in the exploration and development of mineral properties in Nevada;

10. on August 12, 2022, the Filer acquired all of the common shares of GSV (the Acquisition);

11. prior to the Acquisition, the common shares of GSV were listed for trading on the TSX and NYSE American and GSV was a reporting issuer in each of the jurisdictions of Canada;

12. the Acquisition was carried out pursuant to a court-approved plan of arrangement under Division 5 of Part 9 of the *Business Corporations Act* (British Columbia) (the Arrangement);

13. under the terms of the Arrangement, the common shares of GSV were exchanged for common shares of the Filer and GSV became a wholly-owned subsidiary of the Filer;

14. the Arrangement and the resulting Acquisition were approved by the British Columbia Supreme Court (the Court), the TSX, the NYSE American and by special resolution of the securityholders of GSV;

15. GSV delivered an information circular (the Information Circular) describing the Acquisition to its securityholders prior to the meeting at which securityholder approval of the Acquisition was obtained;

16. the contents of the Information Circular and interim order in respect of the Arrangement were approved by the Court prior to delivery to the securityholders of GSV;

17. under NI 51-102, the Information Circular was required to contain prospectus-level disclosure and include or incorporate by reference the financial statements required by a prospectus;

18. the Information Circular included or incorporated by reference the following financial statements relating to the Acquisition:

    (a) the audited financial statements of GSV for the years ended December 31, 2021 and 2020, together with the notes thereto and the auditors' reports thereon;

    (b) unaudited financial statements of GSV for the three-month interim period ended March 31, 2022 with comparatives for the three-month interim period ended March 31, 2021; and

    (c) unaudited pro forma condensed interim consolidated balance sheet of the Filer as at March 31, 2022, a pro forma condensed interim consolidated income statement of the Filer for the three months ended March 31, 2022 and a pro forma consolidated income statement of the Filer for the year ended December 31, 2021,

    (collectively, the Circular Statements);

19. GSV filed the Information Circular under its SEDAR profile on July 12, 2022; the Information Circular was, therefore, available to the public and to the securityholders of GSV and the shareholders of the Filer on the SEDAR website;

20. to the knowledge of the Filer, since the time the Information Circular was filed, there has not been any change in the GSV business that is material and adverse to the Filer;

21. the Acquisition constitutes a "significant acquisition" for the Filer for the purposes of NI 51102; consequently, under Part 8 of NI 51-102, the Filer is required to file a business acquisition report within 75 days of the Acquisition;

22. under NI 51-102, the business acquisition report must include the following financial statements:

    (a) the audited financial statements of GSV for the years ended December 31, 2021 and 2020, together with the notes thereto and the auditors' reports thereon;

    (b) unaudited financial statements of GSV for the three- and six-month interim period ended June 30, 2022, with comparatives for the three- and six-month interim period ended June 30, 2021 (the Updated Interim Financial Statements); and

    (c) unaudited pro forma condensed interim consolidated balance sheet of the Filer as at June 30, 2022, a pro forma condensed interim consolidated income statement of the Filer for the three and six months ended June 30, 2022 and a pro forma consolidated income statement of the Filer for the year ended December 31, 2021 (together with the Updated Interim Financial Statements, the Updated Financial Statements);

23. subsection 8.4(4) of NI 51-102 permits an issuer to include in its business acquisition report financial statements for a period ending not more than one interim period before the interim period for which financial statements would be required to be included in the business acquisition report, if

    (a) the business does not, or related businesses do not, constitute a material departure from the business or operations of the issuer immediately before the acquisition,

    (b) before the date of acquisition, the issuer filed a document that included financial statements for the acquired business that would have been required to be included if the document were a prospectus, and

24. those financial statements are for a period ending not more than one interim period before the interim period for which financial statements would be required to be included in the business acquisition report;

25. subsection 8.4(6) of NI 51-102 permits an issuer to include in its business acquisition report pro forma financial statements based on the interim financial statements permitted to be filed under subsection 8.4(4);

26. because GSV, and not the Filer, filed the Information Circular, the Filer is not able to rely on the exemptions in subsections 8.4(4) and 8.4(6) of NI 51- 02; the Filer satisfies all the other conditions of these exemptions; and

27. the Filer is seeking an exemption from the requirement under section 8.4 of NI 51-102 to include the Updated Financial Statements in the business acquisition report, provided that the Filer includes the Circular Statements in the business acquisition report and files the Information Circular under its SEDAR profile.

Decision

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

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

(a) the Filer files the Information Circular under its SEDAR profile; and

(b) the Filer includes the Circular Statements in its business acquisition report.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

OSC File #: 2022/0421

B.3.3 iA Global Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, s. 3.6.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 13.18(2)(b) and 15.1.

[COURTESY TRANSLATION]

October 7, 2022

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

AND

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

AND

IN THE MATTER OF
IA GLOBAL ASSET MANAGEMENT INC.
(the Filer)

DECISION

Background

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

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, and Saskatchewan (the **Other Jurisdictions**) in respect of the Exemption Sought, and

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

Interpretation

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

Representations

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

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

2. The Filer is registered as a portfolio manager in Québec, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, and Saskatchewan; as an investment fund manager and derivatives portfolio manager in Québec; and as a commodity trading counsel and commodity trading manager in Ontario.

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

4. The Filer is an indirect wholly owned subsidiary of Industrial Alliance Insurance and Financial Services Inc. (**iAIFS**), a life and health insurance corporation and financial services provider, which is itself a wholly owned subsidiary of iA Financial Corporation Inc. (**iA Financial Corporation**). iA Financial Corporation and its subsidiaries, including the Filer, are herein collectively referred to as **iA Financial Group**.

5. Within iA Financial Group, there are several asset management firms and related subsidiaries that provide investment management services to Canadian and American (U.S.) clients, including institutional clients (collectively, the **iA Asset Management Affiliates**).

6. The Filer offers managed accounts exclusively to sophisticated institutional investors, including pension funds, insurance and financial services companies, trusts, charitable organizations and corporations.

7. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has 23 Registered Individuals.

8. The titles used by the Registered Individuals include the words “Vice-President”, “First Vice-President”, “Senior Vice-President”, “Vice-President and Director”, “Director”, “Investment Director”, “Managing Director” and “Senior Director”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**). The Titles to be used by the Registered Individuals are consistent with the titles used by the iA Asset Management Affiliates and iAIFS.

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

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

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

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

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

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

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103.

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

French version signed by:

"Éric Jacob"
Superintendent, Client Services and Distribution oversight
Autorité des marchés financiers

B.3.4 iA Global Asset Management Inc. and Industrial Alliance, Investment Management Inc.

Headnote

Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another firm registered in any jurisdiction of Canada. The dually registered representatives will have sufficient time to adequately serve both firms. Conflicts of interest are unlikely to arise because clients of the Filers and the products offered by the Filers differ considerably. Both firms have policies and procedures in place to address potential conflicts of interest and the dually registered representatives are aware of those policies and procedures. The relief is conditional on the Filers only providing services to institutional permitted clients. The firms are exempted from the prohibition.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1 and 15.1.
Derivatives Act (Quebec) and Derivatives Regulation (Quebec), respectively under section 86 and 11.1.

[COURTESY TRANSLATION]

October 7, 2022

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

AND

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

AND

IN THE MATTER OF
IA GLOBAL ASSET MANAGEMENT INC.
(iAGAM)

AND

INDUSTRIAL ALLIANCE, INVESTMENT MANAGEMENT INC.
(iAIM and, together with iAGAM, the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the restriction contained in paragraph 4.1(1)(b) of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**), pursuant to section 15.1 of Regulation 31-103, to permit the Representatives (as defined below) to be registered as an advising representative or associate advising representative, as the case may be, of each of iAIM and iAGAM (the **Exemption Sought**).

The principal regulator has also received an application from the Filers for a decision under the derivatives legislation of Québec for relief from the prohibition in paragraph 4.1(1)(b) of Regulation 31-103 as applicable by section 11.1 of the *Derivatives Regulation* (Québec), CQLR, c. I-14.01, r. 1, pursuant to section 86 of the *Derivatives Act* (Québec), CQLR, c. I-14.01, to permit the Representatives (as defined below) to be registered as a derivatives advising representative or derivatives associate advising representative, as the case may be, of each of iAIM and iAGAM (the **Exemption Sought for Derivatives**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan;

(c) the decision regarding the Exemption Sought is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario; and

(d) the decision regarding the Exemption Sought for Derivatives is the decision of the principal regulator.

Interpretation

Terms defined in Regulation 11-102 and *Regulation 14-101 respecting Definitions* (chapter V-1.1, r. 3) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. iAIM is a corporation incorporated under the laws of Canada with its head office located in Québec City, Québec. iAIM is a wholly owned subsidiary of Industrial Alliance Insurance and Financial Services Inc. (**iAIFS**), a life and health insurance corporation and financial services provider, which is itself a wholly owned subsidiary of iA Financial Corporation Inc. (**iA Financial Corporation**), a holding company which controls a large network of subsidiaries inside and outside of Canada operating in the business of individual insurance, individual wealth management, group insurance and group savings and retirement businesses, among others.

2. iAIM is registered as a portfolio manager in the provinces of Québec, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, as an investment fund manager and derivatives portfolio manager in Québec, and as a commodity trading counsel and a commodity trading manager in Ontario.

3. iAGAM is a corporation incorporated under the laws of Canada with its head office located in Québec City, Québec. iAGAM is a wholly-owned subsidiary of iAIM, and therefore an indirect wholly-owned subsidiary of iAIFS and an indirect wholly-owned subsidiary of iA Financial Corporation.

4. iAGAM is registered as a portfolio manager in the provinces of Québec, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, as an investment fund manager and derivatives portfolio manager in Québec, and as a commodity trading counsel and a commodity trading manager in Ontario.

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

6. The Filers are affiliates as they are both subsidiaries of iAIFS, a wholly owned subsidiary of iA Financial Corporation.

7. The Filers' offices are located at the same address and they share the same back-office functions; however, the Filers have their own respective office space.

8. Both of the Filers also share common officers and directors and have the same Chief Compliance Officer (**CCO**) and Ultimate Designated Person (**UDP**).

9. The Filers are not in default of any requirements of securities legislation, commodity futures legislation or derivatives legislation in any of the jurisdictions of Canada.

10. iAIM offers managed accounts exclusively to sophisticated institutional investors, including pension funds, insurance and financial services companies, trusts, charitable organizations and corporations. All of iAIM's clients are "permitted clients", as defined in Regulation 31-103, and none of them are individuals. iAIM's non-individual "permitted clients" include segregated funds and pooled funds, as well as the iA Clarington Investments Inc. mutual funds, for which iAIM acts as portfolio manager.

11. A significant portion of iAIM's clients are its affiliated entities. The current affiliates for which iAIM provides portfolio management services include iAIFS (a life and health insurance corporation and financial services provider), Industrial Alliance, Auto and Home Insurance Inc. (an insurance company that provides property, casualty, auto and home insurance), Industrial Alliance Pacific General Insurance Corporation (an insurance company that provides creditor insurance, extended warranties and replacement insurance), Investia Financial Services Inc. (a mutual fund brokerage company), iA Clarington Investments Inc. (a mutual fund manufacturer), Industrial Alliance Trust Inc. (a trust and deposit taking company that provides selected complementary trust services for iA Financial Corporation subsidiaries), SAL Marketing Inc. (a company that is engaged in the marketing and distribution of automotive related warranty products, and that also sells vehicle service contracts in certain provinces), PPI Management Inc. (an insurance brokerage agency),

Michel Rhéaume et associés ltée (an insurance brokerage agency), Lubrico Warranty Inc. (an automotive warranty provider), National Warranties MRWV Limited (an automotive warranty provider), and Prysm General Insurance Inc. (a property insurance, fire insurance, liability insurance, automobile insurance and legal insurance and assistance company).

12. When distinguished by "asset types", clients can either be labelled "general funds" (i.e. monies belonging to an entity or monies of related insurance companies that are invested to satisfy their liabilities under insurance contracts), "segregated funds", "mutual funds" or "pooled funds".

13. When distinguished by "status", clients can either be labelled "iA financial institutions", "iA non-financial institutions" or "external clients".

14. iAIM's clients are proposed to be generally divided amongst the Filers based on their "status": iA financial institutions will remain clients of iAIM, and both iA non-financial institutions and external clients will become clients of iAGAM, except for National Warranties MRWV Limited, SAL Marketing Inc. and Lubrico Warranty Inc., which are considered iA non-financial institutions but will be serviced by iAIM instead of iAGAM.

15. Under this proposed separation of client bases, the distinction between "asset types" will be as follows: iAIM will retain the "general funds", while iAGAM will service the "segregated funds", "mutual funds" and "pooled funds".

16. The only client which is intended to be a client of both Filers is iAIFS, the direct parent entity of iAIM and indirect parent entity of iAGAM. As an iA financial institution, iAIFS' "general funds" will be managed by iAIM. However, the iA non-financial institutions will include the "segregated funds" of iAIFS. Accordingly, the management of iAIFS' assets will be divided between iAIM for the "general funds" and iAGAM for the "segregated funds".

17. As of this date, each of the individuals listed in Appendix A (collectively, the **Existing Representatives**) is registered as an advising representative, an associate advising representative, a derivatives advising representative and/or a derivatives associate advising representative of iAIM. In future, iAIM expects to add additional registered individuals (collectively, the **Future Representatives**) to be so employed by both iAIM and iAGAM. The Existing Representatives and the Future Representatives are collectively referred to as the **Representatives**.

18. For various business reasons, it was decided to require the business of iAIM to be continued through two subsidiaries: iAIM and iAGAM. Accordingly, it was decided to create and register iAGAM with the same structure, compliance systems, management and registered representatives as iAIM.

19. Together, the Filers will conduct the business currently being conducted by iAIM.

20. iAGAM intends to sponsor the Representatives, which will thereby become "dually" registered Representatives with both iAIM and iAGAM.

21. There are valid business reasons for the Representatives to be registered with both Filers. The Filers seek to ensure that their operational structure will be aligned with their business model while effectively meeting the policy objectives of Regulation 31-103.

22. The Filers intends to extend iAIM's compliance systems to iAGAM and establish a fully harmonized compliance organization that will oversee the operations and activities of both Filers.

23. The beneficial ownership of each of the Filers is identical and all elements of compliance and strategic oversight of the Filers will be harmonized. Accordingly, there will not exist, and there is no reason that there should ever arise, any conflicts of interests as between the Filers or as between the duties of an individual serving as a Representative of one of the Filers and any duties such person may have with the other Filer.

24. In all respects, clients of each of the Filers will be provided with the same resources (including, for example, the benefits of research and technology) and, perhaps more significantly, the same safeguards (including, for example, compliance monitoring and financial depth).

25. All Representatives will have sufficient time to adequately serve both Filers. The CCO and UDP of each Filer will ensure that the Representatives continue to have sufficient time and resources to adequately serve each Filer.

26. The Filers have the same CCO and appropriate compliance and supervisory policies and procedures in place to monitor the conduct of the Representatives, including any material conflicts of interest that may arise as a result of the dual registration of the Representatives.

27. All Representatives will act fairly, honestly and in good faith and in the best interests of the clients of each Filer.

28. The Filers will be able to appropriately deal with any conflict arising out of the dual registration, as the case may be.

29. In light of the sophistication of the Filers' non-individual "permitted clients" base, the Exemption Sought is not reasonably expected to deceive, mislead, or cause confusion to the Filers' existing and prospective non-individual "permitted clients".

30. The business carried on through each Filer will be similar in all material respects and while registered through both firms, the Representatives will be engaging in the same type of activities that the Representatives were carrying on before the creation of iAGAM, and will do so with the same clients that they were working with. Accordingly, the Filers do not expect that the dual registration of these Representatives will create any additional work for them, and are comfortable that the Representatives will continue to have sufficient time to adequately serve both firms.

31. The Filers are each indirect wholly-owned subsidiaries of iA Financial Corporation and accordingly, the dual registration of the Representatives will not give rise to the conflicts of interests present in a similar arrangement involving unrelated, arm's length firms.

32. The Filers each have in place policies and procedures to address conflicts of interests that may arise as a result of the dual registration of Representatives, and believe that they will be able to appropriately deal with these conflicts.

33. The policies and procedures of the Filers include policies and procedures for the following:

    a) mitigating or eliminating any client confusion that may result from the dual registration of the Representatives;

    b) ensuring that Representatives know which Filer they are acting on behalf of, when interacting with each client or prospective client;

    c) ascertaining the responsible Filer in respect of the supervision of each Representative;

    d) ascertaining the responsible Filer in respect of any complaints from current or prospective clients;

    e) handling and tracking the records for each Filer, including ensuring that the appropriate records are kept for each Filer by the Representatives; and

    f) ensuring necessary and timely interaction between the compliance personnel of each Filer to resolve any matters in respect of the dual registration of the Representatives (including having shared supervisors and branch managers, if appropriate).

34. The compliance teams of the Filers are equipped to:

    a) manage and address the complexity and size of the Filers;

    b) adequately communicate amongst each other, or share compliance staff;

    c) access the necessary books and records of each Filer;

    d) manage conflicts of interest specific to affiliated registered firms and organizations;

    e) mitigate any confusion, or potential confusion, that may arise for Representatives regarding which firms they are servicing and in what capacity;

    f) mitigate client confusion stemming from the dual registration of the Representatives within an affiliated organization;

    g) supervise a large number of registered individuals across affiliated registrants; and

    h) provide adequate compliance for distinct business lines.

35. In the absence of the Exemption Sought, the Filers would be prohibited from permitting Representatives to act as Representatives of their firm while the individuals are Representatives of the other Filer, which will require significant changes to iA Financial Corporation's planned operating structure, even though iAGAM and iAIM are affiliates. Further, iAGAM will be required to hire new Representatives, and the clients of iAIM which will become clients of iAGAM will be required to establish new relationships with these new iAGAM Representatives.

Decision

Each of the Decision Makers in respect of the Exemption Sought is satisfied that the decision meets the test set out in the Legislation. The principal regulator in respect of the Exemption Sought for Derivatives is satisfied that the decision meets the test set out in the derivatives legislation of Québec.

The decision of the Decision Makers under the Legislation and the derivatives legislation of Québec, as applicable, is that the Exemption Sought and Exemption Sought for Derivatives are granted, subject to the conditions below.

a) The Filers will serve only non-individual "permitted clients" as defined in Regulation 31-310 and that none of the clients of the Filers will be individuals;

b) All Representatives are subject to supervision by, and the applicable compliance requirements of, both Filers;

c) The CCO and the UDP of each Filer will ensure that all Representatives have sufficient time and resources to adequately serve each Filer and its respective clients;

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

e) The relationship between the Filers and the fact that the Representatives are dually registered with both Filers is fully disclosed in writing to each client of the Filers that deal with the Representatives.

French version signed by:

"Éric Jacob"
Superintendent, Client Services and Distribution oversight
Autorité des marchés financiers

APPENDIX A

List of Existing Representatives

Name	Registration Category	Place of Business	Registration Jurisdiction(s)	Principal Regulator
1. Jean-Renée Adam	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
2. Charles Barrette	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
3. Alain Bergeron	Ultimate Designated Person Advising Representative Permitted Individual – Director Permitted Individual – Officer Advising Representative – Commodity Trading Manager (Ontario)	26 Wellington Street East, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission
4. Pier-André Blanchet	Advising Representative Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
5. Emmanuel Brousseau	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
6. David Caron	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
7. Jean-Pierre Chevalier	Advising Representative Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
8. Lison Couture	Chief Compliance Officer – Portfolio Manager Chief Compliance Officer – Investment Fund Manager Permitted Individual - Officer	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
9. Giampiero D'Agnillo	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers

Name	Registration Category	Place of Business	Registration Jurisdiction(s)	Principal Regulator
10. Dave Doyon	Advising Representative Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
11. Thomas Drolet	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
12. Alexandre Drouin	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
13. Maxime Durivage	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
14. Louis Gagnon	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
15. Marc Gagnon	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
16. Pascal Garneau	Advising Representative Permitted Individual - Director	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
17. Martin Gauthier	Advising Representative Permitted Individual – Director Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
18. Simon Genest	Associate Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
19. Jonathan Girard	Associate Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
20. Marie-Pier Gosselin	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers

Name	Registration Category	Place of Business	Registration Jurisdiction(s)	Principal Regulator
21. Daniel Groleau	Advising Representative Advising Representative – Commodity Trading Manager (Ontario) Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
22. Maxime Houde	Associate Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
23. Jean-Remy Lassince	Associate Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
24. Stéfanie Leduc	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
25. Sébastien Mc Mahon	Advising Representative Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
26. Jessica Morasse	Advising Representative Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
27. Alexandre Morin	Advising Representative Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
28. Donald Moss	Advising Representative	26 Wellington Street East, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission
29. Marie-Hélène Naud	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
30. Sophie Noël	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
31. Hugo Noury	Associate Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers

Name	Registration Category	Place of Business	Registration Jurisdiction(s)	Principal Regulator
32. Laurence Patry	Associate Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
33. Pierre Payeur	Advising Representative Permitted Individual - Director	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
34. Martin Pépin	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
35. Tejsvi Rai	Advising Representative	522 University Avenue, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission
36. Mathieu Rioux	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
37. Marti Rioux-Maldague	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
38. Pierre Trottier	Advising Representative Advising Representative – Commodity Trading Counsel (Ontario) Advising Representative – Commodity Trading Manager (Ontario) Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
39. Sébastien Vaillancourt	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
40. Béatrice Vézina Vaughan	Associate Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
41. Daniel Bastasic	Advising Representative	522 University Avenue, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission

Name	Registration Category	Place of Business	Registration Jurisdiction(s)	Principal Regulator
42. Ferdinand Choy	Associate Advising Representative	522 University Avenue, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission
43. Christopher Hau	Advising Representative	522 University Avenue, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission
44. Rose Marcello	Advising Representative	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
45. Jason Parker	Advising Representative	522 University Avenue, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission
46. Dominic Siciliano	Advising Representative Derivatives Advising Representative (Québec)	1080 Grande-Allée Ouest, Québec City, Québec	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Autorité des marchés financiers
47. Michael O'Rourke	Advising Representative	522 University Avenue, Toronto, Ontario	Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan, Québec	Ontario Securities Commission

B.3.5 Brookfield Property Partners L.P. et al.

Headnote

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

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, ss. 107 and 121(2)(a)(ii).
National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.4, 2.8 and 8.1(2).
Form 44-101F1 Short Form Prospectus, ss. 6.1, 11.1(1), 12.1 and 13.3.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1 and 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 8.5 and 8.6.
National Instrument 52-110 Audit Committees, ss. 1.2(g) and 8.1.
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1(2).
National Instrument 58-101 Disclosure of Corporate Governance Practices, ss. 1.3(c) and 3.1(2).

September 30, 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 PROPERTY PARTNERS L.P.
(BROOKFIELD PROPERTY PARTNERS)
AND
BROOKFIELD PROPERTY FINANCE ULC
(DEBT ISSUER)
AND
BROOKFIELD PROPERTY PREFERRED EQUITY INC.
(PREF ISSUER)

DECISION

Background

Brookfield Property Partners, the Debt Issuer and the Pref Issuer (collectively, the **Filers**) received an order dated May 4, 2018 (the **2018 Decision**) exempting the Debt Issuer and the Pref Issuer, *inter alia*, from the continuous disclosure requirements of securities legislation as specified in the 2018 Decision.

On March 31, 2021, Brookfield Asset Management Inc. (**BAM**), BPY Arrangement Corporation (**Purchaser Sub**) and Brookfield Property Partners entered into an arrangement agreement providing for, among other things, the arrangement (the **Arrangement**) of Purchaser Sub under Section 182 of the *Business Corporations Act* (Ontario) in accordance with the terms and subject to the conditions set out in a plan of arrangement (the **Plan of Arrangement**). Pursuant to the terms of the Plan of Arrangement, on July 26, 2021, BAM and Purchaser Sub acquired, directly and indirectly, all of the issued and outstanding equity limited partnership units (the **Units**) of Brookfield Property Partners and the Units were subsequently delisted (the **Delisting**).

One of the conditions to the 2018 Decision is that Brookfield Property Partners has a class of equity securities listed and posted for trading on a short form eligible stock exchange as required by National Instrument 44-101 – *Short Form Prospectus Distributions* (**NI 44-101**), s. 2.2(e) (the **2.2(e) Condition**).

The relief requested in this application (the **Application**) is for an order similar to the relief granted in the 2018 Decision, but amended to account for, among other things, the Delisting, by making the following changes:

1. replacing the 2.2(e) Condition with a condition that Brookfield Property Partners satisfy the requirement in sections 2.3 and 2.4(1)(c)(i);

2. updating the information on the ownership and capital structure of the Filers to reflect the Arrangement; and

3. removing permission that the preference shares that could be issued by the Filers could be convertible into Units.

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

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

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

(c) the insider reporting requirements contained in the Legislation under sections 107 and 109 of the *Securities Act* (Ontario) (the **Act**) as well as the requirement to file an insider profile and insider reports under National Instrument 55-102 — *System for Electronic Disclosure by Insiders*, as amended from time to time, in respect of the respective insiders of the Debt Issuer and the Pref Issuer (the **Insider Reporting Requirements**);

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

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

(f) the qualification requirements (the **Qualification Requirements**) of Part 2 of NI 44-101, such that the Debt Issuer and the Pref Issuer are qualified to file a prospectus in the form of a short form prospectus;

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

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

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

authorizing: (i) the Debt Issuer to issue debt securities; (ii) the Pref Issuer to issue preference shares; and (iii) Brookfield Property Partners to issue preferred limited partnership units, in each case to the public pursuant to one or more prospectus supplements to a base shelf prospectus (each being a **Base Shelf Prospectus**), or one or more short form prospectuses (collectively, the **Exemption Sought**).

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filers to revoke the 2018 Decision.

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

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

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

Interpretation

Terms defined in National Instrument 14-101 — *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. In this decision, **Brookfield Property Partners Related Entities** means, collectively, the Holding LP and subsidiary entities (as this term is defined in Multilateral Instrument 61-101 – *Take-Over Bids and Special Transactions*) of the Holding LP.

Representations

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

Brookfield Property Partners

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

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

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

4. The general partner of Brookfield Property Partners is Brookfield Property Partners Limited (**BPY General Partner**), a Bermuda company and also a wholly-owned subsidiary of BAM. BPY General Partner holds a 0.1% general partnership interest in Brookfield Property Partners. The mind and management of BPY General Partner is located in Bermuda.

5. BAM, a Canadian company, is Brookfield Property Partners' only holder of Units. As of the date hereof, BAM owned, directly or indirectly, all of the Units, all of the general partner units of Brookfield Property Partners, all of the Redemption-Exchange Units (defined below) and all of the special limited partnership interests in Brookfield Property L.P. (the **Holding LP**), collectively representing a 100% equity interest in Brookfield Property Partners, including the indirect general partnership interest in Brookfield Property Partners held by BPY General Partner.

6. On July 26, 2021, the Units of Brookfield Property Partners were delisted from the Toronto Stock Exchange in connection with the Plan of Arrangement.

7. Brookfield Property Partners has three series of publicly traded preferred units listed on the NASDAQ Stock Market.

8. Brookfield Property Partners' assets consist of a 100% managing general partnership interest in the Holding LP, a Bermuda exempted limited partnership that was established on January 4, 2013, and an approximately 98% interest in BP US REIT LLC.

9. Brookfield Property Partners is the managing general partner of the Holding LP, a Bermuda exempted limited partnership that was established on January 4, 2013. The Holding LP owns, directly or indirectly, all of the common shares of Brookfield BPY Holdings Inc., an Ontario corporation (**CanHoldco**), Brookfield BPY Retail Holdings II Inc., an Ontario corporation (**CanHoldco 2**), BPY Bermuda Holdings Limited, a Bermuda company (**Bermuda Holdco**), and BPY Bermuda Holdings II Limited, a Bermuda company (**Bermuda Holdco 2**), BPY Bermuda Holdings IV Limited, a Bermuda company (**Bermuda Holdco 4**), BPY Bermuda Holdings V Limited, a Bermuda company (**Bermuda Holdco 5**) and BPY Bermuda Holdings VI Limited (**Bermuda Holdco 6** and, collectively with CanHoldco, CanHoldco 2, Bermuda Holdco, Bermuda Holdco 2, Bermuda Holdco 4 and Bermuda Holdco 5, the **Holding Entities**).

10. Brookfield Property Partners, the Holding LP and related entities have retained BAM (together with its subsidiaries other than Brookfield Property Partners and its subsidiaries, **Brookfield)** and its related entities to provide management, administrative and advisory services under an amended and restated master services agreement.

The Debt Issuer

11. The Debt Issuer is an unlimited liability company formed under the *Business Corporations Act* (Alberta) on April 18, 2018. The Debt Issuer is a wholly-owned subsidiary of CanHoldco.

12. The Debt Issuer's registered office and Canadian head office is Suite 1700, 335 – 8th Avenue SW, Calgary, Alberta, T2P 1C9.

13. The Debt Issuer is a reporting issuer in the Reporting Jurisdictions and is not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in the Reporting Jurisdictions.

14. The Debt Issuer was established to issue debt securities to the public and has issued the following series of notes publicly or pursuant to private placements: C$500,000,000 aggregate principal amount of 4.364% Medium Term Notes, Series 1, due July 3, 2023, C$400,000,000 aggregate principal amount of 4.115% Medium Term Notes, Series 2, due and repaid October 19, 2021, C$600,000,000 aggregate principal amount of 4.30% Medium Term Notes, Series 3, due March 1, 2024, C$400,000,000 aggregate principal amount of 3.93% Medium Term Notes, Series 4, due January 15, 2027, C$500,000,000 aggregate principal amount of 3.926% Medium Term Notes, Series 5, due August 24, 2025 and C$500,000,000 aggregate principal amount of 4% Medium Term Notes, Series 6, due September 30, 2026.

15. The Debt Issuer's capital structure consists of an unlimited number of authorized Common Shares. As of the date hereof, CanHoldco owns all of the issued and outstanding Common Shares of the Debt Issuer.

16. None of the Common Shares of the Debt Issuer trade publicly, on a stock exchange or otherwise.

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

The Pref Issuer

18. The Pref Issuer is a corporation formed under the *Business Corporations Act* (Ontario) on April 18, 2018. The Pref Issuer is a wholly-owned subsidiary of CanHoldco.

19. The Pref Issuer's registered office and Canadian head office is Suite 300, Brookfield Place Toronto, 181 Bay Street, Toronto, Ontario, M5J 2T3.

20. The Pref Issuer is a reporting issuer in the Reporting Jurisdictions and is not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in the Reporting Jurisdictions.

21. The Pref Issuer has been established to issue preference shares to the public.

22. The Pref Issuer's capital structure consists of an unlimited number of authorized: (i) Common Shares; (ii) Class A Preference Shares, issuable in series; and (iii) Class B Preference Shares, issuable in series. As of the date hereof, CanHoldco owns all of the issued and outstanding Common Shares of the Pref Issuer and there are no Class A Preference Shares or Class B Preference Shares issued and outstanding.

23. The Class A Preference Shares and the Class B Preference Shares are each issuable in one or more series having such rights, restrictions and privileges determined by the directors of the Pref Issuer.

24. None of the shares of the Pref Issuer trade publicly, on a stock exchange or otherwise.

25. Except as required by law or in the terms and conditions of a specific series, none of the Class A Preference Shares or the Class B Preference Shares is entitled to voting rights.

26. As discussed in paragraph 17 above, Brookfield Property Partners indirectly controls 98% of the voting securities of CanHoldco, and CanHoldco directly controls 100% of the voting securities of the Pref Issuer.

Base Shelf Prospectuses

27. The Filers determined that it is in their respective best interests for them to collectively file a Base Shelf Prospectus authorizing the issuance of: (i) preferred limited partnership units by Brookfield Property Partners; (ii) debt securities (the **Debt Securities**) by the Debt Issuer; and (iii) Class A Preference Shares (the **Preference Shares**, and together with the Debt Securities, the **Securities**) by the Pref Issuer. The Preference Shares will have seniority over all other shares of the Pref Issuer and may, in certain circumstances, be convertible into Preference Shares of another series (the **Resulting Preference Shares**). The Filers intend to file further Base Shelf Prospectuses from time to time in the future relating to offerings of Securities.

28. In connection with any issuance of Securities, Brookfield Property Partners, the Holding LP and the Holding Entities (collectively, the **Guarantors**) will each provide full and unconditional joint and several guarantees (collectively, the **Guarantees**) of the payments to be made by the Debt Issuer and the Pref Issuer in respect of the Securities, as stipulated in agreements governing the rights of holders of the Securities, that will result in the holders of such securities being entitled to receive payment from the Guarantors within 15 days of any failure by the Debt Issuer or the Pref Issuer to make a payment, as contemplated by paragraph (d) of the definition of "designated credit support security" in NI 51-102.

The Guarantees in respect of the Securities will rank *pari passu* with certain senior preferred limited partnership units or preference shares of the Guarantors and junior to certain other obligations of the Guarantors. The Guarantees are expected to be in place by the time of an issuance of Securities.

29. Either the Debt Issuer or the Pref Issuer may guarantee preferred limited partnership units issued by Brookfield Property Partners and debt securities issued by Brookfield Property Partners' subsidiaries. Such guarantees will rank *pari passu* with the Securities.

The Filers, the Holding LP and the Holding Entities

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

31. The definitions of "subsidiary" and "beneficial ownership of securities" that apply under the Act only refer to the ownership or control of companies, as opposed to partnerships, and do not clearly capture the relationship that exists among Brookfield Property Partners, the Holding LP, the Debt Issuer, the Pref Issuer and CanHoldco. However, Brookfield Property Partners acts as the managing general partner of the Holding LP, holding a 100% managing general partnership interest in the Holding LP, and therefore controls the Holding LP directly. Further, the Holding LP owns, directly or indirectly, all of the equity and voting securities of the Holding Entities (other than as described in representation 30 above). As a result, Brookfield Property Partners consolidates the Holding LP (and all of the Holding LP's assets, including the Holding Entities) in its financial statements.

32. Brookfield Property Special L.P. (**Property Special LP**), a Brookfield subsidiary, holds a 0.7% special limited partnership interest (the **Special Limited Partnership Units**) in the Holding LP, a large institutional investor and its affiliate hold class A preferred limited partnership units (the **Class A Preferred Units**) of the Holding LP and the remaining limited partnership interests (the **Redemption-Exchange Units**) in the Holding LP are held by Brookfield. Property Special LP is the sole holder of the Special Limited Partnership Units, the large institutional investor and its affiliate are the sole holders of the Class A Preferred Units and Brookfield is the sole holder of the Redemption-Exchange Units.

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

34. BPY General Partner holds a 0.1% general partnership interest in Brookfield Property Partners and acts as the general partner of Brookfield Property Partners. BPY General Partner is wholly-owned by Brookfield.

35. The Guarantors will be "credit supporters" of each of the Debt Issuer and the Pref Issuer and each of the Debt Issuer and the Pref Issuer will be a "credit support issuer".

36. Each of the Debt Issuer and the Pref Issuer, and the relationship between each entity and Brookfield Property Partners, satisfies the requirements of section 13.4(2.1) of NI 51-102 in all respects, other than: (i) the fact that the Holding LP and Brookfield Property Partners are partnerships, (ii) certain Preference Shares may be convertible, in certain circumstances, into Resulting Preference Shares, (iii) the fact that Brookfield Property Partners satisfies its continuous disclosure obligations by complying with U.S. federal securities law as is permitted under NI 71-102, and (iv) the fact that the Holding LP is not the beneficial owner of all of the voting securities of CanHoldco, which in turn wholly-owns each of the Debt Issuer and the Pref Issuer (see paragraph 30 above).

37. Brookfield Property Partners does not directly satisfy the definition of "parent credit supporter" (as defined in Part 13.4 of NI 51-102) in relation to each of the Debt Issuer and the Pref Issuer and the Securities as a result of the indirect ownership of the Debt Issuer and the Pref Issuer through CanHoldco. Therefore, the Securities are not "designated credit support securities" (as defined in Part 13.4 of NI 51-102). If the Exemption Sought is granted, the Filers will (i) treat Brookfield Property Partners as a "parent credit supporter" and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to parent credit supporters, and (ii) treat the Securities as "designated credit support securities" and comply with

the conditions in section 13.4(2.1) of NI 51-102 that apply to designated credit support securities, in accordance with the terms and conditions of the decision document.

38. The Securities will satisfy the definition of "designated credit support securities" (as defined in Part 13.4 of NI 51-102), but for: (i) the fact that Brookfield Property Partners does not directly satisfy the definition of "parent credit supporter" (as defined in Part 13.4 of NI 51-102), and (ii) certain Preference Shares may be convertible, in certain circumstances, into Resulting Preference Shares.

39. Each of the Debt Issuer and the Pref Issuer plans to distribute Securities to the public pursuant to one or more prospectus supplements to a Base Shelf Prospectus, filed in the Reporting Jurisdictions, in reliance upon sections 2.4 of NI 44-101 and, if applicable, National Instrument 44-102 — *Shelf Distributions* (**NI 44-102**). Any short form prospectuses filed in connection with future offerings of Securities will be prepared pursuant to the short form procedures contained in NI 44-101 and, if applicable, NI 44-102 and will comply with the requirements set out in Form 44-101F1 and, if applicable, NI 44-102, other than the Prospectus Disclosure Requirements.

40. The Pref Issuer will not directly satisfy the eligibility criteria in Part 2 of NI 44-101 (and thus the shelf qualification requirements in Part 2 of NI 44 102) in order to be able to file a prospectus in the form of a short form prospectus (and thus short form base shelf prospectus) for Preference Shares that are convertible into Resulting Preference Shares.

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

Offering of Securities

42. At the time of the filing of any short form prospectus or shelf prospectus supplement in connection with an offering of Securities:

    a) The Debt Issuer and the Pref Issuer will comply with all of the filing requirements and procedures set out in NI 44-101, other than the Qualification Requirements, and, if applicable, NI 44-102, except as permitted by the Legislation;

    b) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101 and, if applicable, NI 44-102 other than the Prospectus Disclosure Requirements, except as permitted by the Legislation;

    c) Brookfield Property Partners will continue to be a reporting issuer under the Legislation;

    d) Brookfield Property Partners will continue to provide its Guarantees;

    e) the prospectus will incorporate by reference the documents of Brookfield Property Partners set forth under item 11.1 of Form 44-101F1;

    f) the prospectus disclosure required by item 11 of Form 44-101F1 will be addressed by incorporating by reference Brookfield Property Partners' public disclosure documents referred to in paragraph (e) above; and

    g) Brookfield Property Partners will satisfy the criteria in sections 2.2(a)-(d) and 2.3 of NI 44-101, as applicable, pursuant to Part 4 of NI 71-102, and in section 2.4(1)(c)(i) of NI 44-101.

Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

incorporated into Brookfield Property Partners' current annual financial statements included or incorporated by reference in the prospectus of the Debt Issuer or the Pref Issuer,

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

(i) designated credit support securities,

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

(iii) non-voting securities held by Brookfield,

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

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

(vi) Securities, provided that (x) Brookfield Property Partners has provided its Guarantees in respect of such securities and (y) such securities are not convertible into any security other than Resulting Preference Shares and Preference Shares.

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

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

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

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

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

(a) any preliminary short form prospectus of either the Debt Issuer or the Pref Issuer is in respect of an offering of Securities,

(b) the Debt Issuer and the Pref Issuer are qualified to file a preliminary short form prospectus under section 2.4 of NI 44-101, except modified as follows:

(i) the Debt Issuer and the Pref Issuer do not have to comply with the condition in section 2.4 of NI 44-101 that the securities being distributed be non-convertible preferred shares if, on completion of any offering of new Preference Shares, such Preference Shares are only convertible into Resulting Preference Shares,

(c) The Debt Issuer and the Pref Issuer will be, and will remain so long as any of the Securities issued to the public remain outstanding, an electronic filer under National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval* (**SEDAR**),

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

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

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

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

(iv) the Pref Issuer does not have to comply with the conditions in section 13.3(1)(d) of Form 44-101F1 if, on completion of any offering of new Preference Shares, such Preference Shares are only convertible into Resulting Preference Shares, and

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

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

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

(g) the Debt Issuer, the Pref Issuer and Brookfield Property Partners, as applicable, comply with the requirements in paragraph 42 above; and

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

Furthermore, the decision of the principal regulator is that the 2018 Decision is revoked.

"David Surat"
Manager (Acting), Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0269

B.3.6 E-L Financial Corporation Limited

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the extension take up requirements in subsection 2.32(4) of National Instrument 62-104 Take-Over Bids and Issuer Bids – an issuer conducting an issuer bid requires relief from the requirement not to extend its issuer bid if all terms and conditions are met unless the issuer first takes up all securities validly deposited and not withdrawn under the issuer bid – requested relief granted, subject to conditions.

Applicable Legislative Provisions

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

September 22, 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
E-L FINANCIAL CORPORATION LIMITED
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the "**Shares**") pursuant to an issuer bid commenced on August 22, 2022 (the "**Offer**"), the Filer be exempt from the requirement set out in subsection 2.32(4) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") that the Offer not be extended if all of the terms and conditions of the Offer have been complied with or waived, unless the Filer first takes up all of the Shares deposited under the Offer and not withdrawn (the "**Exemption Sought**").

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

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

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

Interpretation

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

Representations

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

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

2. The registered office of the Filer is located at 165 University Avenue, 10th Floor, Toronto, Ontario, M5H 3B8.

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

4. The authorized share capital of the Filer consists of (a) an unlimited number of Shares, (b) 402,733 Preference Shares, issuable in series, and (c) an unlimited number of First Preference Shares, issuable in series. As at August 16, 2022, there were (i) 3,660,716 Shares; (ii) 258 Series A Preference Shares; (iii) 4,000,000 First Preference Shares, Series 1; (iv) 4,000,000 First Preference Shares, Series 2; and (v) 4,000,000 First Preference Shares, Series 3, issued and outstanding.

5. On August 16, 2022, the last full trading day prior to the date of the announcement of the Offer, the closing price of the Shares on the TSX was $837.99. Based on such closing price, the Shares had an aggregate market value of approximately $3,067,643,400.84 on such date.

6. The board of the Filer (the "**Board**") believes that the purchase of Shares pursuant to the Offer constitutes an efficient means of providing value to the holders of Shares (collectively, the "**Shareholders**") and is in the best interests of the Filer and its Shareholders. The Board further believes that the recent trading price of the Shares is not fully reflective of the underlying value of the Filer or its long term growth prospects. The Offer allows the Filer an opportunity to return up to $100,000,000 of capital to Shareholders who elect to tender their Shares pursuant to the Offer while at the same time increasing the equity ownership of Shareholders who do not elect to tender. The Board believes that the Offer is an advisable use of the Filer's financial resources given its cash requirements and borrowing costs and that, after giving effect to the Offer, the Filer will continue to have sufficient financial resources and working capital to conduct its ongoing business and operations and that the Offer will not preclude the Filer from pursuing its foreseeable business opportunities or the future growth of the Filer's business.

7. The Filer commenced the Offer on August 22, 2022. The issuer bid circular dated August 16, 2022 sent and filed by the Filer in connection with the Offer (the "**Circular**") specifies that the Filer proposes to purchase, by way of a modified "Dutch auction" procedure in the manner described therein and below, up to $100,000,000 of the issued and outstanding Shares at a purchase price of not less than $825.00 and not more than $975.00 per Share (the "Price Range of Shares").

8. The Offer is made only for Shares and not made for any convertible securities. Pursuant to subsection 2.8(b) of NI 62-104, the Filer also made the Offer to each holder of convertible securities that, before the expiry of the deposit period of the Offer, are convertible into Shares. Such convertible securities may, at the option of the holder, be converted for Shares in accordance with the terms of such convertible securities prior to the expiry of the deposit period of the Offer. Shares issued upon the conversion of the convertible securities may be tendered to the Offer in accordance with the terms of the Offer.

9. The Filer will fund the purchase of Shares pursuant to the Offer, together with all related fees and expenses of the Offer, from a combination of available cash on hand and cash available to be drawn under the Filer's existing margin loan facility provided by RBC Dominion Securities Inc.

10. Shareholders wishing to tender to the Offer will be able to do so:

    (a) by making auction tenders in which the tendering Shareholders specify the number of Shares being tendered at a specified price per Share (the "**Auction Price**") within the Price Range of Shares in increments of $5 per Share (each, an "**Auction Tender**"); and/or

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

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

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

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

14. The Filer will determine a single purchase price payable per Share (the "**Purchase Price**") promptly after the expiry of the Offer by taking into account the number of Shares deposited pursuant to Auction Tenders and Purchase Price Tenders and the Auction Prices specified by Shareholders depositing Shares pursuant to Auction Tenders. For the purpose of determining the Purchase Price, Shares deposited pursuant to a Purchase Price Tender will be deemed to have been deposited at a price of $825 per Share (which is the minimum price per Share under the Offer). The Purchase Price will be the lowest price per Share that enables the Filer to purchase the maximum number of Shares validly deposited and not withdrawn pursuant to the Offer having an aggregate Purchase Price not to exceed $100,000,000.

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

16. If the aggregate Purchase Price for Shares validly deposited and not withdrawn pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders would result in an aggregate Purchase Price in excess of $100,000,000, then such deposited Shares will be purchased as follows:

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

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

    All Auction Tenders and Purchase Price Tenders will be subject to adjustment to avoid the purchase of fractional Shares.

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

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

19. Certificates for all Shares not purchased under the Offer (including Shares deposited pursuant to an Auction Tender at prices greater than the Purchase Price, Shares not purchased because of pro-ration, improper tenders, or Shares not taken up due to the termination of the Offer), or properly withdrawn before the Expiration Time (as defined below), will be returned (in the case of certificates representing Shares all of which are not purchased) or replaced with new certificates or DRS advices representing the balance of Shares not purchased (in the case of certificates representing Shares of which less than all are purchased), promptly after the Expiration Time (or termination of the Offer) or the date of withdrawal of the Shares. In the case of Shares tendered through book-entry transfer into Computershare Trust Company of Canada's account at The Depository Trust Company ("**DTC**") or CDS Clearing and Depository Services Inc. ("**CDS**"), the Shares will be credited to the appropriate account maintained by the tendering Shareholder at DTC or CDS, as applicable, without expense to the Shareholder.

20. Assuming the Offer is fully subscribed:

    (a) if the Purchase Price is determined to be $825.00, being the minimum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 121,212, representing approximately 3.3% of the Filer's issued and outstanding Shares as at August 16, 2022; and

    (b) if the Purchase Price is determined to be $975.00, being the maximum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 102,564, representing approximately 2.8% of the Filer's issued and outstanding Shares as at August 16, 2022.

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

22. Dominion and Anglo Investment Corporation Limited ("**Dominion**") exercises control or direction over 1,459,193 Shares (approximately 39.86% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, Dominion will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $825 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Dominion will exercise control or direction over 1,459,193 Shares, representing approximately 41.23% of the outstanding Shares. If the Purchase Price is determined to be $975 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Dominion will exercise control or direction over 1,459,193 Shares, representing approximately 41.01% of the outstanding Shares.

23. Canadian & Foreign Securities Co. Limited ("**CFSC**") exercises control or direction over 535,614 Shares (approximately 14.63% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, CFSC will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $825 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, CFSC will exercise control or direction over 535,614 Shares, representing approximately 15.13% of the outstanding Shares. If the Purchase Price is determined to be $975 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, CFSC will exercise control or direction over 535,614 Shares, representing approximately 15.05% of the outstanding Shares.

24. Economic Investment Trust Limited ("**Economic**") exercises control or direction over 386,206 Shares (approximately 10.55% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, Economic will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $825 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Economic will exercise control or direction over 386,206 Shares, representing approximately 10.91% of the outstanding Shares. If the Purchase Price is determined to be $975 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Economic will exercise control or direction over 386,206 Shares, representing approximately 10.85% of the outstanding Shares.

25. To the knowledge of the Filer, after reasonable inquiry, other than Dominion, CFSC and Economic, no person or company beneficially owns, or exercises control or direction over, more than 10% of the voting rights attached to all of the Filer's outstanding voting securities.

26. As of August 16, 2022, to the knowledge of the Filer and its directors and officers after reasonable inquiry, no director or officer of the Filer, no insider of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's or company's Shares pursuant to the Offer.

27. The Offer is subject to the provisions of the United States regulation entitled Regulation 14E adopted under the *Securities Exchange Act of 1934*, as amended ("**Regulation 14E**").

28. The Offer is scheduled to expire at 5:00 p.m. (Toronto time) on September 26, 2022 (the "**Expiration Time**").

29. The Filer may wish to extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time but the aggregate Purchase Price for Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than $100,000,000. The Filer will not extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time and the aggregate Purchase Price of the Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is equal to or greater than $100,000,000.

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

31. Under Regulation 14E, the Filer must promptly pay for all Shares deposited pursuant to the Offer at the time of expiry of the Offer. Regulation 14E does not provide for extensions of the Offer in the manner required by subsection 2.32(4) of NI 62-104.

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

33. Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Time, may be withdrawn by the Shareholder at any time prior to the expiration of any extension period in respect of the Offer.

34. The Filer is relying on the exemption from the formal valuation requirements set out in subsection 3.4(b) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**" and such exemption, the "**Liquid Market Exemption**").

35. There was a "liquid market" for the Shares, as such term is defined in MI 61-101, as of the date the Offer was publicly announced because:

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

    (b) Cormark Securities Inc. ("**Cormark**"), a person qualified and independent of all interested parties to the Offer, provided an opinion to the Filer in accordance with section 1.2 of MI 61-101 that there is a liquid market for the Shares as of August 16, 2022 (the "**Liquidity Opinion**").

36. Cormark also indicated in the Liquidity Opinion that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer. A copy of the Liquidity Opinion was included in the Circular.

37. Based on the maximum number of Shares that may be purchased under the Offer and the Liquidity Opinion, the Board determined that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.

38. The Circular:

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

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

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

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

    (e) discloses that Shares deposited pursuant to the Offer may be withdrawn at any time prior to the expiration of any extension period in respect of the Offer;

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

    (g) includes the disclosure prescribed by the Legislation for issuer bids.

Decision

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

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

    (a) Shares validly deposited pursuant to the Offer and not withdrawn are taken up and paid for, or dealt with in the manner described above and as set out in the Circular;

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

    (c) The Filer will issue and file a press release announcing receipt of the Exemption Sought promptly, and in any case, no later than one (1) business day following receipt of the Exemption Sought; and

    (d) the Filer complies with the requirements of Regulation 14E in respect of the Offer.

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

B.3.7 United Corporations Limited

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the extension take up requirements in subsection 2.32(4) of National Instrument 62-104 Take-Over Bids and Issuer Bids – an issuer conducting an issuer bid requires relief from the requirement not to extend its issuer bid if all terms and conditions are met unless the issuer first takes up all securities validly deposited and not withdrawn under the issuer bid – requested relief granted, subject to conditions.

Applicable Legislative Provisions

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

September 22, 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
UNITED CORPORATIONS LIMITED
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the "**Shares**") pursuant to an issuer bid commenced on August 22, 2022 (the "**Offer**"), the Filer be exempt from the requirement set out in subsection 2.32(4) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") that the Offer not be extended if all of the terms and conditions of the Offer have been complied with or waived, unless the Filer first takes up all of the Shares deposited under the Offer and not withdrawn (the "**Exemption Sought**").

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

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

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

Interpretation

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

Representations

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

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

2. The registered office of the Filer is located at 165 University Avenue, 10th Floor, Toronto, Ontario, M5H 3B8.

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

4. The authorized share capital of the Filer consists of:

   (a) 52,237 First Preferred Shares without nominal or par value that are redeemable at $30.00 each;

   (b) 200,000 Second Preferred Shares without nominal or par value, issuable in series of which: (i) 80,290 are designated $1.50 Cumulative Redeemable Second Preferred Shares, 1959 Series ("**1959 Series Second Preferred Shares**") and are redeemable at $30.00 each; and, (ii) 119,710 are designated $1.50 Cumulative Redeemable Second Preferred Shares, 1963 Series ("**1963 Series Second Preferred Shares**") and are redeemable at $31.50 each;

   (c) Third Preferred Shares without nominal or par value, issuable in series. The maximum number of Third Preferred Shares that may be outstanding at any time shall be the number for which the stated value does not exceed $15,000,000; and

   (d) an unlimited number of Shares.

   As at August 16, 2022 there were 52,237 First Preferred Shares, 80,290 1959 Series Second Preferred Shares, 119,710 1963 Series Second Preferred Shares, no Third Preferred Shares, and 12,056,593 Shares issued and outstanding.

5. On August 16, 2022, the last full trading day prior to the date of the announcement of the Offer, the closing price of the Shares on the TSX was $93.00. Based on such closing price, the Shares had an aggregate market value of approximately $1,121,263,149.00 on such date.

6. The board of the Filer (the "**Board**") believes that the purchase of Shares pursuant to the Offer constitutes an efficient means of providing value to the holders of Shares (collectively, the "**Shareholders**") and is in the best interests of the Filer and its Shareholders. The Board further believes that the recent trading price of the Shares is not fully reflective of the underlying value of the Filer or its long term growth prospects. The Offer allows the Filer an opportunity to return up to $50,000,000 of capital to Shareholders who elect to tender their Shares pursuant to the Offer while at the same time increasing the equity ownership of Shareholders who do not elect to tender. The Board believes that the Offer is an advisable use of the Filer's financial resources given its cash requirements and borrowing costs and that, after giving effect to the Offer, the Filer will continue to have sufficient financial resources and working capital to conduct its ongoing business and operations and that the Offer will not preclude the Filer from pursuing its foreseeable business opportunities or the future growth of the Filer's business.

7. The Filer commenced the Offer on August 22, 2022. The issuer bid circular dated August 16, 2022 sent and filed by the Filer in connection with the Offer (the "**Circular**") specifies that the Filer proposes to purchase, by way of a modified "Dutch auction" procedure in the manner described therein and below, up to $50,000,000 of the issued and outstanding Shares at a purchase price of not less than $90.00 and not more than $110.00 per Share (the "**Price Range of Shares**").

8. The Filer will fund the purchase of Shares pursuant to the Offer, together with all related fees and expenses of the Offer, from a combination of available cash on hand and cash available to be drawn under the Filer's existing operating credit facility provided by the Bank of Nova Scotia.

9. Shareholders wishing to tender to the Offer will be able to do so:

   (a) by making auction tenders in which the tendering Shareholders specify the number of Shares being tendered at a specified price per Share (the "**Auction Price**") within the Price Range of Shares in increments of $1.00 per Share (each, an "**Auction Tender**"); and/or

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

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

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

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

13. The Filer will determine a single purchase price payable per Share (the "**Purchase Price**") promptly after the expiry of the Offer by taking into account the number of Shares deposited pursuant to Auction Tenders and Purchase Price Tenders and the Auction Prices specified by Shareholders depositing Shares pursuant to Auction Tenders. For the purpose of determining the Purchase Price, Shares deposited pursuant to a Purchase Price Tender will be deemed to have been deposited at a price of $90.00 per Share (which is the minimum price per Share under the Offer). The Purchase Price will be the lowest price per Share that enables the Filer to purchase the maximum number of Shares validly deposited and not withdrawn pursuant to the Offer having an aggregate Purchase Price not to exceed $50,000,000.

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

15. If the aggregate Purchase Price for Shares validly deposited and not withdrawn pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders would result in an aggregate Purchase Price in excess of $50,000,000, then such deposited Shares will be purchased as follows:

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

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

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

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

18. Certificates for all Shares not purchased under the Offer (including Shares deposited pursuant to an Auction Tender at prices greater than the Purchase Price, Shares not purchased because of pro-ration, improper tenders, or Shares not taken up due to the termination of the Offer), or properly withdrawn before the Expiration Time (as defined below), will be returned (in the case of certificates representing Shares all of which are not purchased) or replaced with new certificates or DRS advices representing the balance of Shares not purchased (in the case of certificates representing Shares of which less than all are purchased), promptly after the Expiration Time (or termination of the Offer) or the date of withdrawal of the Shares. In the case of Shares tendered through book-entry transfer into Computershare Trust Company of Canada's account at The Depository Trust Company ("**DTC**") or CDS Clearing and Depository Services Inc. ("**CDS**"), the Shares will be credited to the appropriate account maintained by the tendering Shareholder at DTC or CDS, as applicable, without expense to the Shareholder.

19. Assuming the Offer is fully subscribed:

    (a) if the Purchase Price is determined to be $90.00, being the minimum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 555,555, representing approximately 4.6% of the Filer's issued and outstanding Shares as at August 16, 2022; and

    (b) if the Purchase Price is determined to be $110.00, being the maximum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 454,545, representing approximately 3.8% of the Filer's issued and outstanding Shares as at August 16, 2022.

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

21. E-L Financial Corporation Limited ("**ELF**") exercises control or direction over 6,371,359 Shares (approximately 52.85% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge

of its directors and officers, after reasonable inquiry, ELF will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $90 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, ELF will exercise control or direction over 6,371,359 Shares, representing approximately 55.40% of the outstanding Shares. If the Purchase Price is determined to be $110 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, ELF will exercise control or direction over 6,371,359 Shares, representing approximately 54.92% of the outstanding Shares.

22. United Connected Holdings Corp. ("**United Connected**") exercises control or direction over 2,743,642 Shares (approximately 22.76% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, United Connected will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $90 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, United Connected will exercise control or direction over 2,743,642 Shares, representing approximately 23.86% of the outstanding Shares. If the Purchase Price is determined to be $110 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, United Connected will exercise control or direction over 2,743,642 Shares, representing approximately 23.65% of the outstanding Shares.

23. To the knowledge of the Filer, after reasonable inquiry, other than ELF and United Connected, no person or company beneficially owns, or exercises control or direction over, more than 10% of the voting rights attached to all of the Filer's outstanding voting securities.

24. As of August 16, 2022, to the knowledge of the Filer and its directors and officers after reasonable inquiry, no director or officer of the Filer, no insider of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's or company's Shares pursuant to the Offer.

25. The Offer is subject to the provisions of the United States regulation entitled Regulation 14E adopted under the *Securities Exchange Act of 1934*, as amended ("**Regulation 14E**").

26. The Offer is scheduled to expire at 5:00 p.m. (Toronto time) on September 26, 2022 (the "**Expiration Time**").

27. The Filer may wish to extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time but the aggregate Purchase Price for Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than $50,000,000. The Filer will not extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time and the aggregate Purchase Price of the Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is equal to or greater than $50,000,000.

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

29. Under Regulation 14E, the Filer must promptly pay for all Shares deposited pursuant to the Offer at the time of expiry of the Offer. Regulation 14E does not provide for extensions of the Offer in the manner required by subsection 2.32(4) of NI 62-104.

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

31. Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Time, may be withdrawn by the Shareholder at any time prior to the expiration of any extension period in respect of the Offer.

32. The Filer is relying on the exemption from the formal valuation requirements set out in subsection 3.4(b) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**", and such exemption, the "**Liquid Market Exemption**").

33. There was a "liquid market" for the Shares, as such term is defined in MI 61-101, as of the date the Offer was publicly announced because:

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

(b) Cormark Securities Inc. ("**Cormark**"), a person qualified and independent of all interested parties to the Offer, provided an opinion to the Filer in accordance with section 1.2 of MI 61-101 that there is a liquid market for the Shares as of August 16, 2022 (the "**Liquidity Opinion**").

34. Cormark also indicated in the Liquidity Opinion that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer. A copy of the Liquidity Opinion was included in the Circular.

35. Based on the maximum number of Shares that may be purchased under the Offer and the Liquidity Opinion, the Board determined that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.

36. The Circular:

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

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

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

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

(e) discloses that Shares deposited pursuant to the Offer may be withdrawn at any time prior to the expiration of any extension period in respect of the Offer;

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

(g) includes the disclosure prescribed by the Legislation for issuer bids.

Decision

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

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

(a) Shares validly deposited pursuant to the Offer and not withdrawn are taken up and paid for, or dealt with in the manner described above and as set out in the Circular;

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

(c) The Filer will issue and file a press release announcing receipt of the Exemption Sought promptly, and in any case, no later than one (1) business day following receipt of the Exemption Sought; and

(d) the Filer complies with the requirements of Regulation 14E in respect of the Offer.

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

B.3.8 Economic Investment Trust Limited

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the extension take up requirements in subsection 2.32(4) of National Instrument 62-104 Take-Over Bids and Issuer Bids – an issuer conducting an issuer bid requires relief from the requirement not to extend its issuer bid if all terms and conditions are met unless the issuer first takes up all securities validly deposited and not withdrawn under the issuer bid – requested relief granted, subject to conditions.

Applicable Legislative Provisions

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

September 22, 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
ECONOMIC INVESTMENT TRUST LIMITED
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the "**Shares**") pursuant to an issuer bid commenced on August 22, 2022 (the "**Offer**"), the Filer be exempt from the requirement set out in subsection 2.32(4) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") that the Offer not be extended if all of the terms and conditions of the Offer have been complied with or waived, unless the Filer first takes up all of the Shares deposited under the Offer and not withdrawn (the "**Exemption Sought**").

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

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

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

Interpretation

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

Representations

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

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

2. The registered office of the Filer is located at 165 University Avenue, 10th Floor, Toronto, Ontario, M5H 3B8.

3. The Filer is a reporting issuer in the province of Ontario and the Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") under the symbol "EVT". The Filer is not in default of any requirement of the securities legislation of the Jurisdiction.

4. The authorized share capital of the Filer consists of (i) an unlimited number of Shares, and (ii) 100,000 Preferred Shares, issuable in series. As at August 16, 2022, the Filer had 5,567,635 Shares and no Preferred Shares issued and outstanding.

5. On August 16, 2022, the last full trading day prior to the date of the announcement of the Offer, the closing price of the Shares on the TSX was $122.49. Based on such closing price, the Shares had an aggregate market value of approximately $681,979,611.15 on such date.

6. The board of the Filer (the "**Board**") believes that the purchase of Shares pursuant to the Offer constitutes an efficient means of providing value to the holders of Shares (collectively, the "**Shareholders**") and is in the best interests of the Filer and its Shareholders. The Board further believes that the recent trading price of the Shares is not fully reflective of the underlying value of the Filer or its long term growth prospects. The Offer allows the Filer an opportunity to return up to $20,000,000 of capital to Shareholders who elect to tender their Shares pursuant to the Offer while at the same time increasing the equity ownership of Shareholders who do not elect to tender. The Board believes that the Offer is an advisable use of the Filer's financial resources given its cash requirements and borrowing costs and that, after giving effect to the Offer, the Filer will continue to have sufficient financial resources and working capital to conduct its ongoing business and operations and that the Offer will not preclude the Filer from pursuing its foreseeable business opportunities or the future growth of the Filer's business.

7. The Filer commenced the Offer on August 22, 2022. The issuer bid circular dated August 16, 2022 sent and filed by the Filer in connection with the Offer (the "**Circular**") specifies that the Filer proposes to purchase, by way of a modified "Dutch auction" procedure in the manner described therein and below, up to $20,000,000 of the issued and outstanding Shares at a purchase price of not less than $120.00 and not more than $140.00 per Share (the "**Price Range of Shares**").

8. The Filer will fund the purchase of Shares pursuant to the Offer, together with all related fees and expenses of the Offer, from a combination of available cash on hand and cash available to be drawn under the Filer's existing credit facility provided by the Bank of Nova Scotia.

9. Shareholders wishing to tender to the Offer will be able to do so:

   (a) by making auction tenders in which the tendering Shareholders specify the number of Shares being tendered at a specified price per Share (the "**Auction Price**") within the Price Range of Shares in increments of $1.00 per Share (each, an "**Auction Tender**"); and/or

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

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

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

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

13. The Filer will determine a single purchase price payable per Share (the "**Purchase Price**") promptly after the expiry of the Offer by taking into account the number of Shares deposited pursuant to Auction Tenders and Purchase Price Tenders and the Auction Prices specified by Shareholders depositing Shares pursuant to Auction Tenders. For the purpose of determining the Purchase Price, Shares deposited pursuant to a Purchase Price Tender will be deemed to have been deposited at a price of $120.00 per Share (which is the minimum price per Share under the Offer). The Purchase Price will be the lowest price per Share that enables the Filer to purchase the maximum number of Shares validly deposited and not withdrawn pursuant to the Offer having an aggregate Purchase Price not to exceed $20,000,000.

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

15. If the aggregate Purchase Price for Shares validly deposited and not withdrawn pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders would result in an aggregate Purchase Price in excess of $20,000,000 then such deposited Shares will be purchased as follows:

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

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

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

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

18. Certificates for all Shares not purchased under the Offer (including Shares deposited pursuant to an Auction Tender at prices greater than the Purchase Price, Shares not purchased because of pro-ration, improper tenders, or Shares not taken up due to the termination of the Offer), or properly withdrawn before the Expiration Time (as defined below), will be returned (in the case of certificates representing Shares all of which are not purchased) or replaced with new certificates or DRS advices representing the balance of Shares not purchased (in the case of certificates representing Shares of which less than all are purchased), promptly after the Expiration Time (or termination of the Offer) or the date of withdrawal of the Shares. In the case of Shares tendered through book-entry transfer into Computershare Trust Company of Canada's account at The Depository Trust Company ("**DTC**") or CDS Clearing and Depository Services Inc. ("**CDS**"), the Shares will be credited to the appropriate account maintained by the tendering Shareholder at DTC or CDS, as applicable, without expense to the Shareholder.

19. Assuming the Offer is fully subscribed:

    (a) if the Purchase Price is determined to be $120.00, being the minimum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 166,666, representing approximately 3.0% of the Filer's issued and outstanding Shares as at August 16, 2022; and

    (b) if the Purchase Price is determined to be $140.00, being the maximum Purchase Price under the Offer, the number of Shares that will be purchased by the Filer is 142,857, representing approximately 2.6% of the Filer's issued and outstanding Shares as at August 16, 2022.

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

21. Dominion and Anglo Investment Corporation Limited ("**Dominion**") exercises control or direction over 1,502,898 Shares (approximately 26.99% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, Dominion will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $120 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Dominion will exercise control or direction over 1,502,898 Shares, representing approximately 27.83% of the outstanding Shares. If the Purchase Price is determined to be $140 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Dominion will exercise control or direction over 1,502,898 Shares, representing approximately 27.70% of the outstanding Shares.

22. Dondale Investments Limited ("**Dondale**") exercises control or direction over 692,000 Shares (approximately 12.43% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, Dondale will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $120 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Dondale will exercise control or direction over 692,000 Shares, representing approximately 12.81% of the outstanding Shares. If the Purchase Price is determined to be $140 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, Dondale will exercise control or direction over 692,000 Shares, representing approximately 12.76% of the outstanding Shares.

23. Canadian & Foreign Securities Co. Limited ("**CFSC**") exercises control or direction over 717,713 Shares (approximately 12.89% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, CFSC will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $120 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, CFSC will exercise control or direction over 717,713 Shares, representing approximately 13.29% of the outstanding Shares. If the Purchase Price is determined to be $140 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, CFSC will exercise control or direction over 717,713 Shares, representing approximately 13.23% of the outstanding Shares.

24. E-L Financial Corporation Limited ("**ELF**") exercises control or direction over 1,348,163 Shares (approximately 24.21% of the total number of Shares outstanding as of August 16, 2022). To the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, ELF will not be tendering any of its Shares to the Offer. If the Purchase Price is determined to be $120 (being the minimum Purchase Price under the Offer) and the maximum number of Shares are repurchased, ELF will exercise control or direction over 1,348,163 Shares, representing approximately 24.96% of the outstanding Shares. If the Purchase Price is determined to be $140 (being the maximum Purchase Price under the Offer) and the maximum number of Shares are repurchased, ELF will exercise control or direction over 1,348,163 Shares, representing approximately 24.85% of the outstanding Shares.

25. To the knowledge of the Filer, after reasonable inquiry, other than Dominion, Dondale, CFSC and ELF, no person or company beneficially owns, or exercises control or direction over, more than 10% of the voting rights attached to all of the Filer's outstanding voting securities.

26. As of August 16, 2022, to the knowledge of the Filer and its directors and officers after reasonable inquiry, no director or officer of the Filer, no insider of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's or company's Shares pursuant to the Offer.

27. The Offer is subject to the provisions of the United States regulation entitled Regulation 14E adopted under the *Securities Exchange Act of 1934*, as amended ("**Regulation 14E**").

28. The Offer is scheduled to expire at 5:00 p.m. (Toronto time) on September 26, 2022 (the "**Expiration Time**").

29. The Filer may wish to extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time but the aggregate Purchase Price for Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than $20,000,000. The Filer will not extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time and the aggregate Purchase Price of the Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is equal to or greater than $20,000,000.

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

31. Under Regulation 14E, the Filer must promptly pay for all Shares deposited pursuant to the Offer at the time of expiry of the Offer. Regulation 14E does not provide for extensions of the Offer in the manner required by subsection 2.32(4) of NI 62-104.

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

33. Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Time, may be withdrawn by the Shareholder at any time prior to the expiration of any extension period in respect of the Offer.

34. The Filer is relying on the exemption from the formal valuation requirements set out in subsection 3.4(b) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**" and such exemption, the "**Liquid Market Exemption**").

35. There was a "liquid market" for the Shares, as such term is defined in MI 61-101, as of the date the Offer was publicly announced because:

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

    (b) Cormark Securities Inc. ("**Cormark**"), a person qualified and independent of all interested parties to the Offer, provided an opinion to the Filer in accordance with section 1.2 of MI 61-101 that there is a liquid market for the Shares as of August 16, 2022 (the "**Liquidity Opinion**").

36. Cormark also indicated in the Liquidity Opinion that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer. A copy of the Liquidity Opinion was included in the Circular.

37. Based on the maximum number of Shares that may be purchased under the Offer and the Liquidity Opinion, the Board determined that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.

38. The Circular:

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

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

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

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

    (e) discloses that Shares deposited pursuant to the Offer may be withdrawn at any time prior to the expiration of any extension period in respect of the Offer;

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

    (g) includes the disclosure prescribed by the Legislation for issuer bids.

Decision

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

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

    (a) Shares validly deposited pursuant to the Offer and not withdrawn are taken up and paid for, or dealt with in the manner described above and as set out in the Circular;

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

    (c) The Filer will issue and file a press release announcing receipt of the Exemption Sought promptly, and in any case, no later than one (1) business day following receipt of the Exemption Sought; and

    (d) the Filer complies with the requirements of Regulation 14E in respect of the Offer.

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

B.3.9 Coinsquare Capital Markets Ltd.

Headnote:

Application for time-limited relief from the prospectus requirement, trade reporting requirements and certain provisions of National Instrument 21-101 Marketplace Operation – relief to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, disclosure and reporting requirements — relief will expire upon two (2) years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

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

AND

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

AND

IN THE MATTER OF
COINSQUARE CAPITAL MARKETS LTD.
(the Filer)

DECISION

Background

As set out in Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**SN 21-329**) and CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**SN 21-327**), securities legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving crypto assets because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

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

The Filer operates a proprietary and fully automated CTP (the **Platform**) that enables clients to enter into Crypto Contracts with the Filer to buy, sell deposit and withdraw crypto assets such as Bitcoin, Ether and anything commonly considered to be a crypto asset, digital or virtual currency, or digital or virtual token, that are not themselves securities or derivatives (each a **Crypto Asset,** collectively the **Crypto Assets**). The Filer filed an application to be registered in the category of investment dealer and approved as a dealer and marketplace member with the Investment Industry Regulatory Organization of Canada (**IIROC**) and for approval to operate an alternative trading system as a registered investment dealer. Concurrently, the Filer filed an application to be exempted from certain requirements under applicable securities legislation. This Decision has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Applicable Jurisdictions (as defined below) will not consider this Decision as constituting a precedent for other filers.

Relief Requested

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

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions where required (the **Coordinated Review Decision Makers**) have received an application from the Filer (collectively with the Passport Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from:

(a) certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**); and

(b) except in British Columbia, New Brunswick, Nova Scotia and Saskatchewan, relief from the following marketplace requirements:

a. s. 6.3 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), which prohibits an alternative trading system (**ATS**) from trading securities other than "exchange-traded securities", "corporate debt securities", "government debt securities" and "foreign exchange-traded securities" as those terms are defined in NI 21-101;

b. s. 6.7 of NI 21-101, which requires an ATS to notify the securities regulatory authority in writing if the total dollar trading value or volume on the ATS exceeds thresholds set out in s. 6.7;

c. s. 12.3(1)(a) of NI 21-101, which requires an ATS to make available all technology requirements regarding interfacing with or accessing the marketplace prior to commencing operations; and

d. s. 13.1 of NI 21-101, which requires trades on a marketplace to be reported to and settled through a clearing agency, (the **Marketplace Relief**, and together with the Prospectus Relief and the Trade Reporting Relief, the **Requested Relief**).

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

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

(b) in respect of the Prospectus Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**), and

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

Interpretation

For the purposes of this Decision:

(a) "Accredited Crypto Investor" means

(i) an individual

A. who, alone or with a spouse, beneficially owns financial assets (as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**)) and crypto assets, if not included in financial assets, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000,

B. whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year,

C. whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year, or

D. who, alone or with a spouse, beneficially owns net assets of at least $5,000,000,

(ii) a person or company described in paragraphs (a) to (i) of the definition of "accredited investor" as defined in subsection 73.3(1) of the Act or section 1.1 of NI 45-106, or

(iii) a person or company described in paragraphs (m) to (w) of the definition of "accredited investor" as defined in section 1.1 of NI 45-106.

(b) "Act" means the *Securities Act* (Ontario).

(c) "Apps" means iOS and Android applications that provide access to the Platform.

(d) **"**Crypto Asset Statement" means the statement described in paragraphs 27(c)(v) and 34.

(e) "Eligible Crypto Investor" means

(i) a person whose

A. net assets, alone or with a spouse, in the case of an individual, exceed $400,000,

B. net income before taxes exceeded $75,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

C. net income before taxes, alone or with a spouse, in the case of an individual, exceeded $125,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

(ii) an Accredited Crypto Investor.

(f) "IOSCO" means the International Organization of Securities Commissions.

(g) "Risk Statement" means the statement of risks described in paragraph 27(c).

(h) "Specified Crypto Asset" means the crypto assets, digital or virtual currencies, and digital or virtual tokens listed in Appendix B to this Decision.

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

(j) "Website" means the website www.coinsquare.com or such other website as may be used to host the Platform from time to time.

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 (the **Decision**) is based on the following facts represented by the Filer:

The Filer

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

2. The Filer is registered as a money services business under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

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

4. The Filer has applied to be a registered dealer in the category of investment dealer and a member of IIROC.

5. The Filer's books and records, financial controls and compliance systems (including its policies and procedures) are in compliance with IIROC requirements.

6. The Filer's personnel consist, and will consist, of software engineers, compliance professionals and finance professionals who have experience operating in a regulated financial services environment and expertise in blockchain technology. All of the Filer's key personnel have passed, and new personnel will have passed, criminal records and credit checks.

7. The Filer is not in default of securities legislation of any jurisdictions of Canada. Prior to the Filer's registration as an investment dealer, the Filer's affiliate Coinsquare Ltd. operated the Platform. Coinsquare Ltd. entered into a settlement agreement with the Principal Regulator on July 16, 2020.

Coinsquare's Business

8. The Filer operates the Platform under the business name of "Coinsquare".

9. The Platform uses a proprietary and fully automated, internet-based system that enables clients to buy, sell, deposit and withdraw Crypto Assets through the Filer.

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

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

12. Under the Client Account Agreement, the Filer maintains certain controls over Client Accounts to ensure compliance with applicable law and with the by-laws, rules, regulations and policies of IIROC (**IIROC Rules**), and to provide secure custody of their Client Accounts.

13. The Filer enters into Crypto Contracts with clients to facilitate trading in Crypto Assets which is consistent with activities described in SN 21-327 and constitutes the trading of securities and/or derivatives.

14. The Filer responds as principal to client requests for quotes on Crypto Assets. The Filer also displays client orders for Crypto Assets and its own orders as principal on its marketplace platform (the **Marketplace Platform**)[1], as described under "Platform Operations".

15. The Filer provides order execution only (**OEO**) account services as an IIROC dealer under IIROC rules.

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

17. The Filer will be a member firm of the Canadian Investor Protection Fund (**CIPF**) but the Crypto Assets in the Filer's custody will not qualify for CIPF coverage. The Risk Statement will include disclosure that there will be no CIPF coverage for the Crypto Assets and clients must acknowledge that they have read and understood the Risk Statement before opening a Client Account with the Filer.

Crypto Assets Made Available through the Platform

18. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on its Platform to enter into Crypto Contracts to buy, sell or hold the Crypto Asset on its Platform. Such review includes, but is not limited to, publicly available information concerning:

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

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

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

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

[1] CCML's Marketplace Platform constitutes and will be regulated as an alternative trading system (**ATS**) in all jurisdictions except British Columbia, Saskatchewan, Nova Scotia and New Brunswick where it constitutes an exchange and will be regulated as an exempt exchange.

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

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

21. The Filer has established and applies policies and procedures to determine whether a Crypto Asset available to be bought or sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:

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

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

22. The Filer monitors through media and other sources ongoing developments related to the Crypto Assets available on its Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer described in paragraphs 18-21 to change.

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

24. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

Account Opening

25. Subject to the Filer determining that it is appropriate for a Client Account to be opened, the Platform will be available to any individual who is resident in Canada, who has reached the age of majority in the jurisdiction in which they are resident, and who has the legal capacity to open a securities brokerage account and to any company located in Canada. The Filer also conducts know-your-client information which satisfies the identity verification requirements applicable to reporting entities under Canadian anti-money laundering and anti-terrorist financing laws and IIROC requirements.

26. Clients of the Filer can access the Platform through its Website and on its Apps.

27. As part of the account opening process:

    (a) In addition to the account opening assessment required under IIROC guidance for dealer members offering OEO account services, the Filer assesses "account appropriateness." Specifically, the Filer collects know-your-client (**KYC**) information and will, prior to opening a Client Account, use electronic questionnaires to collect information that the Filer will use to determine whether it is appropriate for a prospective client to enter into Crypto Contracts with the Filer to buy and sell Crypto Assets. The account appropriateness assessment conducted by the Filer considers the following factors:

        (i) the client's experience and knowledge in investing in crypto assets;

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

        (iii) the client's risk and loss tolerance; and

        (iv) the Crypto Assets approved to be made available to a client by entering into Crypto Contracts on the Filer's Platform.

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

    (b) the Filer has adopted and will apply policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client that is not a permitted client (as defined in NI 31-103) can incur, what limits will

apply to such client based on the information collected in (a) above (**Client Limit**), and what steps the Filer will take when the client approaches or exceeds their Client Limit. After completion of the assessment, the Filer will implement controls to monitor and apply the Client Limit.

(c) The Filer will provide a prospective client with a separate Risk Statement that clearly explains the following in plain language:

(i) the Crypto Contracts;

(ii) the risks associated with the Crypto Contracts;

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

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

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

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

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

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

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

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

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

28. The Filer will require clients to agree to the Platform's access requirements which will be available on the Website and will include the following:

(a) trading hours of the Platform;

(b) procedures for funding purchases and withdrawing funds from the Platform;

(c) the fees charged to a client on the Platform;

(d) requirement that the client must comply with any restrictions on use of the Platform, including complying with trading requirements applicable to IIROC members such as IIROC's Universal Market Integrity Rules and all applicable laws;

(e) the possible consequences of any unauthorized use or non-compliance; and

(f) the Filer's conflict of interest policies and procedures.

29. In order for a prospective client to open and operate a Client Account with the Filer, the Filer will obtain an electronic acknowledgement from the prospective client confirming that the prospective client has received, read and understood

the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective client as part of the account opening process.

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

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

32. For clients with pre-existing Client Accounts with the Filer at the time of this Decision, the Filer will do the following at the earlier of (a) the next time they log in to their account with the Filer and (b) before placing their next trade or deposit of Crypto Assets on the Platform:

    (a) confirm prior KYC information on file,

    (b) assesses the "account appropriateness" for the client;

    (c) establish the Client Limit for the client; and

    (d) deliver to the client the Risk Statement and require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement. The Risk Statement will be prominent and separate from other disclosures given to the client at that time, and the acknowledgement will be separate from other acknowledgements by the client at that time.

33. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or Apps.

34. Each Crypto Asset Statement will include:

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

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

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

    (d) any risks specific to the Crypto Asset,

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

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

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

35. In addition to any monitoring required by IIROC, the Filer monitors and will continue to monitor Client Accounts after opening to identify activity inconsistent with the client's account and Crypto Asset assessment. If warranted, the client may receive further messaging about the Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer monitors compliance with the Client Limits established in representation 27(b).

36. The Filer will also periodically prepare and make available to its clients, educational materials and other informational updates about trading on the Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets.

Platform Operations

37. Clients can enter orders on the Platform in one of two ways:

    (a) CS Trade (formerly known as "Quick Trade") is a "Request For Quote" (**RFQ**) system that allows a client to enter a market order with the specified trading pair and quantity after receiving a quote that provides indicative trading terms.

    (b) CS Pro (formerly known as "Advanced Trade") allows a client to interface with a displayed, two-sided order book (the **Order Book**) , as further described below, under "The Marketplace Platform", for the purpose of executing limit orders in the Order Book.

38. In respect of CS Trade, the Filer is a counterparty to each trade. The Filer trades and then hedges its inventory risk by trading in other markets through multiple global crypto asset trading firms or marketplaces (**Liquidity Providers**). The Filer is compensated by a "spread" that is added to the best observed price at which it can buy the Crypto Asset through its Liquidity Providers or subtracted from the best observed price at which it can sell the Crypto Asset through its Liquidity Providers. The "spread" is disclosed on the Platform. After an order has been initiated by a client, the Filer will present this adjusted price to the client as a price quote at which the Filer is willing to transact with the client, absent unusual market conditions or technological problems. The quote will include a target range within which the spread is anticipated to fall. If the client finds the price agreeable, the client will accept the price and agree to the trade.

39. The Filer also offers OTC dealer-facilitated trading services. The OTC services are used by institutional and high-net-worth clients to execute orders that are generally larger than CS Trade orders and provide more personalized execution assistance and greater access to liquidity through designated representatives of the Filer. In respect of its OTC business, the Filer will be the counterparty to each buy or sell transaction initiated by a client.

40. In respect of CS Pro, client orders are matched in the Order Book with other client orders, the Filer's principal orders (which are also displayed in the Order Book as resting orders), or orders placed by other marketplace subscribers. Marketplace subscribers will consist of the Filer, other IIROC Dealer Members and approved large institutional buy-side firms (the **Subscribers**). Relying on aggregated external pricing data from Liquidity Providers, the Filer enters orders in the Order Book in order to provide liquidity around the prevailing market trading price. The Filer's orders are handled in the same manner as client orders entered on the Platform with no preference given or advantage to the handling of the Filer's orders and no advance knowledge of the client orders in the Order Book.

41. All fees, including the Filer's spread when acting as principal and transaction fees as applicable are clearly disclosed and clients can verify pricing for Crypto Assets on the Platform against publicly available pricing information on other CTPs.

42. The Filer establishes, maintains and ensures compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the Platform and its related services, including conflicts between the interests of its owners, its commercial interests and the responsibilities and sound functioning of the Platform and related services.

43. The Filer's policies and procedures to identify and manage conflicts of interest address those that arise from the trading activities of the Filer as principal on the Platform, as described above. The Filer believes that potential conflicts of interest arising from the operation of the Platform are adequately addressed through appropriate disclosure and the controls implemented within the operational model of the Platform.

44. The Filer periodically evaluates the price obtained from its Liquidity Providers against appropriate benchmarks relating to Crypto Assets to confirm that in using its Liquidity Providers it is providing fair and reasonable pricing to its clients. If the Filer concludes from its review that it is not providing fair and reasonable pricing to its clients, it will take steps to address this.

45. The Filer has taken or will take reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions.

46. In the absence of unpredicted technological issues or unusual market conditions, all Crypto Contracts entered into by clients to buy, sell and hold Crypto Assets will be placed with the Filer through the Apps or its Website. Clients will be able to submit buy and sell orders, either in units of the applicable Crypto Asset or in fiat currency, 24 hours a day, 7 days a week. Clients will be able to deposit and withdraw Crypto Assets and fiat currency, 24 hours a day, 7 days a week (or where applicable, for fiat currency during banking hours).

Pre-trade Controls and Settlement

47. Clients will be permitted to transfer into their Client Account with the Filer, Crypto Assets they obtained outside the Platform or, subject to paying applicable withdrawal fees and satisfying applicable minimum withdrawal size requirements

in effect from time to time, withdraw from their Client Account with the Filer, Crypto Assets they have purchased pursuant to their Crypto Contracts with the Filer or deposited with the Filer. Crypto Assets deposited with the Filer will be promptly delivered by the Filer to the Filer's custodian to be held in trust for the benefit of the client. Upon request by a client, the Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client, subject to first satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements. No quote or order will be accepted unless there are sufficient assets available in the Client Account to complete the trade.

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

    (a) to review the Crypto Asset, including the information specified in paragraph 18**,**

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

    (c) as set out in paragraph 22, to monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

49. A Crypto Contract is a bilateral contract between a client and the Filer. Each transaction a client undertakes through the RFQ process using CS Trade, and the matching of orders through CS Pro on the Marketplace Platform, results in an agreement between the persons or companies that entered the orders but is a bilateral Crypto Contract between the client and the Filer for the purposes of settlement.

50. The Filer's internal ledger records all of the transactions executed on the Platform. No order will be accepted by the Filer unless there are sufficient assets available in the Client Account to fund the trade. When client orders are executed through the Platform, the internal ledger is updated. All Crypto Contracts are settled directly between the Filer and each of the buyers and sellers when the matching takes place on the Platform with respect to CS Pro orders since the Filer has verified that assets are available prior to order entry.

51. The Filer does not, and, will not (except in accordance with IIROC rules and with the prior written consent of IIROC) extend margin, credit or other forms of leverage to clients in connection with trading Crypto Assets on the Platform, and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts.

52. The Filer will promptly, and no later than two business days after the trade, settle transactions with the Liquidity Providers on a net basis. The Filer's electronic settlement ledger will compare all transactions between clients and show net settlement day obligations of one client to another. Where there are net purchases of Crypto Assets, the Filer will arrange for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer will arrange for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider. Defaults in settlement are avoided by building into each trading work flow a step to make sure that adequate Client Assets are present to effect the trade.

53. Clients will receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their Client Account with the Filer in compliance with IIROC Rules. Clients will also be able to view their transaction history and account balances in real time by accessing their Client Account with the Filer.

54. The Filer has expertise in and has developed anti-fraud and anti-money-laundering monitoring systems, for both fiat and Crypto Assets, to reduce the likelihood of fraud, money laundering, or client error in sending or receiving Crypto Assets to incorrect wallet addresses.

The Marketplace Platform

55. The Filer, as an IIROC Marketplace Member, will provide the Marketplace Platform to bring together buyers and sellers of digital assets using established, non-discretionary methods under which orders interact with each other, and the buyers and sellers agree to the terms of the trade. In some jurisdictions the Marketplace Platform constitutes an ATS under applicable securities legislation while in other jurisdictions it constitutes an exchange under applicable securities legislation and will be regulated as an exempt exchange.

56. The sole initial Subscriber to the Marketplace Platform will be the Filer, and the Filer will provide clients who are accessing the Platform through CS Pro with access to the Marketplace Platform, subject to appropriate risk management and pre-trade controls.

57. The Marketplace Platform will provide a two-sided, electronic auction market with a visible central limit order book that matches buy and sell orders at "top of book" in strict price/time priority. The Marketplace Platform will not support market

orders, contingent orders, dark orders, or indications of interest. At launch, the Marketplace Platform will not support short sale orders.

58. The Marketplace Platform will offer an application programming interface (API) for Subscribers and/or market data vendors to retrieve depth-of-book order data and data on completed trades.

59. The following designations or markers will be applied to orders, as appropriate: trading participant number, marketplace number, account type: Order-Execution-Only Client / Non-Client / Principal; client Identifier (i.e., Legal Entity Identifier or client account number, as applicable) and time in force: GTC (good till cancelled / FOK (fill or kill) / IOC (immediate execution or cancel).

60. The Filer, charges a transaction fee for every trade on the Marketplace Platform using a maker/taker fee model which is disclosed on the Website.

Custody of Crypto Assets and Cash

61. The Filer has established and will maintain and apply policies and procedures that manage and mitigate custodial risks, including an effective syste of controls and supervision to safeguard Crypto Assets. The Filer will maintain its own hot wallets to hold limited amounts of Crypto Assets that will be used to facilitate client deposit and withdrawal requests. Crypto Assets held in the Filer's hot wallets are Filer assets not Client Assets. All Client Assets will be held in cold storage with third party custodians, Coinbase Custody Trust Company, LLC (**Coinbase**), and Crypto Assets not supported by Coinbase will be held in cold storage by Tetra Trust Company (**Tetra**). Tetra and Coinbase are referred to herein collectively as the **Custodians**. When a client makes a withdrawal from the Platform, the Filer transfers its own assets to the client, so clients generally do not need to wait for the withdrawals from cold storage from the Custodians.

62. Coinbase is a licensed digital asset exchange and a New York trust company regulated by the New York State Department of Financial Services. Coinbase is a "qualified custodian" for purposes of NI 31-103 and has completed a Service Organization Controls (**SOC**) 2 Type 2 examination. The Filer has conducted due diligence on Coinbase, including a review of the SOC 2 Type 2 examination report, and has not identified any material concerns. Tetra is a licensed Alberta trust company regulated by the Alberta Treasury Board and Finance. Tetra is a "qualified custodian" for purposes of NI 31-103 and has completed a SOC 2 Type 1 examination and a SOC 2 Type 2 examination. Tetra's security technology provider has completed a SOC 2 Type 2 examination. The Filer has conducted due diligence on Tetra, including a review of its SOC 2 Type 2 examination report and its security technology provider's SOC 2 Type 2 examination report, and has not identified any material concerns. Any withdrawal from the Custodians requires an approval from multiple Filer representatives and withdrawals can only be made to approved addresses.

63. The Custodians will operate a custody account for the Filer to use for the purpose of holding all of the Client Assets in trust for clients of the Filer. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.

64. Those Crypto Assets that the Custodians hold in trust for clients of the Filer will be held in a segregated omnibus account in the name of the Filer and separate and distinct from the assets of the Filer, the Filer's affiliates, and the Custodians' other clients.

65. The Custodians have established and apply policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents. The Custodians have established and apply written disaster recovery and business continuity plans.

66. The Filer has assessed the risks and benefits of using Coinbase and has determined that in comparison to a Canadian custodian (as that term is defined in NI 31-103), it is more prudent and beneficial to use Coinbase, a U.S. custodian, to hold the Client Assets Coinbase supports than using a Canadian custodian. The Filer has determined to use Tetra as a custodial service provider for the coins not supported by Coinbase but also considers it prudent to maintain relationships with more than one custodian so that it can also provide back-up custodial services in appropriate circumstances for coins supported by the Filer.

67. Coinbase currently maintains $320 million *in specie* coverage for digital assets, including the Crypto Assets owned by clients of the Filer, held in Coinbase's cold storage system.

68. Tetra's security technology provider currently maintains $150 million *in specie* coverage for digital assets, including the Crypto Assets owned by clients of the Filer, held in Tetra's cold storage system. Tetra also maintains a $2 million dedicated limit to the Filer of *in specie* coverage for Crypto Assets owned by clients of the Filer.

69. The Filer is proficient and experienced in holding Crypto Assets and has established and applied policies and procedures that manage and mitigate custodial risks, including, but not limited to, an effective system of controls and supervision to

safeguard the Crypto Assets. The Filer also maintains appropriate policies and procedures related to information technology security, cyber-resilience, disaster recovery capabilities, and business continuity plans.

70. The third-party insurance obtained by the Filer includes coverage for the Crypto Assets held by the Filer through the Custodians in cold storage in the event of loss or theft in accordance with the terms of the insurance policy in question. The Filer confirms once daily that Client Assets held with the Custodians in cold storage match client liabilities on the Filer's books and records.

Marketplace and Clearing Agency

71. The Filer will operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, subsection 1(1) of the Act.

72. Marketplace Relief is necessary because NI 21-101 was not drafted for crypto asset marketplace platforms, and certain requirements are not applicable in this context. The regulators have recognized, in SN 21-329, that the existing requirements of securities legislation may be tailored through terms and conditions and through discretionary exemptive relief, which allows CTPs to operate with appropriate regulatory oversight.

73. The terms and conditions attached to this Decision, as well as the Filer's requirements as a dealer and marketplace member of IIROC, provide appropriate investor protection safeguards. The Marketplace Relief is limited and reflects the balance between needing to be flexible in order to foster innovation in the Canadian capital markets and promoting investor protection and fair and efficient capital markets.

74. In Ontario, the Filer will not operate a "clearing agency" or a "clearing house" as the terms are defined or referred to in securities or commodities futures legislation.

Decision

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

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

(a) The Filer is registered as an investment dealer in the Jurisdiction and the jurisdiction in which the client is resident and is a member of IIROC.

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

(c) Unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage, at all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with a custodian that meets the definition of a "qualified custodian" under NI 31-103, with a custodian that is an "acceptable securities location" as defined in IIROC Rules, or with a custodian that IIROC has granted relief from the "acceptable securities location" requirement.

(d) Before the Filer holds Crypto Assets with a custodian referred to in condition (c), the Filer will take reasonable steps to verify that the custodian:

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

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

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

(e) The Filer will promptly notify the Principal Regulator if the Alberta Ministry of Treasury Board and Finance, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, the South Dakota Division of Banking or the New York State Department of Financial Services, makes a determination that the Filer's custodian is not permitted by that regulatory authority to hold client Crypto Assets.

(f) The Filer will promptly notify the Principal Regulator if the Alberta Ministry of Treasury Board and Finance or the Alberta Securities Commission, makes a determination that Tetra is not permitted by that regulatory authority to hold client Crypto Assets.

(g) For the Crypto Assets held by the Filer, the Filer will:

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

(ii) ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and

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

(h) The Filer has taken or will take reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions.

(i) When the Filer trades with its clients on a principal basis in its capacity as a dealer, the Filer will abide by policies it has adopted with a view to providing fair and reasonable prices to its clients.

(j) Before each prospective client opens a Client Account, the Filer will deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

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

(l) The Risk Statement delivered as set out in conditions (j) and (k) will be prominent and separate from other disclosures given to the client at that time, and the acknowledgement will be separate from other acknowledgements by the client at that time.

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

(n) Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or Apps and includes the information set out in paragraph 34.

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

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

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

(p) Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client to the Principal Regulator.

(q) For each client, the Filer will perform an appropriateness assessment as described in paragraph 27 prior to opening a Client Account, on an ongoing basis and at least every twelve months.

(r) For each client with a pre-existing Client Account at the date of this Decision, the Filer will conduct the account appropriateness assessment and establish the appropriate Client Limit for the client as set out in paragraphs

27 and 32 the next time the client uses their account. The client will not be permitted to trade until the completion of the account appropriateness assessment and a determination that the Client Account is appropriate.

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

(t) The Filer has established and will apply and monitor the Client Limits as set out in paragraph 27(b).

(u) The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets, that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may purchase and sell on the Platform (calculated on a net basis and is an amount not less than $0) in the preceding 12 months:

(i) in the case of a client that is not an Eligible Crypto Investor, does not exceed a net acquisition cost of $30,000;

(ii) in the case of a client that is an Eligible Crypto Investor, but is not an Accredited Crypto Investor; does not exceed a net acquisition cost of $100,000; and

(iii) in the case of an Accredited Crypto Investor, is not limited.

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

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

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

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

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

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

(z) The Filer will evaluate Crypto Assets as set out in paragraphs 18 to 22.

(aa) The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a client in a Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, fine or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of anti-money laundering laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar or analogous conduct.

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

(cc) Before the Filer acts as a carrying broker to a dealer, the Filer will take reasonable steps to verify that the dealer has received the prior written approval of IIROC to offer Crypto Contracts to its clients.

(dd) The Filer will provide to the Principal Regulator, and to the securities regulatory authority or regulator in each of the Non-Principal Jurisdictions with respect to clients in those jurisdictions individually, within 30 days of the end of each March, June, September and December, aggregate reporting of the activity conducted pursuant to Crypto Contracts consisting of the following:

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

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

(iii) number of trades in each month of the quarter;

(iv) average value of the trades in each month of the quarter;

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

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

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

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

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

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

(ii) jurisdiction where the client is located;

(iii) the date the Client Account was opened;

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

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

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

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

(viii) Crypto Asset traded by the client;

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

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

(xi) age of account in months; and

(xii) the Client Limit established by the Filer on each account.

(ff) Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Applicable Jurisdictions, a report of all Client Accounts for which the Client Limits established pursuant to paragraph 27(b) were exceeded during that month.

(gg) The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either (i) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets, and authorizations to access the wallets) previously delivered to the Principal Regulator or (ii) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

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

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

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

(kk) For any clearing or settlement activity conducted by the Filer incidental to the Filer engaging in the business of a Crypto Asset dealer and marketplace, the Filer will:

(i) maintain adequate procedures and processes to ensure the provision of accurate and reliable settlement services in connection with Crypto Assets; and

(ii) maintain appropriate risk management policies and procedures and internal controls to minimize the risk that settlement will not take place as expected.

(ll) This Decision expires on the date that is two years from the date of this Decision.

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

In respect of the Prospectus Relief:

Date: October 12, 2022

"David Surat"
Manager (Acting), Corporate Finance

In respect of the Marketplace Relief:

Date: October 12, 2022

"Michelle Alexander"
Manager, Market Regulation

In respect of the Trade Reporting Relief:

Date: October 12, 2022

"Kevin Fine"
Director, Derivatives

Appendix A – Local Trade Reporting Rules

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

(a) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**);

(b) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**);

(c) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**).

Appendix B – List of Specified Crypto Assets

- Bitcoin
- Ether
- Bitcoin Cash
- Litecoin

B.3.10 TriAct Canada Marketplace LP, operating as MATCHNow

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application to vary and restate a decision granting relief from section 7.1(1) of National Instrument 21-101 Marketplace Operation to expand the definition of Firm Orders that can interact with conditional orders – decision granted.

Applicable Legislative Provisions

National Instrument 21-101 Marketplace Operation, ss. 7.1 & 15.1.
Multilateral Instrument 11-102 Passport System, ss. 4.2 & 4.7.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, s. 3.6.

October 13, 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
TRIACT CANADA MARKETPLACE LP,
OPERATING AS
MATCHNOW
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) to vary and restate the decision issued on June 7, 2021 granting an exemption pursuant to section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from the pre-trade transparency requirements of section 7.1(1) of NI 21-101 (the **2021 Decision**) to permit the implementation of the Filer's new system feature described below, by expanding the definition of "Firm Order," as set out in the 2021 Decision, to include the new feature, whereby a participating active firm dark order (an **IOC order**) may be opted in to automatically generate a firm-up invitation for a conditional order where the system detects a potential match (the **Varied Exemption**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a limited partnership, established under the laws of Ontario, which is registered as an investment dealer under the securities legislation of Ontario and Alberta and approved by the OSC as an ATS. The Filer is a member of the Investment Industry Regulatory Organization of Canada.

2. Pursuant to two orders issued in 2007, one by the British Columbia Securities Commission (on behalf of itself and the securities regulatory authority or regulator in Manitoba, Newfoundland and Labrador, Nova Scotia, Quebec, and Saskatchewan) and one by the then-New Brunswick Securities Commission, and in accordance with the relief provided in section 4.8 of MI 11-102 and the respective Local Rule 12-501 applicable in the Northwest Territories, Prince Edward Island, and Yukon, the Filer is exempt from the requirement to register as an investment dealer in subsection 6.1(a) of NI 21-101 and is authorized to carry on business as an ATS in British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan, and Yukon.

3. The Filer's principal place of business and head office are located in Toronto, Ontario.

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

5. The Filer, as an ATS, intends to offer its subscribers a new feature to enhance its existing conditional order functionality (**Conditionals**), by allowing Conditionals to interact with IOC orders, which are firm active "dark" orders, as well as firm passive dark orders, known as "**Liquidity Providing**" orders, in the MATCHNow system (referred to collectively herein as **Firm Orders**).

6. The Opt-In Feature is an optional feature. A subscriber will need to affirmatively activate it for it to apply to a Firm Order; otherwise, the system will default the Firm Order to being opted out for the feature.

7. Prior to the 2021 Decision, in the Filer's Conditionals functionality, a subscriber would receive a firm-up invitation when the system detected a potential match between or among two or more Conditionals; in accordance with the 2021 Decision, the Conditionals functionality was expanded to allow a subscriber to opt in to have its Liquidity Providing order automatically generate a firm-up invitation for a Conditional where the system detected a potential match between that opted-in Liquidity Providing order and Conditional.

8. The Filer has now proposed a new additional feature which would allow a subscriber to opt in to have an IOC order automatically generate a firm-up invitation for a Conditional where the system detects a potential match between that IOC order and Conditional, thereby expanding the definition of "Firm Order" set out in the 2021 Decision to include both Liquidity Providing orders and IOC orders (the **Varied Opt-In Feature**).

9. In these circumstances, the firm-up invitation generated by any opted-in Firm Order may be interpreted as a display of that Firm Order.

10. Section 7.1(1) of NI 21-101 provides that, when a marketplace displays orders of exchange-traded securities to a person or company, the marketplace must provide accurate and timely information regarding the displayed orders to an information processor or to an information vendor if an information processor is not available.

11. The Filer has requested an exemption from section 7.1(1) of NI 21-101 to be able to offer the Varied Opt-In Feature to its subscribers across Canada.

12. The Varied Opt-In Feature is subject to the following conditions:

    1) The Varied Opt-In Feature will facilitate large-sized trades, as only Firm Orders that are at least 51 standard trading units and $30,000 in notional value or at least $100,000 in notional value may opt in to interact with Conditionals.

    2) The Varied Opt-In Feature, to be activated, requires a subscriber to take the affirmative action of electing to have its Firm Orders interact with Conditionals (on an order-by-basis, or as a "default" for all Firm Order flow associated with a particular Trader ID).

    3) When an opted-in Firm Order offers contra-side liquidity for a Conditional, the invitation to firm up sent to the subscriber that placed the Conditional will only provide symbol and side (i.e., buy or sell), while size and price will only be inferable without precision (i.e., the subscriber will be able to infer that the contra-side is at least 51 standard trading units and $30,000 in notional value or at least $100,000 in notional value, and that the contra-side's price is at or better than the mid-point of the Protected National Best Bid and Offer).

4) When an opted-in Firm Order offers contra-side liquidity for a Conditional, the invitation to firm up sent to the subscriber will not allow the subscriber to determine whether the contra-side liquidity is immediately actionable (i.e., the subscriber will be blind as to whether the contra-side order is a Firm Order or another Conditional).

5) The final step required to achieve an execution—namely, the firm-up by the subscriber that placed the Conditional—is not guaranteed and, therefore, execution is not a mere formality.

13. The Filer's existing compliance mechanism applicable to Conditionals suspends Conditionals trading, on a per-security basis, for the remainder of the trading day for a subscriber or sponsored user whose firm-up rate falls below 70% for the day, provided at least 10 firm-up invitations have been received by the subscriber or sponsored user. This compliance mechanism will treat all firm-up invitations uniformly, including those automatically generated by Firm Orders for which the Varied Opt-In Feature is activated. This provides an additional measure of protection in favour of the policy objective underlying section 7.1(1) of NI 21-101—namely, fair access to pre-trade information—by allowing the Filer to monitor and combat abusive order-cancellation behaviour, which could indicate a subscriber's or sponsored user's attempt to gain an unfair informational advantage. Changes to the compliance mechanism are subject to notice to and approval by the OSC through filing an amendment to the relevant information provided in the Filer's Form 21-101F2.

14. While the transparency requirements are fundamental to the marketplace framework in NI 21-101, there is a benefit for Canadian capital markets from the facilitation of large block-size trades.

15. The Varied Opt-In Feature is expected to encourage greater adoption of Conditionals by the Filer's subscribers and thereby provide more price-improved matching opportunities for large-sized orders, without any significant erosion of price discovery. Nevertheless, the Filer acknowledges that the impact of the Varied Opt-In Feature on the Canadian capital markets will be monitored over time, and any unanticipated negative impact will be addressed.

Decision

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

Based on the Filer's representations above, the decision of the principal regulator under the Legislation is that the Varied Exemption is granted and the 2021 Decision is varied and restated as indicated herein, provided that:

1. The Varied Opt-In Feature will only apply to Firm Orders for which a subscriber has affirmatively consented to using the functionality.

2. A Firm Order will only be eligible for the Varied Opt-In Feature where it meets the applicable minimum size threshold (51 standard trading units and $30,000 or $100,000).

3. An invitation to firm up through the Varied Opt-In Feature conveys only symbol and side as known order elements; information about price or quantity is not conveyed and may only be inferable without precision.

4. An invitation to firm up through the Varied Opt-In Feature does not enable the recipient to determine whether the contra-side liquidity is immediately actionable.

5. The Filer will test the Varied Opt-In Feature prior to implementation to ensure the functionality works as designed.

6. The Filer will analyze the impact of the Varied Opt-In Feature and will share the results with the OSC. The manner and format of the analysis will be agreed to with OSC staff no later than 90 days after the signing of this decision.

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission

B.3.11 Hydro One Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – the Filer requests relief from the requirements in section 3.2 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises in order to permit the Filer to prepare financial statements in accordance with U.S. GAAP. Relief granted, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standard, ss. 3.2 and 5.1

October 13, 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
HYDRO ONE LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an exemption from the requirements of section 3.2 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that the financial statements of the Filer:

(a) be prepared in accordance with accounting principles generally accepted in Canada applicable to publicly accountable enterprises (**Canadian GAAP**), and

(b) disclose an unreserved statement of compliance with International Financial Reporting Standards (**IFRS**) in the case of annual financial statements and disclose an unreserved statement of compliance with IAS 34 in the case of an interim financial report (the **Exemption Sought**).

The Exemption Sought is similar to the exemption granted by the principal regulator in the Jurisdiction on March 27, 2018 in *Re Hydro One Limited* (the **Existing 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;

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

(c) the decision of the principal regulator automatically results in an equivalent decision in the Passport Jurisdictions.

Interpretation

Terms defined in National Instrument 14-101 - *Definitions*, MI 11-102 and NI 52-107 have the same meaning if used in this decision, unless otherwise defined, and "rate-regulated activities" has the meaning ascribed thereto in the Chartered Professional Accountants of Canada Handbook (the **Handbook**).

Representations

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

1. The Filer is incorporated under the *Business Corporations Act* (Ontario). The head office of the Filer is located at 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5.

2. The Filer is a reporting issuer or equivalent in the Jurisdiction and each Passport Jurisdiction and is not in default of securities legislation in any such jurisdiction.

3. Hydro One Inc. (**HOI**) is incorporated under the *Business Corporations Act* (Ontario). The head office of HOI is located at 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5.

4. HOI is a reporting issuer in each of the provinces of Canada and is not in default of any requirement of securities legislation in any such province.

5. HOI is a wholly-owned subsidiary of the Filer and its financial statements are consolidated into the financial statements of the Filer.

6. HOI is an SEC issuer (as defined in NI 52-107) and thus is permitted pursuant to section 3.7 of NI 52-107 to prepare and report its financial statements in accordance with US GAAP. HOI has prepared and filed its financial statements for annual and interim periods in accordance with US GAAP since 2012. HOI's transition date to US GAAP was January 1, 2011, representing the commencement of the 2011 comparative period to HOI's consolidated financial statements as at and for the year ended December 31, 2012.

7. Hydro One Holdings Limited (**HOHL)** is incorporated under the *Business Corporations Act* (Ontario). The head office of HOHL is located at 483 Bay Street, South Tower, 8th Floor, Toronto, Ontario M5G 2P5.

8. HOHL is a reporting issuer in the province of Ontario and is not in default of any requirement of securities legislation in such province.

9. HOHL is a wholly-owned subsidiary of the Filer, its financial statements are consolidated into the financial statements of the Filer and it relies on the continuous disclosure documents filed by the Filer pursuant to section 13.4(2)(d)(ii)(A) of National Instrument 51-102 – *Continuous Disclosure Obligations*.

10. On December 17, 2020, HOHL filed with the United States Securities and Exchange Commission (the **SEC**) under Form F-10/A short form base shelf prospectus (the **Shelf Prospectus**) to qualify the issuance of up to US$3,000,000,000 amount of debt securities of HOHL. The debt securities qualified under the Shelf Prospectus are fully and unconditionally guaranteed by the Filer. Accordingly, HOHL and the Filer are each currently an SEC issuer (as defined in NI 52-107). The Shelf Prospectus will expire on January 17, 2023.

11. The Filer currently prepares and files its financial statements for annual and interim periods in accordance with US GAAP, in reliance on the Existing Relief. The Filer is also permitted to report its financial statements in accordance with US GAAP for so long as it remains an "SEC issuer" (as defined in NI 52-107). However, there is no assurance that the Filer will remain an SEC issuer. In addition, at this time, there is no certainty that the Shelf Prospectus will be renewed after its expiry in January 2023.

12. The Filer has rate-regulated activities.

13. By a decision dated March 27, 2018, the Filer has been granted the Existing Relief which is substantially similar to the Exemption Sought.

14. The Existing Relief provided that it would cease to apply to the Filer on the earliest of:

    (a) January 1, 2024;

    (b) if the Filer ceases to have rate-regulated activities, the first day of the Filer's financial year that commences after the Filer ceases to have rate-regulated activities; and

(c) the effective date prescribed by the International Accounting Standards Board (**IASB**) for the mandatory application of a standard within IFRS specific to entities with rate-regulated activities (**Mandatory Rate-regulated Standard**).

15. In the absence of further relief provided by Canadian securities regulators and if the Filer does not continue to be an "SEC issuer", the Filer would become subject to Canadian GAAP no later than January 1, 2024. Canadian GAAP includes IFRS as incorporated into the Handbook.

16. In January 2021, the IASB published Exposure Draft – *Regulatory Assets and Regulatory Liabilities* (the **Exposure Draft**), which introduces a proposed standard for accounting for regulatory assets and liabilities, applicable to entities with rate-regulated activities. The issuance by the IASB of a Mandatory Rate-regulated Standard would have resulted in the expiry of the Existing Relief, giving rise to the obligation of the Filer to commence financial statement preparation and reporting in accordance with IFRS pursuant to NI 52-107.

17. However, the Exposure Draft is not yet finalized and there continues to be no certainty as to the timing for when the final Exposure Draft will be approved. In particular, the Filer will require sufficient time to:

(a) interpret and implement such standard and transition from financial statement preparation and reporting in accordance with US GAAP to IFRS; and

(b) interpret and reconcile the implications on the customer rate setting process resulting from the implementation.

Decision

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

The decision of the principal regulator under the Legislation is that:

(a) the Existing Relief is revoked;

(b) the Exemption Sought is granted to the Filer in respect of the Filer's financial statements required to be filed on or after the date of this decision, provided that the Filer prepares those financial statements in accordance with US GAAP;

(c) the Exemption Sought will terminate in respect of the Filer on the earliest of the following:

(d) January 1, 2027;

(e) if the Filer ceases to have rate-regulated activities, the first day of the Filer's financial year that commences after the Filer ceases to have rate-regulated activities; and

(f) the first day of the Filer's financial year that commences on or following the later of:

(g) the effective date prescribed by the IASB for a Mandatory Rate-regulated Standard; and

(h) two years after the IASB publishes the final version of a Mandatory Rate-regulated Standard.

"Cameron McInnis"
Chief Accountant
Ontario Securities Commission

OSC File #: 2022/0439

B.3.12 Medical Facilities Corporation

Headnote

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

Applicable Legislative Provisions

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

October 13, 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
MEDICAL FACILITIES CORPORATION
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the **Common Shares**) pursuant to an issuer bid commenced on September 16, 2022 (the **Offer**), the Filer be exempt from the requirement set out in subsection 2.32(4) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**) that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the Filer first takes up all of the Common Shares deposited under the Offer and not withdrawn (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation validly existing under the *Business Corporations Act* (British Columbia) and is in good standing.

2. The registered office of the Filer is in Vancouver, British Columbia and its principal executive office is in Toronto, Ontario.

3. The Filer is a reporting issuer in the Province of Ontario and is not in default of any requirement of the securities legislation in any jurisdiction in which it is a reporting issuer.

4. The authorized share capital of the Filer consists of an unlimited number of Common Shares. As at September 12, 2022, the date prior to the announcement of the Filer's intention to proceed with the Offer, 29,414,759 Common Shares were issued and outstanding.

5. The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "DR".

6. The board of directors of the Filer (the **Board**) believes that the purchase of Common Shares pursuant to the Offer constitutes an efficient means of returning capital to the holders of Common Shares (each a **Shareholder**, collectively the **Shareholders**) and is in the best interests of the Filer and its Shareholders. The Board believes that the Offer is a prudent use of the Company's financial resources given its business profile and assets, the current market price of the Common Shares, the excess capital position of the Company and its cash requirements and borrowing costs. The Offer allows the Filer an opportunity to return up to $34,500,000 of capital to Shareholders who elect to tender their Common Shares to the Offer while at the same time increasing the equity ownership of Shareholders who elect not to tender.

7. The Filer formally announced its intention to commence the Offer on September 13, 2022. The issuer bid circular dated September 16, 2022 prepared and filed by the Filer in connection with the Offer (the **Circular**) specifies that the Filer proposes to purchase, by way of a modified "Dutch auction" procedure in the manner described below, up to $34,500,000 of the issued and outstanding Common Shares (the **Maximum Purchase Amount**) at a purchase price of not less than $10.00 and not more than $11.50 per Common Share (the **Price Range**).

8. The Offer is made only for Common Shares and not made for any convertible securities. Pursuant to subsection 2.8(b) of NI 62-104, the Filer also made the Offer to each holder of convertible securities that, before the expiry of the deposit period of the Offer, are convertible into Common Shares. Such convertible securities may, at the option of the holder, be converted for Common Shares in accordance with the terms of such convertible securities prior to the expiry of the deposit period of the Offer. Common Shares issued upon the conversion of the convertible securities may be tendered to the Offer in accordance with the terms of the Offer.

9. The Filer will fund any purchase of Common Shares pursuant to the Offer, together with all related fees and expenses of the Offer, from available cash on hand and its pre-existing revolving credit facility under the Amended and Restated Credit Agreement dated August 31, 2022 between, among others, the Filer and National Bank Financial Markets. The Offer is not conditional upon the receipt of any other financing.

10. Each Shareholder wishing to tender to the Offer may do so pursuant to:

    (a) auction tenders in which the tendering Shareholders specify the number of Common Shares being tendered at a specified price per Common Share (the **Auction Price**) within the Price Range in increments of $0.10 per Common Share (the **Auction Tenders**); or

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

11. Shareholders may make both Auction Tenders and Purchase Price Tenders, but not in respect of the same Common Shares. Shareholders may also make multiple Auction Tenders at different Auction Prices, but not in respect of the same Common Shares (i.e. Shareholders may tender different Common Shares at different prices, but cannot tender the same Common Shares at different prices). Shareholders who tender Common Shares without making a valid Auction Tender or Purchase Price Tender will be deemed to have made a Purchase Price Tender.

12. If a Shareholder wishes to deposit Common Shares in separate lots at a different price for each lot, that Shareholder must complete a separate Letter of Transmittal (and, if applicable, a Notice of Guaranteed Delivery) for each price at which the Shareholder is depositing Common Shares. A Shareholder may not deposit the same Common Shares pursuant to both an Auction Tender and a Purchase Price Tender, or pursuant to an Auction Tender at more than one price.

13. Any Shareholder who beneficially owns fewer than 100 Common Shares (an **Odd Lot Holder**) and tenders all such Common Shares pursuant to an Auction Tender at a price at or below the Purchase Price, or pursuant to a Purchase Price Tender, will be considered to have made an "Odd Lot Tender".

14. The Filer will determine a single purchase price payable per Share (the "**Purchase Price**") promptly after the expiry of the Offer by taking into account the number of Shares deposited pursuant to Auction Tenders and Purchase Price

Tenders and the Auction Prices specified by Shareholders depositing Shares pursuant to Auction Tenders. The Purchase Price will be the lowest price per Common Share that enables the Filer to purchase the maximum number of Common Shares validly deposited and not properly withdrawn pursuant to the Offer having an aggregate purchase price not exceeding the Maximum Purchase Amount. For the purposes of determining the Purchase Price, Common Shares deposited pursuant to a Purchase Price Tender will be deemed to have been deposited at a price of $10.00 per Common Share (which is the minimum price per Common Share under the Offer).

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

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

    (b) second, the Filer will purchase Common Shares at the Purchase Price on a *pro rata* basis according to the number of Common Shares deposited or deemed to be deposited at a price equal to or less than the Purchase Price by the depositing Shareholders, for an aggregate purchase price of the Maximum Purchase Amount less the aggregate purchase price of the Common Shares purchased from Odd Lot Holders. All Auction Tenders and Purchase Price Tenders will be subject to adjustment to avoid the purchase of fractional Common Shares (with fractions rounded down to the nearest whole Common Share).

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

17. All Common Shares purchased by the Filer pursuant to the Offer (including Auction Tenders tendered at a price below the Purchase Price) will be purchased at the Purchase Price, payable in cash. All payments to Shareholders will be subject to deduction of applicable withholding taxes.

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

19. Certificates for all Common Shares not purchased under the Offer (including Common Shares deposited pursuant to an Auction Tender at prices greater than the Purchase Price, Common Shares not purchased because of pro-ration, improper tenders, or Common Shares not taken up due to the termination of the Offer), or properly withdrawn before the Expiration Date (as defined below), will be returned (in the case of certificates representing Common Shares all of which are not purchased) or replaced with new certificates representing the balance of Common Shares not purchased (in the case of certificates representing Common Shares of which less than all are purchased), promptly after the Expiration Date or termination of the Offer or the date of withdrawal of the Common Shares, without expense to the Shareholder. In the case of Common Shares tendered through book-entry transfer into the account of Computershare Trust Company of Canada at Depository Trust Company (**DTC**) or CDS Clearing and Depository Services Inc. (**CDS**), the Common Shares will be credited to the appropriate account maintained by the tendering Shareholder at DTC or CDS, as applicable, without expense to the Shareholder.

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

21. To the knowledge of the Filer, after reasonable inquiry, no person or company beneficially owns, or exercises control or direction over, more than 10% of the voting rights attached to all of the Filer's outstanding voting securities.

22. As of September 16, 2022, to the knowledge of the Filer and its directors and officers after reasonable inquiry, no director or officer of the Filer, no insider of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's or company's Common Shares pursuant to the Offer.

23. On September 12, 2022, the closing price of the Common Shares on the TSX was $9.49 per Common Share. On September 15, 2022, the closing price of the Common Shares on the TSX was $10.47 per Common Share.

24. As of September 12, 2022, there were 29,414,759 Common Shares issued and outstanding. If the Purchase Price is determined to be $10.00 (being the minimum Purchase Price under the Offer), the maximum number of Common Shares that the Filer is offering to purchase pursuant to the Offer represents approximately 11.73% of the outstanding Common Shares. If the Purchase Price is determined to be $11.50 (being the maximum Purchase Price under the Offer), the

maximum number of Common Shares that the Filer is offering to purchase pursuant to the Offer represents approximately 10.20% of the outstanding Common Shares.

25. The Offer is scheduled to expire at 5:00 p.m. (Eastern time) on October 24, 2022 (the **Expiration Date**).

26. If all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date but the aggregate Purchase Price of the Common Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is less than the Maximum Purchase Amount, the Filer may wish to extend the Offer. The Filer will not extend the Offer if, all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date and the aggregate Purchase Price of the Common Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is equal to or greater than the Maximum Purchase Amount.

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

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

29. Common Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Date, may be withdrawn by the Shareholder at any time prior to the expiration of any extension period in respect of the Offer.

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

31. There is a "liquid market" for the Common Shares, as such term is defined in MI 61-101, as of the date the Offer was publicly announced because:

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

    (b) National Bank Financial Inc. (**National Bank**), a person qualified and independent of all interested parties to the Offer, provided an opinion to the Filer in accordance with section 1.2 of MI 61-101 (the **Liquidity Opinion**) that, based on and subject to the qualifications, assumptions and limitations stated in the Liquidity Opinion, National Bank is of the opinion that, as of the date the Offer was publicly announced: (i) a liquid market exists for the Common Shares; and (ii) it is reasonable to conclude that, following completion of the Offer, there will be a market for holders of Common Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer. A copy of the Liquidity Opinion was included in the Circular.

32. Based on the maximum number of Common Shares that may be purchased under the Offer and the Liquidity Opinion, the Board determined that it is reasonable to conclude that, following completion of the Offer, there will be a market for holders of Common Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.

33. The Board has determined that the Offer is in the best interests of the Filer and Shareholders, and that the Offer is an advisable use of the Filer's financial resources.

34. The Circular:

    (a) discloses the mechanics for the take up of, and payment for, deposited Common Shares;

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

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

(d) sets out the manner in which an extension of the Offer will be communicated to Shareholders and the public;

(e) discloses that Common Shares deposited pursuant to the Offer may be withdrawn any time prior to the expiration of any extension period in respect of the Offer;

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

(g) contains the disclosure prescribed by the Legislation for issuer bids.

Decision

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

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

(a) Common Shares validly deposited under the Offer and not withdrawn are taken up and paid for, or dealt with, in the manner set out in the Circular and described above;

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

(c) The Filer will issue and file a press release announcing receipt of the Exemption Sought promptly, and in any case, no later than one (1) business day following receipt of the Exemption Sought; and

(d) the Filer complies with the requirements of Regulation 14E promulgated under the Exchange Act in respect of the Offer.

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

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 REPORT.				

Failure to File Cease Trade Orders

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

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

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

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	

This page intentionally left blank

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:
Dynamic Alpha Performance II Fund
Dynamic Credit Absolute Return II Fund
Dynamic Liquid Alternatives Private Pool
Dynamic Premium Yield PLUS Fund
Dynamic Real Estate & Infrastructure Income II Fund
Dynamic Retirement Income+ Fund
Dynamic Short Term Credit PLUS Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 14, 2022
NP 11-202 Final Receipt dated Oct 17, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #33435082

Issuer Name:
Black Diamond Distressed Opportunities Fund
Black Diamond Global Enhanced Income Fund
Black Diamond Global Equity Fund
MLD Core Fund
PK Core Fund
Purpose Global Flexible Credit Fund (formerly Purpose Floating Rate Income Fund)
Purpose Gold Bullion Fund
Purpose Healthcare Innovation Yield ETF (formerly Purpose Biotech ETF)
StoneCastle Global Tactical Asset Allocation Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 14, 2022
NP 11-202 Final Receipt dated Oct 17, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3434852

NON-INVESTMENT FUNDS

Issuer Name:
1933 Industries Inc
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 7, 2022
NP 11-202 Preliminary Receipt dated October 11, 2022
Offering Price and Description:
US$50,000,000
Common Shares, Debt Securities, Subscription Receipts, warrants, Convertible Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3444273

Issuer Name:
AbraSilver Resource Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 14, 2022
NP 11-202 Preliminary Receipt dated October 17, 2022
Offering Price and Description:
$100,000,000.00 - COMMON SHARES WARRANTS UNITS SUBSCRIPTION RECEIPTS DEBT SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3445859

Issuer Name:
Canadian Imperial Bank of Commerce
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 7, 2022
NP 11-202 Preliminary Receipt dated October 11, 2022
Offering Price and Description:
Medium Term Notes
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
IA PRIVATE WEALTH INC.
LAURENTIAN BANK SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
RICHARDSON WEALTH LIMITED
Promoter(s):
-
Project #3444201

Issuer Name:
CareRx Corporation (formerly Centric Health Corporation)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 17, 2022
NP 11-202 Preliminary Receipt dated October 17, 2022
Offering Price and Description:
$100,000,000.00 - Common Shares Preference Shares Subscription Receipts Debt Securities Warrants Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3446081

Issuer Name:
CNJ Capital Investments Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated October 11, 2022
NP 11-202 Preliminary Receipt dated October 13, 2022
Offering Price and Description:
$300,000.00 - 3,000,000 Common Shares
Price: $0.10 per share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3444750

Issuer Name:
Dolly Varden Silver Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 7, 2022
NP 11-202 Preliminary Receipt dated October 12, 2022
Offering Price and Description:
$50,000,000.00 - COMMON SHARES DEBT SECURITIES SUBSCRIPTION RECEIPTS WARRANTS UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3444344

Issuer Name:
Fraser Mackenzie Accelerator Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated October 12, 2022
NP 11-202 Preliminary Receipt dated October 14, 2022
Offering Price and Description:
Minimum Offering: $1,000,000.00 - (10,000,000 Common Shares)
Maximum Offering: $2,250,000.00 - (22,500,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3445535

Issuer Name:
NL2 Capital Inc.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary CPC Prospectus dated October 11, 2022
NP 11-202 Preliminary Receipt dated October 13, 2022
Offering Price and Description:
Minimum Offering: $200,000.00 or 2,000,000 Common Shares
Maximum Offering: $1,000,000.00 or 10,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Gravitas Securities
Promoter(s):
Chris Dobbin
Project #3444943

Issuer Name:
POCML 7 Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated October 12, 2022
NP 11-202 Preliminary Receipt dated October 12, 2022
Offering Price and Description:
$250,000.00 - 2,500,000 Common Shares
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
iA PRIVATE WEALTH INC.
Promoter(s):
-
Project #3444954

Issuer Name:
Propel Holdings Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 11, 2022
NP 11-202 Preliminary Receipt dated October 11, 2022
Offering Price and Description:
$125,000,000.00 - Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3444507

Issuer Name:
TAG Oil Ltd
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 11, 2022
NP 11-202 Preliminary Receipt dated October 11, 2022
Offering Price and Description:
$20,000,000.00 □ Common Shares
Per Common Share $□
Underwriter(s) or Distributor(s):
RESEARCH CAPITAL CORPORATION
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #3444570

Issuer Name:
TAG Oil Ltd
Principal Regulator - British Columbia
Type and Date:
Amendment dated October 12, 2022 to Preliminary Short Form Prospectus dated October 11, 2022
NP 11-202 Preliminary Receipt dated October 13, 2022
Offering Price and Description:
$22,000,000.00 -55,000,000 Common Shares
Underwriter(s) or Distributor(s):
RESEARCH CAPITAL CORPORATION
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #3444570

Issuer Name:
Canadian Imperial Bank of Commerce
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated October 7, 2022
NP 11-202 Receipt dated October 11, 2022
Offering Price and Description:
Medium Term Notes
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
IA PRIVATE WEALTH INC.
LAURENTIAN BANK SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
RICHARDSON WEALTH LIMITED
Promoter(s):
-
Project #3444201

Issuer Name:
Liberty Defense Holdings, Ltd. (formerly, Gulfstream Acquisition 1 Corp.)
Principal Regulator - British Columbia
Type and Date:
Amendment dated October 13, 2022 to Final Shelf Prospectus dated February 8, 2022
NP 11-202 Receipt dated October 17, 2022
Offering Price and Description:
$60,000,000.00 - Common Shares Warrants Subscription Receipts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3314914

Issuer Name:
Mawson Gold Limited
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated October 12, 2022
NP 11-202 Receipt dated October 12, 2022
Offering Price and Description:
$25,000,000.00 - Common Shares Warrants Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3440440

Issuer Name:
Woodbine Resources Corp
Principal Regulator - British Columbia
Type and Date:
Amendment dated September 30, 2022 to Final Long Form Prospectus dated June 30, 2022
NP 11-202 Receipt dated October 11, 2022
Offering Price and Description:
Public Offering of $425,000.00 - 4,250,000 Common Shares at a price of $0.10 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
James Walchuck
Project #3371149

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Coinsquare Capital Markets Ltd.	Investment Dealer	October 12, 2022
Voluntary Surrender	Delano Capital Corp.	Exempt Market Dealer	October 12, 2022

This page intentionally left blank

B.11
SROs, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 Coinsquare Capital Markets Ltd. – Notice of Completion of Staff Review of Initial Operation Report

COINSQUARE CAPITAL MARKETS LTD.

NOTICE OF COMPLETION OF STAFF REVIEW OF INITIAL OPERATION REPORT

On May 16, 2022, Coinsquare Capital Markets Ltd.'s (**Coinsquare**) Notice of Initial Operations (**NIO**) was published for comment in accordance with OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes*. The public comment period ended on June 15, 2022. Two comments were received and a summary of comments and responses is contained in this notice.

OSC staff have completed the review of Coinsquare's Form 21-101F2 *Information Statement Alternative Trading System – Initial Operation Report* and have no further comments.

Summary of Comments and Responses

Several commenters stated that the NIO was short on details concerning how Coinsquare would operate. This was because, unlike other crypto-asset platforms that have been registered as restricted dealers with terms and conditions, Coinsquare is registered as an investment dealer, is a Dealer and Marketplace Member of the Investment Industry Regulatory Organization of Canada (IIROC) and is approved to operate an alternative trading system (**ATS**). As an ATS, it will be subject to the same body of rules governing other ATSs, including National Instrument 21-101 *Marketplace Operation*, National Instrument 23-101 *Trading Rules*, and National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*. As an IIROC member, it will also be subject to applicable IIROC Rules. It is anticipated that Coinsquare will also be subject to a Commission order requiring it to comply with the same *Process for Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto* (**ATS Protocol**) as all other ATSs. The ATS Protocol will provide for advance notice to the Commission of significant changes to the information in Form 21-101F2 and the process for approval of changes, which may require publication for comment in advance of approval.

In connection with its application for approval as an investment dealer and ATS, Coinsquare has been granted exemptions from the prospectus and trade reporting requirements and certain marketplace rules. A copy of the decision granting relief is in Chapter 2 of this Bulletin.

The following are Coinsquare's responses to specific issues raised in the comment letters.

Counterparty Risk

1. "*While the ATS may check for potentially erroneous prices, there are no apparent pre-trade financial, or credit checks related to size or overall notional of the trade."*

Coinsquare response: The operational model that has been presented for the Coinsquare ATS[1] reflects current regulatory expectations and is appropriate at the outset of the Coinsquare ATS's operations, when there will only be one Subscriber (i.e., the Coinsquare dealer) or a limited number of Subscribers on the marketplace ("Phase 1"). In that context, there is no practical need for ATS-specific pre-trade financial or credit checks. The Coinsquare dealer, as a Subscriber, applies pre-trade risk controls, as required by IIROC Rules, and any other Subscribers would similarly be required to apply their own controls in respect of their order flow. The Coinsquare ATS has also implemented various marketplace risk-management controls using a third-party system that is also used by other Canadian marketplaces.

[1] Capitalized terms not defined herein are as defined in the *Coinsquare Capital Markets Ltd. – Notice of Initial Operations and Request for Comment* dated May 16, 2022 (available at: https://www.osc.ca/en/industry/market-regulation/marketplaces/alternative-trading-systems-atss/atss-operating-ontario/pending-applications/coinsquare-capital-markets-ltd) (the "*Notice*").

Moreover, with respect to trading by clients of the Coinsquare dealer (on an OEO account basis):

- All such trading must be pre-funded by the client through deposits of fiat and/or Digital Assets into the client's account(s) held at the Coinsquare dealer.
- The Coinsquare dealer has automated pre-trade risk controls that strictly limit what the client can trade in terms of fiat and Digital Assets at any one time, based on the client's account balances.
- As a further control, the Coinsquare dealer will not offer margin or any other forms of leverage to its clients.

That being said, we acknowledge that the comment raises valid considerations regarding counterparty risk that arise in the context of a multi-Subscriber environment which will become relevant as the crypto market in Canada continues to evolve. Accordingly, the second phase of the Coinsquare ATS contemplates multiple Subscribers admitted to trade on the Coinsquare ATS ("Phase 2") as further described below.[2] At present, the Coinsquare ATS has adopted policies and procedures that address the majority of the material risks arising in both phases, including requiring every Subscriber to contract with qualified custodians (the "Custodians") and to deposit Digital Assets into cold wallets held in the Subscriber's name at the Custodians. Further, Coinsquare has dedicated "CS Admin" personnel who will be able to facilitate settlement between Subscribers on a net basis at the end of each day, as reflected in the Notice. These elements mitigate the relevant counterparty risk to a large degree.

In addition, Coinsquare is currently working on a more targeted solution and risk-management system for Phase 2 of the Coinsquare ATS that will further address the risk posited in this comment. We anticipate that the Phase 2 architecture will be reviewed as a "Significant Change" to Coinsquare's Form 21-101F2 at the appropriate time. However, we believe that the existing processes are sufficient and appropriate to address any risks that may arise throughout the duration of Phase 1, and the early part of Phase 2.

2. "*…the Notice does not indicate whether trading is done on a disclosed name basis. Hypothetically, if Subscribers could "approve" or "deny" trading with other Subscribers, the model is no longer a single CLOB model, but a multi-CLOB model where each Subscriber only views other Subscribers' orders that it has approved for trading and vice versa.*"

Coinsquare response: At the commencement of operations, all trading on the Coinsquare ATS will be done by the Coinsquare dealer. As soon as the ATS has two (or more) Subscribers, all trading on the Coinsquare ATS will be done on a fully disclosed basis, reflecting the name of each Subscriber that is a party to each trade. For greater certainty, we would note that, in the context of Phase 2, the Coinsquare ATS will be a single CLOB model; Subscribers will not have the ability to "approve" or "deny" trading with any other specific Subscriber(s), similar to any other Canadian marketplace.

3. "*What recourse does a Subscriber have in the case of a default or even delayed settlement? The risk a Subscriber takes when placing an order in the CLOB is that it will be matched with another Subscriber who has over-levered its position or failed to properly hedge and ultimately fails to deliver and settle the transaction."*

Coinsquare response: In Phase 1, with a single Subscriber, there is no risk of default. For Phase 2, we would refer the commenter to our response to comment #1 above.

Market Risk

4. "*In the absence of pre-funding or proper credit checks, several Subscribers could have experienced material losses, possibly large enough to default and not settle their trades, which in turn results in losses for other Subscribers.*"

Coinsquare response: In Phase 1, with a single Subscriber, there is no risk of default or cascading losses. For Phase 2, we would refer the commenter to our response to comment #1 above.

5. "*The Notice also specifies that "Trading will not be offered on the Coinsquare ATS in Digital Asset pairs." This means total reliance on the fiat wire system to settle each and every trade. Fiat wires often take hours, extend into the next day or even worse, are not available over the weekend*." (p.4)

Coinsquare response: We acknowledge that, in theory, this comment raises a valid point regarding the risks that flow from reliance on traditional fiat wire transfers, were the Phase 1 system to apply to multiple Subscribers indefinitely. However, as noted above in our response to comment #1, we are currently working on a targeted Phase 2 solution, and in the meantime, we believe that the settlement system that has been proposed in the Notice is sufficient and appropriate for Phase 1 and for the early part of Phase 2. In any event, it is certain that the risk highlighted in this comment will have no practical relevance at launch, as the Coinsquare dealer will never be wiring fiat to itself (let alone, over the weekend)..

[2] There may be some limited counterparty or other risks that arise from the moment when there are two Subscribers, depending on the nature of the second Subscriber, the volume of its trading on the Coinsquare ATS, the value of the assets it deposits with the Custodians (as defined herein), etc. However, we anticipate that any such risks will be mitigated and managed by the systems that have been adopted for Phase 1.

Operational Risk

6. "*the proposal identifies that fiat settlement will occur prior to Digital Asset settlement, in each and every instance. Because fiat settlements are affected via a wire with delayed settlement, this could take T+1 on a weekday, or T+3 on a holiday or weekend.*"

Coinsquare response: We acknowledge the comment; however, in Phase 1, there is no practical risk arising from wire transfers, as the Coinsquare dealer will never wire fiat to itself. For additional details, please see our response to comment #5 above.

7. "*If the Digital Asset settlement occurs after the fiat transfer is received, it could be outstanding for more than three days, all the while counterparty and market risk left unchecked by the bilateral settlement process*."

Coinsquare response: We acknowledge the comment; however, in Phase 1, there is no practical risk arising from wire transfers, as the Coinsquare dealer will never wire fiat to itself. For additional details, please see our response to comment #5 above.

8. "*How would the ATS handle a situation where the fiat settlement for the UST had occurred, but the ATS decided to stop offering support for the Digital Asset?*"

Coinsquare response: If the Coinsquare ATS were to discontinue trading of any particular Digital Asset — a decision that must be made by senior management in accordance with Coinsquare's written policies and procedures, including those covering suspension or removal of Digital Assets — any trades that were still in process would be canceled, and any previously transferred fiat would be required to be returned to the purchaser, all in accordance with Coinsquare's written policies and procedures, as they exist today.

9. "*Another concern is the validation of Digital Asset addresses. Instrumental in Digital Asset settlement is a procedure around whitelisting or validating new addresses. The Notice does not appreciate the risk of sending Digital Assets to the wrong address and how such an error would be rectified."*

Coinsquare response: We disagree with this comment for the following reasons:

- Valid addresses are always whitelisted by the Custodians.
- Operational deposit and withdrawal processes (including regular testing of such processes) are in place at the Custodians to reduce any risk of sending a Subscriber's Digital Assets to the wrong address.

Coinsquare expects that the solution it is developing for Phase 2 will have additional safeguards to mitigate the risk described in this comment, and it will be subject to regulatory review in the normal course, at the appropriate time.

Conflict of Interest

10. "*There is no disclosed procedure around best execution or how the ATS will ensure the retail clients behind the Coinsquare dealer will be guaranteed fair pricing when such pricing is offered and controlled by Coinsquare*."

Coinsquare response: "Best execution" is not addressed in the Notice as it is not relevant to the operation of an ATS *per se*. We would note, however, that the Coinsquare dealer is subject to a "best execution" obligation under IIROC Rules and that it has adopted extensive written policies and procedures to fulfill its obligation. Coinsquare has also adopted policies and procedures to ensure fair pricing on the Coinsquare ATS in its capacity as a provider of principal liquidity on the Coinsquare ATS. Moreover, all written policies and procedures of both the Coinsquare ATS and the Coinsquare dealer have been reviewed as part of Coinsquare's regulatory approval process.

11. "*…when additional Subscribers join the ATS, the Coinsquare ATS will still have visibility into the positions of all Subscribers, not just the original Subscriber—the Coinsquare dealer. Moreover, with the competitive advantage of knowing all other Subscribers' positions and credit exposure, the Coinsquare dealer has not offered a commitment to withdraw from the ATS when other Subscribers begin participating.*"

Coinsquare response: Coinsquare has adopted a written policy, entitled the *ATS Conflict of Interest Policies and Procedures*, which sets out how conflicts inherent in the Coinsquare business model will be managed. In accordance with subsection 10.1(e) of National Instrument 21-101 *Marketplace Operation*, that policy will be published on the Coinsquare ATS page on the Coinsquare website at (or prior to) launch of the marketplace. (Like all other written policies of the Coinsquare ATS, the *ATS Conflict of Interest Policies and Procedures* has been reviewed by the regulators.) Briefly, we would note that the policy:

- imposes strict information- and physical barriers to separate Coinsquare dealer (trading) personnel from Coinsquare ATS personnel;
- prohibits Coinsquare dealer (trading) personnel from having any advance notice of orders on the Coinsquare ATS; and

- ensures that Coinsquare dealer principal orders are handled in the same manner as Coinsquare dealer client (agency) orders through the Coinsquare ATS's matching engine, with no preference or advantage given to any of the principal orders.

12. "*Coinsquare ATS will also make unilateral decisions around "forks, airdrops, or other similar events" and how they are handled on the ATS. It would be naïve to believe the ATS's decisions will not be impacted by the decision most advantageous for the Coinsquare dealer.*"

Coinsquare response: All decisions around forks, airdrops, and other similar events will be made in accordance with Coinsquare's *Digital Asset Fork Policy*. In the event of a planned fork, unplanned fork, or airdrop, Coinsquare will submit the details of the action to its Fork Review Committee which will determine whether Coinsquare will support the fork, as required by the policy. This committee is composed of senior officers of Coinsquare from both business and information technology divisions of the firm. The Fork Review Committee, in determining how these events will be handled on the Coinsquare ATS, will consider the following factors: blockchain stability, market capitalization, liquidity, cost and timing. The goal of the Fork Review Committee is to ensure that the Coinsquare ATS offers products which are considered safe and acceptable for all Subscribers to trade.

13. "*The conflict of interest where a single entity (or two entities with common ownership and personnel) can see the activities of all other market participants, while the other Subscribers are trading blind, is insurmountable.*"

Coinsquare response: We disagree with the premise of this comment. The marketplace model adopted by Coinsquare is common for crypto asset trading platforms at this stage of the development of the crypto market in Canada. For additional details, please see our response to comment #11 above. Further, there is precedent for ATS operators to also conduct a traditional "dealer" business alongside the ATS.

Settlement

14. "*However, as written the Proposal does not suggest that dealer members wishing to access Coinsquare ATS, rather than the Coinsquare dealer, will be required to also maintain client accounts at the Coinsquare dealer.*"

Coinsquare response: We believe the comment intends to state that the Notice "*does* suggest" that dealer members wishing to access the Coinsquare ATS as Subscribers will be required to maintain accounts for their clients at the Coinsquare dealer. In fact, the comment as written is true: the Notice does *not* suggest that a Subscriber must maintain its client accounts at the Coinsquare dealer; that is because there is no such requirement. Subscribers to the Coinsquare ATS, to the extent that they are approved as IIROC dealers in their own right, must maintain their own client accounts within their own business operations.

15. "*Since any Subscriber can trade with any other Subscriber on the ATS, all Subscribers will potentially need to be able to settle with all other Subscribers. This requires business relationships to exist between dealers. Any new dealers seeking to become Subscribers must be full members of the collection of Subscribers, introducing a significant barrier to entry. Further, this de-facto requirement gives each Subscriber a veto over the entry of another dealer into the network. This is because any Subscriber could simply refuse to open credit with another – meaning that if a trade were to happen between them (in a multilateral market), that trade would not be settled bilaterally.*"

Coinsquare response: This comment, which appears to raise an issue relating to counterparty risk similar to comments made by the other commenter, is addressed in our response to comment #1 above.

16. "*As settlement is bilateral, and requires credit relationships to exist, dealers must be free to negotiate policies for how they face each other as Coinsquare ATS Subscribers.*"

Coinsquare response: This comment, which appears to raise an issue relating to counterparty risk similar to comments made by the other commenter, is addressed in our response to comment #1 above.

17. "*There is no clarity on the manner of settlement (i.e. use of wire transfers, escrow agents, etc.), timing requirements, or what recourse there may be for bilateral settlement fails.*"

Coinsquare response: For Phase 1, Coinsquare will have in place a bilateral settlement and custody process, which is documented in various written policies and procedures that have been vetted by the regulators. (As noted in response to comment #1 above, a new system is being developed for Phase 2, and it will be subject to regulatory review, in the normal course, at a future time.)

18. "*It is also unclear what safeguards exist to manage the risk that Digital Asset transfers are erroneously sent to the wrong wallet*."

Coinsquare response: For details on the safeguards that the Coinsquare ATS will have place for Phase 1, please see our response to comment #9 above.

19. "*Further, the bilateral nature of settlement as described introduces the potential for cascading credit risk between counterparties. If settlement is bilateral, as described in the Proposal, Subscribers must be in a position to control credit limits with each other – on a trade-by-trade basis.*"

Coinsquare response: This comment, which appears to raise an issue relating to counterparty risk similar to comments made by the other commenter, is addressed in our response to comment #1 above.

Fair Access

20. "*First, the settlement issues above introduce either a requirement that all Subscribers establish credit relationships with each other (which is difficult), or potentially become trading clients of Coinsquare Capital Markets Ltd.*"

Coinsquare response: For Phase 1, Coinsquare will have in place a bilateral settlement and custody process, which is documented in various written policies and procedures that have been vetted by the regulators. A new system is being developed for Phase 2 that will address settlement operations in a multi-subscriber environment and, as noted in response to comment #1 above, it will be subject to regulatory review, in the normal course, at a future time.

21. "*Second, while the requirement that all Coinsquare ATS members must be IIROC members is reasonable, it bears noting that IIROC would have to approve each dealer's activities in digital assets. There are currently no written or proposed rules on this topic from IIROC. It is impossible to judge whether this standard is an unreasonable condition of access for most dealers.*"

Coinsquare response: Requiring ATS subscribers to be IIROC members is a long-standing ATS requirement in Canada. The need for IIROC to approve trading of Digital Assets by prospective Subscribers to the Coinsquare ATS is not an access requirement or restriction imposed by Coinsquare or by the operational model of the Coinsquare ATS, but rather, it is the logical consequence of an IIROC Rule requiring pre-approval of any material business change by an IIROC Dealer Member. We expect all of our IIROC dealer Subscribers to comply with their obligations under IIROC Rules. We also submit that this comment is more appropriately raised with the regulators than with Coinsquare.

22. "*Third, all dealers must have the ability to hold digital assets. While this is ordinarily a reasonable requirement, as of this writing only one dealer in Canada has any capability to hold digital assets.*"

Coinsquare response: This is a regulatory issue endemic to, and unavoidable in, the current stage of the evolution of the market and regulatory framework for Digital Assets in Canada. It is not an issue that results from the manner in which the Coinsquare ATS conducts its operations. As the market and regulatory framework evolve over time, the Coinsquare ATS will evolve as well. For now, we believe that the Coinsquare ATS processes described in the Notice are appropriate and sufficient.

Other Matters

23. "*We do not believe it is sufficient for the broader marketplace to rely on the representation that "Coinsquare has policies and procedures in place to appropriately manage any conflicts between its OEO dealer activities, the Coinsquare ATS, and other Coinsquare businesses*."

Coinsquare response: All ATSs with affiliated dealers have had to confront this issue since formal market regulation was introduced approximately 25 years ago. All Canadian ATSs, including the Coinsquare ATS, address potential conflicts by disclosing the existence of each conflict and creating an information barrier between the ATS and dealer operations.

24. "*We believe that at this time UMIR does not sufficiently address trading of digital assets, and therefore Coinsquare ATS would need to establish (including through publication for comment) market integrity rules under which surveillance will be conducted. Alternatively, UMIR must be amended prior to the operation of Coinsquare ATS to incorporate specific provisions unique to the crypto ecosystem and which may represent risks unique to crypto assets.*"

Coinsquare response: Responsibility for rulemaking does not reside with the Coinsquare ATS, but rather, with the appropriate regulatory body. Coinsquare has worked diligently and collaboratively with the regulators over a lengthy period of time to operationalize a digital asset marketplace that complies with the current regulatory framework for crypto-asset trading platforms set out by the CSA and IIROC. We expect the regulatory framework to evolve over time and, until then, Coinsquare continues to work with IIROC to ensure that the Coinsquare ATS complies with all applicable requirements, including the current provisions of UMIR, but with flexibility, taking into account the unique practical realities presented by Digital Asset trading, balanced with the need to address the legitimate underlying policy considerations of the relevant provisions.

25. "*Further, the Proposal indicates that Coinsquare ATS will self-police until IIROC is able to provide surveillance services. We are concerned that this is a window of unknown length, and potentially very long.*"

Coinsquare response: In consultation with the regulators, Coinsquare has developed a set of market-surveillance protocols to monitor activity on the Coinsquare ATS, supervised by IIROC, to reasonably ensure market integrity. This is an interim measure, in compliance with the regulatory framework that currently exists. In accordance with these interim protocols, the Coinsquare ATS

will generate alerts, reports, and other information, which it will provide to IIROC on a daily basis pursuant to a Regulation Services Agreement between Coinsquare and IIROC as the Coinsquare ATS regulation services provider, in accordance with applicable regulations. These interim protocols will remain in place until a more permanent (consolidated) market surveillance solution is introduced by the regulators, at which time, the interim protocols will be discontinued by the Coinsquare ATS.

26. "*The Proposal also does not address how potential conflicts of interests between the surveillance function (interim or otherwise) and the broader for-profit business will be managed*."

Coinsquare response: As set forth in the applicable written policies and procedures, the Coinsquare ATS personnel responsible for the Coinsquare ATS's marketplace surveillance will be highly trained, highly specialized individuals; they will not have any interaction with, nor any access to, the operations of the Coinsquare dealer. These (and other) safeguards have been discussed in detail with the regulators, and they are all thoroughly documented in the relevant written policies and procedures of the Coinsquare ATS.

27. "*The Proposal indicates that policies & procedures exist to manage conflicts between OEO dealer & ATS activities, but no details are provided, including whether these policies specifically address potential conflicts between trading and surveillance*."

Coinsquare response: The potential conflict between trading and surveillance raised in this comment is addressed through extensive training and the strict segregation of Coinsquare ATS personnel responsible for market surveillance from all other firm (including Coinsquare dealer) personnel. For additional details, please our response to comment #26 above.

28. "*Finally, Coinsquare ATS fees are not yet disclosed at www.coinsquare.com, as indicated in the Proposal.*"

Coinsquare response: Coinsquare ATS fees and other required regulatory disclosures in respect of Coinsquare ATS will be available on the Coinsquare ATS page on the Coinsquare website once the ATS has been approved by the regulators and the business has been launched.

B.11.2.2 TriAct Canada Marketplace LP – Notice of Approval of Proposed Change to the MATCHNow Trading System

TRIACT CANADA MARKETPLACE LP

NOTICE OF APPROVAL OF PROPOSED CHANGE TO THE MATCHNOW TRADING SYSTEM

On October 13, 2022, the Ontario Securities Commission (the **OSC**) approved the amendment proposed by TriAct Canada Marketplace LP (operating as **MATCHNow**) to its Form 21-101F2.

MATCHNow had proposed a change to the MATCHNow trading system involving several distinct technological changes to enhance the ability for existing MATCHNow order types to interact and thereby allow them to match to a greater degree (collectively, the **Order Interaction Enhancements**).

In accordance with the OSC's *Process for the Review and Approval of the Information Contained in Form 21-101F2 and Exhibits Thereto*, a notice outlining and requesting feedback on the Order Interaction Enhancements was published on the OSC website (see https://www.osc.ca/en/industry/market-regulation/marketplaces/alternative-trading-systems-atss/atss-operating-ontario/match-now-operated-triact-orders-notices/triact-0) and in the OSC Bulletin on August 18, 2022 at (2022), 45 OSCB 7560 (see https://www.osc.ca/sites/default/files/2022-08/triact_20220818_changes-to-matchnow-trading-system.pdf) (the **Notice of Proposed Change**).

No comment letters were received in response to the Notice of Proposed Change.

In conjunction with the approval of the Order Interaction Enhancements, which were described in the Notice of Proposed Change, the OSC approved MATCHNow's application for exemptive relief from the pre-trade transparency requirements in section 7.1 of National Instrument 21-101 *Marketplace Operation* with respect to one aspect of the Order Interaction Enhancements, namely, the new opt-in feature that allows Market Flow orders (also known as "Immediate-or-Cancel orders" or **IOC orders**) to interact with Conditionals, provided the IOC orders meet the applicable minimum size requirements (i.e., greater than 50 standard trading units and greater than $30,000 in notional value or greater than $100,000 in notional value) and the additional terms and conditions set out in the exemptive relief decision. That decision is being published along with this Notice of Approval.

In the coming days, MATCHNow will publish a notice on its website indicating the date(s) of implementation of the various Order Interaction Enhancements.

This page intentionally left blank

Index

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.